

Queensland



# JUVENILE JUSTICE ACT 1992

**Reprinted as in force on 20 January 1997  
(includes amendments up to Act No. 22 of 1996)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 3B**

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# Information about this reprint

This Act is reprinted as at 20 January 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



**JUVENILE JUSTICE ACT 1992**

**TABLE OF PROVISIONS**

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title . . . . .	13
2	Commencement . . . . .	13
3	Objectives of Act . . . . .	13
4	Principles of juvenile justice . . . . .	14
5	Definitions . . . . .	15
6	Child’s age regulation . . . . .	19
7	Meaning of police officer “starting a proceeding” . . . . .	20
8	Meaning of “serious offence” . . . . .	20
9	Meaning of court that made order . . . . .	21
<b>PART 1A—ADMINISTRATION</b>		
9A	Explanation about Act’s administration . . . . .	22
9B	Delegations . . . . .	22
9C	Appearances by chief executive and commission . . . . .	23
9D	Delegation of powers by proper officer . . . . .	23
<b>PART 1B—INVESTIGATION PROVISIONS</b>		
<i>Division 1—Conditions on admissibility of child’s statement</i>		
9E	Another person must be present . . . . .	23
<i>Division 2—Fingerprints and palmprints</i>		
10	Application by police officer for permission to take child’s identifying particular . . . . .	24
10A	Another person must be present when identifying particular is taken . . . . .	26
10B	Destruction of identifying particular taken under court order . . . . .	27
10C	Division does not limit other provisions . . . . .	28

**PART 2—CAUTIONS AND START OF PROCEEDINGS***Division 1—Preliminary considerations*

10	Police officer to consider alternatives to proceeding against child . . . . .	29
----	---	----

*Division 2—Cautioning*

11	Purpose of caution . . . . .	29
12	Police officer may administer a caution . . . . .	30
13	Conditions for administration of police caution . . . . .	30
14	Caution administered by respected person of Aboriginal or Torres Strait Islander Community . . . . .	30
15	Caution procedure must involve explanation . . . . .	31
16	Caution procedure may involve apology to victim . . . . .	31
17	Child must be given a notice of caution . . . . .	31
18	Confidentiality of cautions—inadmissibility . . . . .	32
19	Childrens Court may dismiss charge if caution should have been administered . . . . .	33

*Division 3—Arrest*

20	Arrest and ex officio indictment power preserved . . . . .	34
21	Restriction on arrest of child . . . . .	34
22	Parent and chief executive must be advised of arrest of child . . . . .	34

*Division 4—Attendance notice*

23	Attendance notice may be issued for offence . . . . .	35
24	Attendance notice form . . . . .	35
25	Attendance notice must be lodged in court without cost to child . . . . .	36
26	General particulars only are required on an attendance notice . . . . .	36
27	Particulars of attendance notice offence must be given in the proceeding . . . . .	37
28	Parent and chief executive must be advised of service of attendance notice on child . . . . .	37
29	Attendance notice equivalent to a complaint and summons . . . . .	37
30	Court may order immediate arrest of child who fails to appear . . . . .	38
31	Court must strike out attendance notice if service insufficient . . . . .	38

*Division 5—Complaint and summons*

32	Service of complaint and summons if offender a child . . . . .	39
----	--	----

33 Proof of service of complaint and summons in compliance with this Act . . . . . 39

34 No costs against child for lodgment of complaint and summons . . . . . 39

35 Proceeding in relation to simple offence in absence of child . . . . . 40

**PART 3—BAIL AND CUSTODY OF CHILDREN**

37 Bail Act 1980 applies . . . . . 40

38 Arrested child must be brought promptly before the Childrens Court . . . . . 40

39 Child must ordinarily be released from custody on charge . . . . . 40

40 Child must be given release notice . . . . . 41

41 Custody of child pending court appearance . . . . . 42

42 Court may in all cases release child without bail . . . . . 42

43 Custody of child if not released by court . . . . . 43

44 Warrant for arrest of child who fails to appear after release without bail . . 43

45 Custody of child arrested on court warrant . . . . . 44

46 Childrens Court Judge may grant bail . . . . . 44

**PART 4—JURISDICTION AND PROCEEDINGS**

*Division 1—General*

47 Court jurisdiction generally unaffected . . . . . 45

48 Application of Part 4 of Mental Health Act 1974 . . . . . 45

49 Childrens Court Judge . . . . . 45

50 District Court jurisdiction in aid . . . . . 46

51 Childrens Court Magistrate . . . . . 46

52 Magistrates Court jurisdiction in aid . . . . . 46

53 Application of usual laws where necessary . . . . . 47

54 Limitation on justices . . . . . 47

55 Infringement notices . . . . . 48

56 Presence of parent required generally . . . . . 48

56A Court may order parent to attend . . . . . 49

57 Consequence of parent’s absence . . . . . 49

58 Explanation of proceeding . . . . . 50

59 Ordinary practice applies to explanations if child is represented . . . . . 50

60 Chief executive’s and commission’s rights of audience generally . . . . . 51

61 Adjournment power generally . . . . . 51

*Juvenile Justice Act 1992*


---

62	Publication prohibited . . . . .	51
63	One year limitation inapplicable if indictable offence dealt with summarily . . . . .	52
64	Court to refrain from inappropriate summary hearing of indictable offence . . . . .	52
65	Procedural elections under this Act in relation to an indictable offence replace other elections . . . . .	53
66	Court to check child’s legal representation . . . . .	53
67	Use of adduced evidence after change of procedure . . . . .	53
<b><i>Division 2—Serious offence procedure</i></b>		
<b><i>Subdivision 1—Application</i></b>		
68	Application of div 2 . . . . .	54
<b><i>Subdivision 2—Procedure if the serious offence is a supreme court offence</i></b>		
69	Meaning of “supreme court offence” . . . . .	54
69A	Application of subdiv 2 . . . . .	54
69B	Committal proceeding only option . . . . .	55
69C	Child must be committed for trial or sentence before Supreme Court . . . . .	55
<b><i>Subdivision 3—Procedure if the serious offence is not a supreme court offence</i></b>		
69D	Application of subdiv 3 . . . . .	55
69E	Committal proceeding only option . . . . .	55
70	Election if trial results . . . . .	55
71	Election on plea of guilty . . . . .	56
<b><i>Subdivision 4—Proceedings before Childrens Court Judge</i></b>		
72	Jurisdiction of Childrens Court Judge over committed child . . . . .	57
73	Child may change plea of guilty . . . . .	57
74	Removal of proceeding to another jurisdiction . . . . .	58
75	General laws relating to indictable offence apply . . . . .	58
<b><i>Division 3—Indictable offence (other than serious offence) procedure when child legally represented</i></b>		
76	Application . . . . .	58
77	Explanation and election at start . . . . .	59
78	Procedure on summary hearing . . . . .	59

---

79	Election on plea of guilty . . . . .	60
	<b><i>Division 4—Indictable offence (other than serious offence) procedure when child not legally represented</i></b>	
80	Application of Division . . . . .	60
81	Start as committal proceeding . . . . .	60
82	Explanation of election at end of prosecution case . . . . .	61
83	Procedure on summary hearing . . . . .	61
84	Election on plea of guilty . . . . .	62
	<b><i>Division 5—Rules applying if child and another person are charged</i></b>	
85	Joint committal proceeding in relation to adult and child are allowed . . . .	62
86	Prosecution may request a matter proceed as a committal to the Supreme or a District Court in order to ensure joint trial . . . . .	62
	<b><i>Division 6—Appeal and review</i></b>	
87	Appeal rights generally . . . . .	63
88	Sentence review . . . . .	64
89	Application for review . . . . .	64
90	Preliminary procedure . . . . .	64
91	Stay of proceeding and suspension of orders . . . . .	65
92	Conduct of review . . . . .	65
93	Review decision . . . . .	65
94	Interrelation with other types of appeal . . . . .	66
95	Incidents of review . . . . .	67
96	Orders at end of reviews . . . . .	67
	<b><i>Division 7—Mistake in exercise of jurisdiction</i></b>	
97	Meaning of proceeding . . . . .	67
98	Correction of error by court making order . . . . .	68
99	Removal of a proceeding because of lack of jurisdiction . . . . .	68
100	Lack of jurisdiction discovered in course of a proceeding . . . . .	69
101	Lack of jurisdiction discovered after proceeding ends . . . . .	69
	<b><i>Division 8—Special sentencing provisions relating to detainee</i></b>	
102	Extension of Act for detainee offender . . . . .	70
	<b><i>Division 9—Child offenders who become adults</i></b>	
103	Definitions for pt 4, div 9 . . . . .	71

---

104	Offender treated as child . . . . .	71
105	When offender must be treated as an adult . . . . .	71
106	When offender may be treated as an adult . . . . .	72
107	Continuing effect on offender of orders made when child . . . . .	73
107A	When order made as child may be dealt with as adult order . . . . .	73
107B	Sentencing offender as adult . . . . .	75

## **PART 5—SENTENCING**

### *Division 1—Sentencing generally*

108	Jurisdiction to sentence child exclusive . . . . .	75
109	Sentencing principles . . . . .	76
110	Presentence report . . . . .	77
111	Presentence report evidence . . . . .	77
112	Disclosure of presentence report . . . . .	78
113	Finding of guilt as child may be disclosed while a child . . . . .	78
114	Evidence of childhood finding of guilt not admissible against adult . . . . .	78
115	Mandatory sentence provisions inapplicable . . . . .	79
116	Preference to be given to compensation and restitution . . . . .	79
117	Outstanding charge may be taken into account on sentence . . . . .	79
118	Children entitled to explanation of sentence . . . . .	80
119	Copy of court order to be given to child, parent etc. . . . .	80

### *Division 2—Orders on children found guilty of offences*

120	Sentence orders—general . . . . .	81
121	Sentence orders—serious offences . . . . .	82
121A	More than 1 type of order may be made for a single offence . . . . .	83
121B	Combination of probation order and community service order . . . . .	83
121C	Combination of detention order and probation order . . . . .	83
122	Other orders . . . . .	84
123	Orders may be combined in 1 form . . . . .	84
124	Recording of conviction . . . . .	85
125	Considerations whether or not to record conviction . . . . .	85
126	Judge may delegate sentencing power to Magistrate . . . . .	85
127	Reference of case to Childrens Court Judge for sentence . . . . .	86



***Division 3—Good behaviour orders***

128	Good behaviour order . . . . .	87
129	Breach of conditions . . . . .	87

***Division 4—Fines***

130	Child's capacity to pay fine to be considered . . . . .	87
131	Requirements of fine order . . . . .	87
131A	Proper officer's application on breach . . . . .	88

***Division 5—Probation orders***

132	Probation orders—requirements . . . . .	89
133	Child must be willing to comply . . . . .	90
134	Chief executive's application on breach . . . . .	90
135	General options available to Childrens Court Magistrate on breach application . . . . .	91
136	General options available to superior court to which child committed for breach . . . . .	92
137	General options available to court before which child found guilty of an indictable offence . . . . .	92
138	Court may resentence child originally sentenced by lower court . . . . .	93
139	General options available to court to which child committed for breach by indictable offence . . . . .	94
140	Specific powers if breach proved . . . . .	95
141	Variation, discharge and resentence in the interests of justice . . . . .	96
142	Compliance with existing order relevant to further order . . . . .	96
143	Affidavits may be used in certain proceedings . . . . .	97
144	Notice of discharge etc. of probation order . . . . .	97
145	Variations by consent . . . . .	97

***Division 6—Community service orders***

146	Preconditions to making of community service order . . . . .	98
147	Requirements to be set out in community service order . . . . .	98
148	Obligation of chief executive . . . . .	99
149	Community service to be performed within limited period . . . . .	99
150	Multiple or successive community service orders . . . . .	99
151	Limitation on number of hours of community service . . . . .	100
152	Ending of community service order . . . . .	101

---

153	Chief executive's application on breach . . . . .	101
154	General options available to Childrens Court Magistrate on breach application . . . . .	102
155	General options available to superior court to which child committed for breach . . . . .	103
156	Specific powers if breach proved . . . . .	103
157	Extension of time to perform community service . . . . .	104
158	Variation, discharge or resentence in the interests of justice . . . . .	105
159	Compliance with existing order relevant to further order . . . . .	106
160	Affidavits may be used in certain proceedings . . . . .	106
161	Notice of discharge etc. of community service order . . . . .	106
162	Compensation for personal injury . . . . .	107
163	Variations by consent . . . . .	107

***Division 7—Detention order***

***Subdivision 1—Initial order***

164	Presentence report must be obtained before detention order sentence . . .	108
165	Detention must be only appropriate sentence . . . . .	108
166	Court's reasons for detention order to be stated and recorded . . . . .	108
167	Detention to be served in detention centre . . . . .	109
168	Commencement of detention period . . . . .	109
169	Detention orders ordinarily concurrent . . . . .	109
170	Court may order detention period to be cumulative . . . . .	110
171	Limitation on cumulative orders . . . . .	110
172	Period of escape or release pending appeal not counted as detention . . .	110
172A	Application for variation of detention order in interests of justice . . . . .	111
173	Multiple orders of detention and imprisonment against person as adult and child . . . . .	111
174	Period of custody on remand to be treated as detention on sentence . . . .	112

***Subdivision 2—Immediate release order***

175	Purpose of immediate release order . . . . .	112
176	Immediate release order . . . . .	113
177	Immediate release order—requirements . . . . .	113
178	Child must be willing to comply . . . . .	113

---

179	Presentence report must support immediate release order . . . . .	114
180	Effect of program period ending . . . . .	114
181	Application of Workers' Compensation Act 1990 . . . . .	114
182	Suspension of program period . . . . .	114
183	Failure to comply with conditions of immediate release order . . . . .	114
184	Court's decision on complaint . . . . .	115
185	Options available to court before which a child subject to an immediate release order is found guilty of an indictable offence . . . . .	116
186	Variation and revocation in the interests of justice . . . . .	117
187	Detention reduced to the extent just . . . . .	118
	<b><i>Subdivision 3—Release after fixed period of detention</i></b>	
188	Release of child after service of period of detention . . . . .	118
189	Chief executive's fixed release order . . . . .	119
190	Release period counts as part of detention period . . . . .	119
191	Cancellation of release order . . . . .	119
	<b><i>Subdivision 4—Parole for life sentences</i></b>	
191A	Application of subdiv 4 . . . . .	120
191B	Application of parole provisions . . . . .	120
	<b><i>Division 8—Restitution and compensation</i></b>	
192	Restitution, compensation . . . . .	120
	<b><i>Division 9—Application of Traffic Act 1949</i></b>	
193	Application of Traffic Act 1949 generally . . . . .	121
194	Disqualification . . . . .	122
	<b><i>Division 9A—Order for identifying particulars to be taken</i></b>	
194A	Court may order sentenced child's identifying particulars to be taken . . . . .	123
	<b><i>Division 10—Application of Criminal Offence Victims Act 1995</i></b>	
195	Civil compensation orders . . . . .	124
	<b><i>Division 11—Orders against parent</i></b>	
196	Interpretation . . . . .	124
197	Notice to parent of child offender . . . . .	124
198	Show cause hearing . . . . .	125
199	Recovery of unpaid compensations amount . . . . .	127

**PART 6—DETENTION ADMINISTRATION*****Division 1—Administration***

200	Application of Corrective Services Act 1988 . . . . .	127
201	Establishment of detention centres and other places . . . . .	128
203	Management of detention centres . . . . .	128
204	Official visitors appointment . . . . .	129
205	Functions, powers and duties of official visitor . . . . .	129
206	Directions to official visitor on security . . . . .	130

***Division 2—Children in detention centres***

207	Where children to be detained . . . . .	130
208	Authority for admission to detention centre . . . . .	130
209	Child must be given an explanation on entry to detention centre . . . . .	131
210	Leave of absence . . . . .	131
211	Childrens Court may order transfer to prison . . . . .	132
212	Commission may authorise treatment . . . . .	133
213	Ordinary visitor . . . . .	133
214	Protection of legal practitioner representing child . . . . .	134

***Division 3—Complaints***

215	Complaints generally . . . . .	135
216	Official visitor to hear and investigate complaints . . . . .	135
217	Powers of official visitors . . . . .	136
218	Child's communication with official visitor to be private . . . . .	136

***Division 4—Offences***

219	Escape . . . . .	136
220	Search warrant . . . . .	137
221	Warrants may be granted by telephone, facsimile, radio etc. . . . .	138
222	Offences relating to detention centres . . . . .	140

***Division 5—Child of detainee***

223	Child of detainee may be accommodated in detention centre . . . . .	141
224	Registration of birth of child of detainee . . . . .	141

**PART 7—GENERAL**

224A	Programs and services for children . . . . .	141
------	--	-----

---

224B	Police may help in keeping child in custody . . . . .	142
225	Parent entitled to know of whereabouts of child in custody . . . . .	142
226	Preservation of confidentiality . . . . .	142
227	Approved form . . . . .	144
228	Evidence . . . . .	144
229	Proceeding for offence . . . . .	145
230	Extension of time for payment of amounts . . . . .	145
231	Enforcement of child payments . . . . .	145
232	Enforcement of sentence by calendar . . . . .	145
233	Regulations . . . . .	146
234	Transitional delegations saved by Juvenile Justice Legislation Amendment Act 1996 . . . . .	146
235	Transitional orders and decisions saved by Juvenile Justice Legislation Amendment Act 1996 . . . . .	148
236	Application of Act to matters before Juvenile Justice Legislation Amendment Act 1996 . . . . .	149
	<b>SCHEDULE 1 . . . . .</b>	<b>151</b>

### **REGULATION MAKING POWER**

### **ENDNOTES**

1	Index to endnotes . . . . .	153
2	Date to which amendments incorporated . . . . .	153
3	Key . . . . .	153
4	Table of earlier reprints . . . . .	154
5	Tables in earlier reprints . . . . .	154
6	List of legislation . . . . .	154
7	List of annotations . . . . .	155
8	Provisions that have not commenced and are not incorporated into reprint . . . . .	166



# JUVENILE JUSTICE ACT 1992

[as amended by all amendments that commenced on or before 20 January 1997]

**An Act to provide comprehensively for the laws concerning children who commit, or who are alleged to have committed, offences and for related purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Juvenile Justice Act 1992*.

### Commencement

2. This Act commences on a day to be fixed by proclamation.

### Objectives of Act

3. The principal objectives of this Act are—
  - (a) to establish the basis for the administration of juvenile justice; and
  - (b) to establish a code for dealing with children who have, or are alleged to have, committed offences; and
  - (c) to provide for the jurisdiction and proceedings of courts dealing with children; and
  - (d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and
  - (e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander

*Juvenile Justice Act 1992*

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communities, in the provision of services designed to—

- (i) rehabilitate children who commit offences; and
- (ii) reintegrate children who commit offences into the community.

**Principles of juvenile justice**

**4.** The general principles underlying the operation of this Act (“**general principles of juvenile justice**”) are that—

- (a) the community must be protected from offences; and
- (b) because a child tends to be vulnerable in dealings with a person in authority a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child; and
- (c) a child—
  - (i) should be detained in custody for an offence (whether on arrest or sentence) only as a last resort; and
  - (ii) if detained in custody—should only be held in a facility suitable for children; and
- (d) if a child commits an offence—the child should be treated in a way that diverts the child from the courts’ criminal justice system, unless the nature of the offence and the child’s criminal history indicate that a proceeding for the offence should be started; and
- (e) if a proceeding is started against a child for an offence—
  - (i) the proceeding should be conducted in a fair and just way; and
  - (ii) the child should be given the opportunity to participate in and understand the proceeding; and
- (f) a child who commits an offence should be—
  - (i) held accountable and encouraged to accept responsibility for the offending behaviour; and
  - (ii) dealt with in a way that will give the child the opportunity to



develop in responsible, beneficial and socially acceptable ways; and

- (iii) dealt with in a way that strengthens the child's family; and
- (g) a victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law; and
- (h) a parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility; and
- (i) a decision affecting a child should, if practicable, be made and implemented within a time frame appropriate to the child's sense of time; and
- (j) the age, maturity and, where appropriate, cultural background of a child are relevant considerations in a decision made in relation to the child under this Act.

## **Definitions**

5. In this Act—

**“adult”** means a person who is not a child.

**“approved form”** see section 227.

**“arrest”** includes apprehension and taking into custody.

**“arrest offence”** means—

- (a) an offence of a type for which the offender may be arrested without warrant; or
- (b) an offence committed in circumstances where the offender may be arrested without warrant.

**“attendance notice”** means an attendance notice under section 23 (Attendance notice may be issued for arrest offence).

**“bail”** means bail as prescribed by the *Bail Act 1980*.

**“breach of duty”** means a breach of duty as defined by section 4 of the *Justices Act 1886*.

*Juvenile Justice Act 1992*

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**“caution”** means a caution administered under section 12 (Police officer may administer a caution).

**“child”** means—

- (a) a person who has not turned 17 years; or
- (b) after a day fixed under section 6 (Child’s age regulation)—a person who has not turned 18 years.

**“Childrens Court Judge”** includes the Childrens Court when constituted by a Childrens Court Judge.

**“Childrens Court Magistrate”** includes the Childrens Court when constituted by a Childrens Court Magistrate, Stipendiary Magistrate or justices.

**“commission”** means the Queensland Corrective Service Commission.

**“committal proceeding”** means a proceeding before a justice taking an examination of witnesses in relation to a charge of an indictable offence.

**“community service”** means activities decided to be community service under section 224A.<sup>1</sup>

**“community service hours”** means the hours of community service that a child is required to perform under a community service order.

**“community service order”** means an order under section 120(1)(e) (Sentence orders—general).

**“concurrent jurisdiction”** means—

- (a) in relation to a Childrens Court Judge—the jurisdiction of the Judge when constituting a District Court for a proceeding in its criminal jurisdiction; or
- (b) in relation to a District Court—the jurisdiction of the Judge when constituting the Childrens Court; or
- (c) in relation to a Childrens Court Magistrate—the jurisdiction of the Magistrate or justices when constituting a Magistrates Court for a proceeding under the *Justices Act 1886* or the Criminal Code; or

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<sup>1</sup> Section 224A (Programs and services for children)

(d) in relation to a Magistrates Court—the jurisdiction of the Magistrate or justices when constituting the Childrens Court.

“**court**” includes a justice taking an examination of witnesses in relation to a charge of an indictable offence.

“**detainee**”, for a proceeding or application, means a person who is, or was until the person’s appearance before a court for the proceeding or application, in the commission’s custody under this Act, other than a person serving a term of imprisonment under this Act.

“**detention order**” means an order made under section 120(1)(f) (Sentence orders—general) or 121(1)(b) (Sentence orders—serious offences).

“**disclosable caution**” see sections 18N and 18O.

“**driver’s licence**” means a driver’s licence under the *Traffic Act 1949*.

“**finding of guilt**” includes—

- (a) a finding of guilt (whether or not a conviction is recorded); and
- (b) a finding of guilt on a plea of guilty.

“**fixed release order**” see section 189.

“**general principles of juvenile justice**” means the general principles of juvenile justice mentioned in section 4 (Principles of juvenile justice).

“**good behaviour order**” means an order made under section 120(1)(b) (Sentence orders—general).

“**immediate release order**” means an order made under section 176 (Immediate release order).

“**legal practitioner**” means—

- (a) a person admitted as a barrister of the Supreme Court whose name is currently enrolled on the Roll of Barristers of the Supreme Court; or
- (b) a person admitted as a solicitor of the Supreme Court whose name is currently enrolled on the Roll of Solicitors of the Supreme Court.
- (c) a person mentioned in section 229(2)<sup>2</sup> acting for a party.

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<sup>2</sup> Section 229(2) (Proceeding for offence)

**“life offence”** means an offence for which a person sentenced as an adult would be liable to life imprisonment.

**“loss”** of property includes loss, damage or destruction.

**“medical treatment”** includes a physical, psychiatric, psychological or dental examination or treatment.

**“officer”** of the commission, see the *Corrective Services (Administration) Act 1988*, section 6.<sup>3</sup>

**“parent”** means—

- (a) a parent or guardian of a child; or
- (b) a person who has lawful custody of a child other than because of the child’s detention for an offence or pending a proceeding for an offence; or
- (c) a person who has the day-to-day care and control of a child.

**“parole”** means parole under the *Corrective Services Act 1988*, part 4.<sup>4</sup>

**“personal offence”** means an offence relating to the person of another.

**“penalty unit”** see *Penalties and Sentences Act 1992*, section 5.<sup>5</sup>

**“police station”** means a police station within the meaning of the *Police Service Administration Act 1990*.

**“prison”** means a prison within the meaning of the *Corrective Services Act 1988*.

**“probation order”** means an order made under section 120(1)(d) (Sentence orders—general) or 121(1)(a) (Sentence orders—serious offences).

**“procedural action or order”** means an action or order made for, or incidental to, a proceeding that does not constitute a hearing and determination on the merits of the matter to which the proceeding

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<sup>3</sup> *Corrective Services (Administration) Act 1988*, section 6, definition “officer”—  
“**“officer”** in relation to the commission means a person employed by it on salary, or engaged and appointed by it on a contract basis, on the basis of full-time employment or part-time employment.’.

<sup>4</sup> *Corrective Services Act 1988*, part 4 (Parole)

<sup>5</sup> *Penalties and Sentences Act 1992*, section 5 (Meaning of penalty unit)

relates, for example—

- (a) the charging of a defendant; and
- (b) the issue of a warrant; and
- (c) the granting of bail or release without bail; and
- (d) the remand of a defendant; and
- (e) the adjournment of the proceeding.

**“proper officer”** means—

- (a) for the Supreme Court, a District Court or a Childrens Court Judge—the registrar or a sheriff, deputy sheriff or under sheriff of the court; and
- (b) for a Magistrates Court or a Childrens Court Magistrate—the clerk of the court.

**“property offence”** means an offence relating to property.

**“sentence order”** means an order made under section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences), including a reprimand.

**“serious offence”** means an offence mentioned in section 8 (Meaning of “serious offence”).

**“seven year offence”** means a life offence or an offence of a type, that if committed by an adult, would make the adult liable to imprisonment for 7 years or more.

**“simple offence”** includes a regulatory offence and a breach of duty.

**“State”** includes a Territory.

**“supreme court offence”** see section 69.

**“treatment”** includes therapeutic, palliative and preventative treatment.

### **Child’s age regulation**

**6.(1)** The Governor in Council may, by regulation, fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years.

(2) A person of 17 years who commits an offence before the commencement of the regulation will not be taken, after the commencement, to have committed the offence as a child in a subsequent proceeding for the offence.

(3) A court that sentences a person to whom subsection (2) applies for the offence mentioned in the subsection must have regard to the sentence that might have been imposed if the person were sentenced as a child.

(4) The court cannot order the person—

- (a) to serve a term of imprisonment longer than the period of detention that the court could have imposed on the person if sentenced as a child; or
- (b) to pay any amount by way of fine, restitution or compensation greater than that which the court could have ordered the person to pay if sentenced as a child.

(5) Subsection (3) applies even though an adult would otherwise be liable to a heavier penalty which by operation of law could not be reduced.

(6) To avoid any doubt, it is declared subsections (2) to (5) only apply to a person mentioned in subsection (1) who is sentenced after the commencement of the regulation mentioned in the subsection.

### **Meaning of police officer “starting a proceeding”**

7. In this Act, mention of a police officer “starting a proceeding” against a child for an offence includes—

- (a) obtaining a warrant for the arrest of a child on a charge for an offence; and
- (b) arresting a child for an offence without a warrant.

### **Meaning of “serious offence”**

8.(1) Subject to subsection (2), in this Act “serious offence” means—

- (a) a life offence; or
- (b) an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more.

(2) An offence is not a serious offence if it is of a type that, if committed by an adult, may be dealt with summarily under—

- (a) the Criminal Code, section 443(1)(eb) or (i);<sup>6</sup> or
- (b) the *Drugs Misuse Act 1986*, section 13.<sup>7</sup>

(3) For the purpose of this section, the type of an offence includes the circumstances in which it is committed.

