

*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

*Legislative Assembly Chamber,
Brisbane,*

The Clerk of the Parliament.

27 June 2016

In the name and on behalf of the Queen, I assent to this Bill.

M L Hew

Government House,

Brisbane,

27 June 2016



Queensland

No. 39 of 2016

A BILL for

An Act to amend the Childrens Court Act 1992, the Corrective Services Act 2006, the Police Powers and Responsibilities Act 2000, the Youth Justice Act 1992 and the Acts mentioned in schedule 1 for particular purposes



Queensland

Youth Justice and Other Legislation Amendment Bill (No. 2) 2016

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2016

A Bill

for

An Act to amend the *Childrens Court Act 1992*, the *Corrective Services Act 2006*, the *Police Powers and Responsibilities Act 2000*, the *Youth Justice Act 1992* and the Acts mentioned in schedule 1 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Youth Justice and Other Legislation Amendment Act (No. 2) 2016*.

1A Commencement

This Act commences on 1 July 2016, immediately after the commencement of the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016*.

Part 2 Amendment of Childrens Court Act 1992

2 Act amended

This part amends the *Childrens Court Act 1992*.

3 Amendment of s 3 (Definitions)

Section 3, definitions *child's community*, *community justice group*, *first-time offender*, *interested person*, *non-youth justice matter*, *relevant person* and *youth justice matter*—
omit.

4 Omission of pt 4, div 1, hdg (Constitution and sitting times)

Part 4, division 1, heading—

omit.

5 Insertion of new s 20

Part 4—

insert—

20 Who may be present at a proceeding

- (1) In a proceeding before the court relating to a child, the court must exclude from the room in which the court is sitting any person who is not—
- (a) the child; or
 - (b) a parent or other adult member of the child's family; or
 - (c) a victim, or a person who is a representative of the victim, of the offence alleged to have been committed by the child; or
 - (d) a witness giving evidence; or
 - (e) if a witness is a complainant within the meaning of the *Criminal Law (Sexual Offences) Act 1978*—a person whose presence will provide emotional support to the witness; or
 - (f) a party or person representing a party to the proceeding, including, for example, a police officer or other person in charge of a case against a child in relation to an offence; or
 - (g) a representative of the chief executive of the department; or
 - (ga) the public guardian under the *Public Guardian Act 2014*; or
 - (gb) if the proceeding is a child protection proceeding under the *Child Protection Act 1999*—the chief executive (child safety); or

[s 5]

- (h) if the child is an Aboriginal or Torres Strait Islander person—
 - (i) a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
 - (ii) a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child; or
- (i) an infant or young child in the care of an adult who may be present in the room.
- (2) However, the court must also exclude from the room a person mentioned in subsection (1)(c) if, in the court's opinion, the person's presence would be prejudicial to the interests of the child.
- (3) Also, the court may permit to be present in the room—
 - (a) a person who is engaged in—
 - (i) a course of professional study relevant to the operation of the court; or
 - (ii) research approved by the chief executive of the department; or
 - (b) a person who, in the court's opinion, will assist the court; or
 - (c) for a criminal proceeding against a child—1 or more of the following persons if, in the court's opinion, the person's presence would not be prejudicial to the interests of the child—
 - (i) a representative of mass media;
 - (ii) a person who, in the court's opinion, has a proper interest in the proceeding.

- (4) Also, this section does not affect any order made, or that may be made, by the court under the *Evidence Act 1977*, section 21A—
 - (a) excluding any person (including a defendant) from the place in which the court is sitting; or
 - (b) permitting any person to be present while a special witness within the meaning of that section is giving evidence.
- (5) This section—
 - (a) applies even if the court’s jurisdiction is being exercised conjointly with another jurisdiction; and
 - (b) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment.
- (6) In this section—

chief executive (child safety) means the chief executive of the department in which the *Child Protection Act 1999* is administered.

child’s community means the child’s Aboriginal or Torres Strait Islander community, whether it is—

- (a) an urban community; or
- (b) a rural community; or
- (c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

community justice group, for a child, means—

- (a) the community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, for the child’s community; or

[s 6]

- (b) a group of persons within the child's community, other than a department of government, that is involved in the provision of any of the following—
 - (i) information to a court about Aboriginal or Torres Strait Islander offenders;
 - (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
 - (iii) other activities relating to local justice issues; or
- (c) a group of persons made up of the elders or other respected persons of the child's community.

criminal proceeding means a proceeding against a child under the *Youth Justice Act 1992* for an offence or for the sentencing of the child for an offence.

6 Omission of pt 4, div 2 (Closed and open proceedings)

Part 4, division 2—

omit.

**Part 3 Amendment of Corrective
Services Act 2006**

7 Act amended

This part amends the *Corrective Services Act 2006*.

8 Amendment of sch 4 (Dictionary)

Schedule 4, definition *parole order*—

omit, insert—

parole order—

- (a) means a parole order mentioned in section 194 or a court ordered parole order; and
- (b) for chapter 5, part 1, division 1, subdivision 2—see section 178; and
- (c) for chapter 5, part 1, division 2—see section 186.

Note—

Under the *Youth Justice Act 1992*, sections 276E and 276F the provisions of this Act that apply to a parole order also apply to a statutory parole order under those sections of that Act.

