

Youth Justice and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 261

made under the

Police Powers and Responsibilities Act 2000
Youth Justice Act 1992

General Outline

Short title

Youth Justice and Other Legislation Amendment Regulation 2019.

Authorising law

Section 314 of the *Youth Justice Act 1992*.

Section 809 of the *Police Powers and Responsibilities Act 2000*.

Policy objectives and the reasons for them

On 16 December 2019, the remaining provisions of the *Youth Justice and Other Legislation Amendment Act 2019* (the Amendment Act) are scheduled to commence by proclamation.

The objective of the *Youth Justice Amendment Regulation 2019* (the Amendment Regulation) is to ensure the *Youth Justice Regulation 2016* (YJ Regulation) and the *Police Powers and Responsibilities Regulation 2012* (PPR Regulation) accurately reflect and support the *Youth Justice Act 1992* (YJ Act) and the *Police Powers and Responsibilities Act 2000* (PPRA) following the changes being made by the Amendment Act on its proclamation.

The amendment to the PPR Regulation will enable the Queensland Police Service to fulfil enhanced requirements in relation to children under the PPRA following proclamation of the Amendment Act.

Proclamation of the Amendment Act will change some requirements in relation to pre-sentence reports with the aim of contributing to reducing the period in which youth justice matters are finalised. Amendments to the YJ Regulation will reflect and support these changes.

Amendments are also being made to the YJ Regulation to support the implementation of the information sharing framework into the YJ Act. The amendments consist of safeguards against

the inappropriate sharing of information under arrangements made under the new framework, and assist both disclosers and receivers of information to remain focussed on the purposes for which the information is to be used and disclosed under the YJ Act.

Achievement of policy objectives

Prescribing legal aid organisations

The PPR Regulation is amended to prescribe legal aid organisations for the purposes of amended section 421 of the PPRA. Under the amended provision police are required to notify or attempt to notify a representative of a legal aid organisation prior to questioning a child in relation to an indictable offence. Legal aid organisations prescribed in the PPR Regulation for this purpose are the Aboriginal and Torres Strait Islander Legal Service (ATSILS) and Legal Aid Queensland (LAQ).

Requirements for pre-sentence reports

Following proclamation of the Amendment Act, as an alternative to providing a full pre-sentence report when requested by a court, the chief executive of Youth Justice will be able to provide further material to be considered with another report prepared for another sentencing of the child that happens or happened within the previous six months. Currently, further material can only be provided if another report has been prepared for another sentencing of the child that happens on the same day. This change needs to be reflected in the YJ Regulation.

Also, to support the removal from the YJ Act of the 15 business day minimum period within which to produce a pre-sentence report, guidance is being inserted into the YJ Regulation regarding factors that influence the complexity of a report and consequently impact on the time needed for its preparation. This is designed to enhance consistency regarding factors that are considered when assessing the likely complexity of a report and therefore a reasonable timeframe for its production under new section 151(6) of the YJ Act. It is intended that Youth Justice court officers will inform the court about factors that the court may consider relevant to the likely complexity of a report. Well-informed timeframes will enable accurate pre-sentence reports that add value to the court's sentencing while still managing to reduce the time it takes to finalise youth justice matters.

Additional safeguards against the inappropriate sharing of information

The information sharing framework being inserted into the YJ Act provides authority for chief executives of prescribed entities to enter into arrangements with other prescribed entities and/or service providers in order to share information for the purposes of meeting the needs of children charged with offences. To limit the inappropriate sharing of information under an arrangement, limitations are being inserted into the YJ Regulation that provide for increased accountability and transparency as well as greater protection of the interests of vulnerable young people and their families under information sharing arrangements.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the Act.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

There are no costs associated with the implementation of this Amendment Regulation. Pre-sentence report provisions will contribute to minimising the time taken to resolve court proceedings while allowing time for robust, high quality pre-sentence reports. Information sharing provisions will assist disclosers and receivers of information to remain focussed on the purposes for which the information is to be used and disclosed under the YJ Act. This will also have the effect of minimising the inappropriate sharing of information and

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the Amendment Regulation. The Department of Youth Justice applied a self-assessed exclusion from further regulatory impact analysis on the basis that the Amendment Regulation relates to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services (self-assessed exclusion category j).