### **Meaning of court that made order**

9.(1) In this Act, mention of the court that made a particular order on sentence includes, if the order was made by—

- (a) the Supreme Court—any sittings of the Supreme Court in its criminal jurisdiction at any place in Queensland; or
- (b) a District Court—any sittings of a District Court in its criminal jurisdiction at any place in Queensland; or
- (c) a Childrens Court Judge—any sittings of a Childrens Court Judge at any place in Queensland; or
- (d) a Magistrates Court—any Magistrates Court sitting at any place in Queensland; or
- (e) a Childrens Court Magistrate—any Childrens Court Magistrate sitting at any place in Queensland.

(2) Subsection (1) applies even though the court is not constituted by the same judicial officer who made the order originally.

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<sup>6</sup> Criminal Code, section 443(1)(eb) or (i) (Indictable offences which may be dealt with summarily)

<sup>7</sup> *Drugs Misuse Act 1986*, section 13 (Certain offences may be dealt with summarily)

## PART 1A—ADMINISTRATION

### Explanation about Act's administration

**9A.(1)** This Act is administered through departments and the commission.

**(2)** The involvement of the commission is expressly mentioned in this Act and in the *Corrective Services (Administration) Act 1988*.

**(3)** The Minister responsible for this part's administration is responsible for the Act's development as a whole, particularly for the way it affects the administration of justice.

**(4)** For subsection (3), the Minister may require the commission to provide—

- (a) information it has relevant to the Act's effectiveness; and
- (b) access to detention centres and other places controlled by the commission for genuine researchers seeking information on a voluntary basis.

### Delegations

**9B.(1)** The chief executive of a department may delegate to the commission or to an officer of the public service or the commission a power conferred on that chief executive under this Act.

**(2)** The commission may delegate to a chief executive of a department or to an officer of the commission or the public service a power conferred on the commission under this Act.

**(3)** A power delegated to the commission or a chief executive of a department may be subdelegated by the commission or that chief executive.

**(4)** Subsections (1) to (3) apply to a power subject to any written direction of the Minister responsible for the administration of the provision under which the power is conferred.

**(5)** This section does not limit a power of delegation conferred on a chief executive of a department or the commission by another Act.



**Appearances by chief executive and commission**

**9C.(1)** This section applies to a provision of this Act about a proceeding or application that states a chief executive may appear or, if a detainee is involved, the commission may appear.

**(2)** It is declared that the entitlement of the commission to appear does not affect the entitlement to appear of the chief executive mentioned in the provision.

**Delegation of powers by proper officer**

**9D.(1)** A proper officer may delegate the proper officer's powers under this Act to an officer of the public service (an "**officer**") mentioned in subsection (2) if the officer is a justice.

**(2)** If the proper officer is—

- (a) the registrar, sheriff, deputy sheriff or under sheriff—the powers may be delegated to an officer employed in the registry of the court concerned; or
- (b) the clerk of the court—the powers may be delegated to an officer employed in the registry of the court concerned.

**PART 1B—INVESTIGATION PROVISIONS***Division 1—Conditions on admissibility of child's statement***Another person must be present**

**9E.(1)** In a proceeding for an indictable offence, a court must not admit into evidence against the defendant a statement made or given to a police officer by the defendant when a child, unless the court is satisfied that there was present at the time and place the statement was made or given, a person mentioned in subsection (2).

**(2)** The person required to be present is—

- (a) a parent of the child; or
- (b) a legal practitioner acting for the child; or
- (c) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or
- (d) a justice of the peace other than—
  - (i) a justice of the peace who is a member of the Queensland Police Service; or
  - (ii) a justice of the peace (commissioner for declarations); or
- (e) an adult nominated by the child.

**(3)** Subsection (1) does not apply if—

- (a) the prosecution satisfies the court that there was proper and sufficient reason for the absence of a person mentioned in subsection (2) at the time the statement was made or given; and
- (b) the court considers that, in the particular circumstances, the statement should be admitted into evidence.

**(4)** This section does not require that a police officer permit or cause to be present when a child makes or gives the statement a person whom the police officer suspects on reasonable grounds—

- (a) is an accomplice of the child; or
- (b) is, or is likely to become, an accessory after the fact;

in relation to the offence or another offence under investigation.

**(5)** This section does not limit the power of a court to exclude evidence from admission in a proceeding.

### ***Division 2—Fingerprints and palmprints***

#### **Application by police officer for permission to take child's identifying particular**

**10.(1)** This section applies if a child has been charged, without being arrested, with an indictable offence or an offence against any of the following Acts that is an arrest offence—

*Juvenile Justice Act 1992*

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- (a) the Criminal Code;
- (b) the *Drugs Misuse Act 1986*;
- (c) the *Police Service Administration Act 1990*;
- (d) the *Regulatory Offences Act 1985*;
- (e) the *Vagrants, Gaming and Other Offences Act 1931*;
- (f) the *Weapons Act 1990*.

(2) A police officer (the “**applicant**”) may apply to a Childrens Court Magistrate (the “**court**”) to have an identifying particular of the child taken.

(3) The applicant must give notice of the application to—

- (a) the child; and
- (b) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (c) the chief executive; and
- (d) the commission, if the child is a detainee.

(4) The court may decide the application in the absence of a person mentioned in subsection (3), if the court is satisfied that subsection (3) has been complied with.

(5) On the application—

- (a) the applicant and anyone mentioned in subsection (3) is entitled to be heard and to provide evidence; and
- (b) the court may act on statements of information and belief.

(6) The court may order the identifying particular to be taken if it is satisfied, on the balance of probabilities, of all the following facts—

- (a) someone has committed the charged offence;
- (b) there is evidence of an identifying particular of the offender that is of the same type as the identifying particular the applicant seeks to have taken from the child;
- (c) the child is reasonably suspected of being the offender;
- (d) the order is necessary for the proper conduct of the investigation of the offence.

*Juvenile Justice Act 1992*

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(7) The order must state the investigation for which the order is made.

(8) If the child will not be in custody when the particular is taken, the order must require the child to report to a police station as directed under the order to have the identifying particular taken.

(9) A child must not contravene the order.

Maximum penalty—10 penalty units.

(10) A child who commits an offence against subsection (9) may be arrested without warrant.

(11) If the child will be in custody when the particular is taken, the order must require the particular to be taken at the place the child is held in custody.

(12) A police officer may use reasonable force to take the identifying particular under the order.

(13) This section is subject to section 10A.<sup>8</sup>

(14) In this section—

“**charged offence**” means the offence with which the child is charged or an offence arising out of the same, or same set of, circumstances.

“**identifying particular**” means fingerprints or palmprints.

“**parent**”, of a child, includes someone who is apparently a parent of the child.<sup>9</sup>

### **Another person must be present when identifying particular is taken**

**10A.(1)** In a proceeding for an offence, a court must not admit into evidence against a defendant an identifying particular taken from the defendant under section 10<sup>10</sup> unless the court is satisfied a person

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<sup>8</sup> Section 10A (Another person must be present when identifying particular is taken)

<sup>9</sup> This section was inserted by the *Juvenile Justice Legislation Amendment Act 1996*, section 8. The existing section 10 is to be relocated as section 19 on the commencement of section 10(2) of that Act.

<sup>10</sup> Section 10 (Application by police officer for permission to take child’s identifying particular)

mentioned in subsection (2) was present when the identifying particular was given.

(2) The person required to be present is—

- (a) a parent of the child; or
- (b) a legal practitioner acting for the child; or
- (c) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or
- (d) a justice of the peace other than—
  - (i) a justice of the peace who is a member of the Queensland Police Service; or
  - (ii) a justice of the peace (commissioner for declarations); or
- (e) an adult nominated by the child.

(3) Subsection (1) does not apply if—

- (a) the prosecution satisfies the court there was proper and sufficient reason for the absence of a person mentioned in subsection (2) when the particular was taken; and
- (b) the court considers that, in the particular circumstances, the particular should be admitted into evidence.

(4) This section does not require that a police officer permit or cause to be present when the identifying particular is taken a person whom the police officer suspects on reasonable grounds—

- (a) is an accomplice of the child; or
- (b) is, or is likely to become, an accessory after the fact;

for the offence or another offence under investigation.

(5) This section does not limit the power of a court to exclude evidence from admission in a proceeding.

### **Destruction of identifying particular taken under court order**

**10B.(1)** An identifying particular taken from a child under an order under

section 10<sup>11</sup> must be destroyed if the investigation for which the order was made does not result in a sentence order being made.

(2) For subsection (1), the destruction must happen within 7 days of the following—

- (a) if the investigation is for an offence for which a proceeding had started when the order was made and the proceeding ends without a sentence order being made—the end of the proceeding;
- (b) if the investigation is for an offence for which a proceeding is started within 28 days after the order is made and the proceeding ends without a sentence order being made—the end of the proceeding;
- (c) if the investigation is for an offence for which a proceeding is not started within 28 days of the order—the end of the period of 28 days.

(3) An applicant who obtains an order to have an identifying particular taken from a child under section 10 must not fail to ensure the particular is destroyed under this section, unless the applicant has a reasonable excuse for failing to do so.

Maximum penalty—100 penalty units.

### **Division does not limit other provisions**

**10C.** This division does not limit another Act under which someone's fingerprints or palmprints may be taken.

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<sup>11</sup> Section 10 (Application by police officer for permission to take child's identifying particular)

## **PART 2—CAUTIONS AND START OF PROCEEDINGS**

### *Division 1—Preliminary considerations*

#### **Police officer to consider alternatives to proceeding against child**

**10.(1)** Subject to section 20 (Arrest and ex officio indictment power preserved), a police officer, before starting a proceeding against a child for an offence, must first consider whether in all the circumstances it would be more appropriate—

- (a) to take no action; or
- (b) to administer a caution to the child.

**(2)** The circumstances to which the police officer must have regard include—

- (a) the circumstances of the alleged offence; and
- (b) the child's previous history known to the police officer.

**(3)** If necessary the police officer must delay starting a proceeding in order to consider the matters mentioned in subsection (2).<sup>12</sup>

### *Division 2—Cautioning*

#### **Purpose of caution**

**11.** The purpose of this Division is to set up a way of diverting a child who commits an offence from the courts' criminal justice system by allowing a police officer to administer a caution to the child instead of starting a proceeding for the offence.

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<sup>12</sup> This section is to be renumbered as section 19 on the commencement of the *Juvenile Justice Legislation Amendment Act 1996*, section 10(2).

**Police officer may administer a caution**

**12.(1)** A police officer instead of starting a proceeding against a child for an offence may administer a caution to the child.

**(2)** The child is then not liable to be prosecuted for the offence.

**Conditions for administration of police caution**

**13.(1)** A police officer may administer a caution to a child for an offence only if the child—

- (a) admits committing the offence to the police officer; and
- (b) consents to being cautioned.

**(2)** A police officer who administers a caution, or who requests the administration of a caution under section 14 (Caution administered by respected person of Aboriginal or Torres Strait Islander community), must, if practicable, arrange to be present at the administration of the caution—

- (a) a person chosen by the child; or
- (b) a parent of the child or a person chosen by a parent of the child.

**(3)** The commissioner of the police service may authorise a police officer who the Commissioner considers has sufficient training or experience (“**authorised officer**”) to administer cautions.

**(4)** If a police officer administering a caution is not an authorised officer, the caution must be administered in the presence of an authorised officer.

**Caution administered by respected person of Aboriginal or Torres Strait Islander Community**

**14.(1)** If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, the caution may be administered by a respected person of the community at the request of an authorised officer mentioned in section 13 (Conditions for administration of police caution).

**(2)** In a proceeding, evidence that a person purported to administer a caution under subsection (1) as a respected person mentioned in the subsection is evidence that the person was a respected person.



**Caution procedure must involve explanation**

**15.(1)** A police officer who administers, or requests the administration of, a caution to a child must take steps to ensure that the child and the person present under section 13(2) (Conditions for administration of police caution) understand the purpose, nature and effect of the caution.

**(2)** The steps that can be taken include, for example—

- (a) personally explaining these matters to the child; and
- (b) having some person with training or experience in the cautioning of children give the explanation; and
- (c) having an interpreter or other person able to communicate effectively with the child give the explanation; and
- (d) supplying an explanatory note in English or another language.

**Caution procedure may involve apology to victim**

**16.(1)** This section applies only after a police officer decides that a caution should be administered to a child for an offence.

**(2)** The procedure of administering a caution to a child for an offence may involve the child apologising to a victim of the offence if—

- (a) the police officer administering, or requesting the administration of, the caution considers that an apology is an appropriate course of action in the particular circumstances of the case; and
- (b) the child is willing to apologise; and
- (c) the victim is willing to participate in the procedure.

**Child must be given a notice of caution**

**17.(1)** If a caution is administered to a child for an offence, the police officer who—

- (a) administered the caution; or
- (b) under section 14 (Caution administered by respected person of Aboriginal or Torres Strait Islander community), requested the administration of the caution;

must give the child a notice in a form approved by the commissioner of the police service.

(2) The notice must state—

- (a) that a caution was administered to the child; and
- (b) the child's name; and
- (c) the substance of the offence; and
- (d) the police officer's name and rank; and
- (e) the place where the caution was issued; and
- (f) the names of all persons present when the caution was issued; and
- (g) the nature and effect of a caution.

(3) In a proceeding, a document purporting to be a notice or copy of a notice is evidence that the child was administered a caution for the offence in the circumstances stated in the notice.

### **Confidentiality of cautions—inadmissibility**

**18.(1)** If a caution is to be, or has been, administered to a child, then, subject to subsection (2), a member of the Police Service is not to give to a person who is not a member of the Police Service information in any form that is likely to identify the child as a person to whom a caution is to be, or has been, given.

Maximum penalty—100 penalty units

(2) Subsection (1) does not prevent the information being given to the following persons—

- (a) a parent of the child;
- (b) a person who will be involved in the administration of the caution;
- (c) an investigator under the *Liquor Act 1992* dealing with a child offender;
- (d) a member of a police service of the Commonwealth or another State or a Territory dealing with a child offender;

- (e) a person who is undertaking research approved by the Commissioner;
- (f) the chief executive;
- (g) a legal practitioner acting for the child;
- (h) a court, or legal practitioner acting for a party, in a proceeding in which the giving of the caution is relevant to a fact in issue.

(3) Subject to section 19(2) (Childrens Court may dismiss charge if caution should have been administered), evidence that a person was administered a caution is not admissible against the person in a proceeding—

- (a) against the person for an offence; or
- (b) for an application under the *Bail Act 1980*.

### **Childrens Court may dismiss charge if caution should have been administered**

**19.(1)** If a child pleads guilty before a Childrens Court to a charge made against the child by a police officer, the court may dismiss the charge instead of accepting the plea of guilty if—

- (a) application is made for the dismissal by or on behalf of the child; and
- (b) the court is satisfied that the child should have been cautioned instead of being charged.

(2) In determining the application, the Childrens Court may have regard to any other cautions administered to the child for any offence.

(3) If the court dismisses a charge under subsection (1), the court may—

- (a) administer the caution to the child; or
- (b) direct that a caution be administered to the child as directed by the court.

***Division 3—Arrest*****Arrest and ex officio indictment power preserved**

**20.(1)** Sections 10 (Police officer to consider alternatives to proceeding against child) and 21 (Restriction on arrest of child) do not affect—

- (a) the power to charge under section 42(1A) of the *Justices Act 1886*; or
- (b) a power to arrest a child for a serious offence; or
- (c) a proceeding on an indictment.

**(2)** Despite sections 10 (Police officer to consider alternatives to proceeding against child) and 21 (Restriction on arrest of child), a police officer may arrest a child if the police officer believes on reasonable grounds that arrest is necessary—

- (a) to prevent a continuation or a repetition of the offence or the commission of another offence; or
- (b) to prevent concealment, loss or destruction of evidence relating to the offence.

**(3)** Despite section 21 (Restriction on arrest of child), a police officer may arrest a child if the arresting police officer believes on reasonable grounds that the child is unlikely to appear before the Childrens Court in response to a complaint and summons or an attendance notice.

**Restriction on arrest of child**

**21.** Subject to section 20 (Arrest and ex officio indictment power preserved), a proceeding against a child for an offence must be started by way of—

- (a) complaint and summons under the *Justices Act 1886*; or
- (b) attendance notice.

**Parent and chief executive must be advised of arrest of child**

**22.(1)** A person who arrests a child must promptly advise of the arrest and whereabouts of the child—

*Juvenile Justice Act 1992*

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- (a) a parent of the child, unless a parent cannot be found after reasonable inquiry; and
- (b) the chief executive or a person who holds an office within the department nominated by the chief executive for the purpose.

(2) In this section—

“**parent**”, of a child, includes someone who is apparently a parent of the child.

*Division 4—Attendance notice***Attendance notice may be issued for offence**

**23.(1)** The object of this section is to provide an alternative way for a police officer to start a proceeding against a child that does not involve the custody associated with arrest or the delay associated with issuing a complaint and summons under the *Justices Act 1886*.

(2) If a police officer believes on reasonable grounds that a child has committed an offence, the police officer may serve an attendance notice on the child.<sup>13</sup>

(3) An attendance notice must be personally served on a child.

**Attendance notice form**

**24.(1)** An attendance notice must—

- (a) state the substance of the offence alleged to have been committed; and
- (b) state the name of the child alleged to have committed the offence; and
- (c) require the child to appear before a Childrens Court Magistrate (“**the court**”) in relation to the offence at a specified time and place; and

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<sup>13</sup> An attendance notice differs from a complaint and summons in requiring the police officer with the beliefs mentioned to also serve the attendance notice.

(d) be signed by the police officer serving the attendance notice.

(2) The place specified in an attendance notice for the child to appear before the court must be a place where the court will be sitting at the time specified.

(3) The time specified in an attendance notice for the child to appear before the court must be a time—

- (a) as soon as practicable after service of the attendance notice; and
- (b) fixed generally by the proper officer of the court for hearing matters under this Act.

### **Attendance notice must be lodged in court without cost to child**

**25.(1)** Before the time a child is required by an attendance notice to appear before a Childrens Court Magistrate, the attendance notice must be lodged with the clerk of the court at the place where the child is required by the attendance notice to appear.

(2) A child must not be ordered to pay lodgment costs in the proceeding for the offence.

### **General particulars only are required on an attendance notice**

**26.(1)** The statement mentioned in section 24(1)(a) (Attendance notice form) need only provide general particulars of the offence, for example—

- (a) the type of offence; and
- (b) time and place it is alleged to have been committed.

(2) If 2 or more matters are properly joined in 1 attendance notice under section 43(1) of the *Justices Act 1886*, then, despite section 43(2) and (3) of that Act—

- (a) each matter need not be set out in a separate paragraph; and
- (b) objection cannot be taken to the attendance notice because each matter is not set out in a separate paragraph.

**Particulars of attendance notice offence must be given in the proceeding**

**27.(1)** Section 26 (General particulars only are required on an attendance notice) does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.

**(2)** When a child on whom an attendance notice has been served appears before the Childrens Court Magistrate in response to the notice, the Childrens Court Magistrate must ensure that the child is provided promptly with all necessary particulars of the offence and granted any adjournment of the proceeding necessary to consider them.

**Parent and chief executive must be advised of service of attendance notice on child**

**28.(1)** A person who has served an attendance notice on a child must promptly advise—

- (a) a parent of the child, unless a parent cannot be found after reasonable inquiry; and
- (b) the chief executive.

**(2)** In this section—

“**parent**”, of a child, includes someone who is apparently a parent of the child.

**Attendance notice equivalent to a complaint and summons**

**29.(1)** A statement under section 24(1)(a) (Attendance notice form) is taken to be a complaint under the *Justices Act 1886*.

**(2)** A requirement made by a police officer under section 24(1)(c) (Attendance notice form) is taken to be a summons issued by a justice under the *Justices Act 1886*.

**(3)** Subject to this Act, the *Justices Act 1886* and any other Act applies to an attendance notice in the same way as it applies to a complaint and summons.

**Court may order immediate arrest of child who fails to appear**

**30.(1)** Subject to subsection (2) and section 31 (Court must strike out attendance notice if service insufficient), if a child fails to appear before a Childrens Court Magistrate as required by an attendance notice served on the child, the court may order that a warrant issue for the arrest of the child to be brought before the court to be dealt with according to law.

**(2)** A court may order that a warrant issue for the arrest of a child under subsection (1) only if it is satisfied—

- (a) on oath or by deposition under section 56(3) of the *Justices Act 1886* that the child was served in time for it to be practical for the child to appear before the court; and
- (b) on oath that there is evidence substantiating the offence for which the attendance notice was served.

**(3)** Any justice may issue the warrant.

**(4)** The bail and custody provisions of Part 3 apply to a child arrested on the warrant.

**Court must strike out attendance notice if service insufficient**

**31.(1)** If—

- (a) a child fails to appear before a Childrens Court Magistrate as required by an attendance notice; and
- (b) the court is not satisfied that the child was served in time for it to be practical for the child to appear before the court;

the court must strike out the attendance notice.

**(2)** The striking out of an attendance notice under subsection (1) does not prevent another proceeding being started for the offence for which the attendance notice was served.



***Division 5—Complaint and summons*****Service of complaint and summons if offender a child**

**32.(1)** A complaint and summons requiring a child to appear before a court to answer a complaint of an offence must be served on the child a reasonable time before the child is required to appear before the court.

**(2)** The complaint is also to be served on—

- (a) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (b) the chief executive.

**(3)** A person serving a complaint and summons on a child must do so—

- (a) as discreetly as practicable; and
- (b) not at or in the vicinity of the child’s place of employment or school, unless there is no other place where service may be reasonably effected.

**(4)** Subject to section 28 (Parent and chief executive must be advised of service of attendance notice on child), this section does not apply to an attendance notice.

**(5)** In this section—

“**parent**”, of a child, includes someone who is apparently a parent of the child.

**Proof of service of complaint and summons in compliance with this Act**

**33.(1)** A statement in a deposition made for the purposes of section 56(3)(b) of the *Justices Act 1886* that the complaint and summons was served as required by this Act is evidence of that fact.

**(2)** Section 56(5) of the *Justices Act 1886* applies to the deposition.

**No costs against child for lodgment of complaint and summons**

**34.** In a proceeding started against a child by complaint and summons, a

court must not order the child to pay the cost of lodging the complaint and summons with the clerk of the court.

### **Proceeding in relation to simple offence in absence of child**

**35.(1)** Subject to subsection (2), a Childrens Court Magistrate may hear and determine a proceeding against a child in relation to a complaint and summons for a simple offence in the absence of the child in the way set out in Part 6 of the *Justices Act 1886*.

**(2)** Under subsection (1), the only sentence order a Childrens Court Magistrate may make against a child in the child's absence is an order imposing a fine, and then only if the child has indicated in writing to the court that the child has a capacity to pay a fine of a specified amount that is equal to or greater than the fine ordered to be paid.

## **PART 3—BAIL AND CUSTODY OF CHILDREN**

### **Bail Act 1980 applies**

**37.(1)** Subject to this Act, the *Bail Act 1980* applies in relation to a child charged with an offence.

**(2)** A review of a sentence order under Part 4, Division 6 is an appeal for the purposes of the *Bail Act 1980*.

### **Arrested child must be brought promptly before the Childrens Court**

**38.** 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.

### **Child must ordinarily be released from custody on charge**

**39.(1)** Subject to subsection (2), if—

- (a) a child who has been arrested on a charge of an offence is delivered into the custody of a police officer at a place that is a

police station, watch-house or lockup; and

- (b) it is not practicable to promptly constitute the Childrens Court to deal with the child;

the police officer who is in charge of, or the watch-house keeper of the place, must, unless the *Bail Act 1980* otherwise provides, grant bail to the child and release the child from custody in accordance with section 7 of that Act.

(2) A police officer authorised to grant bail to a child in accordance with section 7 of the *Bail Act 1980* may instead—

- (a) release the child into the custody of a parent; or
- (b) permit the child to go at large;

without bail.

(3) The release of a child without bail must be subject to a condition that the child surrenders into the custody of the court before which the charge on which the child was arrested is to be brought at the time and place for the time being appointed for the child to do so.

(4) Subsection (2) does not limit the power of a police officer to grant bail.

### **Child must be given release notice**

**40.(1)** A police officer who releases a child from custody under section 39(2)(a) or (b) (Child must ordinarily be released from custody on charge) must give to the child a notice (“**release notice**”) in a form approved by the commissioner of the police service.

(2) The release notice must set out—

- (a) the child’s name; and
- (b) the offence or the nature of the warrant on which the child was held in custody; and
- (c) the name of the police officer who started the proceeding, or justice who issued the warrant, on which the child was held in custody; and
- (d) the court into whose custody the child is required to surrender

- under the conditions of release; and
- (e) the time and place the child is required to surrender into the court's custody; and
  - (f) a warning that a warrant will be issued for the child's arrest if the child fails to surrender into the court's custody.

### **Custody of child pending court appearance**

**41.(1)** Until brought before a court, a child arrested on a charge of an offence or a warrant issued under this Act who is not released from custody must be held in the custody of—

- (a) the commissioner of the police service; or
- (b) the commission in accordance with arrangements mentioned in subsection (2).

**(2)** The commissioner of the police service must make arrangements with the commission for an arrested child wherever practicable to be placed in a detention centre until brought before a court.

**(3)** The commission must take the action necessary to hold the child in custody in accordance with the arrangements.

### **Court may in all cases release child without bail**

**42.(1)** If, in a particular case, a court may grant bail to and release a child from custody under the *Bail Act 1980*, the court may instead—

- (a) release the child into the custody of a parent; or
- (b) permit the child to go at large;

without bail.

**(2)** The release of a child without bail must be subject to a condition that the child surrenders into the custody of the court before which the child is required to appear at the time and place for the time being appointed for the child to do so.

**(3)** Subsection (1) does not limit the power of a court to grant bail.

**Custody of child if not released by court**

**43.(1)** Except where the child remains the prisoner of the court, a court that remands a child in custody must remand the child into the custody of the commission despite the provisions of any other Act to the contrary.

**(2)** Jurisdiction conferred by an Act on a court—

- (a) to commit a person to a place of detention (other than a detention centre) pending appearance before a court; and
- (b) to give directions to the person in charge of the place;

is taken, if the person is a child, instead to confer jurisdiction on the court to remand the child into the custody of the commission and to give directions to the commission.

**(3)** A court that remands a child into the custody of the commission must order the commissioner of the police service to deliver the child as soon as practicable into the custody of the commission.

**(4)** A child held by the commissioner of the police service under an order made under subsection (3) is—

- (a) before being delivered to the commission—in the custody of the commissioner of the police service; and
- (b) after being delivered to the commission—in the custody of the commission.

**(5)** Subject to subsection (6), the commission may keep a child mentioned in subsection (3) who is in the commission's custody in places that the commission determines from time to time.

**(6)** The commission cannot determine under subsection (5) that a child is to be kept in a prison.

**Warrant for arrest of child who fails to appear after release without bail**

**44.** Subject to this Act, the provisions of the *Bail Act 1980* relating to the issue of warrants for the arrest of defendants who fail to surrender into the custody of the court before which they were required to appear after being permitted to go at large without bail apply to a child who fails to appear after

being released into the custody of a parent, or permitted to go at large, without bail.

### **Custody of child arrested on court warrant**

**45.** If, under an Act, a court issues or orders the issue of a warrant for the arrest of a child (other than a warrant for the commitment of a child to a detention centre) it must order the commissioner of the police service to have the child promptly brought before a court to be dealt with according to law.

### **Childrens Court Judge may grant bail**

**46.(1)** Subject to this Part, a Childrens Court Judge may—

- (a) grant bail to a child held in custody on a charge of an offence; or
- (b) enlarge, vary or revoke bail granted to a child in, or in connection with, a criminal proceeding within the meaning of the *Bail Act 1980*;

whether or not the child has appeared before the Childrens Court Judge in, or in connection with, the offence or criminal proceeding.