Part 3A Amendment of Police Powers and Responsibilities Act 2000

8A Act amended

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

8B Amendment of s 474 (Destruction of identifying particulars)

- (1) Section 474—

insert—

- (4A) If—

- (a) the person is a child; and
- (b) the *Youth Justice Act 1992* applies for proceeding against the child for the identifying particulars offence; and
- (c) the child pleads guilty before the court; and

[s 8C]

- (d) the court dismisses the charge and refers the offence to the chief executive (communities) for a restorative justice process under the *Youth Justice Act 1992*, section 24A;

the requirement to destroy the identifying particulars under subsection (1) does not apply until the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

- (2) Section 474(5)—

insert—

restorative justice agreement see the *Youth Justice Act 1992*, schedule 4.

restorative justice process see the *Youth Justice Act 1992*, schedule 4.

8C Amendment of s 695 (Application for order in relation to seized things)

Section 695—

insert—

- (6) Subsection (7) applies if—

- (a) a proceeding started in relation to a thing seized is a proceeding against a child for an offence; and
- (b) the child pleads guilty before the court; and
- (c) the court dismisses the charge and refers the offence to the chief executive (communities) for a restorative justice process under the *Youth Justice Act 1992*, section 24A.

- (7) For subsection (3)(a), the discontinuation of the proceeding is taken to happen on the day the child discharges his or her obligations under a restorative justice agreement made as a

consequence of the referral.

(8) In this section—

restorative justice agreement see the *Youth Justice Act 1992*, schedule 4.

restorative justice process see the *Youth Justice Act 1992*, schedule 4.

Part 4 Amendment of Youth Justice Act 1992

9 Act amended

This part amends the *Youth Justice Act 1992*.

10 Amendment of s 11 (Police officer to consider alternatives to proceeding against child)

Section 11(1)(c), ‘a conference’—

omit, insert—

the chief executive for a restorative justice process

11 Amendment of s 21 (Childrens Court may dismiss charge if caution should have been administered or no action taken)

Section 21(3)(b), ‘that a caution be administered’—

omit, insert—

a police officer to administer a caution

12 Replacement of pt 2, div 3, hdg (Reference by police officer for a conference)

Part 2, division 3, heading—

[s 13]

omit, insert—

Division 3 Referral for restorative justice process

13 Replacement of ss 22 and 23

Sections 22 and 23—

omit, insert—

22 When police officer may refer offence for restorative justice process

- (1) This section applies if a child admits committing an offence to a police officer.
- (2) Instead of bringing the child before a court for the offence, the police officer may, by written notice given to the chief executive, refer the offence to the chief executive for a restorative justice process.
- (3) However, the police officer may make the referral only if—
 - (a) the child indicates willingness to comply with the referral; and
 - (b) having regard to the deciding factors, the officer considers—
 - (i) a caution is inappropriate; and
 - (ii) a proceeding for the offence would be appropriate if the referral were not made; and
 - (iii) the referral is a more appropriate way of dealing with the offence than starting a proceeding.
- (4) The *deciding factors* for referring an offence to the chief executive for a restorative justice process are—

- (a) the nature of the offence; 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 dealt with under a restorative justice process.
- (5) The police officer must inform the child generally of the restorative justice process and potential consequences for the child if he or she fails to properly participate in the process.
- (6) If the referral is accepted by the chief executive, the chief executive must give written notice of the acceptance to the police officer and the child.

23 If restorative justice agreement is made as a consequence of referral for restorative justice process

- (1) This section applies if—
- (a) a police officer refers an offence committed by a child to the chief executive for a restorative justice process; and
 - (b) a restorative justice agreement is made as a consequence of the referral.
- (2) The child is not liable to be prosecuted for the offence unless otherwise provided under this Act.

14 Amendment of s 24 (Powers of police officer if referral is unsuccessful or if child contravenes conference agreement)

- (1) Section 24, heading, ‘conference’—

omit, insert—

restorative justice

[s 15]

(2) Section 24(1)—

omit, insert—

- (1) This section applies if a police officer refers an offence committed by a child to the chief executive for a restorative justice process and—
 - (a) the chief executive returns the referral to the officer under section 32(1); or
 - (b) the child fails to comply with a restorative justice agreement made as a consequence of the referral.

(3) Section 24(2)(b) and (c)—

omit, insert—

- (b) any participation by the child in the restorative justice process; and
- (c) if a restorative justice agreement was made as a consequence of the referral—anything done by the child under the agreement.

(4) Section 24(3)(c), ‘conference’—

omit, insert—

restorative justice process

15 Insertion of new s 24A

Part 2, division 3—

insert—

24A Childrens Court may dismiss charge if offence should have been referred to restorative justice process

- (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 the offence should have been referred to the chief executive for a restorative justice process under section 22, regardless of whether or not the child admitted committing the offence to the police officer.
- (1A) In deciding the application, the Childrens Court may have regard to—
 - (a) any cautions administered to the child for any offence; and
 - (b) whether any previous restorative justice agreements have been made by the child.
- (2) If the court dismisses the charge, the court may refer the offence to the chief executive for a restorative justice process.
- (3) However, the dismissal of the charge does not prevent a police officer restarting a proceeding against the child for the offence or a court sentencing the child for the offence if—
 - (a) the chief executive returns the referral under section 32(1); or
 - (b) the child fails to comply with a restorative justice agreement made as a consequence of the referral.
- (4) For part 3, the police officer is taken to be the referring authority for a referral made under subsection (2).
- (5) If the court decides to—
 - (a) make an order of dismissal under the *Justices Act 1886*, section 149 and give the child a certificate of the dismissal; or

[s 16]

- (b) give the child a certificate of dismissal under the Criminal Code, section 700;

the court must not give the child the certificate until the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

16 Replacement of pt 3 (Youth justice conferences generally)

Part 3—

omit, insert—

Part 3 Restorative justice processes

Division 1 Preliminary

30 Object of part

The object of this part is to provide for the use of a restorative justice process for a child who commits an offence.

