

## **Explanatory Notes**

### **FOR**

## **Amendments To Be Moved During Consideration In Detail By The Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity**

### **Making Queensland Safer Bill 2024**

#### **Objectives of the Amendments**

The policy objectives of amendments to be moved during consideration in detail of the Making Queensland Safer Bill 2024 (the Bill) are to:

- in relation to ‘adult, crime, adult time:’
  - clarify that, mirroring the position with respect to adults, a Childrens Court magistrate cannot impose a period of detention greater than three years when sentencing a child for a prescribed offence under the ‘adult crime, adult time’ provision (new section 175A of the *Youth Justice Act 1992* (Youth Justice Act));
  - provide that where a court is making an order for a child to serve a period of detention for a prescribed offence under section 175A, the court must (rather than may) set a release date at any point during the period of the detention, subject to any requirement to serve a minimum sentence;
  - provide that if a court dealing with an application to vary or a contravention of a community service order that was made under section 175A(9) discharges the order and resentsences the child, the court need not make another community service order;
- in relation to the contents and admissibility of childhood criminal histories:
  - clarify that the definition of the criminal history of a child includes all decisions, findings and orders made, and actions taken (including where no further action is taken), under specific provisions of the Youth Justice Act dealing with variations of a community based order and contraventions of a community based order and supervised release order;
  - amend section 150 of the Youth Justice Act to ensure that in sentencing a child the court can have regard to the child’s traffic history;
  - clarify the transitional approaches to the admissibility of childhood findings of guilt against an adult for particular purposes under section

new 148B, the amendments to sections 150 and 150A, and the definition of criminal history of a child under new section 6;

- in relation to the ‘opt-out’ eligible persons register:
  - correct a minor and technical error to ensure the amendments to the definitions of ‘applicant’ and ‘nominee’ commence by proclamation.

## **Achievement of the Objectives**

### *Jurisdiction of a Childrens Court Magistrate*

Currently section 175(1)(g) of the Youth Justice Act limits the maximum period of detention that a Childrens Court magistrate can impose to one year. However, when sentencing an adult offender, a magistrate can impose a period of up to three years imprisonment under section 552H of the Criminal Code, unless imposing a Drug and Alcohol Treatment Order.

To give effect to the ‘adult crime, adult time’ amendments, clause 18 amends section 175 to provide that the limit of one year does not apply when a Childrens Court magistrate is sentencing a child for a prescribed offence under section 175A.

Amendment 1 amends new section 175A(2) of the Youth Justice Act to provide that where a court is sentencing a child to an offence prescribed under that section, the court may order the child be detained for a period not more than: (a) if the court is not constituted by a judge – three years; or (b) if the court is constituted by a judge – the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve.

This provides that a Childrens Court magistrate can order a child to serve a period of detention of up to three years under section 175A.

The following amendments are made as a consequence of this amendment.

Amendment 2 inserts a reference to section 175A into section 186(3) of the Youth Justice Act. This clarifies that if a Childrens Court magistrate sentencing a child under section 175A determines that the child should be committed for sentence before a Childrens Court judge then section 175A also applies to the Childrens Court judge.

Amendment 3 amends section 214 of the Youth Justice Act to provide that if a Childrens Court magistrate is ordering multiple detention orders (either under section 175 and section 175A, or under section 175A) against a child on the same day or in the same proceedings, the court as constituted by the Childrens Court magistrate cannot direct that a detention order be served cumulatively with another of the detention orders if the total period of the detention orders exceed three years.

Amendment 5 amends sections 252D and 252E of the Youth Justice Act to replace references to ‘1 year’ with ‘the prescribed period’. ‘Prescribed period’ is defined to mean: (a) for a sentence imposed under section 175A – three years; or (b) otherwise – one year. This will enable a Childrens Court magistrate to deal with a contravention of

a supervised release order which was imposed under section 175A if the unexpired part of the child's sentence is three years or less.

*Requirement to set a release date when sentencing under 'adult crime, adult time'*

Amendment 4 amends new section 227(3A) (renumbered 227(4)) of the Youth Justice Act to provide that if a court orders a child to serve a period of detention under section 175A: (a) subsections 227(1) to (3) do not apply; and (b) the court must order the child to be released from detention after serving the proportion of the period of detention that the court considers appropriate, subject to any requirement under the Criminal Code mentioned in section 175A(5) that relates to the offence.