**(2)** Subsection (1)(a) applies even if the child has previously been refused bail by the Childrens Court.

**(3)** A child charged with an offence mentioned in section 13 of the *Bail Act 1980* may be granted bail by a Childrens Court Judge, despite the section.

**(4)** This section does not limit the power a court or person ordinarily has to grant, enlarge, vary or revoke bail.

## **PART 4—JURISDICTION AND PROCEEDINGS**

### *Division 1—General*

#### **Court jurisdiction generally unaffected**

**47.** This Act does not affect the jurisdiction a court has apart from this Act in relation to a child charged with an offence, unless this Act otherwise provides.

#### **Application of Part 4 of Mental Health Act 1974**

**48.(1)** Part 4 of the *Mental Health Act 1974*—

- (a) applies to a child charged with an indictable offence as it applies to an adult; and
- (b) does not apply to a child charged with a simple offence.

**(2)** For the purposes of subsection (1), in Part 4 of the *Mental Health Act 1974*—

- (a) mention of a prisoner within the meaning of the *Corrective Services Act 1988* is taken to mean a child detained under a detention order; and
- (b) mention of a prison is taken to mean a detention centre; and
- (c) mention of the Community Corrections Board is taken to mean the commission.

#### **Childrens Court Judge**

**49.** A Childrens Court Judge has jurisdiction—

- (a) to hear and determine under section 72 (Jurisdiction of Childrens Court Judge over committed child) a charge against a child for an offence; and
- (b) to delegate sentencing power to a Childrens Court Magistrate under section 126 (Judge may delegate sentencing power to Magistrate); and

- (c) to review under section 88 (Sentence review) a sentence order imposed by a Childrens Court Magistrate; and
- (d) to hear bail applications under section 46 (Childrens Court Judge may grant bail); and
- (e) to order the transfer of a person to a prison under section 211 (Childrens Court may order transfer to prison); and
- (f) to perform other functions and exercise other powers conferred on the judge under this Act.

### **District Court jurisdiction in aid**

**50.(1)** For the purpose of the jurisdiction over persons and matters assigned to a Childrens Court Judge under this Act, a Childrens Court Judge has the powers and jurisdiction of a District Court in its criminal jurisdiction.

**(2)** The powers and jurisdiction conferred under subsection (1) are in addition to those otherwise conferred under this Act.

**(3)** To the extent that another provision of this Act is inconsistent with subsection (1), the other provision prevails.

### **Childrens Court Magistrate**

**51.(1)** All proceedings under the *Justices Act 1886* for the hearing and determination of charges against children for offences, including committal proceedings, must be heard and determined before a Childrens Court Magistrate.

**(2)** A Childrens Court Magistrate has jurisdiction to hear and determine the proceedings.

**(3)** A Magistrates Court and justices conducting committal proceedings do not have that jurisdiction.

### **Magistrates Court jurisdiction in aid**

**52.(1)** For the purpose of the jurisdiction over persons and matters assigned to a Childrens Court Magistrate under this Act, a Childrens Court



Magistrate has the powers, authorities and jurisdiction of a Magistrates Court under the *Justices Act 1886*.

(2) The powers, authorities and jurisdiction conferred under subsection (1) are in addition to those otherwise conferred under this Act.

(3) To the extent that another provision of this Act is inconsistent with subsection (1), the other provision prevails.

### **Application of usual laws where necessary**

**53.(1)** Subject to subsections (2) and (3), for the purposes of the powers and jurisdiction of a Childrens Court conferred by this Act, the provisions of the Criminal Code, *Justices Act 1886* and other Acts apply to—

- (a) the institution and conduct of a proceeding before a Childrens Court; and
- (b) the exercise by a Childrens Court of its powers and jurisdiction; and
- (c) the enforcement of an order made by a Childrens Court.

(2) Provisions applied under subsection (1) apply, with all necessary modifications and any prescribed modifications—

- (a) in relation to a Childrens Court Judge in the way they apply in relation to a District Court; and
- (b) in relation to a Childrens Court Magistrate in the way they apply in relation to a Magistrates Court.

(3) To the extent that another provision of this Act is inconsistent with a provision applied under subsection (1), the other provision of this Act prevails.

### **Limitation on justices**

**54.(1)** If the Childrens Court is constituted by 2 justices, the court's jurisdiction in relation to a proceeding against a child for an offence is limited to—

- (a) the hearing and determination of a charge of a simple offence in a case where the child pleads guilty; and

(b) taking or making a procedural action or order.

(2) The justices cannot make a detention order or immediate release order.

(3) This section does not affect a limitation placed on the power of a justice under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **Infringement notices**

**55.(1)** If, under an Act, an adult may elect to pay a monetary penalty prescribed under the Act in relation to a simple offence instead of being prosecuted on complaint and summons for the offence, a child may also elect to pay the monetary penalty instead of being prosecuted.

(2) Part 4A of the *Justices Act 1886* does not apply to an offence committed by a child.

### **Presence of parent required generally**

**56.(1)** If a parent of a child is not present when the child appears before a court charged with an offence, the court, after making inquiries of those present as to—

(a) the whereabouts of the child's parents; and

(b) whether a parent of the child has been informed of the proceedings as required under section 22 (Parent and chief executive must be advised of arrest of child), 28 (Parent and chief executive must be advised of service of attendance notice on child) and 32 (Service of complaint and summons if offender a child);

may adjourn the proceeding to enable a parent to be present at the time and place to which the proceeding is adjourned.

(2) The court may recommend that the chief executive provide financial assistance to a parent of the child to ensure that a parent is present at the proceeding.

**Court may order parent to attend**

**56A.(1)** A court before which a child appears charged with an offence may order a parent of the child to attend the proceeding as directed by the court.

(2) The order may be made on the prosecution's application or on the court's initiative.

(3) The court may cause the proper officer of the court to give written notice to the parent to attend as directed.

(4) If requested by the proper officer, the commissioner of the police service must help the proper officer to give the notice.

(5) The court may recommend the chief executive provide financial assistance to the parent to ensure the parent's attendance.

(6) A person must not contravene a notice given to the person under subsection (3).

Maximum penalty—50 penalty units.

(7) A court that makes an order under subsection (1) may adjourn the proceeding to allow the parent to attend.

**Consequence of parent's absence**

**57.(1)** This section applies if a parent of a child against whom a finding or order has been made in a proceeding for an offence satisfies the court on application that—

- (a) the child was dealt with when no parent was present; and
- (b) the parent making the application was—
  - (i) not aware of the time and place of the proceeding in sufficient time to allow the parent to be present; or
  - (ii) unable to attend for sufficient reason.

(2) The court may set aside the finding or order if it considers that it is in the interests of justice to do so, for example if it considers that the child's capacity to make an election or other decision relating to the proceeding was adversely affected.

(3) The matter determined by the finding or order must then be heard and

determined afresh.

- (4) The application must be made within 28 days of the finding or order.

### **Explanation of proceeding**

**58.(1)** In a proceeding before a court in which a child is charged with an offence, the court must take steps to ensure, as far as practicable, that the child and any parent of the child present has full opportunity to be heard and participate in the proceeding.

(2) Without limiting subsection (1), the court must ensure that the child and parent understand, as far as practicable—

- (a) the nature of the alleged offence, including the matters that must be established before the child can be found guilty; and
- (b) the court's procedures; and
- (c) the consequences of any order that may be made.

(3) Examples of the steps a court may take are—

- (a) directly explaining these matters in court to the child and parent; and
- (b) having some appropriate person give the explanation; and
- (c) having an interpreter or another person able to communicate effectively with the child and parent give the explanation; and
- (d) causing an explanatory note in English or another language to be supplied to the child and parent.

### **Ordinary practice applies to explanations if child is represented**

**59.** This Part does not—

- (a) prevent an explanation required to be given to a person, or an inquiry required to be made of a person, from being given to or made of a legal practitioner representing the person; or
- (b) prevent the legal practitioner from responding to the explanation or inquiry on behalf of the person.

**Chief executive's and commission's rights of audience generally**

**60.(1)** This section applies to a proceeding before a court in which a child is charged with an offence.

**(2)** The chief executive or, if the child is a detainee, the commission, is entitled to be heard by the court on matters mentioned in subsection (3), even though the chief executive or commission is not a party to the proceeding.

**(3)** The matters are—

- (a) adjournment of the proceeding; and
- (b) matters relating to the custody or release from custody of the child pending completion of the proceeding; and
- (c) sentence orders that may be made against the child; and
- (d) without limiting paragraphs (a) to (c), matters on which the court considers the chief executive or commission should be heard.

**(4)** If the chief executive or commission is a party to the proceeding, the chief executive or commission may appear and be represented by an officer of the department or commission.

**Adjournment power generally**

**61.(1)** If it appears to the Childrens Court that a proceeding before it in relation to an offence could be more conveniently, economically or fairly heard before the Childrens Court at another place, the court may adjourn the hearing to that other place.

**(2)** The remand, bail and custody provisions of Part 3 apply to the adjournment.

**Publication prohibited**

**62.(1)** In this section—

**“criminal proceeding”** means a proceeding taken in Queensland against a child for an indictable or simple offence;

**“identifying matter”** means—

- (a) the name, address, school, place of employment or any other particular likely to lead to the identification of the child charged in the criminal proceeding; or
- (b) any photograph, picture, videotape or other visual representation of the child or of another person that is likely to lead to the identification of the child charged in the criminal proceeding;

**“publish”** means publish in Queensland or elsewhere to the general public by means of television, newspaper, radio or any other form of communication.

(2) A person must not publish an identifying matter in relation to a criminal proceeding.

Maximum penalty (subject to Part 5)—

- (a) in the case of a body corporate—200 penalty units;
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months.

### **One year limitation inapplicable if indictable offence dealt with summarily**

**63.(1)** The purpose of this section is to ensure that a child may elect to have an indictable offence dealt with before a Childrens Court Magistrate despite delay in prosecution.

(2) A Childrens Court Magistrate may exercise jurisdiction under this Part in relation to an indictable offence even though more than 1 year has passed since the offence was committed.

### **Court to refrain from inappropriate summary hearing of indictable offence**

**64.(1)** This section applies if a Childrens Court Magistrate (**“the court”**) has jurisdiction to hear and determine summarily a charge against a child of an indictable offence (subject to the consent of the child).

(2) The court must refrain from exercising the jurisdiction unless it is satisfied that the charge can be adequately dealt with summarily by the court.

(3) The court may initially decide to exercise the jurisdiction on submissions made by the parties.

(4) If at any stage of the proceeding the court decides that the charge cannot be adequately dealt with summarily by the court, any further proceeding before the court must be conducted as a committal proceeding.

### **Procedural elections under this Act in relation to an indictable offence replace other elections**

65. The rules set out in this Part relating to election by a child of procedure in relation to an indictable offence apply despite any right of election that may be conferred on any person under any other Act.

### **Court to check child's legal representation**

66. If a child appears before a court charged with an indictable offence but is not represented by a legal practitioner, the court may proceed with a hearing and determination only if it is satisfied that—

- (a) the child has had reasonable opportunity to obtain representation by a legal practitioner; and
- (b) has decided not to be represented by a legal practitioner.

### **Use of adduced evidence after change of procedure**

67.(1) This section applies if a proceeding before a court (“**former proceeding**”) changes into another proceeding (“**new proceeding**”) before the court because of—

- (a) an election or change of an election under this Act; or
- (b) a decision of a court to refrain from exercising summary jurisdiction in relation to an indictable offence; or
- (c) a decision of a court to remove the proceeding to its concurrent jurisdiction on discovering a misapprehension affecting the court's treatment of the defendant as a child or adult; or
- (d) a decision of a court to continue or hear a proceeding in its

concurrent jurisdiction under division 9.<sup>14</sup>

(2) If evidence has been adduced in the course of the former proceeding, the hearing again of the evidence in the new proceeding is at the discretion of the court.

(3) If the court decides against hearing the evidence again in the new proceeding, the evidence is taken to have been adduced by the party who adduced the evidence in the former proceeding.

### *Division 2—Serious offence procedure*

#### *Subdivision 1—Application*

#### **Application of div 2**

**68.** This division applies to a proceeding in which a child is charged with a serious offence.

#### *Subdivision 2—Procedure if the serious offence is a supreme court offence*

#### **Meaning of “supreme court offence”**

**69.** A “supreme court offence” is an offence that a District Court does not have jurisdiction to try because of the *District Court Act 1967*, section 61.<sup>15</sup>

#### **Application of subdiv 2**

**69A.** This subdivision applies to a proceeding before a Childrens Court Magistrate (the “court”) in which a child is charged with a supreme court offence.

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<sup>14</sup> Division 9 (Child offenders who become adults)

<sup>15</sup> *District Courts Act 1967*, section 61 (Exception from criminal jurisdiction)



**Committal proceeding only option**

**69B.** The proceeding must be conducted as a committal proceeding.

**Child must be committed for trial or sentence before Supreme Court**

**69C.** If, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence, the court must order the child to be committed—

- (a) to be tried before the Supreme Court; or
- (b) if the child enters a plea of guilty at the committal proceeding—to be sentenced before the Supreme Court.

*Subdivision 3—Procedure if the serious offence is not a supreme court offence*

**Application of subdiv 3**

**69D.** This subdivision applies to a proceeding before a Childrens Court Magistrate (the “**court**”) in which a child is charged with a serious offence other than a supreme court offence.

**Committal proceeding only option**

**69E.** The proceeding must be conducted as a committal proceeding.

**Election if trial results**

**70.(1)** This section only applies if, on consideration of all the evidence adduced on the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence.

**(2)** If the child is represented by a legal practitioner, then, before ordering the child to be committed to be tried under section 108 of the *Justices Act 1886*, the court must explain to the child and any parent of the child who is present the child’s right of election mentioned in subsection (3).

(3) The child may elect—

- (a) to be committed to a court of competent jurisdiction (other than a Childrens Court Judge) for trial before a Judge and jury; or
- (b) to be committed for trial before a Childrens Court Judge sitting without a jury.

(4) After the explanation, the court must then ask the child whether the child consents to being tried before a Childrens Court Judge without a jury.

(5) If the child consents, the court must order the child to be committed to be tried by a Childrens Court Judge.

(6) If the child—

- (a) is not legally represented; or
- (b) if legally represented—does not give the consent mentioned in subsection (5);

the court must order the child to be committed to be tried before a court of competent jurisdiction (other than a Childrens Court Judge).

(7) This section does not apply if a child enters a plea of guilty at the committal proceeding.

### **Election on plea of guilty**

**71.(1)** If the child enters a plea of guilty at the committal proceeding, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).

(2) The child may elect—

- (a) to be committed for sentence before a court of competent jurisdiction (other than a Childrens Court Judge); or
- (b) to be committed for sentence before a Childrens Court Judge.

(3) The court must ask the child whether the child consents to being sentenced before a Childrens Court Judge.

(4) If the child consents, the court must order the child to be committed to be sentenced by a Childrens Court Judge.

(5) If the child does not give the consent mentioned in subsection (4), the

court must order the child to be committed for sentence before a court of competent jurisdiction (other than a Childrens Court Judge).

#### *Subdivision 4—Proceedings before Childrens Court Judge*

### **Jurisdiction of Childrens Court Judge over committed child**

**72.(1)** In this section—

**“committal charge”** means a charge on which a child is committed for trial or sentence before a Childrens Court Judge, and includes a charge arising out of the same, or same set of, circumstances.

**(2)** Subject to subsection (4), the Judge, sitting alone without a jury, may try the child on the committal charge if—

- (a) the child was committed for trial; or
- (b) the child was committed for sentence but a plea of not guilty is entered under section 73 (Child may change plea of guilty).

**(3)** Subject to subsection (4), the Judge may sentence the child on the committal charge and any other charge for an indictable offence on which the child consents to being sentenced by the Judge.

**(4)** The child may withdraw the child’s election to be tried before the Childrens Court Judge without a jury.

**(5)** The withdrawal of the election must happen before the child enters a plea to the committal charge.

### **Child may change plea of guilty**

**73.(1)** A child who appears before a Childrens Court Judge after being committed for sentence on an indictable offence is in all cases entitled to enter a plea of not guilty when called on to enter a plea under section 600 of the Criminal Code.

**(2)** To the extent that this section is inconsistent with section 600 of the Criminal Code, this section prevails.

**(3)** Evidence that the child previously entered a plea of guilty at the

committal proceeding is not admissible in the trial following the change of plea.

### **Removal of proceeding to another jurisdiction**

**74.(1)** The Crown may apply to a Childrens Court Judge for the removal to another court of competent jurisdiction of a proceeding on a charge for an offence committed for trial before the judge on the ground that this would ensure that the child is jointly tried with another person.

**(2)** If the Judge is satisfied that—

- (a) the child should be tried with the other person; and
- (b) removing the proceeding would ensure that the committal of the proceeding before the Judge did not prevent this from happening;

the Judge may grant the request and remove the proceeding as requested.

**(3)** In removing the proceeding, the Judge may exercise power as if the proceeding had been brought before the wrong court.

**(4)** This section does not prevent the Childrens Court Judge presiding over the trial of the child in the Judge's concurrent jurisdiction.

### **General laws relating to indictable offence apply**

**75.** Subject to this Division, the provisions of the Criminal Code or any other Act relating to the hearing and determination on indictment of an offence apply to a proceeding before a Childrens Court Judge under this Division.

### ***Division 3—Indictable offence (other than serious offence) procedure when child legally represented***

#### **Application**

**76.** This Division applies to a proceeding before a Childrens Court Magistrate (“**the court**”) in which a child is—

- (a) charged with an indictable offence (other than a serious offence); and
- (b) represented by a legal practitioner.

### **Explanation and election at start**

**77.(1)** Subject to section 64 (Court to refrain from inappropriate summary hearing of indictable offence), before evidence is adduced at the committal proceeding, the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (2).

**(2)** The child may elect—

- (a) to have the proceeding continue as a committal proceeding; or
- (b) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and determination of the charge summarily by the court.

**(3)** The court must then ask the child whether the child consents to having the charge heard and determined summarily by the court.

**(4)** If the child consents, the court must proceed to hear and determine the charge summarily.

**(5)** If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.

### **Procedure on summary hearing**

**78.(1)** On proceeding to hear and determine the charge summarily, the court must—

- (a) reduce the charge to writing; and
- (b) ask the child whether the child is guilty or not guilty.

**(2)** If the child pleads guilty, the court must act under section 79 (Election on plea of guilty).

**(3)** If the child pleads not guilty, the court may proceed in the same way as is provided in section 146 of the *Justices Act 1886*.

**Election on plea of guilty**

**79.(1)** If the child enters a plea of guilty at the committal proceeding, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).

**(2)** The child may elect—

- (a) to be committed for sentence before a court of competent jurisdiction; or
- (b) to be sentenced by the Childrens Court Magistrate.

**(3)** The court must then ask the child whether the child consents to being sentenced by the Childrens Court Magistrate.

**(4)** If the child consents, the Childrens Court Magistrate must sentence the child.

**(5)** If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction.

***Division 4—Indictable offence (other than serious offence) procedure  
when child not legally represented***

**Application of Division**

**80.** This Division applies to a proceeding before a Childrens Court Magistrate (“**the court**”) in which a child is—

- (a) charged with an indictable offence (other than a serious offence); and
- (b) not represented by a legal practitioner.

**Start as committal proceeding**

**81.** The proceedings must be conducted as a committal proceeding until all the evidence has been adduced on the part of the prosecution.

**Explanation of election at end of prosecution case**

**82.(1)** Subject to section 64 (Court to refrain from inappropriate summary hearing of indictable offence), if after all the evidence to be offered on the part of the prosecution has been adduced, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence the court must explain to the child, and any parent present in the court, the child's right of election mentioned in subsection (2).

**(2)** The child may elect—

- (a) to have the proceeding continue as a committal proceeding; or
- (b) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and determination of the charge summarily by the court.

**(3)** The court must then ask the child whether the child consents to having the charge heard and determined summarily by the court.

**(4)** If the child consents, the court must discontinue the committal proceeding and proceed to hear and determine the charge summarily.

**(5)** If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.

**Procedure on summary hearing**

**83.(1)** On proceeding to hear and determine the charge summarily, the court must—

- (a) reduce the charge to writing; and
- (b) ask the child whether the child is guilty or not guilty.

**(2)** If the child pleads guilty, the court may act under section 84 (Election on plea of guilty).

**(3)** If the child pleads not guilty, the court may proceed in the same way as is provided in section 146 of the *Justices Act 1886*, subject to section 67 (Use of adduced evidence after change of procedure).

**Election on plea of guilty**

**84.(1)** If the child enters a plea of guilty during the committal proceeding, the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (2).

**(2)** The child may elect—

- (a) to be committed for sentence before a court of competent jurisdiction; or
- (b) to be sentenced by the Childrens Court Magistrate.

**(3)** The court must then ask the child whether the child consents to being sentenced by the Childrens Court Magistrate.

**(4)** If the child consents, the Childrens Court Magistrate must sentence the child.

**(5)** If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction.

***Division 5—Rules applying if child and another person are charged*****Joint committal proceeding in relation to adult and child are allowed**

**85.** Despite section 21 of the *Childrens Court Act 1992*, a Magistrate may at the same time conduct a committal proceeding—

- (a) as a Childrens Court Magistrate, in relation to a charge of an indictable offence brought against a child; and
- (b) as a justice, in relation to an indictable offence brought against an adult;

if, were the child an adult, a committal proceeding in relation to each offence would have been conducted at the same time against both persons.

**Prosecution may request a matter proceed as a committal to the Supreme or a District Court in order to ensure joint trial**

**86.(1)** The purpose of this section is to ensure that the operation of Divisions 2 to 4 does not prevent a child from being tried with another



offender.

(2) Before a Childrens Court Magistrate commits a child for trial before a Childrens Court Judge on a charge of a serious offence, the prosecution may request that the child be committed for trial instead to another court of competent jurisdiction on the ground that this would ensure that the child will be tried jointly with another person.

(3) Before a Childrens Court Magistrate starts to hear and determine summarily a charge against a child for an indictable offence other than a serious offence, the prosecution may request that the proceeding be conducted or continued as a committal proceeding on the ground that this would ensure that the child will be jointly tried with another person.

(4) If the Childrens Court Magistrate is satisfied, after hearing the submissions of the parties—

(a) that the child should be tried jointly with the other person; and

(b) that granting the prosecution's request would ensure that the operation of Divisions 2 to 4 did not prevent this from happening;

the Magistrate must grant the request and proceed as for the committal of the child for trial on the offence in accordance with the request.

(5) Subsection (4) has effect despite Divisions 2 to 4.

### *Division 6—Appeal and review*

#### **Appeal rights generally**

**87.(1)** This Part does not affect the right of any person to appeal, or apply for leave to appeal, under the Criminal Code or the *Justices Act 1886* against an order of a court or judicial officer.

(2) In addition to the right to apply for a review of a sentence order under section 88 (Sentence review), a child has the same right as an adult to appeal against the order.

(3) The provisions of Chapter 67 of the Criminal Code, and Part 9 of the *Justices Act 1886*, relating to appeals or applications for leave to appeal apply, with necessary modifications and any prescribed modifications—

(a) in relation to a finding of guilt or order made in a proceeding

against a child for an offence as it applies in relation to a conviction or order made in a proceeding against an adult for an offence; and

- (b) in relation to a proceeding before a Childrens Court Magistrate as it applies to a proceeding before a Magistrates Court; and
- (c) in relation to a proceeding before a Childrens Court Judge as it applies in relation to a proceeding before a District Court.

### **Sentence review**

**88.** A Childrens Court Judge on application may review a sentence order made by a Childrens Court Magistrate.

### **Application for review**

**89.(1)** An application may be made by—

- (a) a child against whom the sentence order was made; or
- (b) the chief executive, or, if the child is a detainee, the commission, acting in either case in the child's interests; or
- (c) the complainant or arresting officer for the charge for which the sentence order was made.

**(2)** An application must be made—

- (a) in the way allowed by the Childrens Court Rules; and
- (b) within 28 days after the sentence order is made or within a later period that may at any time be allowed by the Childrens Court Judge.

### **Preliminary procedure**

**90.** The proper officer of the Childrens Court at the place where the Childrens Court Judge is sitting must notify the applicant and all other parties of the place and time for the hearing of the application.

**Stay of proceeding and suspension of orders**

**91.(1)** Without affecting—

- (a) another power to stay the effect of an order of a court; or
- (b) the operation of a law that has that effect;

a Childrens Court Judge may order a stay of all or any proceedings under a sentence order that is subject to a review application under this Division.

**(2)** The Childrens Court Judge may impose conditions the Judge considers appropriate on the stay.

**Conduct of review**

**92.(1)** A review of a sentence must be by way of rehearing on the merits.

**(2)** The Childrens Court Judge may have regard to—

- (a) the record of the proceeding before the Childrens Court Magistrate; and
- (b) any further submissions and evidence by way of affidavit or otherwise.

**(3)** The review of a sentence order must be conducted expeditiously and with as little formality as possible.

**Review decision**

**93.(1)** On reviewing a sentence order, a Childrens Court Judge may—

- (a) confirm the order; or
- (b) vary the order; or
- (c) discharge the order and substitute another order within the jurisdiction of a Childrens Court Magistrate to make.

**(2)** The Judge may also make any other order a Childrens Court Magistrate could have made in connection with the sentence order as confirmed, varied or substituted under subsection (1).

**Interrelation with other types of appeal**

**94.(1)** In this section—

**“application”** by a child for a sentence review, includes an application by the chief executive or the commission acting in the child’s interests.

**“ordinary appeal”** means—

- (a) an appeal or application for leave to appeal under Chapter 67 of the Criminal Code; or
- (b) an appeal under Part 9 of the *Justices Act 1886*.

**“sentence review”** means a review under section 88 (Sentence review) of a sentence order.

**(2)** If a child starts a proceeding for an ordinary appeal against a sentence order—

- (a) an application by the child for a sentence review of the sentence order cannot be started; and
- (b) if an application by the child for a sentence review of the sentence order is pending at the start of the proceeding for an ordinary appeal—the application by the child for the sentence review lapses.

**(3)** If—

- (a) a child starts a proceeding for an ordinary appeal against a finding of guilt made against the child in relation to which a sentence order was made; or
- (b) a person other than a child against whom a sentence order has been made starts a proceeding for an ordinary appeal against the sentence order;

a Childrens Court Judge cannot proceed to hear and determine any pending application by the child for a sentence review against the sentence order until the ordinary appeal is finished.

**(4)** If—

- (a) a complainant or arresting officer applies for a sentence review of a sentence order made against a child; and
- (b) the child starts a proceeding for an ordinary appeal against the

sentence order or the finding of guilt for which it was made; a Childrens Court Judge can not proceed to hear and decide the application for the sentence review until the ordinary appeal is finished.

### **Incidents of review**

**95.(1)** No costs may be ordered against a party on a sentence review.

**(2)** The decision of a Childrens Court Judge on a sentence review—

- (a) takes effect as the decision of the Childrens Court Magistrate who made the sentence order reviewed; and
- (b) subject to subsection (2), may be enforced or appealed against in the same way as the decision of the Childrens Court Magistrate.

**(3)** Subsection (2) does not authorise—

- (a) a further review by a Childrens Court Judge of a sentence already reviewed under this Division by a Childrens Court Judge; or
- (b) an appeal to a District Court Judge under section 222 of the *Justices Act 1886*.

### **Orders at end of reviews**

**96.(1)** Subject to section 232 (Enforcement of sentence by calendar), if as a result of the decision of the Childrens Court Judge on a sentence review, a child is required to serve a period of detention or the unserved part of a period of detention, the Judge, as part of the order on the appeal, must direct that a warrant be issued to arrest the child and commit the child to a detention centre.