31 The restorative justice process

- (1) This part applies if a police officer or a court (each a *referring authority*) refers an offence to the chief executive for a restorative justice process.
- (2) The restorative justice process is to be a conference.
- (3) However, the restorative justice process is to be an alternative diversion program if—
 - (a) the referral is made by a police officer under section 22 or made by a court under section 24A or 164; and

- (b) a conference can not be convened for any reason other than—
 - (i) the chief executive being unable to contact the child after reasonable inquiries; or
 - (ii) the child being unwilling to participate in the conference.

32 Returning referrals

- (1) The chief executive may, by written notice given to the referring authority, return the referral if—
 - (a) the chief executive is unable to contact the child after reasonable inquiries; or
 - (b) the chief executive has made reasonable requirements of the child to attend an interview about the process and the child has failed to attend as required; or
 - (c) the chief executive considers it necessary for a victim of the offence to participate and the victim does not wish to participate or can not be located after reasonable inquiries; or
 - (d) during the restorative justice process the child denies committing the offence to the chief executive, a convenor or victim of the offence; or
 - (e) the chief executive is satisfied that an appropriate restorative justice agreement is unlikely to be made within a time the chief executive considers appropriate; or
 - (f) the chief executive considers that the referral is unsuitable for a restorative justice process; or

[s 16]

- (g) a conference is convened for the referral and the convenor ends the conference without an agreement being made.
- (2) The notice must state the reasons for returning the referral, and the reasons may be considered by a court in any later proceeding for sentencing the child for the offence.
- (3) The referring authority must make reasonable efforts to inform the child that the referral has been returned.

Division 2 Conferences

33 Object of division

This division provides for the use of a conference to allow a child, who commits an offence, and other concerned persons to consider or deal with the offence in a way that benefits all concerned.

34 Who may participate in conference

- (1) The following persons are entitled to participate in the conference—
 - (a) the child;
 - (b) the victim;
 - (c) the convenor;
 - (d) a representative of the commissioner of the police service;
 - (e) a parent of the child;
 - (f) if requested by the child, 1 or more of the following—
 - (i) the child's legal representative;
 - (ii) a member of the child's family;

- (iii) another adult;
- (g) if requested by the victim, 1 or more of the following—
 - (i) the victim's legal representative;
 - (ii) a member of the victim's family;
 - (iii) another adult;
- (h) another person approved by the convenor.

Examples for paragraph (h)—

- 1 a representative of the chief executive
 - 2 a person present for the purpose of training, research or education
 - 3 for an Aboriginal or Torres Strait Islander child who is from an Aboriginal or Torres Strait Islander community, a respected person of the community or a representative of a community justice group that may be in the community
- (2) To ensure that a victim of the offence is informed of his or her entitlement to participate in the conference, the referring authority must give the chief executive contact information for the victims of the offence.
 - (3) For subsection (1)(h), if the child is an Aboriginal or Torres Strait Islander person from an Aboriginal or Torres Strait Islander community, the convenor must consider inviting to attend the conference either or both of the following—
 - (a) a respected person of the community;
 - (b) if there is a community justice group in the community—a representative of the community justice group.

35 Convening conference

- (1) The conference may be convened only if—

[s 16]

- (a) the child and the convenor attend the conference; and
 - (b) there is a degree of victim participation in the conference through—
 - (i) the attendance of the victim or a representative of the victim; or
 - (ii) the use of pre-recorded communication recorded by the victim for use in the conference; or
 - (iii) a representative of an organisation that advocates on behalf of victims of crime.
- (2) The convenor is responsible for convening the conference and must be independent of the circumstances of the offence.
- (3) The conference must be directed towards making a conference agreement.
- (4) If the child is not legally represented at the conference, the convenor must ensure the child—
 - (a) is informed of the right to obtain legal advice; and
 - (b) has reasonable information about how to obtain legal advice and a reasonable opportunity to do so.
- (5) The conference ends when a conference agreement is made or the convenor brings the conference to an end because—
 - (a) the child fails to attend the conference as required; or
 - (b) the child denies committing the offence at the conference; or
 - (c) the convenor concludes a participant's conduct or failure will result in a conference agreement being unlikely to be made; or

- (d) the convenor concludes a conference agreement is unlikely to be made within a time the convenor considers appropriate.
- (6) If the conference ends without a conference agreement but the convenor considers it is worthwhile persisting with efforts to make a conference agreement, the convenor may convene another conference.

36 Conference agreement

- (1) A *conference agreement* is an agreement reached at the conference—
 - (a) in which a child admits committing the offence; and
 - (b) in which the child undertakes to address the harm caused by the child committing the offence.
- (2) The conference agreement must be in the approved form and be agreed to and signed by—
 - (a) the child; and
 - (b) the convenor; and
 - (c) if a representative of the commissioner of the police service participates in the conference—the representative; and
 - (d) if a victim of the offence participates in the conference—the victim.

Note—

If a court makes a presentence referral, the court must, amongst other things, have regard to the child's obligations, and anything done by the child, under the conference agreement in sentencing the child for the offence. See section 165(6).