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that the short title of the Regulation is the *Youth Justice and Other Legislation Amendment Regulation 2019*.

Clause 2 provides for the commencement of provisions in the regulation. It is stated that the provisions commence on 16 December 2019.

Part 2 – Amendment of Police Powers and Responsibilities Regulation 2012

Clause 3 provides that the part amends the PPR Regulation.

Clause 4 replaces section 26 (Legal aid organisation—Act, sch 6, definition *legal aid organisation*). The section provides that for the purposes of schedule 6 of the PPRA, definition *legal aid organisation*, paragraph (a), ATSILS is prescribed. This means that ATSILS remains the legal aid organisation for Aboriginal and Torres Strait Islander adults under the PPRA.

Subsection (2) has the effect that for a person who is not an Aboriginal or Torres Strait Islander adult, *legal aid organisation* means ATSILS or LAQ. It is intended that under amended section 421 of the PPRA, police will notify or attempt to notify a representative of ATSILS for a child who identifies as Aboriginal or Torres Strait Islander and LAQ for other children.

Part 3 – Amendment of Youth Justice Regulation 2016

Clause 5 provides that the part amends the YJ Regulation.

Clause 6 inserts a new section 5A (Likely complexity of pre-sentence report) that applies if a court orders the chief executive to give to the court a pre-sentence report under section 151 of the YJ Act. Subsection 151(6) provides that the court can ask that the report be provided within a stated period that is reasonable, having regard to the likely complexity of the report.

The new section 5A in the YJ Regulation provides a non-exhaustive list of factors that may influence the likely complexity of a report and that a court could consider when deciding on a reasonable period for its provision. The list includes the number, nature, seriousness of the offence(s) and the circumstances in which they were committed. For example, a sentencing involving multiple different offences of varying nature, such as theft and assault committed in different locations at different times in conjunction with different perpetrators and with the child having different levels of culpability will necessarily involve more complexity than a sentencing for a single offence. The inclusion of these factors in new section 5A provides the court with familiar and consistent factors that can be used to determine the likely complexity of a report.

The section also includes a ‘catch all’ provision that will enable the court to consider any other matter that is likely to influence complexity and subsequently impact on the date set for a report. For example, language or cultural barriers; disability, impairment or mental health concerns. Other matters that may also be considered under this provision include the details of the child’s supervised order history as well as corresponding orders made by a court in another State and the number and type of sentencing options that need to be covered in the report.

Clause 7 amends section 6 (Contents of further material for pre-sentence report) by omitting existing subsection (1) and inserting a new subsection. The new subsection ensures that section 6 accurately reflects changes made to the YJ Act by the Amendment Act in relation to the provision of further material by the chief executive for the purposes of forming a pre-sentence report.

Clause 8 makes a consequential amendment to section 38 (Keeping information—Act, s 303) in order to reflect the re-numbering of the youth justice principles in schedule 1 of the YJ Act that occurred on commencement of the Amendment Act.

Clause 9 replaces the heading of Part 5 (Confidential information) with a new heading (Provisions about disclosure of information) to more accurately reflect the contents of the part.

Clause 10 has the effect that the existing section 44 becomes a division within part 5, to facilitate the insertion of another division by clause 12.

Clause 11 updates the heading of section 44 (Dealing with confidential information—Act, s 289(i)) in line with current drafting practice. Subsection (2) amends the note in existing section

44(2) to ensure that the provision applies to new division 2A (Information sharing and services coordination for children charged with offences) of the YJ Act. Subsection (3) omits the definition of confidential information from section 44; it is moved to the dictionary by clause 13.

Clause 12 inserts new Division 2 (Information sharing and services coordination for children charged with offences) into Part 5. The new division contains new sections 44A (Arrangements must be given to chief executive and published), 44B (Limitations on disclosing confidential information—Act, s 297G) and 44C (Disclosing confidential information about a child without the child’s consent). The new sections aim to ensure that the sharing of information under arrangements made pursuant to the new information sharing framework in the YJ Act remains focussed on achieving the purpose of the framework: to enable a coordinated response to the needs of children charged with offences (new section 297B of the YJ Act).