**(2)** Any justice may issue the warrant.

### ***Division 7—Mistake in exercise of jurisdiction***

### **Meaning of proceeding**

**97.** In this Division—

“**proceeding**” means a proceeding for the hearing and determination of a charge of an offence.

### **Correction of error by court making order**

**98.(1)** For the purpose of correcting an error in a proceeding, a Childrens Court Magistrate has the same power as a Magistrates Court to reopen the proceeding and correct the error.

**(2)** For the purpose of applying section 147A of the *Justices Act 1886*—

- (a) mention in the section of a conviction includes a finding of guilt; and
- (b) if the defendant affected is a child, the persons who may apply under the section include the chief executive, or, if the child is a detainee, the commission, acting in either case in the child’s interests.

**(3)** Section 188 of the *Penalties and Sentences Act 1992* applies in relation to a Childrens Court Judge.

**(4)** This section does not affect the power of a court under another section of this Division.

### **Removal of a proceeding because of lack of jurisdiction**

**99.(1)** If a court is satisfied that it does not have jurisdiction to hear and determine a proceeding before it because of this Act, it may remove the proceeding to a court of competent jurisdiction.

**(2)** To remove and deal with the proceeding that remains before it, the court may—

- (a) give directions it considers necessary; and
- (b) take or make any procedural action or order the court of competent jurisdiction could take or make.

**(3)** Subsection (2) does not limit any other power the court may have to deal with the proceeding.

**Lack of jurisdiction discovered in course of a proceeding**

**100.(1)** This section applies if, in the course of a proceeding, a court finds that it does not have jurisdiction to hear and determine the proceeding because of this Act.

(2) If the court has the necessary jurisdiction in its concurrent jurisdiction, it may continue the proceeding in the concurrent jurisdiction.

(3) If the court does not act under subsection (2), it may deal with the proceeding under section 99 (Removal of a proceeding because of lack of jurisdiction).

**Lack of jurisdiction discovered after proceeding ends**

**101.(1)** This section applies if a finding or order has been made in a proceeding—

- (a) on the assumption that the person charged was a child, when the person was an adult; or
- (b) on the assumption that the person charged was an adult, when the person was a child.

(2) Application may be made to the court that made the finding or order to set aside the finding or order.

(3) The application may be made by—

- (a) a party to the proceeding; or
- (b) if the person charged in the proceeding was a child—the chief executive, or, if the child is a detainee, the commission, acting in either case in the child's interests; or; or
- (c) the Director of Prosecutions.

(4) The application must be made—

- (a) within 28 days after the error is discovered by the applicant; or
- (b) by a later day that the court may at any time allow.

(5) On hearing the application, the court may set aside the finding or order and—

- (a) make the finding or order the court considers should have been

made in the first place, if necessary after deciding what facts the court when differently constituted must have found when making the finding or order set aside; or

- (b) take any action or make any order that could have been made by the court if it had discovered the error immediately before making the finding or order.

(6) A court cannot set aside an acquittal under this section or an order dismissing a charge or discharging a person.

### *Division 8—Special sentencing provisions relating to detainee*

#### **Extension of Act for detainee offender**

**102.(1)** In this section—

“**detainee**” means a person serving a period of detention under a sentence order.

(2) If—

- (a) a proceeding is started against a detainee for an offence committed within the period of 1 year after the detainee ceased to be a child; and
- (b) the proceeding is started within 1 year of the commission of the offence;

the detainee may be treated as a child for the purpose of the proceeding.

(3) A court may treat the detainee as a child if it considers this appropriate, for example because—

- (a) treatment of the detainee as an adult would disrupt the application of an existing sentence order; or
- (b) the offence was committed in a detention centre in circumstances suggesting that the detainee should be treated as a child in relation to the offence; or
- (c) a recommendation made by the commission or in a presentence report supports the treatment of the detainee as a child.



(4) A court may act under this section on application by a party to the proceeding or on its own initiative.

### *Division 9—Child offenders who become adults*

#### **Definitions for pt 4, div 9**

**103.** In this Division—

“**offence**” means the offence the offender committed as a child.

“**offender**” means a person who has—

- (a) committed an offence as a child; and
- (b) since committing the offence become an adult.

“**sentence**”, in relation to an offender sentenced as an adult, includes orders made instead of sentence.

#### **Offender treated as child**

**104.** Subject to this Division, the offender must be treated as a child for the purposes of this Act during any proceeding for the offence.

#### **When offender must be treated as an adult**

**105.(1)** If 1 year has passed after an offender has become an adult—

- (a) a proceeding afterwards started against the offender for the offence must be taken as if the offender were an adult at the time of the commission of the offence; and
- (b) if found guilty in the proceeding—the offender must be sentenced as an adult.

**(2)** If—

- (a) a proceeding has started against an offender for the offence in the way provided in this Act for a child; but
- (b) the proceeding has not been completed to a finding of guilty or not guilty by the time 1 year has passed after the offender

becomes an adult;

then—

- (c) the proceeding must be finished in the way provided in this Act for a child; but
- (d) if found guilty—the offender must be sentenced as an adult.

(3) An offender must not be treated as an adult under this section if the court is satisfied that there was undue delay on the part of the prosecution in starting or completing the proceeding.

### **When offender may be treated as an adult**

**106.(1)** This section applies if—

- (a) a proceeding has started against an offender for an offence in the way provided in this Act for a child (the “**childhood proceeding**”); and
- (b) by the time 1 year has passed after the offender becomes an adult—
  - (i) the childhood proceeding has not been completed to a finding of guilty or not guilty; and
  - (ii) the offender, for another offence—
    - (A) is proceeded against as an adult; or
    - (B) has been sentenced as an adult.

(2) The court hearing the childhood proceeding may decide to continue the proceeding as if the offender were an adult when the offence was committed.

(3) For subsection (2), the Childrens Court may continue the proceeding in its concurrent jurisdiction.

(4) If the offender is found guilty, the offender must be sentenced as an adult.

(5) This section applies despite section 105(2).<sup>16</sup>

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<sup>16</sup> Section 105(2) (When offender must be treated as an adult)

**Continuing effect on offender of orders made when child**

**107.(1)** An order that may be made under this Act against a child (“**the order**”) may be made even though the person concerned will have ceased to be a child before the order’s effect will have ceased under its terms.

(2) If a person against whom the order is made ceases to be a child before the order’s effect ceases under its terms—

- (a) the order continues to apply as if the person continued to be a child; and
- (b) other proceedings and orders arising out of the order that could have been taken or made in relation to the person had the person remained a child must be taken or made as if the person were a child.

(3) For subsection (2), a reference in this Act to a child subject to an order who commits an offence or contravenes a requirement of, or prescribed requirement relating to, the order is declared to include a reference to the child committing the offence or contravening the requirement while subject to the order after becoming an adult.

(4) Subsection (3) does not limit subsection (2).

(5) If—

- (a) a proceeding or order mentioned in subsection (2)(b) may be taken before, or made by, a court if a person is found guilty of an offence before the court; and
- (b) the person is found guilty before a Magistrates Court of an offence committed as an adult;

the court has concurrent jurisdiction to hear the proceeding or make the order.

(6) For subsection (5), any judicial officer constituting the Magistrates Court may constitute the Childrens Court.

**When order made as child may be dealt with as adult order**

**107A.(1)** This section applies if—

- (a) a sentence order is made against a person as a child (the “**childhood sentence order**”); and

*Juvenile Justice Act 1992*

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(b) a proceeding arising out of the order is taken before a court after the person becomes an adult.

(2) If the circumstances mentioned in subsection (3) apply, the court may decide to deal with the person as if—

- (a) the childhood sentence order were a corresponding adult order made for the offence; and
- (b) the offence were committed as an adult.

(3) The circumstances are—

- (a) the person, for another offence committed as an adult—
  - (i) is being proceeded against; or
  - (ii) has been sentenced; or
- (b) more than 1 year has passed after the offender becomes an adult.

(4) The court may declare the childhood sentence order to be a corresponding adult order and make all necessary changes to the childhood sentence order to change it to a corresponding adult order.

(5) The person is then subject to the corresponding sentence order for the proceeding before the court and any further proceedings and orders.

(6) For subsection (2), the Childrens Court may continue the proceeding in its concurrent jurisdiction.

(7) In this section—

**“corresponding adult order”** to a childhood sentence order, means a type of sentence to which an adult is liable that is similar to the type of the childhood sentence order, for example—

- (a) a probation order made under the *Penalties and Sentences Act 1992* is a corresponding adult order to a probation order made under this Act; and
- (b) a community service order made under the *Penalties and Sentences Act 1992* is a corresponding adult order to a community service order made under this Act.

**Sentencing offender as adult**

**107B.(1)** Subject to subsections (2) and (3), a court sentencing an offender as an adult under section 105, 106 or 107A<sup>17</sup> has jurisdiction to sentence the offender in any way that an adult may be sentenced.

**(2)** The court must have regard to—

- (a) the fact that the offender was a child when the offence was committed; and
- (b) the sentence that might have been imposed on the offender if sentenced as a child.

**(3)** The court cannot order the offender—

- (a) to serve a term of imprisonment longer than the period of detention that the court could have imposed on the offender if sentenced as a child; or
- (b) to pay an amount by way of fine, restitution or compensation greater than that which the court could have ordered the offender to pay if sentenced as a child.

**(4)** Subsection (3) applies even though an adult would otherwise be liable to a heavier penalty which by operation of law could not be reduced.

**PART 5—SENTENCING***Division 1—Sentencing generally***Jurisdiction to sentence child exclusive**

**108.(1)** A court that sentences a child for an offence must sentence the child under this part.

**(2)** Subsection (1) applies despite any other Act or law.

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<sup>17</sup> Section 105 (When offender must be treated as an adult), 106 (When offender may be treated as an adult) or 107A (When order made as child may be dealt with as adult order)

**Sentencing principles**

**109.(1)** In sentencing a child for an offence, a court must have regard to—

- (a) subject to this Act, the general principles applying to the sentencing of all persons; and
- (b) the general principles of juvenile justice; and
- (c) the special considerations stated in subsection (2); and
- (d) the nature and seriousness of the offence; and
- (e) the child's previous offending history; and
- (f) any information about the child, including a presentence report, provided to assist the court in making a determination; and
- (g) any impact of the offence on a victim; and
- (h) a sentence imposed on the child that has not been completed; and
- (i) a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and
- (j) the fitting proportion between the sentence and the offence.

**(2)** Special considerations are that—

- (a) a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and
- (b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and
- (c) the rehabilitation of a child found guilty of an offence is greatly assisted by—
  - (i) the child's family; and
  - (ii) opportunities to engage in educational programs and employment; and
- (d) a child who has no apparent family support, or opportunities to engage in educational programs and employment, should not receive a more severe sentence because of the lack of support or opportunity; and

- (e) a detention order should be imposed only as a last resort and for the shortest appropriate period.

(3) In sentencing a child for an offence, a court may receive any information it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.

### **Presentence report**

**110.(1)** A court, before it sentences a child found guilty of an offence, may order the chief executive to give to the court a presentence report concerning the child.

(2) The court may request that the report contain specified information, assessments and reports relating to the child or the child's family or other matters.

(3) Pending the giving of a presentence report, the court may adjourn the proceeding and remand the child in custody or exercise the powers conferred by Part 3 to grant bail to and release the child from custody.

(4) In releasing the child from custody, the court may impose conditions that it considers necessary to facilitate the preparation of the presentence report.

(5) The chief executive must cause the presentence report to be prepared in documentary form and given to the court promptly.

(6) The report must be given to the court promptly, but need not be given in less than 15 days.

### **Presentence report evidence**

**111.(1)** The court may request the author of a presentence report, or a person who gave a statement included in the report, to attend before the court in the way indicated by the court for the purpose of giving more information.

(2) The court may ask, and allow parties to the proceeding to ask, questions of a person attending the court under subsection (1).

(3) A court may give as much weight as it considers appropriate to a

presentence report or answers given in response to questions under subsection (2).

### **Disclosure of presentence report**

**112.(1)** If a presentence report is given to a court under section 110 (Presentence report), the court may give a copy of the report as soon as practicable—

- (a) to the prosecution; and
- (b) if the child is represented by a legal practitioner—the legal practitioner.

**(2)** If the child is not represented by a legal practitioner, the court must give the report to the child or a parent of the child present in the court.

**(3)** The court may give directions it considers appropriate about a report given to anyone under subsection (1) or (2), including, for example, a direction limiting disclosure and a direction requiring the report's return.

### **Finding of guilt as child may be disclosed while a child**

**113.(1)** A finding of guilt against a child by a court for an offence, whether or not a conviction has been recorded, is part of the criminal history of the child to which regard may be had by a court that subsequently sentences the child for any offence as a child.

**(2)** Subsection (1) applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **Evidence of childhood finding of guilt not admissible against adult**

**114.(1)** In a proceeding against an adult for an offence, there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded.

**(2)** Subsection (1) applies even though the evidence would otherwise be admissible under section 15 of the *Evidence Act 1977* and section 5(3)(b) of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**(3)** This section does not prevent a court that is sentencing an adult from



receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court's sentence.

### **Mandatory sentence provisions inapplicable**

**115.** A court that sentences a child for an offence—

- (a) must disregard a requirement under any other Act that an amount of money or term of imprisonment must be the minimum penalty for the offence; and
- (b) must take a requirement under any other Act that an amount of money or term of imprisonment must be the only penalty for the offence as providing instead that the amount or term is the maximum penalty for the offence.

### **Preference to be given to compensation and restitution**

**116.** If a court sentencing a child for an offence considers—

- (a) that it is appropriate to make both of the orders that the child pay—
  - (i) an amount by way of compensation or restitution; and
  - (ii) an amount by way of fine; and
- (b) that the child has insufficient resources to pay both amounts;

the court must give preference to ordering the child to pay only the compensation or restitution amount.

### **Outstanding charge may be taken into account on sentence**

**117.(1)** A court sentencing a child for an offence may take into account an outstanding charge against the child in the same way an outstanding charge may be taken into account when an adult is sentenced.

**(2)** Section 189 of the *Penalties and Sentences Act 1992* applies for the purpose of subsection (1).

**Children entitled to explanation of sentence**

**118.(1)** When making an order sentencing a child for an offence a court must take steps to ensure that the child understands—

- (a) the purpose and effect of the order; and
- (b) the consequences (if any) that may follow if the child fails to comply with the requirements of the order.

**(2)** Examples of the steps a court may take are—

- (a) directly explaining these matters in court to the child; or
- (b) having some appropriate person give the explanation; or
- (c) having an interpreter or other person able to communicate effectively with the child give the explanation; or
- (d) causing an explanatory note in English or another language to be supplied to the child.

**(3)** Subsection (1) does not apply where the child's presence is not required at sentence.

**Copy of court order to be given to child, parent etc.**

**119.(1)** A court that makes an order sentencing a child for an offence must cause—

- (a) the order to be promptly reduced to writing by the proper officer of the court in the prescribed form; and
- (b) a copy of the order to be given to—
  - (i) the child; and
  - (ii) a parent of the child; and
  - (iii) the chief executive, and, if the child is a detainee, the commission.

**(2)** If a person mentioned in subsection (1)(b) is not present in the court, the subsection—

- (a) is sufficiently complied with if the proper officer of the court serves a copy of the sentence order on the person; and

(b) does not apply if the proper officer of the court is unable to ascertain the whereabouts of the person after reasonable inquiries.

(3) Failure to comply with subsection (1) does not affect the validity of the sentence order.

### *Division 2—Orders on children found guilty of offences*

#### **Sentence orders—general**

**120.(1)** When a child is found guilty of an offence before a court, the court may—

- (a) reprimand the child; or
- (b) order the child to be of good behaviour for a period not longer than 1 year; or
- (c) order the child to pay a fine of an amount prescribed under an Act in relation to the offence; or
- (d) subject to subsection (3), order the child to be placed on probation for a period not longer than—
  - (i) if the court is not constituted by a Judge—1 year; or
  - (ii) if the court is constituted by a Judge and section 121 (Sentence orders—serious offences) does not apply—2 years; or
- (e) subject to subsection (3), if the child has attained the age of 13 years—order the child to perform unpaid community service for a period not longer than—
  - (i) if the child has not attained the age of 15 years at the time of sentence—100 hours; or
  - (ii) if the child has attained the age of 15 years at the time of sentence—200 hours; or
- (f) order that the child be detained for a period not more than—
  - (i) if the court is not constituted by a judge—1 year; or

- (ii) if the court is constituted by a judge and section 121<sup>18</sup> does not apply—the shorter period of the following—
  - (A) half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve;
  - (B) 5 years.

(2) A court may make an order for a child's detention under subsection (1)(f) with or without an immediate release order under section 176.<sup>19</sup>

(3) A probation order under subsection (1)(d) or a community service order may only be made against a child found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment.

(4) This section has effect subject to the *Childrens Court Act 1992*.

### **Sentence orders—serious offences**

**121.(1)** If a child is found guilty of a serious offence before a court presided over by a Judge (“**the court**”), the court, may—

- (a) order the child to be placed on probation for a period not longer than 3 years; or
- (b) make a detention order against the child under subsection (2) or (3).

(2) For a serious offence other than a life offence, the court may order the child to be detained for a period not more than 7 years.

(3) In relation to a serious offence that is a life offence, the court may order that the child be detained for—

- (a) a period not more than 10 years; or
- (b) a period up to and including the maximum of life, if—
  - (i) the offence involves the commission of violence against a person; and
  - (ii) the court considers the offence to be a particularly heinous

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<sup>18</sup> Section 121 (Sentence orders—serious offence)

<sup>19</sup> Section 176 (Immediate release order)

offence having regard to all the circumstances.

(4) A court may make an order for a child's detention under subsection (2) or (3) with or without an immediate release order under section 176.<sup>20</sup>

(5) This section does not limit a court's power to make an order under section 120 (Sentence orders—general).

### **More than 1 type of order may be made for a single offence**

**121A.** A court may make more than 1 type of sentence order for a single offence, subject to sections 121B and 121C.<sup>21</sup>

### **Combination of probation order and community service order**

**121B.(1)** If a court makes both a probation order and a community service order against a child for a single offence (the “**original offence**”), the court—

- (a) must make separate orders; and
- (b) must not impose one of the orders as a requirement of the other order.

(2) If the child contravenes a requirement of either the probation order or the community service order after the orders are made and is resentenced for the original offence, the other order is discharged.

### **Combination of detention order and probation order**

**121C.(1)** This section applies if a court makes both a detention order and a probation order against a child for a single offence.

(2) The court may make the detention order only for a maximum period of 6 months and may not make an immediate release order.

(3) The probation order may only be for a maximum period ending

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<sup>20</sup> Section 176 (Immediate release order)

<sup>21</sup> Sections 121B (Combination of probation order and community service order) and 121C (Combination of detention order and probation order)

1 year after release from detention under the detention order.

(4) The requirements of the probation order only start when the child is released from detention.

### **Other orders**

**122.** A court that makes a sentence order against a child for an offence under section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences), in addition to the order, may make 1 or more of the following orders—

- (a) an order allowed by Division 8 (Restitution and compensation) requiring the child—
  - (i) to make restitution of property; or
  - (ii) to pay compensation of not more than an amount equal to 20 penalty units for loss to property; or
  - (iii) to pay compensation for injury suffered by another person;
- (b) an order allowed by Division 9 (Application of *Traffic Act 1949*);
- (c) an order allowed by division 9A.<sup>22</sup>

### **Orders may be combined in 1 form**

**123.(1)** This section applies if a court makes more than 1 sentence order against a child charged before it with more than 1 offence.

(2) The court may combine more than 1 of the sentence orders in 1 order form if each sentence order that the form deals with is—

- (a) of the same type; and
- (b) subject to similar conditions.

(3) The order form must contain, or have attached, a list of each offence for which the order form is made.

(4) In a proceeding, it is taken that a separate sentence order was made for each offence.

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<sup>22</sup> Division 9A (Order for identifying particulars to be taken)

**Recording of conviction**

**124.(1)** Other than under this section, a conviction is not to be recorded against a child who is found guilty of an offence.

(2) If a court makes an order only under section 120(1)(a) or (b) (Sentence orders—general), a conviction is not to be recorded.

(3) If a court makes an order under section 120(1)(c) to (f) (Sentence orders—general), the court may order that a conviction be recorded.

(4) If a court makes an order under section 121 (Sentence orders—serious offences), and the order is not allowed under section 120 (Sentence orders—general), a conviction is taken to be recorded.

**Considerations whether or not to record conviction**

**125.(1)** In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including—

- (a) the nature of the offence; and
- (b) the child's age and any previous convictions; and
- (c) the impact the recording of a conviction will have on the child's chances of—
  - (i) rehabilitation generally; or
  - (ii) finding or retaining employment.

(2) Except as otherwise provided by this or another Act, a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose.

(3) A finding of guilt against a child for an offence without the recording of a conviction stops a subsequent proceeding against the child for the same offence as if a conviction had been recorded.

**Judge may delegate sentencing power to Magistrate**

**126.(1)** This section applies if—

- (a) a proceeding in which a child may be sentenced for an offence is before a Childrens Court Magistrate; and

- (b) the Childrens Court Magistrate considers that an appropriate sentence would be beyond the jurisdiction of the Childrens Court Magistrate because of the limit to the jurisdiction set out in section 120(1)(d) or (f) (Sentence orders—general).

(2) The Magistrate may request a Childrens Court Judge to delegate to the Magistrate the power to impose a sentence that, under section 120(1) (Sentence orders—general), may only be made if a Judge constitutes the sentencing court.

(3) The Childrens Court Judge has jurisdiction to delegate the power.

(4) The delegation must be made before any evidence is heard, plea entered or election made, unless the child—

- (a) is represented by a legal practitioner; and  
(b) consents to a delegation happening at a later time.

(5) The request and delegation may be made informally, including by any form of distance communication.

(6) The Magistrate must inform the child of the delegation.

### **Reference of case to Childrens Court Judge for sentence**

**127.(1)** If, in a proceeding for the sentencing of a child for an offence, a Childrens Court Magistrate considers that the circumstances require the making of a sentence order—

- (a) beyond the jurisdiction of a Childrens Court Magistrate; but  
(b) within the jurisdiction of a Childrens Court Judge;

the Magistrate may commit the child for sentence before a Childrens Court Judge.

(2) In relation to a committal under subsection (1), the Childrens Court Magistrate may make all orders and directions as if it were a committal following a committal proceeding.

(3) The Childrens Court Judge may exercise sentencing powers to the extent mentioned in section 120 (Sentence orders—general).



***Division 3—Good behaviour orders*****Good behaviour order**

**128.** A court that makes a good behaviour order against a child must impose a condition that the child abstains from violation of the law for the period of the order.

**Breach of conditions**

**129.(1)** If a person against whom a good behaviour order has been made commits an offence during the period of the order, a court that deals with the person on a charge for the offence may have regard to the breach of the good behaviour order when determining its sentence for the offence.

**(2)** Otherwise a court must not take any action in relation to a breach of a good behaviour order.

***Division 4—Fines*****Child's capacity to pay fine to be considered**

**130.** A court may make an order requiring a child to pay an amount by way of fine only if it is satisfied that the child has the capacity to pay the amount.

**Requirements of fine order**

**131.** An order made by a court requiring a child to pay a fine must direct that—

- (a) the fine be paid by a specified time or by specified instalments; and
- (b) the fine must be paid in the first instance to the proper officer of the court.

**Proper officer's application on breach**

**131A.(1)** This section applies if a child who is ordered to pay a fine for an offence fails to pay all the fine within the time allowed for payment.

**(2)** The proper officer may apply to the court to cancel the fine order and make a community service order against the child.

**(3)** The proper officer must give notice of the application to—

- (a) the child; and
- (b) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (c) the chief executive.

**(4)** If the court is satisfied that the child has not paid an amount of the fine within the time allowed, the court may—

- (a) take no action; or
- (b) extend the time for paying the amount; or
- (c) cancel the fine order and resentence the child by making a community service order against the child.

**(5)** The community service hours under the community service order must be calculated using the following formula—

$$\text{unpaid amount of fine} \times 8 \\ \text{1 penalty unit.}$$

**(6)** However, the community service hours calculated using the formula must not be more than that permitted under section 120(1)(e) or 151.<sup>23</sup>

**(7)** If the hours calculated under the formula are less than that permitted by section 151, the court may not make an order under subsection (4)(c).

**(8)** If the hours calculated under the formula are more than that permitted by section 120(1)(e) or 151, the court may only make an order for the maximum hours permitted.

**(9)** The community service order is a community service order under section 120(1)(e).

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<sup>23</sup> Section 120(1)(e) (Sentence orders—general) or 151 (Limitation on number of hours of community service)

(10) In this section—

“parent”, of a child, includes someone who is apparently a parent of the child.

### *Division 5—Probation orders*

#### **Probation orders—requirements**

**132.(1)** A probation order made against a child must require—

- (a) that the child must report in person to the chief executive within 1 business day after the order is made or any longer period that may be specified in the order; and
- (b) that, during the probation order—
  - (i) the child must abstain from violation of the law; and
  - (ii) the child must carry out the lawful instructions of the chief executive; and
  - (iii) the child must report and receive visits as directed by the chief executive; and
  - (iv) the child or a parent of the child must notify the chief executive within 2 business days of any change of address, employment or school; and
  - (v) the child must not leave, or stay out of, Queensland during the probation period, without the prior approval of the chief executive.

(2) A probation order made against a child may contain requirements that the child must comply during the whole or a part of the probation period with conditions that the court considers necessary or desirable for preventing—

- (a) a repetition by the child of the offence in relation to which the order was made; or
- (b) the commission by the child of other offences.

(3) A requirement imposed by a court under subsection (2)—

- (a) must relate to the offence for which the probation is made; and
- (b) must be supported by the court's written reasons.

### **Child must be willing to comply**

**133.** A court may make a probation order against a child only if the child indicates willingness to comply with the requirements of the order.

### **Chief executive's application on breach**

**134.(1)** If, in the chief executive's opinion, a child against whom a probation order has been made has contravened a requirement of the order or any other prescribed requirement relating to the order, the chief executive must warn the child of the consequences of further contravention, including the making of an application under this section.

**(2)** Subsection (1) does not apply if the child's whereabouts—

- (a) are unknown to the chief executive; and
- (b) cannot be reasonably ascertained.

**(3)** If, in the chief executive's opinion, a child against whom a probation order has been made—

- (a) has contravened a requirement of the order or a prescribed requirement relating to the order; and
- (b) if warned under subsection (1)—has continued to contravene the requirement after being warned under subsection (1);

the chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court Magistrate for a finding that a breach of the probation order has happened.

**(4)** The application may only be started during the period of the probation order.

**(5)** A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

**(6)** If—

- (a) complaint is made before a justice that a child has breached a

probation order; and

- (b) information is given on oath before the justice substantiating—
  - (i) the matter of the complaint; and
  - (ii) that either the whereabouts of the child cannot reasonably be ascertained or there are reasonable grounds for believing that the child would not appear in answer to a complaint and summons;

the justice, instead of issuing a complaint and summons, may issue in the first instance a warrant to arrest the child and to cause the child to be brought before a Childrens Court Magistrate to be further dealt with according to law.

(7) A child arrested under the warrant must be treated, for the purpose of Part 3, as if arrested on a charge of an offence.

(8) In this section—

“parent”, of a child, includes someone who is apparently a parent of the child.

### **General options available to Childrens Court Magistrate on breach application**

**135.(1)** A Childrens Court Magistrate (“**the court**”), on application made under section 134 (Chief executive’s application on breach), if satisfied beyond reasonable doubt that the contravention alleged in the application has happened, may exercise the powers mentioned in subsections (2) to (5).

(2) If the probation order was made by the court, the court may take any action allowed under section 140 (Specific powers if breach proved).