- (3) The conference agreement may not provide for the child to be treated more severely for the

[s 16]

offence than if the child were sentenced by a court or in a way that contravenes the sentencing principles in section 150.

- (4) A copy of the conference agreement must immediately be given to each person who signed the agreement.
- (5) To remove any doubt, it is declared that the conference agreement may contain a requirement that the child must comply with outside the State.

Example—

A conference agreement may require the child to perform voluntary work for a charity that is located outside the State.

37 Amendment of conference agreement by chief executive

- (1) This section applies if the chief executive considers that the conference agreement is or becomes unworkable, including, for example, because compliance with the agreement has become impossible or unsafe.
- (2) The chief executive may, if the child agrees, amend the conference agreement to the extent necessary to make the agreement workable.
- (3) In deciding how to amend the conference agreement, the chief executive must take reasonable steps to find out, and give effect to, the views of each participant who signed the agreement.
- (4) The amended conference agreement replaces the original agreement and takes effect from its amendment by the chief executive.
- (5) After amending the conference agreement, the chief executive must make reasonable efforts to give a copy of the amended agreement to each participant who signed the agreement.

Division 3 Alternative diversion programs

38 Alternative diversion program

- (1) An *alternative diversion program* is a program, agreed to by the chief executive and the child, that involves the child participating in any of the following to address the child's behaviour—
 - (a) remedial actions;
 - (b) activities intended to strengthen the child's relationship with the child's family and community;
 - (c) educational programs.
- (2) The program must be designed to—
 - (a) help the child to understand the harm caused by his or her behaviour; and
 - (b) allow the child an opportunity to take responsibility for the offence committed by the child.
- (3) The program 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 that contravenes the sentencing principles in section 150.
- (4) The program must be in writing and be signed by the child.
- (5) The chief executive must give the referring authority a copy of the alternative diversion program.

Division 4 General

39 Convenors

- (1) A convenor is responsible for convening a conference.
- (2) The chief executive may approve appropriately qualified persons as convenors.
- (3) A convenor has all the powers—
 - (a) necessary to perform the responsibilities of a convenor; or
 - (b) conferred on the convenor under this Act or another Act.

40 Admissibility of particular evidence

- (1) An admission about committing the relevant offence, made by the child while participating in a restorative justice process, is inadmissible in any proceeding.
- (2) Subsection (1) extends to—
 - (a) any written material or other correspondence made for the purpose of the restorative justice process; or

Example—

a written apology given as a requirement of a conference agreement

 - (b) actions of the child, done for the purpose of the restorative justice process, that make evident that the child committed the relevant offence.
- (3) However, evidence that would otherwise be inadmissible in a proceeding because of subsection (1) is admissible—
 - (a) if the child agrees to the admission of the evidence; or
 - (b) in a proceeding under part 7, division 2.

(4) In this section—

relevant offence, in relation to a restorative justice process, means the offence to which the process relates.

41 Notice of successful completion of restorative justice agreement

If a child discharges his or her obligations under a restorative justice agreement made as a consequence of a restorative justice process, the chief executive must notify the referring authority for the process accordingly.

17 Amendment of s 74 (Chief executive's right of audience generally)

Section 74(3)(d) and (e)—

omit, insert—

(d) without limiting paragraphs (a) to (c), matters on which the court considers the chief executive should be heard.

18 Amendment of s 138 (Dealing with offender held in corrective services facility)

(1) Section 138(6) to (8)—

omit, insert—

(6) For holding the offender at a corrective services facility—

(a) the offender is liable to serve a term of imprisonment equal to the period of detention to which the offender is sentenced for the child offence; and

(b) the offender is taken to be a prisoner subject to the *Corrective Services Act 2006*; and

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- (c) any rights, liberties or immunities of the offender as a detainee are not preserved, transferred or otherwise applicable for the offender as a prisoner; and
 - (d) the day the offender would otherwise have been released under section 227, for the period of detention, is the day the offender is to be released on parole under the *Corrective Services Act 2006*.
 - (7) However, the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the **statutory parole order**) and the provisions of that Act applying to parole orders also apply to the statutory parole order.
- (2) Section 138(9)—
renumber as section 138(8).

19 Amendment of s 139 (Application to be held in detention centre)

Section 139(1)(b)(ii), ‘an order’—
omit, insert—
a transfer

20 Amendment of s 147 (Use of evidence of cautions and conferences in deciding issue of criminal responsibility)

- (1) Section 147, heading, ‘conferences’—
omit, insert—
restorative justice agreements
- (2) Section 147, ‘conference agreement’—
omit, insert—
restorative justice agreement

21 Amendment of s 154 (Finding of guilt as child may be disclosed while a child)

Section 154—

insert—

- (3) However, subsection (1) does not apply to a finding of guilt against a child by a court for an offence if—
 - (a) the offence was referred to the chief executive for a restorative justice process under section 163(1)(d)(i); and
 - (b) a restorative justice agreement was made as a consequence of the referral.

22 Amendment of s 160 (Copy of court order or decision to be given to child, parent etc.)

- (1) Section 160(1)(c)—

renumber as section 160(1)(e).

- (2) Section 160(1)—

insert—

- (c) a decision to dismiss a charge under section 24A(1) for the referral of an offence to the chief executive for a restorative justice process;
- (d) the referral of an offence to the chief executive for a restorative justice process under section 163(1)(d)(i);

23 Insertion of new pt 7, div 2

Part 7—

insert—

Division 2 Restorative justice process referrals before sentencing

161 Definitions for division

In this division—

child, in relation to a referral, means the child to which the referral relates.

court diversion referral see section 163(1)(d)(i).

offence, in relation to a referral, means the offence to which the referral relates.