New section 44A requires an arrangement made under new section 297F of the YJ Act to be provided to the chief executive as soon as practicable after being established. The chief executive must publish a copy on the department’s website. This provides transparency and a level of public scrutiny regarding the contents of arrangements that will govern the sharing of information between prescribed entities and service providers.

New section 44B prescribes limitations about how, or the circumstances in which, a holder of confidential information relating to a child charged with an offence may disclose the information under the new information sharing provisions.

Subsection (2) requires a prescribed entity or service provider (the ‘holder’) who discloses information to provide a written notice to the recipient stating the purpose, from those listed in new section 297G(2)(a) to (f) of the YJ Act, that the holder reasonably believes the information may help the recipient to do. This is designed to provide focus to the sharing of information under an arrangement, and limit inappropriate sharing of information outside of the listed purposes in the YJ Act.

The subsection further provides that the written notice must state that the recipient must not disclose the information to another entity under a different arrangement without obtaining the written consent of the holder.

Subsection (3) further provides that the written notice in subsection (2) must be given to the recipient before, or at the same time as, the information is disclosed to the recipient and that the notice can be used to share information for a period of up to six months. This is to ensure that entities who share information more frequently can do so readily without needing to create a notice for each instance information is shared within a six month period. After that period, a new written notice will be required to ensure that the sharing of information remains appropriate for meeting a child’s needs.

Subsections (4)-(6) of new section 44B provide a mechanism for prescribed entities and service providers to share information received under one arrangement with a prescribed entity or service provider under a different arrangement. Subsection (5) provides that a prescribed entity or service provider who receives information under an arrangement, and therefore becomes a holder, can request the consent of the prescribed entity or service provider who provided the information to disclose it to a recipient in another arrangement. Subsection (6) provides that the request under subsection (5) must be in writing and state the purpose, from the list in new

section 297G(2)(a) to (f), that the holder reasonably believes the information may help the recipient to do.

This mechanism is designed to facilitate instances where the disclosing of information by a recipient to a party outside of an arrangement, but who is a party to a different arrangement under the YJ Act, will be beneficial in meeting the needs of a child charged with an offence. This provision will enable that disclosure with appropriate safeguards attached, which ensure clear accountability and the protection of the interests of vulnerable young people and their families.

Importantly, new section 285(1)(i) of the YJA has the effect that recipients of confidential information under an arrangement are subject to the confidentiality obligations in the YJ Act and are prohibited from disclosing that information except under part 9. A prohibited disclosure constitutes an offence under section 288 of the YJ Act.

New section 44C requires a prescribed entity or service provider that discloses information about a child without the child's consent to make all reasonable attempts to inform the child that their information has been disclosed and the purpose, from those listed in new section 297G(2)(a) to (f) of the YJ Act, that the prescribed entity or service provider reasonably believed the information may help the recipient to do. This will contribute towards ensuring that disclosures without consent are necessary and appropriate, and ensures that to the greatest extent possible, the child is treated with respect and dignity.

Subsection (3) provides that advising a child of the disclosure need not be undertaken when the prescribed entity or service provider who made the disclosure reasonably believes delaying advising the child is appropriate in all the circumstances. This ensures that where advising the child may, for example, create or increase a risk of harm to a person or interfere with an ongoing investigation, the advice can be delayed until an appropriate time.

It is also stipulated in subsection (4) that holders of information who make disclosures of confidential information without consent must make a record of the attempts that were made to obtain consent prior to the disclosure as well as the attempts made to advise the child of the disclosure afterwards. This supports the principle underlying the information sharing framework in new section 297C of the YJ Act which states whenever possible and practical, a person's consent should be obtained before disclosing confidential information relating to the person to someone else. It also enhances accountability for disclosures without consent and provides an increased level of protection for the interests of vulnerable young people and their families while supporting trusting relationships between prescribed entities and service providers with young people.

Subsection (5) inserts definitions of prescribed entity and service provider, by reference to new section 297D of the YJ Act.

Clause 13 amends schedule 2 (Dictionary) to insert a definition of confidential information that was removed in section 44(3) by clause 11. The definition refers to the definition provided in section 284 of the YJ Act.