(3) If—

- (a) the probation order was made by the Supreme Court, a District Court or a Childrens Court Judge; and
- (b) the court considers that the circumstances of the contravention do not make it desirable that the order should be discharged and the child dealt with for the offence in respect of which the order was made;

the court may take any action under section 140 (Specific powers if breach proved) other than under section 140(1)(c).

(4) If—

- (a) the probation order was made by the Supreme Court, a District Court or a Childrens Court Judge; and
- (b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may order the child to appear before the court that made the order.

(5) On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by Part 3 to be brought or to appear before that other court.

### **General options available to superior court to which child committed for breach**

**136.(1)** The Supreme Court, District Court or Childrens Court Judge before which a child appears under an order under section 135 (General options available to Childrens Court Magistrate on breach application), if satisfied beyond reasonable doubt of the matter alleged against the child in the application made by the chief executive under section 134 (Chief executive’s application on breach), may take any action allowed by section 140 (Specific orders if breach proved).

(2) The proceeding before the Supreme Court, District Court or Childrens Court Judge must be heard and determined by a judge sitting without a jury.

### **General options available to court before which child found guilty of an indictable offence**

**137.(1)** If a child who is subject to a probation order is found guilty of an indictable offence, the court before which the child is found guilty (“**the court**”) may exercise the powers mentioned in subsections (2) to (5).

(2) If the probation order was made by the court, the court may take any

action allowed by section 140 (Specific powers if breach proved).

**(3)** If—

- (a) the probation order was not made by the court; and
- (b) the court considers that the circumstances of the indictable offence do not make it desirable that the probation order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may take any action under section 140 (Specific powers if breach proved) other than under section 140(1)(c).

**(4)** If—

- (a) the probation order was not made by the court; and
- (b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may—

- (c) order the child to appear before the court that made the order; or
- (d) if the court may act under section 138 (Court may resentence child originally sentenced by lower court)—act under the section.

**(5)** On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by Part 3 to be brought or to appear before the other court.

### **Court may resentence child originally sentenced by lower court**

**138.(1)** If—

- (a) the court mentioned in section 137(1) (General options available to court before which child found guilty of an indictable offence) is the Supreme Court, a District Court or a Childrens Court Judge; and
- (b) the probation order was made by a Childrens Court Magistrate; and
- (c) the court considers that the circumstances of the contravention

make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may act under section 140(1)(c) (Specific powers if breach proved) to make any sentence order a Childrens Court Magistrate could make in the same circumstances.

(2) A sentence order made under subsection (1)—

- (a) for the purposes of an appeal is taken to be a sentence order made on indictment; but
- (b) for all other purposes is taken to be a sentence order made by a Childrens Court Magistrate.

(3) If—

- (a) the court is the Supreme Court; and
- (b) the probation order was made by a District Court or a Childrens Court Judge (the “**lower court**”); and
- (c) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may act under section 140(1)(c) (Specific powers if breach proved) to make any sentence order the lower court could make in the same circumstances.

(4) A sentence order made under subsection (3) is taken to be a sentence order made by the lower court mentioned in the subsection.

### **General options available to court to which child committed for breach by indictable offence**

**139.(1)** The court before which a child appears under an order under section 137(4)(c) (General options available to court before which child found guilty of an indictable offence) may take any action allowed by section 140 (Specific powers if breach proved).

(2) If the proceeding is before the Supreme Court, District Court or



Childrens Court Judge, the proceeding must be heard and determined by a judge sitting without a jury.

### **Specific powers if breach proved**

**140.(1)** A court that acts under this section may—

- (a) vary any of the requirements of the probation order (other than the requirement that the child abstain from violation of the law); or
- (b) extend the period of the probation order but not so that it is longer than the period allowed by section 120(1)(d) (Sentence orders—general) and section 121(1)(a) (Sentence orders—serious offences) in relation to the offence for which the order was made; or
- (c) discharge the probation order and resentence the child for the offence for which the order was made, as if the child had just been found guilty before the court of that offence; or
- (d) on the undertaking of the child to comply in all respects with the requirements of the probation order and all prescribed requirements applicable to the child because of the order, take no further action.

(2) A court may act under subsection (1)(a) only if the child expresses a willingness to comply with the requirements of the probation order as varied.

(3) An order under subsection (1)(b) may be made in conjunction with an order under subsection (1)(a).

(4) An order may be made under this section even though, at the time it is made, the probation order in relation to which the order is made is no longer in force because the period of the probation order has ended.

(5) For the purpose of subsection (4), the probation order is taken to continue in force until a proceeding under this section is heard and determined.

**Variation, discharge and resentence in the interests of justice**

**141.(1)** If a probation order is in force in relation to a child, on application made by or on behalf of the child or by the chief executive, the court that made the probation order may—

- (a) vary the requirements of the probation order (other than the requirement that the child abstain from violations of the law); or
- (b) discharge the probation order; or
- (c) discharge the order and resentence the child for the offence in respect of which the probation order was made as if the child had just been found guilty before the court of the offence;

if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the probation order was made.

**(2)** Notification of the making of an application under subsection (1) must be given—

- (a) if the application is made by or on behalf of the child—by the applicant to the chief executive; or
- (b) if the application is made by the chief executive—by the chief executive to the child.

**(3)** An application cannot be made on the grounds that the child has contravened a requirement of the probation order or a prescribed requirement applicable to the child because of the probation order.

**Compliance with existing order relevant to further order**

**142.** A court that resentences a child for an offence after discharging a probation order under section 140(1)(c) (Specific powers if breach proved) or section 141(1)(c) (Variation, discharge and resentence in the interests of justice) must have regard to—

- (a) the making of the probation order; and
- (b) anything done by the child in compliance with the order.

**Affidavits may be used in certain proceedings**

**143.(1)** In a proceeding before a court under section 134 (Chief executive's application on breach), 135 (General options available to Childrens Court Magistrate on breach application), 136 (General options available to superior court to which child committed for breach), 139 (General options available to court to which child committed for breach by indictable offence) or 141 (Variation, discharge and resentence in the interests of justice), evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

(2) The proceeding may be determined on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.

(3) The court may make an order under subsection (2) of its own initiative or on the application of a party to the proceedings.

**Notice of discharge etc. of probation order**

**144.** If a court in the exercise of jurisdiction under sections 134 (Chief executive's application on breach) to 141 (Variation, discharge and resentence in the interests of justice) affects the terms or operation of a probation order made against a child, it must cause written notice of the exercise of the jurisdiction to be given to—

- (a) the child; and
- (b) the chief executive; and
- (c) if that court is not the court that made the probation order to which the application for exercise of the jurisdiction applied—to the court that made the order.

**Variations by consent**

**145.(1)** Despite any other provision of this Division, the proper officer of a court by which a probation order has been made against a child, on application, may make an order amending the requirements of the order, other than the requirement that the child abstain from violations of the law.

- (2) An application—

- (a) may be made—
  - (i) by or on behalf of the child; or
  - (ii) by the chief executive; and
- (b) must be supported by affidavit filed in the office of the proper officer deposing to the fact that the chief executive and the child consent to the making of the order to vary the requirements of the probation order.

(3) The proper officer of the court must note the amendment of the requirements of the probation order on the court's record of the probation order.

(4) The period of a probation order cannot be amended under an application.

### *Division 6—Community service orders*

#### **Preconditions to making of community service order**

**146.** A court may make a community service order against a child only if—

- (a) the child indicates willingness to comply with the requirements of the order; and
- (b) the court is satisfied that the child is a suitable person to perform community service; and
- (c) the court is satisfied on consideration of a report by the chief executive that community service of a suitable nature can be provided for the child.

#### **Requirements to be set out in community service order**

**147.** A community service order must contain requirements—

- (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
- (b) that the child perform in a satisfactory way for the number of

hours specified in the order the community service that the chief executive directs the child to perform; and

- (c) that the child, while performing community service, comply with every reasonable direction of the chief executive; and
- (d) that the child inform the chief executive of every change in the child's place of residence within 2 business days of the change.

### **Obligation of chief executive**

**148.** The chief executive, in giving directions to a child in relation to the child's performance of community service, is—

- (a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child's parent; and
- (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
- (c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.

### **Community service to be performed within limited period**

**149.** A child against whom a community service order is made must perform the number of hours of community service specified in the order—

- (a) within the period of 1 year starting on the date of the order; or
- (b) within any extended period that a court may order under section 156 (Specific powers if breach proved), section 157 (Extension of time to perform community service) or section 158 (Variation, discharge or resentencing in the interests of justice); or
- (c) any extended period allowed by order of the proper officer of the court under section 163 (Variations by consent).

### **Multiple or successive community service orders**

**150.** A court—

- (a) may make 2 or more community service orders against a child in

respect of 2 or more offences; and

- (b) may make a community service order against a child who is already subject to an existing community service order.

### **Limitation on number of hours of community service**

**151.(1)** Subject to subsections (2) and (3), the community service hours specified in a community service order must not be less than 20.

**(2)** If—

- (a) a court makes 2 or more community service orders against a child found guilty of 2 or more offences; and
- (b) the child is not subject to an existing community service order;

the total of the community service hours specified in the orders must not be less than 20 or more than the maximum appropriate to the child allowed by section 120(1)(e) (Sentence orders—general) for 1 offence.

**(3)** If—

- (a) a court makes 1 or more community service orders against a child; and
- (b) the child is subject to 1 or more existing community service orders;

the total of the community service hours specified in all the orders, less the number of hours for which the child has performed community service under the existing order or orders, must not be not less than 20 or more than the maximum appropriate to the child allowed by section 120(1)(e) (Sentence orders—general) for 1 offence.

**(4)** To the extent that the total exceeds the maximum allowed, the order or orders made by the court is or are of no effect.

**(5)** Every community service order made against a child operates cumulatively to every other community service order made against the child, unless the court that makes a community service order directs otherwise.

**Ending of community service order**

**152.** A community service order made against a child remains in effect until—

- (a) the child has performed community service in accordance with the requirements specified under section 147(b) and (c) (Requirements to be set out in community service order) for the number of hours specified in the order; or
- (b) the order is discharged under section 156 (Specific powers if breach proved) or 158 (Variation, discharge or resentence in the interests of justice); or
- (c) the expiry of the period within which the community service is required to be performed under section 149 (Community service to be performed within limited period);

whichever first happens.

**Chief executive's application on breach**

**153.(1)** If the chief executive is of the opinion that a child against whom a community service order has been made has contravened a requirement of the order or a prescribed requirement relating to the order, the chief executive must warn the child of the consequences of further contravention including the making of an application under this section.

**(2)** Subsection (1) does not apply if the child's whereabouts—

- (a) are unknown to the chief executive; and
- (b) cannot reasonably be ascertained.

**(3)** If, in the chief executive's opinion, a child against whom a community service order has been made—

- (a) has contravened a requirement of the order or a prescribed requirement relating to the order; and
- (b) if warned under subsection (1)—has continued to contravene a requirement of the order after being warned;

the chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court Magistrate for a finding that the child has breached the order.

(4) A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

(5) If—

- (a) a complaint is made before a justice that a child has breached a community service order; and
- (b) information is given on oath before the justice substantiating—
  - (i) the matter of the complaint; and
  - (ii) that either the whereabouts of the child cannot reasonably be ascertained or there are reasonable grounds for believing that the child would not comply with a summons;

the justice, instead of issuing a summons, may issue in the first instance a warrant to arrest the child and to cause the child to be brought before a Childrens Court Magistrate to be further dealt with according to law.

(6) A child arrested under the warrant for the purposes of Part 3 must be treated as if arrested on a charge of an offence.

(7) In this section—

“**parent**”, of a child, includes someone who is apparently a parent of the child.

### **General options available to Childrens Court Magistrate on breach application**

**154.(1)** A Childrens Court Magistrate (“**the court**”), on application made under section 153 (Chief executive’s application on breach), if satisfied beyond reasonable doubt that the contravention alleged in the application has happened, may exercise the powers mentioned in subsections (2) to (5).

(2) If the community service order was made by the court, the court may take any action allowed under section 156 (Specific powers if breach proved).

(3) If—

- (a) the community service order was made by the Supreme Court, a District Court, or a Childrens Court Judge; and



- (b) the court considers that the circumstances of the contravention do not make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may take any action under section 156 (Specific powers if breach proved) other than under section 156(1)(c).

**(4)** If—

- (a) the community service order was made by the Supreme Court, a District Court or Childrens Court Judge; and
- (b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may order the child to appear before the court that made the order.

**(5)** On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by Part 3 to be brought or appear before that other court.

### **General options available to superior court to which child committed for breach**

**155.(1)** The Supreme Court, a District Court or a Childrens Court Judge before which a child appears under an order under section 154(4) (General options available to Childrens Court Magistrate on breach application), if satisfied beyond reasonable doubt of the matter alleged against the child in the application made by the chief executive under section 153 (Chief executive's application on breach), may take any action allowed by section 156 (Specific powers if breach proved).

**(2)** The proceeding before the Supreme Court, District Court or Childrens Court Judge must be heard and determined by a judge sitting without a jury.

### **Specific powers if breach proved**

**156.(1)** A court that acts under this section may—

- (a) increase the number of hours for which the child is required to perform community service; or
- (b) extend the period within which the community service is required to be performed under the community service order beyond the period of 1 year starting on the date of the order; or
- (c) discharge the community service order and resentence the child as if the child had just been found guilty before the court of the offence; or
- (d) on the undertaking of the child to comply in all respects with the requirements of the community service order and all prescribed requirements applicable to the child because of the order, take no further action.

(2) A court may act under subsection (1)(a) only if the child expresses a willingness to comply with the requirements of the community service order as varied.

(3) An order under subsection (1)(b) may be made in conjunction with an order under subsection (1)(a).

(4) An order may be made under this section even though, at the time it is made, the community service order is no longer in force because the period within which the community service was required to be performed, has ended.

(5) For the purpose of subsection (4), the community service order is taken to continue in force until the proceeding under this section is heard and determined.

### **Extension of time to perform community service**

**157.(1)** If a community service order is in force in relation to a child, on application made by or on behalf of the child or by the chief executive, a Childrens Court Magistrate may extend the period in which the community service is required to be performed under the order under section 149 (Community service to be performed within limited period) if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

- (2) Notification of the making of an application under subsection (1)

must be given by—

- (a) if the application is made by or on behalf of the child—the applicant to the chief executive; or
- (b) if the application is made by the chief executive—the chief executive to the child.

### **Variation, discharge or resentence in the interests of justice**

**158.(1)** If a community service order is in force in relation to a child, on application made by or on behalf of the child or the chief executive, the court that made the order may—

- (a) extend the period in which the community service is required to be performed under the order under section 149 (Community service to be performed within limited period); or
- (b) reduce (without restriction) the number of hours for which the child is required to perform community service under the order; or
- (c) discharge the order; or
- (d) discharge the order and resentence the child for the offence in respect of which the order was made as if the child had just been found guilty before the court of the offence;

if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

**(2)** Notification of the making of an application under subsection (1) must be given by—

- (a) if the application is made by or on behalf of the child—the applicant to the chief executive; or
- (b) if the application is made by the chief executive—the chief executive to the child.

**(3)** An application cannot be made on the ground that the child has contravened a requirement of the order or a prescribed requirement applicable to the child because of the community service order.

**Compliance with existing order relevant to further order**

**159.** A court that resentences a child for an offence after discharging a community service order under section 156(1)(c) (Specific powers if breach proved) or 158(1)(d) (Variation, discharge or resentence in the interests of justice) must have regard to—

- (a) the making of the community service order; and
- (b) anything done by the child in compliance with the community service order.

**Affidavits may be used in certain proceedings**

**160.(1)** In a proceeding before any court under section 154 (General options available to Childrens Court Magistrate on breach application), 155 (General options available to superior court to which child committed for breach), 157 (Extension of time to perform community service) or 158 (Variation, discharge or resentence in the interests of justice), evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

(2) The proceeding may be determined on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.

(3) The court may make an order under subsection (2) on its own initiative or on the application of a party to the proceeding.

**Notice of discharge etc. of community service order**

**161.** If a court in the exercise of jurisdiction under section 156 (Specific powers if breach proved), 157 (Extension of time to perform community service) or 158 (Variation, discharge or resentence in the interests of justice) affects the terms or operation of a community service order made against a child, the court must cause written notice of the exercise of the jurisdiction to be given to—

- (a) the child; and
- (b) the chief executive; and

- (c) if the court is not the court that originally made the community service order—the court that made the order.

### **Compensation for personal injury**

**162.** The *Workers' Compensation Act 1990* applies to a child performing community service under a community service order as a worker (within the meaning of that Act) working under a contract of service with the Crown.

### **Variations by consent**

**163.(1)** Despite any other provision of this Division, the proper officer of a court by which a community service order has been made against a child, on application, may make an order varying the requirements of the order by—

- (a) reducing the number of hours of community service required to be performed; or
- (b) extending the period within which the community service is required to be performed.

**(2)** An application—

- (a) may be made—
  - (i) by or on behalf of the child; or
  - (ii) by the chief executive; and
- (b) must be supported by affidavit filed in the office of the proper officer deposing to the fact that the chief executive and the child consent to the making of the order to vary the requirements of the community service order.

**(3)** The proper officer of the court must note the variation of the requirements of the community service order on the court's record of the order.

***Division 7—Detention order******Subdivision 1—Initial order*****Presentence report must be obtained before detention order sentence**

**164.** A court may make a detention order against a child only if it has first—

- (a) ordered the chief executive to prepare a presentence report; and
- (b) received and considered the report.

**Detention must be only appropriate sentence**

**165.** A court may make a detention order against a child only if the court, after—

- (a) considering all other available sentences; and
- (b) taking into account the desirability of not holding a child in detention;

is satisfied that no other sentence is appropriate in the circumstances of the case.

**Court's reasons for detention order to be stated and recorded**

**166.(1)** A court that makes a detention order against a child must—

- (a) state its reasons in court; and
- (b) cause the reasons to be reduced to writing and kept by the proper officer of the court with the documents relating to the proceeding.

**(2)** Subject to subsection (3), a court's failure to comply with subsection (1) does not affect the sentence order.

**(3)** A court considering the sentence order on appeal or review must take into account a failure to comply with subsection (1)(a) and give the failure the weight it considers appropriate.

**Detention to be served in detention centre**

**167.(1)** Subject to this Act, a child who is sentenced to serve a period of detention must serve the period of detention in a detention centre.

**(2)** Subject to section 232 (Enforcement of sentence by calendar), on making a detention order against a child, a court must issue its warrant in the prescribed form (if any) directing the commissioner of the police service to take the child into custody and deliver the child to a detention centre decided by the commission.

**(3)** Subsection (2) does not apply if the court makes an immediate release order under section 176 (Immediate release order).

**Commencement of detention period**

**168.(1)** A period of detention under a detention order takes effect from the day the court makes the detention order.

**(2)** Subsection (1) has effect subject to section 170 (Court may order detention period to be cumulative), section 174 (Period of custody on remand to be treated as detention on sentence) and subsection (3).

**(3)** If a child is required to serve a period of detention or the unserved part of a period of detention as a result of an appeal against a sentence order (including an application for a sentence review), the period or unserved part takes effect from the start of the child's custody on sentence for the offence in question after the appeal.

**Detention orders ordinarily concurrent**

**169.** If, at the time a court makes a detention order against a child for an offence, the child—

- (a) is serving; or
- (b) has been sentenced to serve;

a period of detention for another offence, the period of detention under the court's detention order must be served concurrently with the other period of detention, unless other provision is made under section 170 (Court may order detention period to be cumulative) or another Act.

**Court may order detention period to be cumulative**

**170.(1)** If, at the time a court makes a detention order against a child for an offence, the child—

- (a) is serving; or
- (b) has been sentenced to serve;

a period of detention for another offence, the court may order the period of detention under the court's detention order to take effect from the end of the other period of detention.

**(2)** Subsection (1) applies even if the other period of detention has to be served concurrently or cumulatively with a period of detention for an offence other than the one for which the court makes the detention order.

**Limitation on cumulative orders**

**171.(1)** A court making more than 1 detention order under section 120 (Sentence orders—general) against a child on the same day or in the same proceedings is not to direct that a detention order be served cumulatively with another of the detention orders if the total period of the detention orders would exceed—

- (a) when made by a Childrens Court Magistrate—1 year; or
- (b) when made by another court—7 years.

**(2)** To the extent that the total exceeds the maximum allowed the orders are of no effect.

**Period of escape or release pending appeal not counted as detention**

**172.** If a child serving a period of detention under a detention order—

- (a) is released from custody under Part 3 pending an appeal against the detention order (including an application for a sentence review); or
- (b) escapes from custody;

the period for which the child is absent from custody pending the appeal or escape, as the case may be, must not be counted as part of the period of detention.



**Application for variation of detention order in interests of justice**

**172A.(1)** This section applies to a child who—

- (a) escapes from detention under a detention order for an offence (the “**original**” order and offence); and
- (b) is held in custody in another State for another offence committed in the other State or on a charge of an offence allegedly committed in the other State (the “**interstate custody**”).

(2) An application may be made at any time to the court that made the original order to change the original order in the interests of justice.

(3) The application may be made by the child or the commission, acting in the interests of the child.

(4) If the application is not made by the commission, notice of the application must be given to the commission.

(5) On the application the court may—

- (a) take no action; or
- (b) order all or part of the period of interstate custody to be a period of detention taken to have been served under the original order.

(6) An order under subsection (5)(b) has effect even if the period of interstate custody is required to be served, concurrently or cumulatively, with a period of custody imposed because of an offence, other than the original offence, committed in Queensland or elsewhere.

**Multiple orders of detention and imprisonment against person as adult and child**

**173.(1)** Sections 169 (Detention orders ordinarily concurrent) and 170 (Court may order detention period to be cumulative) extend to a case where—

- (a) at the time a court makes a detention order against a person as a child, the person is serving or has been sentenced to serve a term of imprisonment as an adult; or
- (b) at the time a court makes an order sentencing a person to a term of imprisonment as an adult, the person is serving or has been sentenced to serve a period of detention as a child;

as if a reference in the sections to a period of detention included a reference to the term of imprisonment mentioned in paragraph (a) or (b).

(2) Subject to subsection (4), if a person is liable to serve a term of imprisonment as an adult concurrently with a period of detention as a child, the period must be served as a term of imprisonment.

(3) The period of deprivation of liberty because of the term of imprisonment must be counted as part of the period of detention.

(4) The commission may arrange for the person to serve all or part of the term of imprisonment in a detention centre.

(5) The period of deprivation of liberty in the detention centre—

(a) is a period of detention served; and

(b) must be counted as part of the term of imprisonment.

### **Period of custody on remand to be treated as detention on sentence**

**174.(1)** If a child is sentenced to a period of detention for an offence, any period of time for which the child was held in custody pending the proceeding for the offence must be counted as part of the period of detention that is served in a detention centre.

(2) A period of time for which a child is also held in custody on sentence for another offence is not to be counted for the purposes of subsection (1).

(3) Any period of custody of less than 1 day is not to be counted under subsection (1).

### ***Subdivision 2—Immediate release order***

#### **Purpose of immediate release order**

**175.** The purpose of this Subdivision is to provide for a final option instead of the detention of a child by allowing a court to immediately release the child into a structured program with strict conditions.

**Immediate release order**

**176.(1)** A court that makes a detention order against a child may immediately suspend the order and make an order (“**immediate release order**”) that the child be immediately released from detention.

(2) The child must be released from detention in accordance with the immediate release order.

**Immediate release order—requirements**

**177.(1)** An immediate release order must require—

- (a) that the child participate as directed by the chief executive in a program for a period not longer than 3 months (“**program period**”) that is recommended in the presentence report mentioned in section 179 (Presentence report must support immediate release order) and specified in the order; and
- (b) that during the program period the child abstain from violations of the law.

(2) An immediate release order made in relation to a child may contain requirements that the child comply during the whole or a part of the program period with conditions that the court considers necessary for preventing a repetition by the child of the offence in relation to which the detention order was made or the commission by the child of other offences.

(3) A requirement imposed by a court under subsection (2)—

- (a) must relate to the offence for which the detention order was made; and
- (b) must be supported by the court’s written reasons.

**Child must be willing to comply**

**178.** A court may make an immediate release order in relation to a child only if the child expresses willingness to comply with the requirements of the order.

**Presentence report must support immediate release order**

**179.** A court may make an immediate release order in relation to a child only if the presentence report considered by it before making the detention order in question indicates that—

- (a) the child is suitable for release from detention under an immediate release order; and
- (b) an appropriate program in which the child may participate is available on the child's release under the order.

**Effect of program period ending**

**180.** Subject to section 183 (Failure to comply with conditions of immediate release order), at the end of the program period the child is no longer liable to serve a period of detention under the detention order.

**Application of Workers' Compensation Act 1990**

**181.** The *Workers' Compensation Act 1990* applies to a child performing unpaid duties under a program in which the child is participating under an immediate release order as a worker (within the meaning of that Act) working under a contract of service with the Crown.

**Suspension of program period**

**182.(1)** If, during the program period, a child for good reason is unable to participate in the program mentioned in section 177(1)(a) (Immediate release order—requirements), the chief executive may, by written notice given to the child, suspend the program period for a specified period.

**(2)** The period for which the program period is suspended is not to be counted as part of the program period.

**Failure to comply with conditions of immediate release order**

**183.(1)** If, at any time while a condition imposed on a child under an immediate release order has effect, the chief executive is satisfied that the child has failed to comply with the condition, the chief executive may obtain a warrant for the arrest of the child under subsection (2).

(2) If a justice is satisfied on complaint under oath by the chief executive that a child has failed to comply with a condition imposed by an immediate release order, the justice may issue a warrant directed to all police officers for the arrest of the child and for the child to be brought before the court that made the order to be further dealt with according to law.

(3) Part 3 applies to a child arrested on the warrant as if—

- (a) the child were arrested for an offence; and
- (b) references to the Childrens Court in the Part were references to the court before which the child is required by the warrant to be brought.

(4) A court before which a child is brought on the warrant has jurisdiction to hear and determine the complaint.

(5) If the court is the Supreme Court, a District Court or a Childrens Court Judge, the complaint must be heard and determined by a Judge sitting without a jury.

### **Court's decision on complaint**

**184.(1)** If the court is satisfied of the matters specified in the complaint, it may take the action mentioned in subsection (2) or (3).

(2) The court may—

- (a) revoke the immediate release order; and
- (b) subject to section 187 (Detention reduced to the extent just), order the child to serve the sentence of detention for which the immediate release order was made.

(3) Instead of revoking the immediate release order, the court may permit the child a further opportunity to satisfy the conditions of the order and if it thinks fit vary the conditions.

(4) The onus is on the child to satisfy the court it should permit the child this further opportunity.

**Options available to court before which a child subject to an immediate release order is found guilty of an indictable offence**

**185.(1)** In this section—

**“lower court”** means—

- (a) in relation to the Supreme Court—a District Court or the Childrens Court; or
- (b) in relation to a District Court or Childrens Court Judge—a Childrens Court Magistrate.

**“the court”** means the court mentioned in subsection (2).

(2) If a child who is subject to an immediate release order is found guilty of an indictable offence, the court before which the child is found guilty may exercise the powers mentioned in subsections (3) to (6) in relation to the immediate release order.

(3) If the court considers that the child should be given a further opportunity to satisfy the conditions of the immediate release order, the court need take no further action.

(4) If—

- (a) the immediate release order was made by the court or a lower court; and
- (b) the court considers that the immediate release order should be revoked;

the court may—

- (c) revoke the immediate release order; and
- (d) subject to section 187 (Detention reduced to the extent just), order the child to serve the sentence of detention for which the immediate release order was made.

(5) If—

- (a) the immediate release order was not made by the court or a lower court; and
- (b) the court considers that the immediate release order should be revoked;

the court may order the child to appear before the court that made the order.

(6) On ordering a child to appear before another court under subsection (5), the court may commit the child to custody or release the child as provided by Part 3 to be brought or appear before the other court.