162 When court must consider making court diversion referral or presentence referral

- (1) If a child enters a plea of guilty for an offence in a proceeding before a court, the court must consider referring the offence to the chief executive for a restorative justice process instead of sentencing the child.
- (2) If a finding of guilt for an offence is made against a child before a court, the court must consider referring the offence to the chief executive for a restorative justice process to help the court make an appropriate sentence order.

163 Power of court to make restorative justice process referral

- (1) The court may, by notice given to the chief executive, refer an offence to the chief executive for a restorative justice process if—
 - (a) the court considers the child is informed of, and understands, the process; and

- (b) the child indicates willingness to comply with the referral; and
 - (c) the court is satisfied that the child is a suitable person to participate in a restorative justice process; and
 - (d) having regard to the deciding factors for referring the offence, the court considers the referral would—
 - (i) allow the offence to be appropriately dealt with without making a sentence order (a *court diversion referral*); or
 - (ii) help the court make an appropriate community based order or detention order (a *presentence referral*); and
 - (e) having regard to a submission by the chief executive about the appropriateness of the offence for a referral, the court considers the referral is appropriate in the circumstances.
- (2) In this section—
- deciding factors*, for referring an offence, means—
- (a) the nature of the offence; 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 dealt with under a restorative justice process.

164 Court diversion referrals

- (1) This section applies if the court makes a court diversion referral.
- (2) The making of the referral brings the court proceeding for the offence to an end and the child

[s 23]

is not liable to be further prosecuted for the offence unless—

- (a) the chief executive returns the referral under section 32(1); or
 - (b) the chief executive advises the court's proper officer that the child failed to comply with a restorative justice agreement made as a consequence of the referral.
- (3) If subsection (2)(a) applies—
- (a) the court's proper officer must bring the charge for the offence back on before the court for sentencing; and
 - (b) in sentencing the child, the court must not have regard to the referral being returned.
- (4) If subsection (2)(b) applies, the court's proper officer must bring the charge for the offence back on before the court for sentencing and the court must either—
- (a) take no further action; or
 - (b) allow the child a further opportunity to comply with the agreement; or
 - (c) sentence the child for the offence.
- (5) If the charge for the offence is brought back on before the court for sentencing, the court's proper officer must give the child and the chief executive notice that the proceeding for the offence is to be heard by the court on a stated day.
- (6) The notice must include a warning that, if the child fails to appear before the court in compliance with the notice, the court may issue a warrant for the child's arrest.
- (7) The notice restarts the proceeding from when it ended and the child is liable to be sentenced for the offence.

- (8) If the child fails to appear before the court in compliance with the notice, the court may issue a warrant for the child's arrest.
- (9) If subsection (4)(a) applies, the court proceeding for the offence is brought to an end and the child is not liable to be further prosecuted for the offence.

165 Presentence referrals

- (1) This section applies if the court makes a presentence referral.
- (2) On making the referral, the court may—
 - (a) give the directions it considers appropriate to the child or the chief executive; and
 - (b) adjourn the proceeding for the offence.
- (3) If the chief executive returns the referral under section 32(1), the court must proceed with sentencing the child for the offence.
- (4) If a restorative justice agreement is made as a consequence of the referral, the chief executive must—
 - (a) give the court a copy of the agreement; and
 - (b) inform the court of any obligations of the child under the agreement that have already been performed.
- (5) If a restorative justice agreement is given to the court under subsection (4), the court must give a copy of the agreement as soon as practicable to—
 - (a) the prosecution; and
 - (b) if the child is represented by a lawyer—the lawyer.
- (6) In sentencing the child for the offence, the court must have regard to—

[s 24]

- (a) the child's participation in the relevant restorative justice process; and
- (b) the child's obligations under the restorative justice agreement; and
- (c) anything done by the child under the restorative justice agreement; and
- (d) any information provided by the chief executive about sentencing the child.

24 Amendment of s 175 (Sentence orders—general)

(1) Section 175(1)—

insert—

- (da) if a restorative justice agreement is made as a consequence of a presentence referral relating to the child—order the child to perform his or her obligations under the agreement; or
- (db) order that the child participate in a restorative justice process as directed by the chief executive; or

(2) Section 175—

insert—

- (2A) For subsection (1)(db), the offence the child is found guilty of is taken to be referred by the court to the chief executive for a restorative justice process.

25 Insertion of new s 178C

After section 178B—

insert—

178C Combination of restorative justice orders and other sentence orders

- (1) This section applies if a court makes, for a single offence, a restorative justice order and any other sentence order.
- (2) The court—
 - (a) must make separate orders; and
 - (b) must not impose one of the orders as a requirement of the other.
- (3) If the child contravenes the restorative justice order after the orders are made and is resentenced for the offence, the court may discharge any or all of the other sentence orders.
- (4) If the child contravenes one of the other sentence orders after the orders are made and is resentenced for the offence, the court may discharge the restorative justice order.

26 Insertion of new pt 7, div 6A

Part 7—

insert—

Division 6A Restorative justice orders

192A Preconditions to making restorative justice order

- (1) A court may make a restorative justice order against a child only if—
 - (a) the court considers the child is informed of, and understands, the process; and
 - (b) the child indicates willingness to comply with the order; and

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- (c) the court is satisfied that the child is a suitable person to participate in a restorative justice process; and
- (d) having regard to the following, the court considers the order is appropriate in the circumstances—
 - (i) a submission by the chief executive about the appropriateness of the order;
 - (ii) the deciding factors for referring the offence.