(7) A court before which a child appears under an order made under subsection (6) may—

- (a) if it considers that the child should be given a further opportunity to satisfy the conditions of the immediate release order—take no further action; or
- (b) if it considers that the immediate release order should be revoked—revoke the immediate release order.

(8) If a court revokes an immediate release order under this section, the court must—

- (a) order the child to serve the sentence of detention in relation to which the immediate release order was made; and
- (b) issue the warrant mentioned in section 167 (Detention to be served in detention centre).

### **Variation and revocation in the interests of justice**

**186.(1)** If an immediate release order is in force in relation to a child, on application by or on behalf of the child or the chief executive, the court that made the immediate release order may—

- (a) vary the requirements of the order; or
- (b) revoke the immediate release order;

if it appears to the court that it is in the interests of justice to do so, having regard to circumstances that have arisen or become known since the immediate release order was made.

(2) Notification of the making of an application under subsection (1) must be given by—

- (a) if the application is made by or on behalf of the child—the applicant to the chief executive; or
- (b) if the application is made by the chief executive—the chief executive to the child.

(3) An application cannot be made on the grounds that the child has contravened a requirement of the immediate release order.

(4) If a court revokes an immediate release order under this section the court must order the child to serve the sentence of detention in relation to which the immediate release order was made.

### **Detention reduced to the extent just**

**187.** A court that revokes an immediate release order and orders a child to serve the period of detention for which the immediate release order was made must reduce the period of detention by any period the court considers just having regard to everything done by the child to conform with the immediate release order.

### *Subdivision 3—Release after fixed period of detention*

### **Release of child after service of period of detention**

**188.(1)** Unless a court makes an order under subsection (2), a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention.

(2) A court may order a child to be released from detention after serving 50% or more, and less than 70%, of a period of detention if it considers that there are special circumstances, for example to ensure parity of sentence with that imposed on a person involved in the same or related offence.

(3) If the child is entitled under section 174 to have a period of custody pending the proceeding (the “**custody period**”) treated as detention on sentence, the period before the child is released under this section must be reduced by the custody period.

#### *Example—*

C is sentenced to 10 weeks detention. C spent 2 weeks on remand before sentence. C must be released after 5 weeks, which is 70% of 10 weeks with a further reduction of 2 weeks.



**Chief executive's fixed release order**

**189.(1)** At the end of the period after which a child is required to be released under section 188 (Release of child after service of period of detention), the chief executive must make an order (“**fixed release order**”) releasing the child from detention.

(2) The chief executive may—

- (a) impose conditions that the chief executive considers appropriate on the fixed release order; and
- (b) amend the conditions at any time by written notice served on the child.

**Release period counts as part of detention period**

**190.** A period of time for which a child is released from detention under a fixed release order must be counted as part of the period that the child spent in detention for the purpose of calculating the end of the child's period of detention.

**Cancellation of release order**

**191.(1)** If the chief executive is of the opinion, on reasonable grounds, that a child released from detention under a fixed release order has contravened a condition imposed by the chief executive on the order, the chief executive may revoke the order by instrument.

(2) If the chief executive revokes a release order the chief executive may make application to a Magistrate for a warrant to arrest the child and return the child to a detention centre for the unexpired portion of the child's sentence.

(3) If, on application under subsection (2), the Magistrate is satisfied on the chief executive's complaint on oath that the child named in the warrant has failed to comply with the conditions of the child's fixed release order, the Magistrate may issue a warrant authorising all police officers to arrest the child and return the child to a detention centre.

(4) A warrant issued under subsection (3) must specify the grounds on which the warrant was issued.

(5) The Commissioner on being requested by the chief executive to do so must withdraw a warrant issued under this section.

(6) The period spent by the child out of custody after the issue of a warrant is not to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released, unless the chief executive determines otherwise at any time.

#### *Subdivision 4—Parole for life sentences*

##### **Application of subdiv 4**

**191A.** This subdivision applies to a child who is sentenced to detention for life.

##### **Application of parole provisions**

**191B.(1)** The *Corrective Services Act 1988*, part 4,<sup>24</sup> applies to the child.

(2) For subsection (1), a reference in the part to a prisoner serving a term of imprisonment for life is taken to include the child.

#### *Division 8—Restitution and compensation*

##### **Restitution, compensation**

**192.(1)** In this section—

“**offence affected property**” includes—

- (a) property in relation to which the offence was committed; or
- (b) property affected in the course of, or in connection with, the commission of the offence, for example, property of a victim of an offence committed against the victim’s person.

(2) If a child is found guilty before a court of an offence relating to

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<sup>24</sup> *Corrective Services Act 1988*, part 4 (Parole)

*Juvenile Justice Act 1992*

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property or against the person of another, the court may in addition to making a sentence order against the child, make 1 or more of the following orders—

- (a) an order that the child make restitution of offence affected property;
- (b) an order that the child pay compensation (not more than an amount equal to 20 penalty units) for loss caused to offence affected property;
- (c) an order that the child pay compensation for injury suffered by another person (whether the victim against whose person the offence was committed or another) because of the commission of the offence.

(3) An order made under subsection (1) requiring a child to pay an amount by way of compensation or making restitution must direct—

- (a) that the amount must be paid by a time specified in the order or by instalments specified in the order; and
- (b) that the amount must be paid in the first instance to the proper officer of the court.

(4) An order under this section may include a direction the court considers necessary or convenient for the order, for example the way in which restitution of property is to be carried out.

(5) A court may make an order requiring a child to pay an amount under this section only if the court is satisfied that the child has the capacity to pay the amount.

### ***Division 9—Application of Traffic Act 1949***

#### **Application of Traffic Act 1949 generally**

**193.(1)** Subject to this Act, the provisions of the *Traffic Act 1949* apply in relation to a child as they apply in relation to an adult.

(2) For this purpose—

- (a) a reference in the *Traffic Act 1949* to a Magistrates Court or justice is taken to include a reference to a Childrens Court

Magistrate; and

- (b) a reference in the *Traffic Act 1949* to a clerk of a Magistrates Court is taken to be a reference to a clerk of a Childrens Court.

### **Disqualification**

**194.(1)** In this section—

“**disqualified**” means disqualified from holding or obtaining a driver’s licence.

(2) If—

- (a) a child is found guilty of an offence under the Criminal Code, *Traffic Act 1949* or another Act; and
- (b) were the child convicted of the offence as an adult the child would be liable to be disqualified on the conviction whether under the Criminal Code, *Traffic Act 1949* or another Act;

the child is also liable to be disqualified to the same extent.

(3) If—

- (a) a child is found guilty of an offence under the Criminal Code, *Traffic Act 1949* or another Act; and
- (b) a conviction is recorded; and
- (c) were the child convicted of the offence as an adult, the child would be disqualified by the conviction by operation of law;

the child is also disqualified to the same extent.

(4) Subject to subsection (6), section 16C of the *Traffic Act 1949* applies in relation to a child found guilty of an offence mentioned in paragraph (a) or (b) of the section and, for this purpose, a mention in the section of a conviction includes a finding of guilt.

(5) Subject to subsection (6), sections 21 and 22 of the *Traffic Act 1949* apply in relation to a child acquitted of a charge of an offence.

(6) Subsections (4) and (5) apply only if the child is of an age when persons generally are eligible to obtain a driver’s licence.

***Division 9A—Order for identifying particulars to be taken*****Court may order sentenced child’s identifying particulars to be taken**

**194A.(1)** This section applies if a child is found guilty before a court of an indictable offence or an offence against any of the following Acts that is an arrest offence—

- (a) the Criminal Code;
- (b) the *Drugs Misuse Act 1986*;
- (c) the *Police Service Administration Act 1990*;
- (d) the *Regulatory Offences Act 1985*;
- (e) the *Vagrants, Gaming and Other Offences Act 1931*;
- (f) the *Weapons Act 1990*.

**(2)** The court, in addition to making a sentence order against the child, may make an order that the child’s identifying particulars be taken.

**(3)** If the child will not be in custody when the particulars are to be taken, the order must require the child to report to a police station as directed under the order to have them taken.

**(4)** A child must not contravene the order.

Maximum penalty—10 penalty units

**(5)** A child who commits an offence against subsection (4) may be arrested without warrant.

**(6)** If the child will be in custody when the particulars are to be taken, the order must require them to be taken at the place the child is held in custody.

**(7)** A police officer may use reasonable force to take the particulars under the order.

**(8)** In this section—

**“identifying particulars”** means fingerprints and palmprints.

***Division 10—Application of Criminal Offence Victims Act 1995*****Civil compensation orders**

**195.** To remove doubt, it is declared the *Criminal Offence Victims Act 1995*, applies to an offence committed by a child, unless the contrary intention appears.

***Division 11—Orders against parent*****Interpretation**

**196.** In this Division—

“**parent**” means a guardian of the child, other than the chief executive;

“**show cause hearing**” means the hearing and determination of the issue of whether a parent should be ordered to pay compensation under section 198(5) (Show cause hearing).

**Notice to parent of child offender**

**197.(1)** This section applies if it appears to a court, on the evidence or submissions in a case against a child found guilty of a personal or property offence, that—

- (a) compensation for the offence should be paid to anyone; and
- (b) a parent of the child may have contributed to the fact the offence happened by not adequately supervising the child; and
- (c) it is reasonable that the parent should be ordered to pay compensation for the offence.

**(2)** The court may decide to call on a parent of the child to show cause, as directed by the court, why the parent should not pay the compensation.

**(3)** The court may act under subsection (2) on its own initiative or on the prosecution’s application.

**(4)** If the parent is present in court when the court decides to call on the parent to show cause, the court may call on the parent to show cause by

announcing its decision in court.

(5) If a court calls on a parent under subsection (2), the court must—

- (a) reduce its grounds to writing; and
- (b) give a copy to the parent.

(6) The court in all cases, instead of acting under subsection (2), may cause the proper officer of the court to give written notice to the parent calling on the parent to show cause as directed by the notice why the parent should not pay the compensation.

(7) If a parent is called on under subsection (4)—

- (a) the court must reduce its grounds to writing; and
- (b) a copy of the grounds must be given, in accordance with the courts directions (if any), to the parent a reasonable time before the show cause hearing.

(8) A proceeding under this section or section 198<sup>25</sup> is a civil proceeding and a court may make an order for the costs of the proceeding.

(9) In this section—

**“compensation”** for the offence means compensation for—

- (a) loss caused to a person’s property whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or
- (b) injury suffered by a person, whether as the victim of the offence or otherwise, because of the commission of the offence.

### **Show cause hearing**

**198.(1)** At the show cause hearing—

- (a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the show cause hearing; and
- (b) further evidence may be given and submissions made; and

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<sup>25</sup> Section 198 (Show cause hearing)

*Juvenile Justice Act 1992*

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- (c) the parent may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
- (d) the parent may require any fact stated in submissions mentioned in paragraph (a) to be proved.

**(2)** Subject to subsection (1)—

- (a) the determination of the issues on the show cause hearing must be by way of a fresh hearing on the merits; and
- (b) the court is not bound by a determination made by it under section 197 (Notice to parent of child offender).

**(3)** If the parent was called on to show cause on the prosecution's application, the prosecution is a party to the show cause hearing.

**(4)** If the parent was called on to show cause by the court's own initiative the prosecution, which in this case always includes the Director of Prosecutions, may at the show cause hearing—

- (a) appear and give the court the assistance it may require; or
- (b) intervene as a party with the court's permission.

**(5)** If, on consideration of the evidence and submissions mentioned in subsection (1)(a) and (b), a court is satisfied of the matters mentioned in section 197(1)(a),(b) and (c),<sup>26</sup> the court may make an order requiring the parent to pay compensation.

**(6)** The court is to make its decision on the basis of proof beyond a reasonable doubt.

**(7)** The maximum amount of compensation payable under an order is 67 penalty units.

**(8)** The order must direct that—

- (a) the amount must be paid by a time specified in the order or by instalments specified in the order; and
- (b) the amount must be paid in the first instance to the proper officer of the court.

**(9)** In determining the amount to be paid by a parent by way of

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<sup>26</sup> Section 197(1)(a), (b) and (c) (Notice to parent of child offender)



compensation, the court must have regard to the parent's capacity to pay the amount, which must include an assessment of the effect any order would have on the parent's capacity to provide for dependants.

(10) A court may proceed under this section in the absence of the parent if the court is satisfied that the parent has been given notice of the show cause hearing under section 197 (Notice to parent of child offender).

(11) A show cause hearing may be heard before the court as constituted when calling on the parent to show cause, or as otherwise constituted.

(12) To remove doubt, it is declared that the commission can not be ordered to pay compensation under subsection (5).

### **Recovery of unpaid compensations amount**

**199.(1)** An amount of compensation ordered to be paid under section 198,<sup>27</sup> and any amount of costs ordered to be paid, is a debt owed by the parent to the person in whose favour the order is made.

(2) The order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*.

(3) If the order is filed in the registry of a Magistrates Court, the order is taken to be an order made by the court and may be enforced as an order of the court.

## **PART 6—DETENTION ADMINISTRATION**

### *Division 1—Administration*

#### **Application of Corrective Services Act 1988**

**200.** The *Corrective Services Act 1988* (other than sections 38, 40, and 113 to 121) does not apply to a child, unless this Act expressly applies that Act to a child in particular circumstances.

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<sup>27</sup> Section 198 (Show cause hearing)

**Establishment of detention centres and other places**

**201.** The Governor in Council may, by regulation—

- (a) establish detention centres and other places for the purposes of this Act; and
- (b) determine the purpose for which a place (other than a detention centre) may be used; and
- (c) name a detention centre or other place.

**Management of detention centres**

**203.(1)** Subject to this Act, the commission is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

**(2)** The commission may carry out the responsibilities mentioned in subsection (1) by using any convenient form of direction, for example, rules, directions, codes, standards and guidelines relating to—

- (a) detention centre organisation; or
- (b) functions, conduct and responsibilities of detention centre officers; or
- (c) types of programs for children detained in a detention centre; or
- (d) contact between children detained in the detention centre and members of the public; or
- (e) arrangements for educational, recreational and social activities of children detained in detention centres.

**(3)** In relation to each detention centre, the commission is responsible for—

- (a) providing services that promote the health and wellbeing of children detained at the centre; and
- (b) promoting the social, cultural and educational development of children detained at the centre; and
- (c) maintaining discipline and good order in the centre; and
- (d) maintaining the security and management of the centre.

**Official visitors appointment**

**204.(1)** The Minister must appoint 1 or more official visitors for each detention centre.

**(2)** At least 1 official visitor for a detention centre must be a legal practitioner.

**(3)** An official visitor—

(a) holds office—

(i) only in relation to the detention centre named in the appointment; and

(ii) for the period (not more than 2 years) specified in the appointment; and

(b) is eligible for reappointment; and

(c) is entitled to the remuneration and allowances determined by the Minister.

**(4)** A person who is—

(a) an officer of the public service; or

(b) a member of the Police Service; or

(c) an officer of the commission;

is not eligible for appointment as an official visitor.

**Functions, powers and duties of official visitor**

**205.(1)** An official visitor has the functions and powers conferred or imposed on official visitors under this Act or any other Act.

**(2)** The commission must make arrangements for each detention centre to be visited by an official visitor at least once a month.

**(3)** An official visitor must prepare and submit a report to the commission for each visit.

**(4)** An official visitor may—

(a) enter the detention centre for which the official visitor is appointed at any time; and

- (b) at any place perform functions that the commission directs the official visitor to perform.

### **Directions to official visitor on security**

**206.** The commission may give the official visitor for a detention centre directions relating to the security of the detention centre that the commission considers necessary.

## ***Division 2—Children in detention centres***

### **Where children to be detained**

**207.(1)** The commission must decide the detention centre at which a child ordered to be detained or remanded in custody is to be detained.

(2) The commission may direct that a child detained in a detention centre be transferred to another detention centre.

### **Authority for admission to detention centre**

**208.(1)** The commission must not—

- (a) admit a child to a detention centre; or
- (b) detain a child in a detention centre;

unless the commission is given a document mentioned in subsection (2).

(2) The documents are—

- (a) a warrant authorising the detention of the child; or
- (b) if the child has been refused bail by a police officer in relation to a charge of an offence—a copy of the bench charge sheet for the offence; or
- (c) a list or calendar made out under Order 8 rule 3 of the *Criminal Practice Rules 1990* that contains the name of the child and particulars of the judgment pronounced on the child; or
- (d) a document in the prescribed form that contains the relevant

- details of an existing document mentioned in paragraph (c); or
- (e) a document prescribed by regulation.

### **Child must be given an explanation on entry to detention centre**

**209.** As soon as practicable after being admitted to a detention centre, a child must be given an explanation of the child's rights and responsibilities as a resident of the detention centre.

### **Leave of absence**

**210.(1)** Subject to this Act, the commission may, by written notice given to a child detained in a detention centre, and subject to conditions that the commission determines, grant the child leave of absence.

**(2)** The leave may only be granted—

- (a) for a specified period; and
- (b) for a specified purpose set out in subsection (3); and
- (c) subject to specified conditions.

**(3)** The purposes for which leave may be granted are—

- (a) to seek or engage in paid or unpaid employment; and
- (b) to attend any place for educational or training purposes; and
- (c) to visit the child's family, relatives or friends; and
- (d) to take part in sport, recreation or entertainment in the community; and
- (e) to attend any place for medical examination or treatment; and
- (f) to attend a funeral; and
- (g) any other purpose that the commission considers will assist in the child's reintegration into the community.

**(4)** If a child is granted leave of absence—

- (a) the child is taken to be in lawful custody during the period of leave; and
- (b) the period of leave counts as part of the child's period of

detention.

(5) If the child contravenes a condition imposed in relation to a grant of leave of absence (other than a condition with respect to returning to a detention centre) the commission may, in writing—

- (a) vary the conditions of the grant; or
- (b) cancel the leave of absence.

### **Childrens Court may order transfer to prison**

**211.(1)** Subject to subsection (2), a person serving a period of detention under a detention order, or the commission, may apply to a Childrens Court Judge for an order that the unserved part of the period of detention be served as a term of imprisonment.

(2) Subsection (1) only applies if—

- (a) the person is 18 or more; or
- (b) the person is 17 or more and—
  - (i) has previously been held in custody in a prison on sentence, remand or otherwise; or
  - (ii) has been sentenced to serve a term of imprisonment.

(3) The Court may grant or refuse to grant the order.

(4) An order made under subsection (1)—

- (a) must specify the day on which the order will take effect; and
- (b) is taken for all purposes to be a sentence of imprisonment for a period equal to the length of the unserved part of the period of detention.

(5) The *Corrective Services Act 1988* applies to a person imprisoned under the order.

(6) However, the person may only, and must, be released on parole on the day the person would have been released under a fixed release order if the order under subsection (1) had not been made, unless the person—

- (a) is released under the *Corrective Services Act 1988*, section 166(4)

or (5);<sup>28</sup> or

(b) is required to be held in custody for another reason.

(7) In this section—

**“period of detention”**, for a person who is liable to serve a further period of detention cumulatively with a period of detention being served, includes the further period of detention.

### **Commission may authorise treatment**

**212.** Despite any other Act or law, the commission is authorised to give consent to any medical treatment of a child in the commission’s custody if—

- (a) the medical treatment requires the consent of a guardian of the child; and
- (b) the commission is unable to ascertain the whereabouts of a guardian of the child despite reasonable inquiries; and
- (c) it would be detrimental to the child’s health to delay the medical treatment until the guardian’s consent can be obtained.

### **Ordinary visitor**

**213.(1)** This section does not apply to an official visitor.

(2) The commission may approve the entry of visitors to a detention centre either generally or in a particular case.

(3) The commission may refuse entry to a detention centre to a person if—

- (a) in the commission’s opinion, the person’s presence in the detention centre would prejudice the security or good order of the detention centre; or
- (b) the person does not, on request, give the person’s name, address or proof of identity; or
- (c) the person refuses to comply with a request made under

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<sup>28</sup> *Corrective Services Act 1988*, section 166(4) or (5) (Eligibility for parole)

subsection (5).

(4) Subject to section 214 (Protection of legal practitioner representing child), the commission may require a visit to a detention centre to take place in the presence, or under the supervision, of a member of the staff of the detention centre.

(5) The commission may, on reasonable grounds, ask a visitor to a detention centre—

- (a) to submit to an external physical search by a member of the staff of the detention centre; or
- (b) to submit anything in the visitor's possession to a search by a member of the staff of the detention centre.

(6) The commission may give a visitor who has entered a detention centre a direction it considers necessary for the security or good order of the centre.

(7) If a visitor refuses to submit to a search requested under subsection (5) or fails to comply with a direction under subsection (6), the commission may ask the visitor to leave the centre immediately.

(8) A police officer or a member of the staff of a detention centre may, using force that is reasonable and necessary, remove from the centre a visitor who refuses to leave the centre immediately when requested to leave.

### **Protection of legal practitioner representing child**

**214.(1)** A legal practitioner representing a child held in a detention centre is entitled to access to the child at all reasonable times.

(2) A member of the staff at a detention centre—

- (a) must allow the legal practitioner to conduct an interview with the child out of the hearing of any other person; and
- (b) must not open, copy, remove or read any correspondence—
  - (i) from the child to the legal practitioner; or
  - (ii) from the legal practitioner to the child.



***Division 3—Complaints*****Complaints generally**

**215.(1)** A child or parent of a child detained in a detention centre may complain about a matter that affects the child.

(2) The commission must issue written instructions on how a complaint may be made and dealt with, which may include the direction of the complaint to an official visitor or other appropriate authority.

(3) Despite subsection (2), a child is entitled—

- (a) to complain directly to an official visitor; or
- (b) subject to subsection (4), have the child's complaint referred to an official visitor.

(4) The commission need not deal with a complaint that the commission reasonably believes to be trivial or made only to cause annoyance.

(5) The commission must tell the child how the complaint will be dealt with.

(6) This section does not limit the powers of an official visitor.

**Official visitor to hear and investigate complaints**

**216.(1)** Subject to subsection (2), the official visitor must hear and investigate a complaint made or referred to the official visitor under section 215 (Complaints generally).

(2) The official visitor must not investigate a complaint—

- (a) that the official visitor believes to be trivial or made only to cause annoyance; or
- (b) if the complaint does not relate to any function of the commission under this Act.

(3) The official visitor must give the commission a report of an investigation conducted under this section.

**Powers of official visitors**

**217.** An official visitor—

- (a) may at any time ask—
  - (i) a child detained in the centre; or
  - (ii) a member of the staff of a detention centre;to provide any information and answer any question relevant to the investigation of a complaint; and
- (b) may examine and take a copy of any document kept under or for the purposes of the Act; and
- (c) must be allowed to conduct an interview with a child detained in the centre out of the hearing of any person employed at the centre; and
- (d) has powers that may be prescribed by regulation.

**Child's communication with official visitor to be private**

**218.** A member of the staff of a detention centre—

- (a) must allow the official visitor for the centre to conduct an interview with a child detained at the centre out of the hearing of any other person; and
- (b) must not open, read, copy or remove any correspondence—
  - (i) from a child detained in the centre to the centre's official visitor; or
  - (ii) from the detention centre's official visitor to a child detained in the centre.

***Division 4—Offences*****Escape**

**219.(1)** A person who is lawfully detained under this Act must not—

- (a) escape from detention; or

- (b) attempt to escape from detention; or
- (c) be absent from a detention centre without lawful authority; or
- (d) escape or attempt to escape from the custody of a police officer or an officer of the department into which the person was placed under this Act.

Maximum penalty (subject to Part 5)—40 penalty units or imprisonment for 1 year.

(2) A police officer may arrest, without warrant, a person who commits an offence against subsection (1).

### **Search warrant**

**220.(1)** The commission or a police officer may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that a person who has escaped from detention is, or may be within the next 7 days, in any place.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the police officer or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise any police officer, with specified assistance and by specified force that is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) search for, and if found, arrest the person named in the warrant; and
- (b) state whether the entry is authorised to be made at any reasonable time of the day or night or only during specified reasonable hours of the day or night; and
- (c) specify the day (not more than 14 days after the issue of the

- warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

**Warrants may be granted by telephone, facsimile, radio etc.**

**221.(1)** If the commission or a police officer (“**applicant**”) considers it necessary to do so because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the applicant’s remote location;

the applicant may apply by telephone, facsimile, radio or another form of communication for a warrant under section 220 (Search warrant).

(2) Before applying for the warrant, the applicant must prepare an information on oath of the kind mentioned in section 220(2) (Search warrant) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, the applicant may apply for the warrant before the information has been sworn.

(4) If the Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) that the Magistrate may have required concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 220 (Search warrant), complete and sign the warrant that the Magistrate would issue under the section if the application had been made under the section.

(5) If the Magistrate completes and signs the warrant, the Magistrate must promptly send a copy of the warrant to the applicant by facsimile or, if it is not reasonably practicable to do so—

- (a) the Magistrate must—
- (i) tell the applicant what the terms of the warrant are; and
- (ii) tell the applicant the day and time when the warrant was

*Juvenile Justice Act 1992*

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signed; and

(iii) record on the warrant the reasons for granting the warrant; and

(b) the applicant must—

(i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and

(ii) write on the form of warrant the name of the Magistrate and the day and time when the Magistrate signed the warrant.

(6) The applicant must also—

(a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or

(b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph;

send to the Magistrate—

(c) the information mentioned in subsection (2), which must have been properly sworn; and

(d) if a form of warrant was completed by the police officer under subsection (5)(b)—the completed form of warrant.

(7) When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—

(a) attach them to the warrant that the Magistrate completed and signed; and

(b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 220 (Search warrant).

(8) A facsimile copy of a warrant, or a form of warrant properly completed by the police officer under subsection (5)(b), is authority for an entry, search, arrest or other exercise of a power that the warrant signed by the Magistrate authorises.

(9) If—

(a) it is material for a court to be satisfied that an entry, search, arrest or other exercise of power was authorised by this section; and

- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume that the exercise of power was not authorised by this section unless the contrary is proved.

### **Offences relating to detention centres**

**222.(1)** A person must not—

- (a) without lawful authority enter or attempt to enter a detention centre; or
- (b) remain in or in the vicinity of a detention centre after having been directed to leave by—
  - (i) the commission; or
  - (ii) a police officer; or
- (c) in contravention of a direction from the commission, communicate or attempt to communicate with a person detained at the detention centre; or
- (d) without lawful authority—
  - (i) convey or deliver, or allow another person to convey or deliver, to a person detained in the centre any liquor, drugs, money, letter, document or other article; or
  - (ii) convey, or allow another person to convey, from the detention centre any liquor, drugs, money, letter, document, clothing or other article; or
  - (iii) leave, or allow to be left, at the centre any liquor, drugs, money, letter, document, clothing or other article with the intention that it come into the possession of a person detained in the centre.

Maximum penalty (subject to Part 5)—40 penalty units or imprisonment for 1 year.

(2) A police officer may arrest without warrant any person found committing an offence against subsection (1).

***Division 5—Child of detainee*****Child of detainee may be accommodated in detention centre**

**223.** The commission may allow a child of a person detained in a detention centre to be accommodated in the detention centre subject to conditions the commission considers appropriate.

**Registration of birth of child of detainee**

**224.(1)** In this section—

“**document**” means a certificate or other document made or issued under the *Registration of Births, Deaths and Marriages Act 1962* in relation to the birth of a child or an alteration or addition to the name of a child.

(2) If a document is made or issued in relation to a child whose mother or father is, or was when the child was born, detained in a detention centre or otherwise detained under this Act—

- (a) the document must not state that fact or contain information from which that fact can reasonably be inferred; and
- (b) an address—
  - (i) that is required by the *Registration of Births, Deaths, and Marriages Act 1962* to be shown in the document; and
  - (ii) that cannot be shown in the document because of paragraph (a);

must instead be shown as the city or town in which or nearest to which the address is situated.

**PART 7—GENERAL****Programs and services for children**

**224A.(1)** The chief executive must establish—

- (a) programs and services necessary to give effect to any order or direction under this Act; and
- (b) programs and services to support, help, and reintegrate into the community children who have committed offences.