(2) In this section—

deciding factors, for referring an offence, means—

- (a) the nature of the offence; 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 dealt with under a restorative justice process.

192B Requirements to be set out in restorative justice order

A restorative justice 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 order—
 - (i) the child abstain from violation of the law; and

- (ii) the child comply with every reasonable direction of the chief executive; and
- (iii) the child 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 the child's address, employment or school; and
- (v) the child must not leave, or stay out of, Queensland while the order is in force, without the prior approval of the chief executive; and
- (vi) the child participate in a restorative justice process as directed by the chief executive; and
- (vii) the child perform his or her obligations under a restorative justice agreement made as a consequence of the child's participation in the restorative justice process.

192C Making restorative justice order and community service order or graffiti removal order

- (1) This section applies if, for the same offence, a court makes a restorative justice order and—
 - (a) a community service order; or
 - (b) a graffiti removal order.
- (2) In making the community service order, the court must, when deciding the number of hours of unpaid community service, have regard to the child's obligations under the restorative justice agreement related to the restorative justice order.
- (3) In making the graffiti removal order, the court

[s 27]

must, when deciding the number of hours of graffiti removal service, have regard to the child's obligations under the restorative justice agreement related to the restorative justice order.

- (4) Subsections (2) and (3) only apply to a restorative justice agreement that is in force at the time of making the community service order or graffiti removal order.

192D Ending of restorative justice order

- (1) A restorative justice order remains in force until the earlier of the following—
- (a) the chief executive is satisfied the child has discharged the child's obligations under the related restorative justice agreement;
 - (b) the order is discharged under section 245 or 247;
 - (c) 12 months from the date the order is made.
- (2) The period that a restorative justice order remains in force under subsection (1) is subject to sections 245, 247 and 252.

27 Amendment of s 245 (Court's power on breach of a community based order other than a conditional release order)

- (1) Section 245(1)—

insert—

- (ab) for a restorative justice order—extend the period within which the child's obligations under the order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section;
or

- (2) Section 245(3), after '(aa),'—

insert—

(ab),

**28 Amendment of s 247 (Variation, discharge and
resentence in the interests of justice)**

Section 247(1)—

insert—

- (ba) for a restorative justice order—extend the period within which the child’s obligations under the order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section;
or

29 Amendment of s 252 (Variations by consent)

Section 252(5)(b)—

omit, insert—

- (b) for a community based order, other than a community service order or restorative justice order—an amendment of the period of the order;

**30 Replacement of pt 8, div 2A (Period of detention to be
served as period of imprisonment)**

Part 8, division 2A—

omit, insert—

**Division 2A Age related transfers to
corrective services facility**

Subdivision 1 Prison transfer directions

[s 30]

276A Definitions for subdivision

In this subdivision—

detainee includes a person liable to serve a period of detention under this Act.

prison transfer direction see section 276C(1).

276B Particular detainees liable to be transferred to corrective services facility

- (1) The following persons are liable to be transferred to a corrective services facility—
 - (a) a person in detention who—
 - (i) turns 18 years while serving a period of detention; and
 - (ii) is liable to serve a remaining period of detention of 6 months or more;
 - (b) a person beginning detention who—
 - (i) is 18 years or older when beginning detention; and
 - (ii) is liable to serve a remaining period of detention of 6 months or more.
- (2) For this section, the *remaining period of detention* for a person—
 - (a) is taken to start—
 - (i) if turning 18 years during detention—on the day the person turns 18 years; or
 - (ii) if 18 years or older when beginning detention—on the day the person begins detention; and
 - (b) is taken to end—

- (i) at the conclusion of all periods of detention that the person is liable to serve cumulatively; but
 - (ii) no later than the day the person is required to be released from detention under section 227.
- (3) In this section—
beginning detention includes returning to detention to continue or complete a period of detention because of a contravention of a conditional release order or supervised release order.

276C Transfer of particular detainees to corrective services facility

- (1) As soon as practicable after the chief executive becomes aware a person is liable to be transferred to a corrective services facility under section 276B, the chief executive must give a written direction (a *prison transfer direction*) to the chief executive (corrective services) stating—
 - (a) that the person is to be transferred to a corrective services facility on a stated day (the *transfer day*); and
 - (b) the period of detention the person remains liable to serve at the transfer day.
- (2) The transfer day must not be earlier than the day the person becomes liable to be transferred to the corrective services facility.
- (3) Within 28 days after giving the prison transfer direction to the chief executive (corrective services), the chief executive must—
 - (a) give the person a copy of the direction; and
 - (b) inform the person that, from the transfer day, the person will be held at a corrective

[s 30]

services facility and be subject to the *Corrective Services Act 2006*; and

- (c) inform the person of his or her right under this subdivision to apply for a delay of the transfer.
- (4) The chief executive may issue another prison transfer direction in relation to the person if the chief executive considers—
 - (a) the circumstances relevant to the person previously obtaining a delay no longer exist; or
 - (b) the person poses a risk to the safety or wellbeing of a detainee at the detention centre at which the person is detained.
- (5) Failure to comply with subsection (1) does not invalidate a prison transfer direction.

276D Application for temporary delay of transfer

- (1) If, when a court makes a detention order against a person for an offence, the person becomes liable to be transferred to a corrective services facility under section 276B, the person may immediately apply to the court for a temporary delay of the person's transfer to the corrective services facility.
- (2) A detainee given a copy of a prison transfer direction under section 276C(3) may, before the transfer, apply to the Childrens Court for a temporary delay of the detainee's transfer to the corrective services facility.
- (3) On receipt by the court of a detainee's application made under subsection (2), the detainee's transfer is stayed until the application is decided, withdrawn or otherwise ends.
- (4) The court may grant an application made under

subsection (1) or (2) only if it is satisfied the delay—

- (a) would be in the interests of justice; and
 - (b) would not prejudice the security or good order of the detention centre at which the applicant is, or is to be, detained; and
 - (c) would not prejudice the safety or wellbeing of any detainee at the detention centre at which the applicant is, or is to be, detained; and
 - (d) would not cause the person to be detained at a detention centre after the person turns 18 years and 6 months.
- (5) Without limiting the matters the court may have regard to, the court must have regard to the following matters in making a decision on an application made under subsection (1) or (2)—
- (a) any vulnerability of the applicant;
 - (b) any interventionist, rehabilitation or similar activities being undertaken by the applicant and the availability of those activities if transferred.
- (6) However, if the chief executive agrees to the application—
- (a) subsections (4) and (5) do not apply; and
 - (b) the court's proper officer may grant the application.
- (7) If the court grants an application made under subsection (1) or (2)—
- (a) the court must decide a new day for the prison transfer direction to take effect being no more than 6 months after the day the applicant turns 18 years; and

[s 30]

(b) the chief executive must inform the chief executive (corrective services) of the new day for the prison transfer direction.

(8) In this section—

temporary delay means a delay of 6 months or less.

276E Transferee subject to *Corrective Services Act 2006* from transfer

- (1) This section applies if a person is transferred to a corrective services facility under this subdivision.
- (2) From the transfer—
 - (a) the person is liable to serve a term of imprisonment equal to the period of detention the person remains liable to serve at the transfer; and
 - (b) the person is taken to be a prisoner subject to the *Corrective Services Act 2006*; and
 - (c) any rights, liberties or immunities of the person as a detainee end and are not preserved, transferred or otherwise applicable for the person as a prisoner; and
 - (d) the day the person would otherwise have been released under section 227, for the period of detention, is the day the person is to be released on parole under the *Corrective Services Act 2006*.
- (3) However, the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the *statutory parole order*) and the provisions of that Act applying to parole orders also apply to the statutory parole order.

Subdivision 2 Age limits for detention

276F Persons over 18 years and 6 months should not serve period of detention at detention centre

- (1) This Act is subject to the overriding principle that it is in the best interests of the welfare of all detainees at a detention centre that persons who are 18 years and 6 months or older are not detained at the centre.
- (2) To give effect to the principle—
 - (a) a person who is 18 years and 6 months or older must not—
 - (i) enter a detention centre to begin serving a period of detention; or
 - (ii) return to a detention centre to continue or complete a period of detention, including, for example, returning because of a contravention of a conditional release order or supervised release order; and
 - (b) an application for a temporary delay of a transfer is of no effect if the applicant is 18 years and 6 months or older; and
 - (c) an application for a temporary delay of a transfer lapses when the applicant turns 18 years and 6 months; and
 - (d) a temporary delay of a transfer under section 276D is of no effect to the extent it delays the transfer of a person for any period after the person turns 18 years and 6 months.
- (3) If the application of subsection (2)(a) prevents a person from being detained at a detention centre, the person must instead be held at a corrective services facility.
- (4) For holding the person at a corrective services facility—

[s 31]

- (a) the person is liable to serve a term of imprisonment equal to the period of detention the person remains liable to serve when the person would otherwise enter or return to a detention centre; and
 - (b) the person is taken to be a prisoner subject to the *Corrective Services Act 2006*; and
 - (c) any rights, liberties or immunities of the person as a detainee are not preserved, transferred or otherwise applicable for the person as a prisoner; and
 - (d) the day the person would otherwise have been released under section 227, for the period of detention, is the day the person is to be released on parole under the *Corrective Services Act 2006*.
- (5) However, the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the ***statutory parole order***) and the provisions of that Act applying to parole orders also apply to the statutory parole order.
- (6) This section applies despite anything else in this Act.
- (7) In this section—
application for a temporary delay of a transfer
means an application made under section 276D(1) or (2).

31 Amendment of s 283 (Confidential information to which this part applies)

Section 283(2)(c), ‘conference’—

omit, insert—

restorative justice process

32 Amendment of s 295 (Disclosure by police of information about cautions and youth justice conferences and agreements)

- (1) Section 295, heading, ‘youth justice conferences and’—
omit, insert—

**restorative justice process referrals and
restorative justice**

- (2) Section 295(1)(b), ‘conference’—
omit, insert—

restorative justice process

- (3) Section 295(1)(c), ‘conference’—
omit, insert—

restorative justice

33 Amendment of s 296 (Disclosure by chief executive or convenor of information about conference agreements)

- (1) Section 296, heading, ‘conference agreements’—
omit, insert—

restorative justice processes

- (2) Section 296(1), after ‘conference’—
insert—

**or the managing of an alternative diversion
program**

- (3) Section 296(2)(a)—
omit, insert—

**(a) for informing a referring authority about a
referral made by it; or**

- (4) Section 296(2)(b), ‘parties’—
omit, insert—

participants

[s 34]

34 Insertion of new s 302A

After section 302—

insert—

302A Chief executive may seek contact information for victims of offences

- (1) The chief executive may, by written notice given to the scheme manager, require the scheme manager to give the chief executive contact information for victims of an offence committed by a child.
- (2) However, a requirement under subsection (1) only applies for a victim if the victim consents to his or her contact information being given to the chief executive.
- (3) In this section—

scheme manager means the scheme manager under the *Victims of Crime Assistance Act 2009*, schedule 3.