(2) Subsection (1) does not apply to programs and services the commission has a function to develop and administer under the *Corrective Services (Administration) Act 1988*, section 18.<sup>29</sup>

(3) Without limiting subsection (1), the chief executive must decide the activities that are to comprise community service for every community service order.

(4) The chief executive may establish any other programs and services for children who have committed offences.

### **Police may help in keeping child in custody**

**224B.** Nothing in this Act stops the commissioner of the police service entering into arrangements with the commission under which the commissioner holds a child in custody for the commission.

### **Parent entitled to know of whereabouts of child in custody**

**225.(1)** A parent of a child who is being held in custody on being arrested for an offence, or on an order made under this Act, may request the commission to inform the parent of the whereabouts of the child.

(2) The commission on request must give the information to the parent if the child is in the commission's custody, or the commission knows where the child is.

### **Preservation of confidentiality**

**226.(1)** A person must not record, disclose or use confidential information gained by the person through involvement in the administration of this Act, unless the person does so—

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<sup>29</sup> *Corrective Services (Administration) Act 1988*, section 18 (Functions of commission)



*Juvenile Justice Act 1992*

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- (a) for the purpose of a prescribed Act; or
- (b) when expressly authorised under an Act; or
- (c) when authorised under the regulations.

Maximum penalty (subject to Part 5)—40 penalty units.

(2) A person is not required—

- (a) to disclose confidential information to a court or tribunal; or
- (b) to produce a record containing confidential information to a court or tribunal;

unless—

- (c) it is necessary to do so for the purpose of this Act; or
- (d) the court considers that it is necessary in the interests of justice to do so.

(3) A person gains information through involvement in the administration of this Act if the person gains the information—

- (a) in the course of the involvement; or
- (b) because of opportunity provided by the involvement.

(4) The following persons are taken to be involved in the administration of this Act—

- (a) an officer of the department; and
- (b) a person investigating a matter under this Act; and
- (c) any other person who performs a function under or for the purposes of this Act.

(5) In this section—

“**child**” means a child dealt with under this Act;

“**confidential information**” includes—

- (a) the name, address, school, place of employment or any other particular likely to lead to the identification of a child; and
- (b) any photograph, picture, videotape or other visual representation of a person that is likely to lead to the identification of the child; and

- (c) a report made for the purposes of a proceeding in relation to a child; and
- (d) a report about a child made for the department or another Government department; and
- (e) a report about a child given to an agency for the purpose of carrying out the objects of this Act.

**“prescribed Act”** means the following—

- (a) this Act;
- (b) *Corrective Services (Administration) Act 1988*;
- (c) *Corrective Services Act 1988*.

### **Approved form**

**227.** A form may be approved for use under a provision of this Act—

- (a) for a provision administered through the commission—by the commission; or
- (b) for a provision administered through a department—by the department’s chief executive.

### **Evidence**

**228.(1)** This section applies to any proceeding.

(2) It is unnecessary to prove the appointment of a department’s chief executive, an officer of the public service, an officer of the commission, an official visitor or anyone appointed under this Act.

(3) It is not necessary to prove the authority of any person to take any action under this Act.

(4) Subsection (2) or (3) does not apply if a party to the proceeding, by reasonable notice, requires the appointment or authority to be proved.

(5) This section does not affect a person’s right to adduce evidence to disprove the appointment or authority.

**Proceeding for offence**

**229.(1)** A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

**(2)** In a proceeding for an offence against this Act, a police officer, an officer of the public service or an officer of the commission may appear for the prosecution even though not a complainant or arresting officer.

**(3)** A reference in this Act to a legal practitioner acting for a party includes anyone appearing for the prosecution under subsection (2).

**Extension of time for payment of amounts**

**230.** The proper officer of a court by which a person is ordered to pay an amount under this Act by way of fine, restitution or compensation on application in writing made by any party to the proceeding in which the order was made may extend the period in which the person is required to pay the amount subject to conditions if any that the proper officer considers just.

**Enforcement of child payments**

**231.** If an order is made by a court under this Act requiring a child to pay to the State or to any person an amount of money by way of fine, restitution or compensation—

- (a) the amount ordered to be paid constitutes a debt owing to the State or other person by the child; and
- (b) the order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*; and
- (c) on being so filed, the order is taken to be an order properly made by the Magistrates Court under that Act and may be enforced as an order so made.

**Enforcement of sentence by calendar**

**232.** Despite a provision of this Act requiring a court to issue or order the issue of a warrant to have a child taken into custody and delivered to a detention centre to serve a period of detention, the court need not act under

the provision if a calendar or other document of the registrar or other official of the court has the same effect.

### **Regulations**

**233.(1)** The Governor in Council may make regulations for the purpose of this Act.

**(2)** Without limiting the power conferred by subsection (1), the Governor in Council may make regulations in relation to the matters set out in Schedule 1.

### **Transitional delegations saved by Juvenile Justice Legislation Amendment Act 1996**

**234.(1)** Despite any specified invalidity, it is declared a transitional delegation was or is in effect until cancelled—

- (a) before the commencement of the amendment Act—by a chief executive; or
- (b) after the commencement of the amendment Act—
  - (i) by a chief executive, if the chief executive has power to make a delegation of the type cancelled; or
  - (ii) by the commission, if the commission has power to make a delegation of the type cancelled.

**(2)** A delegation is a “**transitional delegation**” if it is—

- (a) a delegation in effect immediately before the first administrative order took effect, whether the delegation was made under section 227<sup>30</sup> or under the *Family Services Act 1987*, section 10<sup>31</sup> that, if subsection (1) did not apply, would have become ineffective because of the order; or
- (b) a delegation made by the director-general, Department of Justice that, if subsection (1) did not apply, would have been ineffective

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<sup>30</sup> Section 227 (Delegation by chief executive)

<sup>31</sup> *Family Services Act 1987*, section 10 (Delegation, and exercise of powers on behalf of chief executive)

*Juvenile Justice Act 1992*

because it was made to an officer of the public service other than an officer of the Department of Justice; or

- (c) a delegation made by a chief executive before the making of a later administrative order that, if subsection (1) did not apply, would have become ineffective because it was of a type that after the order could not be made by the chief executive; or
- (d) a delegation made by a chief executive before the commencement of the amendment Act that, if subsection (1) did not apply, would become ineffective because it was of a type that on the commencement of the amendment Act could not be made by the chief executive.

(3) This section is—

- (a) to remove doubt; and
- (b) expires on the 31 December 1996; and
- (c) is a section to which the *Acts Interpretation Act 1954*, section 20A<sup>32</sup> applies.

(4) In this section—

**“amendment Act”** means the *Juvenile Justice Legislation Amendment Act 1996*.

**“chief executive”** means—

- (a) the director-general of the Department of Justice; or
- (b) the director-general of the Department of Families, Youth and Community Care.

**“delegation”** means a delegation or purported delegation of a power provided by this Act.

**“first administrative order”** means the *Administrative Arrangements Order (No. 2) 1996*.

**“later administrative order”** means—

- (a) the *Administrative Arrangements Amendment Order (No. 1)*

<sup>32</sup> *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

1996; or

- (b) another administrative arrangements order or amendment order made before this section expires.

**“specified invalidity”** means an invalidity affecting a transitional delegation and mentioned in subsection (2) in relation to the delegation.

### **Transitional orders and decisions saved by Juvenile Justice Legislation Amendment Act 1996**

**235.(1)** Despite a specified invalidity, a transitional order or decision is declared to have been, and is, in effect.

(2) An order or decision is a **“transitional order or decision”** if it is an order or decision made after 25 February 1996 that, if subsection (1) did not apply, would be invalid because it mentions one transitional department instead of another transitional department.

(3) The order or decision is taken to have referred to, and to refer to, the department that was required to be mentioned if the order or decision was to be in effect.

(4) This section is—

- (a) to remove doubt; and  
 (b) expires on the 31 December 1996; and  
 (c) is a section to which the *Acts Interpretation Act 1954*, section 20A<sup>33</sup> applies.

(5) In this section—

**“order or decision”** means an order or decision, or purported order or decision, of a court under this Act.

**“specified invalidity”** means an invalidity affecting a transitional order or decision and mentioned in subsection (2) in relation to the order or decision.

**“transitional department”** means—

<sup>33</sup> *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

- (a) the Department of Family Services and Aboriginal and Islander Affairs; or
- (b) the Department of Families, Youth and Community Care; or
- (c) the Department of Justice.

### **Application of Act to matters before Juvenile Justice Legislation Amendment Act 1996**

**236.(1)** This Act as amended by a provision of the amendment Act applies to an offence committed, and proceeding started, before the commencement of the provision.

**(2)** However—

- (a) a person can not be sentenced more severely for an offence committed before the commencement of a provision of the amendment Act than would have been the case if the provision had not been enacted; and
- (b) a caution administered before the commencement of section 18N<sup>34</sup> or 18O<sup>35</sup> can not be disclosed to a court or anyone after the commencement of the section if the disclosure could not have been made if the section had not been enacted.
- (c) a parent of a child can not be ordered under section 198<sup>36</sup> to pay compensation for an offence committed by the child before the commencement of section 63 of the amendment Act that the parent could not have been ordered to pay before the commencement.

**(3)** Subsection (2)(a) is about punishment level and does not stop a court making orders against anyone of a type or number only available because of the amendment Act.

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<sup>34</sup> Section 18N (Disclosable caution and community conference agreement—later childhood offence)

<sup>35</sup> Section 18O (Disclosable caution and community conference agreement—later adulthood offence)

<sup>36</sup> Section 198 (Show cause hearing)

(4) In this section—

**“amendment Act”** means the *Juvenile Justice Legislation Amendment Act 1996*.



**SCHEDULE 1****REGULATION MAKING POWER**

section 233(2) of this Act

1. The form of an attendance notice, all matters relating to the operation of attendance notices in the place of complaints and summons.
2. All matters concerning community conferences, including—
  - (a) convening and conduct of a community conference; and
  - (b) reports to be given by a community conference convenor; and
  - (c) time for completing a community conference; and
  - (d) regulating contents of community conference agreements; and
  - (e) keeping of names of persons approved as community conference convenors and information about community conferences.
3. Matters to be included in presentence reports.
4. Forms, conditions, requirements, duties, functions and powers relating to orders made under Part 5.
5. The standards, management, control and supervision of probation orders, community service orders and immediate release orders.
6. Standards, management, control and supervision of detention centres.
7. Maintenance of good order and discipline within detention centres.
8. Conditions for the release of children from detention centres.
9. Medical services to children in detention.
10. Searches of children in detention centres and their possessions.
11. The appointment, functions and powers of official visitors.
12. Matters relating to the breach, revocation or variation of orders made under this Act.

SCHEDULE 1 (continued)

- 13.** Penalties for a contravention of a regulation of not more than 20 penalty units.

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## ENDNOTES

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated . . . . .	153
3	Key . . . . .	153
4	Table of earlier reprints . . . . .	154
5	Tables in earlier reprints . . . . .	154
6	List of legislation . . . . .	154
7	List of annotations . . . . .	155
8	Provisions that have not commenced and are not incorporated into reprint .	166

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 20 January 1997. Future amendments of the Juvenile Justice Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 32 of 1993	26 August 1993
2	to Act No. 76 of 1993	18 January 1994
3	to Act No. 87 of 1994	20 January 1995
3A	to Act No. 22 of 1996	26 August 1996

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1, 2
Obsolete and redundant provisions	3
Renumbered provisions	1, 2

## 6 List of legislation

### **Juvenile Justice Act 1992 No. 44**

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1993 (1993 SL No. 313)

as amended by—

### **Penalties and Sentences Act 1992 No. 48 s 207 sch**

date of assent 24 November 1992

commenced 27 November 1992 (1992 SL No. 377)

### **Statute Law (Miscellaneous Provisions) Act 1993 No. 32 s 3 sch 1**

date of assent 3 June 1993

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 1**

date of assent 14 December 1993

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 1**

date of assent 1 December 1994

commenced on date of assent

**Criminal Code No. 37 of 1995 ss 1–2, 458 sch 2 pt 2**

date of assent 16 June 1995

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 14 June 1997) (1996 SL No. 84 s 2(2))

**Criminal Offence Victims Act 1995 No. 54 ss 1–2, 45 sch 2**

date of assent 22 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1995 (1995 SL No. 383)

**Juvenile Justice Legislation Amendment Act 1996 No. 22 pts 1–2, schs 1, 3**

date of assent 15 August 1996

ss 6, 12(1), 13(2) and (3), 22, 25, 26, 27(1) (so far as it inserts new section 89(1)(c)), 27(2), 28(3), 33, 34, 35, 36–39, 44, 45, 46, 48, 49, 51, 52, 54, 55, 57, 58, 60, 62, 63, 64 and 72 commenced 18 November 1996 (1996 SL No. 324)

ss 5(1)–(2) so far as it omits/inserts certain definitions, 8 so far as it inserts new pt 1C div 2–4, 9–11, 12(2), 13(1), (4)–(5), 40–41, 43, sch 1 amdts 3–4 not yet proclaimed into force

remaining provisions commenced on date of assent

**7 List of annotations****Principles of juvenile justice**

s 4 amd 1996 No. 22 s 4

**Definitions**

- s 5
- def “**approved form**” ins 1996 No. 22 s 5(2)
  - def “**caution**” sub 1996 No. 22 s 5(1)–(2)
  - def “**chief executive**” om R3 (see RA s 39)
  - def “**commission**” ins 1996 No. 22 s 5(2)
  - def “**Commissioner**” om 1996 No. 22 s 5(1)
  - def “**community conference agreement**” ins 1996 No. 22 s 5(2)
  - def “**community conference convenor**” ins 1996 No. 22 s 5(2)
  - def “**community service**” sub 1996 No. 22 s 5(1)–(2)
  - def “**convenor**” ins 1996 No. 22 s 5(2)
  - def “**detainee**” ins 1996 No. 22 s 5(2)
  - def “**disclosable caution**” ins 1996 No. 22 s 5(2)
  - def “**disclosable community conference agreement**” ins 1996 No. 22 s 5(2)
  - def “**fixed release order**” ins 1996 No. 22 s 5(2)
  - def “**legal practitioner**” amd 1996 No. 22 s 5(3)
  - def “**non-life offence**” om 1996 No. 22 s 5(1)
  - def “**officer**” ins 1996 No. 22 s 5(2)
  - def “**parole**” ins 1996 No. 22 s 5(2)
  - def “**penalty unit**” amd 1992 No. 48 s 207 sch om R3 (see RA s 39) ins 1996 No. 22 s 5(2)

def “**personal offence**” ins 1996 No. 22 s 5(2)  
 def “**proper officer**” sub 1993 No. 76 s 3 sch 1  
 def “**property offence**” ins 1996 No. 22 s 5(2)  
 def “**referring court**” ins 1996 No. 22 s 5(2)  
 def “**referring police officer**” ins 1996 No. 22 s 5(2)  
 def “**seven year offence**” ins 1996 No. 22 s 5(2)  
 def “**State**” ins 1996 No. 22 s 5(2)  
 def “**supreme court offence**” ins 1996 No. 22 s 5(2)

**Child’s age regulation**

s 6 amd 1993 No. 76 s 3 sch 1

**Meaning of “serious offence”**

s 8 amd 1995 No. 37 s 458 sch 2 pt 2; 1996 No. 22 s 6

**Meaning of court that made order**

s 9 amd 1996 No. 22 s 3 sch 1

**PART 1A—ADMINISTRATION**

pt hdg ins 1996 No. 22 s 7

**Explanation about Act’s administration**

s 9A prev s 9A renum and reloc as s 9D 1996 No. 22 s 3 sch 1  
 pres s 9A ins 1996 No. 22 s 7

**Delegations**

s 9B ins 1996 No. 22 s 7

**Appearances by chief executive and commission**

s 9C ins 1996 No. 22 s 7

**Delegation of powers by proper officer**

s 9D new s 9D (prev s 9A) ins 1993 No. 76 s 3 sch 1  
 renum and reloc 1996 No. 22 s 3 sch 1

**PART 1B—INVESTIGATION PROVISIONS**

pt hdg ins 1996 No. 22 s 8

**Division 1—Conditions on admissibility of child’s statement**

div hdg (prev pt 2 div 6 hdg) renum and reloc 1996 No. 22 s 3 sch 1

**Another person must be present**

s 9E new s 9E (prev s 36) renum and reloc 1996 No. 22 s 3 sch 1

**Division 2—Fingerprints and palmprints**

div hdg ins 1996 No. 22 s 8

**Application by police officer for permission to take child’s identifying particular**

s 10 prev s 10 renum as s 19 1996 No. 22 s 10(2)  
 pres s 10 ins 1996 No. 22 s 8

**Another person must be present when identifying particular is taken**

s 10A ins 1996 No. 22 s 8

**Destruction of identifying particular taken under court order**

s 10B ins 1996 No. 22 s 8

**Division does not limit other provisions**

s 10C ins 1996 No. 22 s 8

**PART 1C—CAUTIONS AND COMMUNITY CONFERENCES**

pt hdg ins 1996 No. 22 s 8

**Division 1—Cautioning**div hdg new div 1 hdg (prev pt 2 div 2 hdg) renum and reloc 1996 No. 22 s 3 sch 1**Purpose of caution**s 11 reloc 1996 No. 22 s 3 sch 1**Police officer may administer a caution**s 12 reloc 1996 No. 22 s 3 sch 1**Conditions for administration of police caution**s 13 amd 1996 No. 22 s 3 sch 1  
reloc 1996 No. 22 s 3 sch 1**Caution administered by respected person of Aboriginal or Torres Strait Islander Community**

prov hdg amd 1994 No. 87 s 3 sch 1

s 14 amd 1994 No. 87 s 3 sch 1  
reloc 1996 No. 22 s 3 sch 1**Caution procedure must involve explanation**s 15 reloc 1996 No. 22 s 3 sch 1**Caution procedure may involve apology to victim**s 16 reloc 1996 No. 22 s 3 sch 1**Child must be given a notice of caution**

prov hdg amd 1994 No. 87 s 3 sch 1

s 17 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 3 sch 1  
reloc 1996 No. 22 s 3 sch 1**Childrens Court may dismiss charge if caution should have been administered**s 18 prev s 18 amd 1993 No. 76 s 3 sch 1  
om 1996 No. 22 s 11pres s 18 (prev s 19) amd 1996 No. 22 s 12(1)  
renum and reloc 1996 No. 22 ss 3, 12(2) sch 1**Division 2—Community conferences**

div hdg ins 1996 No. 22 s 8

**Subdivision 1—Establishment of process and generally applicable provisions**

sdiv hdg ins 1996 No. 22 s 8

**Object of division and explanation**s 18A ins 1996 No. 22 s 8

**Approval of community conference convenor****s 18B**     ins 1996 No. 22 s 8**Who may refer an offence to a community conference****s 18C**     ins 1996 No. 22 s 8**Who may participate in a community conference****s 18D**     ins 1996 No. 22 s 8**Conduct of community conference****s 18E**     ins 1996 No. 22 s 8**Form of community conference agreement****s 18F**     ins 1996 No. 22 s 8**If chief executive signs agreement for program****s 18G**     ins 1996 No. 22 s 8**Subdivision 2—Reference by police officer before a proceeding starts****sdiv hdg**   ins 1996 No. 22 s 8**Reference of offence to community conference by police officer****s 18H**     ins 1996 No. 22 s 8**If an agreement is made on a referral by a police officer****s 18I**     ins 1996 No. 22 s 8**Powers of police officer if referral is unsuccessful or if child contravenes agreement****s 18J**     ins 1996 No. 22 s 8**Division 3—Confidentiality of cautions, community conference agreements and information from community conferences****div hdg**   ins 1996 No. 22 s 8**Confidentiality of cautions and community conference agreements****s 18K**     ins 1996 No. 22 s 8**Confidentiality of information about community conference generally****s 18L**     ins 1996 No. 22 s 8**Division 4—Use in evidence of cautions, community conference agreements and information about community conferences****div hdg**   ins 1996 No. 22 s 8**Admissibility of evidence of caution or community conference agreement****s 18M**     ins 1996 No. 22 s 8**Disclosable caution and community conference agreement—later childhood offence****s 18N**     ins 1996 No. 22 s 8**Disclosable caution and community conference agreement—later adulthood offence****s 18O**     ins 1996 No. 22 s 8



**Use of information from community conference in evidence**s 18P ins 1996 No. 22 s 8**PART 2—START OF PROCEEDINGS**pt hdg amd 1996 No. 22 s 9**Police officer to consider alternatives to proceeding against child**s 19 prev s 19 renum as s 18 1996 No. 22 s 12(2)  
pres s 19 (prev s 10) amd 1996 No. 22 s 10(1)  
renum and reloc 1996 No. 22 s 10(2)**Division 2—Arrest**div hdg prev div 2 hdg renum and reloc as pt 1C, div 1 hdg 1996 No. 22 s 3 sch 1  
pres div 2 hdg (prev div 3 hdg) renum 1996 No. 22 s 3 sch 1**Arrest and ex officio indictment power preserved**s 20 amd 1996 No. 22 s 13(2)–(3); 1996 No. 22 s 13(1), (4)–(5)**Parent and chief executive must be advised of arrest of child**s 22 amd 1996 No. 22 s 14**Division 3—Attendance notice**div hdg prev div 3 hdg renum as div 2 hdg 1996 No. 22 s 3 sch 1  
pres div 3 hdg (prev div 4 hdg) renum 1996 No. 22 s 3 sch 1**Attendance notice may be issued for offence**prov hdg amd 1996 No. 22 s 15(1)  
s 23 amd 1996 No. 22 s 15(2)**Parent and chief executive must be advised of service of attendance notice on child**s 28 amd 1996 No. 22 s 16**Attendance notice equivalent to a complaint and summons**s 29 amd 1993 No. 32 s 3 sch 1**Division 4—Complaint and summons**div hdg prev div 4 hdg renum as div 3 hdg 1996 No. 22 s 3 sch 1  
pres div 4 hdg (prev div 5 hdg) renum 1996 No. 22 s 3 sch 1**Division 5—Complaint and summons**div hdg renum as div 4 hdg 1996 No. 22 s 3 sch 1**Service of complaint and summons if offender a child**s 32 amd 1996 No. 22 s 17**Division 6—Conditions on admissibility of child's statement**div hdg renum and reloc as part 1B, div 1 hdg 1996 No. 22 s 3 sch 1**Another person must be present**s 36 renum and reloc as s 9E 1996 No. 22 s 3 sch 1**Child must be given release notice**s 40 amd 1993 No. 32 s 3 sch 1; 1996 No. 22 s 3 sch 1**Custody of child pending court appearance**s 41 amd 1996 No. 22 ss 3, 18 sch 1

**Custody of child if not released by court**

**s 43** amd 1996 No. 22 ss 3, 19 sch 1

**Custody of child arrested on court warrant**

**s 45** amd 1996 No. 22 s 3 sch 1

**Childrens Court Judge may grant bail**

**s 46** amd 1993 No. 32 s 3 sch 1

**Application of Part 4 of Mental Health Act 1974**

**s 48** amd 1996 No. 22 s 20

**Childrens Court Judge**

**s 49** amd 1996 No. 22 s 3 sch 1

**Presence of parent required generally**

**s 56** amd 1996 No. 22 s 21

**Court may order parent to attend**

**s 56A** ins 1996 No. 22 s 22

**Chief executive's and commission's rights of audience generally**

**s 60** sub 1996 No. 22 s 23

**Use of adduced evidence after change of procedure**

**s 67** amd 1996 No. 22 s 24

**Subdivision 1—Application**

**sdiv hdg** ins 1996 No. 22 s 25

**Application of div 2**

**s 68** sub 1996 No. 22 s 25

**Subdivision 2—Procedure if the serious offence is a supreme court offence**

**sdiv hdg** ins 1996 No. 22 s 25

**Meaning of “supreme court offence”**

**s 69** sub 1996 No. 22 s 25

**Application of subdiv 2**

**s 69A** ins 1996 No. 22 s 25

**Committal proceeding only option**

**s 69B** ins 1996 No. 22 s 25

**Child must be committed for trial or sentence before Supreme Court**

**s 69C** ins 1996 No. 22 s 25

**Subdivision 3—Procedure if the serious offence is not a supreme court offence**

**sdiv hdg** ins 1996 No. 22 s 25

**Application of subdiv 3**

**s 69D** ins 1996 No. 22 s 25

**Committal proceeding only option**

**s 69E** ins 1996 No. 22 s 25

**Subdivision 4—Proceedings before Childrens Court Judge****sdiv hdg** ins 1996 No. 22 s 26**Application for review****s 89** amd 1996 No. 22 s 27**Interrelation with other types of appeal****s 94** amd 1996 No. 22 s 28**Orders at end of reviews****s 96** amd 1994 No. 87 s 3 sch 1**Correction of error by court making order****s 98** amd 1992 No. 48 s 207 sch; 1996 No. 22 s 29**Lack of jurisdiction discovered after proceeding ends****s 101** amd 1996 No. 22 s 30**Extension of Act for detainee offender****s 102** amd 1996 No. 22 s 31**Definitions for pt 4, div 9****s 103 prov hdg** sub 1996 No. 22 s 3 sch 1**When offender must be treated as an adult****s 105 prov hdg** sub 1996 No. 22 s 32**When offender may be treated as an adult****s 106** prev s 106 renum and reloc as s 107B 1996 No. 22 s 33(3)  
pres s 106 ins 1996 No. 22 s 34**Continuing effect on offender of orders made when child****s 107** amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 35**When order made as child may be dealt with as adult order****s 107A** ins 1996 No. 22 s 36**Sentencing offender as adult****prov hdg** amd 1996 No. 22 s 33(1)**s 107B** new s 107B (prev s 106) amd 1996 No. 22 s 33(2)  
renum and reloc 1996 No. 22 s 33(3)**Jurisdiction to sentence child exclusive****s 108** amd 1996 No. 22 s 3 sch 1**Presentence report****s 110** amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 37**Disclosure of presentence report****s 112** amd 1996 No. 22 s 38**Finding of guilt as child may be disclosed while a child****s 113** amd 1996 No. 22 s 39**Evidence of childhood finding of guilt not admissible against adult****s 114** amd 1996 No. 22 s 40

**Particular cautions and community conference agreements admissible as part of person's criminal history**

s 114A ins 1996 No. 22 s 41

**Outstanding charge may be taken into account on sentence**

s 117 amd 1992 No. 48 s 207 sch

**Copy of court order to be given to child, parent etc.**

prov hdg sub 1996 No. 22 s 42(1)

s 119 amd 1996 No. 22 s 42(2)

**Division 1A—Court referred community conferences before sentencing**

div hdg ins 1996 No. 22 s 43

**Reference to community conference by court**

s 119A ins 1996 No. 22 s 43

**If an agreement is made on an indefinite referral by a court**

s 119B ins 1996 No. 22 s 43

**Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court's indefinite referral**

s 119C ins 1996 No. 22 s 43

**If an agreement is made on a referral by a court before sentence**

s 119D ins 1996 No. 22 s 43

**Sentence orders—general**

s 120 amd 1996 No. 22 s 44

**Sentence orders—serious offences**

s 121 amd 1996 No. 22 s 45

**More than 1 type of order may be made for a single offence**

s 121A ins 1996 No. 22 s 46

**Combination of probation order and community service order**

s 121B ins 1996 No. 22 s 46

**Combination of detention order and probation order**

s 121C ins 1996 No. 22 s 46

**Other orders**

s 122 amd 1996 No. 22 s 47

**Recording of conviction**

s 124 amd 1996 No. 22 s 48

**Considerations whether or not to record conviction**

s 125 amd 1996 No. 22 s 3 sch 1

**Proper officer's application on breach**

s 131A ins 1996 No. 22 s 49

**Chief executive's application on breach**

s 134 amd 1996 No. 22 s 50

**General options available to Childrens Court Magistrate on breach application**  
s 135      amd 1994 No. 87 s 3 sch 1

**Variation, discharge and resentence in the interests of justice**  
s 141      amd 1996 No. 22 s 51

**Community service to be performed within limited period**  
s 149      amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 52

**Chief executive's application on breach**  
s 153      amd 1996 No. 22 s 53

**Specific powers if breach proved**  
s 156      amd 1996 No. 22 s 54

**Variation, discharge or resentence in the interests of justice**  
s 158      amd 1996 No. 22 s 55

**Detention to be served in detention centre**  
s 167      amd 1994 No. 87 s 3 sch 1; 1996 No. 22 ss 3, 56 sch 1

**Limitation on cumulative orders**  
s 171      amd 1996 No. 22 s 57

**Application for variation of detention order in interests of justice**  
s 172A     ins 1996 No. 22 s 58

**Multiple orders of detention and imprisonment against person as adult and child**  
s 173      amd 1996 No. 22 s 59

**Period of custody on remand to be treated as detention on sentence**  
s 174      amd 1994 No. 87 s 3 sch 1

**Release of child after service of period of detention**  
s 188      amd 1994 No. 87 s 3 sch 1

**Subdivision 4—Parole for life sentences**  
sdiv hdg   ins 1996 No. 22 s 60

**Application of sdiv 4**  
s 191A     ins 1996 No. 22 s 60

**Application of parole provisions**  
s 191B     ins 1996 No. 22 s 60

**Division 9A—Order for identifying particulars to be taken**  
div hdg    ins 1996 No. 22 s 61

**Court may order sentenced child's identifying particulars to be taken**  
s 194A     ins 1996 No. 22 s 61

**Division 10—Application of Criminal Offence Victims Act 1995**  
div hdg    sub 1995 No. 54 s 45 sch 2

**Civil compensation orders**  
s 195      sub 1995 No. 54 s 45 sch 2

**Notice to parent of child offender**

s 197      amd 1996 No. 22 s 62

**Show cause hearing**

s 198      amd 1996 No. 22 s 63

**Recovery of unpaid compensations amount**

s 199      amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 64

**PART 6—DETENTION ADMINISTRATION**

pt hdg      sub 1996 No. 22 s 3 sch 1

**Chief executive to establish programs and services**

s 202      om 1996 No. 22 s 65

**Management of detention centres**

s 203      amd 1996 No. 22 s 66

**Official visitors appointment**

s 204      amd 1996 No. 22 s 3 sch 1

**Functions, powers and duties of official visitor**

s 205      amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 67

**Directions to official visitor on security**

s 206      amd 1996 No. 22 s 68

**Where children to be detained**

s 207      amd 1996 No. 22 s 69

**Authority for admission to detention centre**

s 208      amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 70

**Leave of absence**

s 210      amd 1996 No. 22 s 71

**Childrens Court may order transfer to prison**

s 211      amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 72

**Commission may authorise treatment**

prov hdg      amd 1996 No. 22 s 73

s 212      amd 1996 No. 22 s 73

**Ordinary visitor**

s 213      amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 74

**Complaints generally**

s 215      amd 1996 No. 22 s 75

**Official visitor to hear and investigate complaints**

s 216      amd 1996 No. 22 s 76

**Escape**

s 219      amd 1993 No. 32 s 3 sch 1

**Search warrant**

s 220      amd 1996 No. 22 s 77

**Warrants may be granted by telephone, facsimile, radio etc.**

s 221 amd 1996 No. 22 s 78

**Offences relating to detention centres**

s 222 amd 1996 No. 22 s 79

**Child of detainee may be accommodated in detention centre**

s 223 amd 1996 No. 22 s 80

**Programs and services for children**

s 224A ins 1996 No. 22 s 81

**Police may help in keeping child in custody**

s 224B ins 1996 No. 22 s 81

**Parent entitled to know of whereabouts of child in custody**

s 225 amd 1996 No. 22 s 82

**Preservation of confidentiality**

s 226 amd 1996 No. 22 s 3 sch 1

**Approved form**

s 227 sub 1996 No. 22 s 83

**Evidence**

s 228 amd 1996 No. 22 s 84

**Proceeding for offence**

s 229 amd 1996 No. 22 s 85

**Transitional delegations saved by Juvenile Justice Legislation Amendment Act 1996**s 234 sub 1996 No. 22 s 86  
exp 31 December 1996 (see s 234(3)(b))  
AIA s 20A applies (see s 234(3)(c))**Transitional orders and decisions saved by Juvenile Justice Legislation Amendment Act 1996**s 235 prev s 235 om R1 (see RA s 40)  
pres s 235 ins 1996 No. 22 s 86  
exp 31 December 1996 (see s 235(4)(b))  
AIA s 20A applies (see s 235(4)(c))**Application of Act to matters before Juvenile Justice Legislation Amendment Act 1996**s 236 prev s 236 om R1 (see RA s 40)  
pres s 236 ins 1996 No. 22 s 86**SCHEDULE 1—REGULATION MAKING POWER**

amd 1996 No. 22 s 87

**SCHEDULE 2—TRANSITIONAL PROVISIONS**

om 1996 No. 22 s 88

**SCHEDULE 3—ACTS AMENDED**

om R1 (see RA s 40)

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Criminal Code No. 37 of 1995, s 458 sch 2 pt 2 reads as follows—**

### **1. Section 8(2)—**

*omit, insert—*

‘(2) An offence is not a serious offence if it is of a type that, if committed by an adult, may be dealt with summarily under the Criminal Code, section 320.<sup>37</sup>’.

**Juvenile Justice Legislation Amendment Act 1996 No. 22, ss 5(1) (omission of definition “caution”), 5(2) (insertion of definitions “caution”, “community conference convenor”, “convenor”, “community conference agreement”, “disclosable community conference agreement”, “referring court” and “referring police officer”), 8 (insertion of new pt 1C, div 2–4), 9, 10, 11, 12(2), 13(1), (4)–(5), 40, 41, 43 and sch 1 (items 3 and 4) read as follows—**

### **Amendment of s 5 (Definitions)**

**5.(1) Section 5, definition “caution”—**

*omit.*

**(2) Section 5—**

*insert—*

‘**“caution”** see part 1C, division 1.

**“community conference agreement”** see section 18E(3).

**“community conference convenor”** see section 18B.

**“convenor”** means a community conference convenor.

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<sup>37</sup> Criminal Code, section 320 (When a charge for an indictable offences may be decided summarily)



“**disclosable community conference agreement**” see sections 18N and 18O.

“**referring court**” for an offence referred to a community conference—see section 18C(b).

“**referring police officer**” for an offence referred to a community conference—see section 18C(a).’.

### **Insertion of new pt 1C**

8. Before part 2—

*insert—*

## **‘PART 1C—CAUTIONS AND COMMUNITY CONFERENCES**

### *‘Division 2—Community conferences*

#### *‘Subdivision 1—Establishment of process and generally applicable provisions*

#### **‘Object of division and explanation**

‘**18A.(1)** The object of this division is to establish a community conference process for a child who admits committing an offence to a police officer or after a finding of guilt for an offence is made against the child before a court.

‘**(2)** The process allows the child, a victim of the offence and the community to consider or deal with the offence in a way benefiting all concerned.

‘**(3)** The process involves the following steps—

- (a) a police officer or court refers the offence to a community conference;
- (b) a community conference convenor convenes a conference

between the child and other concerned persons (see section 18D<sup>38</sup>);

- (c) at the conference the offence is discussed and an agreement made on what must be done because of the offence.

‘(4) The benefits intended are—

- (a) the child may benefit by—
  - (i) meeting any victim and taking responsibility for the results of the offence in an appropriate way; and
  - (ii) having the opportunity to make restitution and pay compensation for the offence; and
  - (iii) taking responsibility for the way in which the conference deals with the offence; and
  - (iv) having less involvement with the courts’ criminal justice system; and
- (b) the victim may benefit by the opportunity—
  - (i) to meet and understand the child and understand why the offence was committed; and
  - (ii) to express the victim’s concerns; and
  - (iii) to have questions answered; and
  - (iii) to influence the way in which the conference deals with the offence; and
  - (v) to encourage the child’s sense of responsibility; and
- (c) the community may benefit by—
  - (i) fewer offences being committed because of effective early intervention by the community; and
  - (ii) less public cost from unnecessary involvement of the courts’ criminal justice system; and
  - (iii) increasing resolution of disputes within the community without government intervention or legal proceedings.

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<sup>38</sup> Section 18D (Who may participate in a community conference)

‘(5) In deciding whether it is appropriate to refer an offence to a community conference, a police officer or court must have regard to—

- (a) the offence’s nature; and
- (b) the harm suffered by anyone because of the offence; and
- (c) whether the interests of the community and the child would be served by having the offence considered or dealt with in an informal way.

‘(6) This subdivision provides for community conferences generally.

‘(7) Subdivision 2<sup>39</sup> has provisions for a community conference when an offence is referred by a police officer before the start of a proceeding for the offence.

‘(8) Part 5, division 1A<sup>40</sup> has provisions for a community conference when an offence is referred by a court after a finding of guilt is made against a child for the offence.

### ‘Approval of community conference convenor

‘18B.(1) The chief executive may approve a person as a community conference convenor (a “convenor”).

‘(2) Before approving a person as a convenor, the chief executive must be satisfied the person has appropriate experience or training to be a convenor.

‘(3) The convenor of a particular community conference must be—

- (a) a person approved as a community conference convenor by the chief executive; and
- (b) independent of the circumstances of the offence.

### ‘Who may refer an offence to a community conference

‘18C. An offence may be referred to a community conference by—

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<sup>39</sup> Subdivision 2 (Reference by police officer before a proceeding starts)

<sup>40</sup> Part 5 (Sentencing), division 1A (Court referred community conferences before sentencing)

- (a) a police officer under section 18H<sup>41</sup> (the “**referring police officer**”); or
- (b) a court under part 5, division 1A (the “**referring court**”).

### **‘Who may participate in a community conference**

**‘18D.** The participants in a community conference are as follows—

- (a) the convenor;
- (b) the child and, at the child’s request—
  - (i) a legal practitioner acting for the child; or
  - (ii) a member of the child’s family; or
  - (iii) an adult nominated by the child;
- (c) at the request of any victim of the offence—the victim or a legal practitioner acting for the victim or a member of the victim’s family;
- (d) a representative of—
  - (i) if the offence is referred to the conference by a police officer—the commissioner of the police service; or
  - (ii) if the offence is referred to the conference by a court—the prosecution in the proceeding for the offence;
- (e) another person decided by the convenor.

*Example of paragraph (e)—*

The convenor may decide a representative of the chief executive may participate in a conference if the community conference agreement may provide for the child to be subject to a program similar to one a child is subject to under a community service order or a probation order.

### **‘Conduct of community conference**

**‘18E.(1)** A community conference must be convened and conducted by the convenor for the conference.

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<sup>41</sup> Section 18H (Reference of offence to community conference by police officer)

‘(2) All decisions made by the convenor necessary for the conduct of the conference must be respected by the participants.

‘(3) The conference must be directed towards making an agreement about the offence (the “**community conference agreement**”).

‘(4) The convenor may bring the conference to an end at any time if—

- (a) the child fails to attend the conference as required by the referring police officer or court; or
- (b) the convenor considers—
  - (i) the offence unsuitable for a community conference; or
  - (ii) an agreement will not be made within a time the convenor considers appropriate.

‘(5) Also, the conference ends if an agreement is made.

‘(6) The convenor must give the referring police officer or court a report about the outcome of the conference within 14 days of the conference’s end.

‘(7) The report must be in the approved form.

### ‘**Form of community conference agreement**

‘**18F.(1)** A community conference agreement about an offence must be in the approved form.

‘(2) The agreement must be agreed to and signed by—

- (a) the convenor; and
- (b) the child; and
- (c) a representative of—
  - (i) if the offence is referred to the conference by a police officer—the commissioner of the police service; or
  - (ii) if the offence is referred to the conference by a court—the prosecution in the proceeding for the offence;
- (d) if a victim of the offence participates in the conference—the victim.

‘(3) The agreement must contain provisions under which—

- (a) the child admits committing the offence; and
- (b) the child's compliance with the agreement is monitored.

'(4) The agreement may contain a provision about the following—

- (a) the making of restitution or payment of compensation;
- (b) an apology that must be made to a victim;
- (c) the child's future conduct while a child;
- (d) a program mentioned in subsection (5);
- (e) another matter the convenor considers appropriate.

'(5) An agreement signed by the chief executive may provide for the child to be subject to a program similar to one a child is subject to under a community service order or a probation order.

'(6) The agreement may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way contravening the sentencing principles in section 109.<sup>42</sup>

'(7) A copy of the agreement must be given immediately to each person who signs the agreement under subsection (2).

### **'If chief executive signs agreement for program**

'**18G.(1)** This section applies if the chief executive signs a community conference agreement providing for a program similar to one a child is subject to under a community service order or a probation order.

'(2) The chief executive may arrange the program and monitor the child's participation.

'(3) If the child fails to comply with the agreement's requirements about the program, the chief executive may take no action or notify—

- (a) for an offence referred to the community conference by a police officer—the police officer; or
- (b) for an offence referred to the community conference by a court—the court's proper officer.

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<sup>42</sup> Section 109 (Sentencing principles)

***‘Subdivision 2—Reference by police officer before a proceeding starts*****‘Reference of offence to community conference by police officer**

**‘18H.(1)** A police officer may refer the offence to a community conference before a proceeding is started for the offence, if—

- (a) the child admits committing the offence to the police officer; and
- (b) the victim consents, if there was a victim of the offence; and
- (c) the police officer considers—
  - (i) the referral is a more appropriate way of dealing with the offence than starting a proceeding; and
  - (ii) a caution is inappropriate and a proceeding for the offence would be appropriate if the reference were not made; and
  - (iii) a community conference convenor will be available for the community conference.

**‘(2)** The police officer may require the child to attend the community conference as directed by the police officer.

**‘(3)** However, if the convenor for the conference considers the offence unsuitable for a community conference, the convenor may decline to convene the conference by written notice given to the police officer.

**‘(4)** The notice must be in the form approved by the chief executive.

**‘(5)** The notice is taken to bring the conference to an end.

**‘(6)** The police officer must inform the child that the police officer has received the notice.

**‘If an agreement is made on a referral by a police officer**

**‘18I.** If a community conference agreement is made on the referral by the police officer, the child is then not liable to be prosecuted for the offence.

**‘Powers of police officer if referral is unsuccessful or if child contravenes agreement**

**‘18J.(1)** This section applies if—

- (a) the child fails to attend the community conference as directed by the police officer; or
- (b) the community conference ends without an agreement being made; or
- (c) the child contravenes an agreement made at the community conference.

‘(2) In considering what further action is appropriate, the police officer must consider—

- (a) the matters mentioned in section 19(2);<sup>43</sup> and
- (b) any participation by the child in the community conference; and
- (c) if an agreement was made at the conference—anything done by the child under the agreement.

‘(3) The police officer may—

- (a) take no action; or
- (b) administer a caution to the child; or
- (c) refer the offence to another community conference, with or without the same convenor; or
- (d) start a proceeding against the child for the offence.

***‘Division 3—Confidentiality of cautions, community conference agreements and information from community conferences***

**‘Confidentiality of cautions and community conference agreements**

‘18K.(1) This section applies if, for an offence committed by a child—

- (a) a caution is to be, or has been, administered to the child; or
- (b) the child makes a community conference agreement about an offence referred to a community conference by a police officer.

‘(2) A member of the Queensland Police Service must not give to anyone other than a member of the Queensland Police Service information

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<sup>43</sup> Section 19 (Police officer to consider alternatives to proceeding against child)



likely to identify the child as a person to whom a caution is to be, or has been, administered, or who has entered into a community conference agreement.

Maximum penalty—100 penalty units.

‘(3) Subsection (2) does not prevent the information being given to—

- (a) a parent of the child; or
- (b) a complainant for the offence; or
- (c) the chief executive; or
- (d) a member of a police service of the Commonwealth or another State dealing with a child offender; or
- (e) a legal practitioner acting for the child; or
- (f) a court, or legal practitioner acting for a party in a proceeding in which the administration of the caution or the making of the community conference agreement is admissible in evidence; or
- (g) a person who has the function of investigating offences under an Act and who is dealing with a child offender; or
- (h) a person who is undertaking research approved by the commissioner of the police service; or
- (i) another person, for the purpose of this Act.

**‘Confidentiality of information about community conference generally**

‘18L.(1) For section 226,<sup>44</sup> information gained by a community conference convenor in the conduct of a community conference is confidential information gained through the administration of this Act.

‘(2) The convenor may record, disclose or use the information if the convenor has a reasonable excuse for the recording, disclosure or use.

‘(3) It is a reasonable excuse if the recording, disclosure or use is—

- (a) for a report to a referring police officer or court under

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<sup>44</sup> Section 226 (Preservation of confidentiality)

section 18E(6);<sup>45</sup> or

- (b) with the agreement of all the parties to the community conference; or
- (c) for this or another Act; or
- (d) for statistical purposes without revealing, or being likely to reveal, the identity of a person to whom the information relates; or
- (e) for an inquiry or proceeding about an offence happening in the conduct of a community conference.

‘(4) In this section—

“**conduct of a community conference**” includes all steps involved in establishing the conference and dealing with anything from the conference.

*‘Division 4—Use in evidence of cautions, community conference agreements and information about community conferences*

**‘Admissibility of evidence of caution or community conference agreement**

‘**18M.(1)** Evidence that a caution has been administered to a child or a community conference agreement has been made by a child is not admissible against the child in a proceeding taken against the child for an offence.

‘(2) Subsection (1) does not stop evidence of a caution being admitted against the child—

- (a) in a proceeding for which the caution is a disclosable caution; or
- (b) under section 18(2);<sup>46</sup> or
- (c) in a proceeding in which the caution is admissible in evidence under an Act.

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<sup>45</sup> Section 18E(6) (Conduct of community conference)

<sup>46</sup> Section 18 (Childrens Court may dismiss charge if caution should have been administered)

‘(3) Subsection (1) does not stop evidence of a community conference agreement being admitted against the child—

- (a) in a proceeding for which the agreement is a disclosable community conference agreement; or
- (b) in a proceeding in which the community conference agreement is admissible in evidence under an Act.

**‘Disclosable caution and community conference agreement—later childhood offence**

‘18N.(1) This section applies to a person who—

- (a) as a child is administered a caution, or makes a community conference agreement, for a seven year offence committed by the child; and
- (b) after the caution is administered or the agreement is made, commits an offence as a child (the “**later childhood offence**”).

‘(2) For a proceeding for the later childhood offence—

- (a) the caution is a “**disclosable caution**”; and
- (b) the agreement is a “**disclosable community conference agreement**”.

**‘Disclosable caution and community conference agreement—later adulthood offence**

‘18O.(1) This section applies to a person who—

- (a) as a child is administered a caution, or makes a community conference agreement, for an offence committed by the person; and
- (b) is dealt with as a child for a second or later seven year offence; and
- (c) after being dealt with as a child for a second or later seven year offence commits an offence as an adult (the “**later adulthood offence**”).

‘(2) For a proceeding for the later adulthood offence—

- (a) the caution is a **“disclosable caution”**; and
- (b) the community conference agreement is a **“disclosable community conference agreement”**.

‘**(3)** It is immaterial—

- (a) whether the caution or agreement relied on for subsection (1)(a) was administered or made for the second or later seven year offence relied on for subsection (1)(b) or for another offence; and
- (b) whether the caution or agreement relied on for subsection (1)(a) was administered or made before or after the second or later seven year offence relied on for subsection (1)(b) was committed or dealt with.

‘**(4)** In this section—

**“dealt with”**, for an offence, includes the following—

- (a) being administered a caution for the offence;
- (b) making a community conference agreement for the offence;
- (c) dealt with on a finding of guilt.

**“second”** seven year offence of a child mentioned in subsection (1)(b) and (c), means a seven year offence the child commits after being dealt with for a seven year offence.

### **‘Use of information from community conference in evidence**

‘**18P.(1)** Evidence of anything done or said, or an admission made, in the conduct of a community conference about an offence is inadmissible in any proceeding.

‘**(2)** However, evidence that would otherwise be excluded from admission in a proceeding because of subsection (1) is admissible in a proceeding if—

- (a) all the parties to the community conference agree to the admission of the evidence; or

- (b) the proceeding is under part 5, division 1A;<sup>47</sup> or
- (c) the evidence is admissible under this or another Act; or
- (d) the proceeding is about an offence happening in the conduct of the community conference.

**(3)** In this section—

**“conduct of a community conference”** includes all steps involved in establishing the conference and dealing with anything from the conference.’.

### **Amendment of pt 2 heading (Cautions and start of proceedings)**

**9.** Part 2, heading, ‘Cautions and’—

*omit.*

### **Amendment of s 10 (Police officer to consider alternatives to proceeding against child)**

**10.(1)** Sections 10(1)—

*insert—*

‘(c) to refer the offence to a community conference.’.

**(2)** Section 10—

*renumber* as section 19.

### **Omission of s 18 (Confidentiality of cautions—admissibility)**

**11.** Section 18—

*omit.*

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<sup>47</sup> Part 5 (Sentencing), division 1A (Court referred community conferences before sentencing)

**Amendment of s 19 (Childrens Court may dismiss charge if caution should have been administered)**

**12.(2)** Section 19—

*renumber* as section 18.

**Amendment of s 20 (Arrest and ex officio indictment power preserved)**

**13.(1)** Section 20(1), ‘Sections 10’—

*omit, insert—*

‘Sections 19’

**(4)** Section 20(2), ‘sections 10’—

*omit, insert—*

‘sections 19’.

**(5)** Section 20—

*insert—*

‘**(4)** Sections 19, 21 and 22<sup>48</sup> do not apply to the arrest of a child by a police officer who believes on reasonable grounds that the child is an adult.

‘**(5)** In deciding whether the police officer had the reasonable grounds, a court may have regard to the child’s apparent age and the circumstances of the arrest.’.

**Amendment of s 114 (Evidence of childhood finding of guilt not admissible against adult)**

**40.(1)** Section 114—

*insert—*

‘**(2A)** Subsection (1) does not apply to the finding of guilt for a purpose mentioned in subsection (4) if the adult, as a child, was dealt with for a

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<sup>48</sup> Sections 19 (Police officer to consider alternatives to proceeding against child), 21 (Restriction on arrest of child) and 22 (Parent and chief executive must be advised of arrest of child)

seven year offence and then committed and was dealt with for a seven year offence.

‘**(2B)** For an adult mentioned in subsection (3), the finding of guilt is part of the adult’s criminal history for a proceeding in which the adult is sentenced for any offence.

‘**(2C)** Subsection (3) and (4) apply to the finding of guilt despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

‘**(2D)** However, the provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986* applying at the end of a rehabilitation period for a conviction apply as if the finding of guilt were a conviction.

‘**(2E)** In this section—

“**dealt with**”, for an offence, includes the following—

- (a) being administered a caution for the offence;
- (b) making a community conference agreement for the offence;
- (c) dealt with on a finding of guilt.’.

**(2)** Section 114(2A) to (3)—

*renumber* as section 114(3) to (8).

## **Insertion of new s 114A**

**41.** After section 114—

*insert*—

### **‘Particular cautions and community conference agreements admissible as part of person’s criminal history**

‘**114A.(1)** A caution administered to a person may be considered as part of the person’s criminal history in a proceeding in which—

- (a) the person is sentenced for an offence; and
- (b) the caution is a disclosable caution.

‘**(2)** A community conference agreement made by a person for an offence committed by the person may be considered as part of the person’s criminal history in a proceeding in which—

- (a) the person is sentenced for an offence; and
- (b) the agreement is a disclosable community conference agreement.’.

### **Insertion of new pt 5, div 1A**

#### **43. Part 5—**

*insert—*

#### ***‘Division 1A—Court referred community conferences before sentencing***

#### **‘Reference to community conference by court**

**‘119A.(1)** This section applies if a finding of guilt for an offence is made against a child before a court.

**‘(2)** The court may refer the offence to a community conference, if—

- (a) the victim consents, if there was a victim of the offence; and
- (b) the court considers—
  - (i) the offence may be appropriately dealt with by a community conference without the court making a sentence order; or
  - (ii) referral to a community conference would help the court in making an appropriate sentence order; and
- (c) the court considers a community conference convenor will be available for the community conference.

**‘(3)** On making the referral the court may—

- (a) give directions it considers appropriate to the child, the convenor of the conference and anyone else who may participate in the conference; and
- (b) adjourn the proceeding for the offence.

#### **‘If an agreement is made on an indefinite referral by a court**

**‘119B.(1)** This section applies if a community conference agreement is made on referral by a court that considered the offence may be appropriately



dealt with by a community conference without the court making a sentence order.

‘(2) The community conference convenor must give notice to the court’s proper officer that the agreement was made.

‘(3) A notice under subsection (2)—

- (a) brings the court proceeding for the offence to an end; and
- (b) the child is then not liable to be further prosecuted for the offence.

‘(4) On the giving of the notice, the child is taken to have been found guilty by the court of the offence without a conviction being recorded.

**‘Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court’s indefinite referral**

‘119C.(1) This section applies if—

- (a) a court refers an offence to a community conference on considering the offence may be appropriately dealt with by a community conference without the court making a sentence order; and
- (b) a circumstance mentioned in subsection (2) happens.

‘(2) The circumstances are—

- (a) the child fails to attend the conference as directed by the court; or
- (b) the community conference ends without an agreement being made; or
- (c) a community conference agreement is made and the child contravenes the agreement.

‘(3) The court’s proper officer may—

- (a) take no action; or
- (b) refer the offence to another community conference, with or without the same convenor; or
- (c) bring the charge for the offence back on before the court for sentencing.

‘(4) For subsection (3)(c), the proper officer must give notice to the child

and the chief executive that the proceeding for the offence is to be heard by the court on a specified day.

‘(5) If requested by the proper officer, the commissioner of the police service must help the proper officer give the notice.

‘(6) If the proceeding for the offence was previously brought to an end by a notice under section 119B(2),<sup>49</sup> a notice under subsection (4)—

- (a) restarts the proceeding from when it was brought to an end; and
- (b) the child is then liable to be sentenced for the offence.

‘(7) In making a sentence order for the offence, the court must consider—

- (a) any participation by the child in the community conference; and
- (b) if an agreement is made—
  - (i) the agreement; and
  - (ii) anything done by the child under the agreement.

### **‘If an agreement is made on a referral by a court before sentence**

‘**119D.(1)** This section applies if a community conference agreement is made on referral by a court because the court considered referral to a community conference would help the court in making an appropriate sentence order for the offence.

‘(2) In making a sentence order for the offence, the court must consider—

- (a) the child’s participation in the community conference; and
- (b) the agreement; and
- (c) anything done by the child under the agreement; and
- (d) a convenor’s report under section 18E(6).<sup>50</sup>

‘(3) A court may impose a requirement on the child under the sentence

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<sup>49</sup> Section 119B(2) (If an agreement is made on an indefinite referral by a court)

<sup>50</sup> Section 18E(6) (Conduct of community conference)

order or in addition to the sentence order, even if the requirement is also a requirement of the agreement.’.

**‘Combination of detention order and probation order**

‘**121C.(1)** This section applies if a court makes both a detention order and a probation order against a child for a single offence.

‘**(2)** The court may make the detention order only for a maximum period of 6 months and may not make an immediate release order.

‘**(3)** The probation order may only be for a maximum period ending 1 year after release from detention under the detention order.

‘**(4)** The requirements of the probation order only start when the child is released from detention.’.

**SCHEDULE 1—MINOR AMENDMENTS OF  
JUVENILE JUSTICE ACT 1992**

**3. Part 2, division 2—**

*renumber* and *relocate* as division 1 in part 1C.

**4. Part 2, divisions 3 to 5—**

*renumber* as divisions 2 to 4.