35 Insertion of new pt 11, div 14

Part 11—

insert—

Division 14 Transitional provision for the Youth Justice and Other Legislation Amendment Act (No. 2) 2016

386 Application of Act to matters before commencement

- (1) The provisions of this Act, as in force after the commencement of the amendments, apply to

incomplete proceedings under this Act.

- (2) To remove any doubt, it is declared that the requirements for transferring a detainee to a corrective services facility under this Act apply to—
- (a) a detainee who turns 18 years on or after the commencement of the amendments, regardless of when the detainee's period of detention started; and
 - (b) a person sentenced for an offence, or returned to detention in relation to an offence, after the commencement of the amendments, regardless of when the person committed the offence, was charged with the offence or criminal proceedings for the offence were started.
- (3) A prison transfer direction issued before the commencement ceases to have effect if the person, the subject of the notice, was not transferred to a corrective services facility before the commencement of the amendments.
- (4) Despite the replacement of part 3 by the amendments, that part, as in force immediately before the replacement, continues to apply for any of the following started before the replacement—
- (a) a referral by a police officer of an offence to the chief executive for a conference;
 - (b) a youth justice conference;
 - (c) a conference agreement.
- (5) In this section—

amendments means the amendments of this Act made by the *Youth Justice and Other Legislation Amendment Act (No. 2) 2016*.

incomplete proceedings means proceedings against a child for an offence conducted under this

[s 36]

Act and started, but not completed, before the commencement of the amendments.

prison transfer direction means a prison transfer direction under section 276C(1) as in force immediately before the commencement of the amendments.

36 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definitions *community based order*, *conference*, *conference agreement*, *convenor*, *period of detention*, *period of imprisonment*, *prison transfer direction*, *referring police officer*, *relevant individual*, *transfer day*, *transferred detention order* and *unserved period of detention*—

omit.

- (2) Schedule 4—

insert—

adult offence, for part 6, division 11, see section 132.

alternative diversion program see section 38.

child, for part 7, division 2, see section 161.

child offence, for part 6, division 11, see section 132.

community based order means a probation order, graffiti removal order, community service order, intensive supervision order, conditional release order or restorative justice order.

conference means a conference under part 3, division 2.

conference agreement see section 36.

contact information, for a victim of an offence, means sufficient information about the victim to enable the chief executive to communicate with the victim.

convenor means a person approved as a convenor under section 39.

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

court diversion referral, for part 7, division 2, see section 163(1)(d)(i).

detainee means a person—

- (a) being held on remand, in the chief executive's custody, in connection with a charge of an offence; or
- (b) serving a period of detention, in a detention centre, for an offence; or
- (c) otherwise being held in custody in a detention centre.

offence, for part 7, division 2, see section 161.

offender, for part 6, division 11, see section 132.

participant means a person entitled to participate in a conference under section 34.

presentence referral see section 163(1)(d)(ii).

prisoner see the *Corrective Services Act 2006*, schedule 4.

prison transfer direction, for part 8, division 2A, subdivision 1, see section 276C(1).

referring authority see section 31(1).

restorative justice agreement means—

- (a) a conference agreement; or
- (b) an alternative diversion program agreed to by the chief executive and the child who is to complete the program.

restorative justice order means an order made under section 175(1)(da) or (db).

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restorative justice process means a conference or an alternative diversion program.

sentence, for part 6, division 11, see section 132.

term of imprisonment see the *Penalties and Sentences Act 1992*, section 4.

Part 5

Minor and consequential amendments

37 Acts amended in sch 1

Schedule 1 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments

section 37

Justice and Other Information Disclosure Act 2008

1 Schedule, definition *person in the criminal justice system*, paragraph (e)—

omit, insert—

- (e) a person who committed an offence that is referred to the chief executive (youth justice) for a restorative justice process under the *Youth Justice Act 1992*; or

Police Powers and Responsibilities Act 2000

1 Section 380(3)(c), ‘a youth justice conference’—

omit, insert—

the chief executive (communities) for a restorative justice process

Police Service Administration Act 1990

1 Section 10.2G, definition *criminal history*, paragraph (b)(iii)—

omit, insert—

- (iii) referrals of offences to the chief executive of the department in which the *Youth Justice Act 1992* is administered for restorative justice processes under that Act.

2 Section 10.2O(2), examples, second dot point—

omit, insert—

- *Youth Justice Act 1992*, section 295 (Disclosure by police of information about cautions and restorative justice processes and restorative justice agreements)

Public Guardian Act 2014

1 Section 57(2)(h)(ii), ‘a conference’—

omit, insert—

the chief executive of the department in which that Act is administered for a restorative justice process under that Act

Right to Information Act 2009

1 Schedule 3, section 12(1), ‘*Juvenile Justice Act 1992*’—

omit, insert—

Youth Justice Act 1992

2 Schedule 3, section 12(1), editor's note—

omit.

Young Offenders (Interstate Transfer) Act 1987

**1 Section 3, definition *young offender*, paragraph (b), after
 'section 175(1)(d),'—**

insert—

(da), (db),

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