This ensures that the default requirement to serve 70% of the sentence in section 227(1) and the other requirements under subsections (2) and (3) will not apply to a court making an order that a child serve a period of detention under section 175A.

It also ensures that a court sentencing a child under the 'adult crime, adult time' provision sets a date for release from detention. The court will have a discretion as to when to set the release date at any point during the period of the detention. This discretion is subject to any requirement to serve a minimum period of detention for the offence. For example, the effect of section 314A of the Criminal Code and new section 175A(5) of the Youth Justice Act is that if a child is sentenced to an offence of unlawful striking causing death and is ordered to serve a period of detention, the child's release date cannot be set earlier than 80% of the period of detention.

The amendments to section 227 reflect the position with respect to adults where the court has a discretion as to when to set a parole date, except where there is a requirement to serve a minimum period of imprisonment.

*Contraventions and variations of mandatory community service orders*

Clause 19 of the Bill inserts new section 175A(9) which, in effect, provides that, if a child is sentenced for an offence of grievous bodily harm, serious assault (in certain circumstances) or wounding committed in a public place while adversely affected by an intoxicating substance, they must be sentenced to a community service order. This effectively adopts section 108B of the *Penalties and Sentences Act 1992* (Penalties and Sentences Act).

The effect of new section 175A(9) and 175A(10) is that the court is required to impose a community service order unless satisfied: (a) the child has a physical, intellectual or psychiatric disability which means they are not capable of complying with the order; (b) the child is not a suitable person to perform community service, or (c) community service of a suitable nature cannot be provided for the child.

Part 7, division 12 of the Youth Justice Act provides pathways for community based sentence orders, including community service orders, to be discharged and the child to be resentenced. Section 249 provides for certain matters in relation to resentencing under this division. As the Bill inserts mandatory community service orders into the Youth Justice Act, the requirement to order a community service order if the relevant preconditions are met would be re-enlivened upon resentencing.

If an adult contravenes a mandatory community service order that was imposed under section 108B of the Penalties and Sentences Act, and the court decides to discharge the order and resentence the offender, there are provisions in the Penalties and Sentences Act that provide the court discretion as to whether or not to impose another community service order.

In order to better align the approach a court takes when resentencing an offender for an offence where a mandatory community service order was made, Amendment 5 also amends section 249 of the Youth Justice Act to provide that when resentencing the child for the offence for which the mandatory community service order was made under section 175A(9), the court need not make another community service order.

This will apply where a court discharges the order and resentences the child when dealing with a contravention of a community based order under section 245 or when dealing with an application to vary the order under section 247 of the Youth Justice Act.

#### *Commencement of amended definitions*

Amendments 6, 7, and 12 correct a minor and technical error in the Bill.

In effect, the amendments move the definitions of ‘applicant’ and ‘nominee’ in subclauses 38(3) and (5) to clause 59 in order to ensure these provisions commence by proclamation. These definitions relate to the eligible person register amendments, which will commence by proclamation.

#### *Definition of a child’s criminal history*

Clause 39 of the Bill inserts new section 6 into the Youth Justice Act which provides a definition of ‘criminal history’ of a child for the purposes of the Youth Justice Act.

Amendment 8 amends section 6(1)(d) to provide that the following are included in the criminal history of a child: all decisions, findings and orders made, and actions taken, by a court, Childrens Court judge, Childrens Court magistrate or other judicial officer-

- (i) under section 245, 246 or 246A in relation to the child’s contravention of a community based order; or
- (ii) under section 247 on an application made by the child or the chief executive in relation to a community based order made against the child;  
or
- (iii) under section 252D, 252E or 252F in relation to the child’s contravention of a supervised release order.

It is not intended that these amendments will capture interlocutory decisions, findings, orders or actions.

Amendment 9 inserts definitions of ‘action’ and ‘child’.

*Admissibility of a child's traffic history at sentencing*

Clause 50 of the Bill amends section 150(3)(e) as renumbered by the Bill to replace reference to 'previous offending history' with 'criminal history'. The definition of criminal history of a child in new section 6 does not include a child's traffic history.

A traffic history is defined in schedule 4 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) and includes findings of guilt for offences under the TORUM Act (such as careless driving of motor vehicles or a vehicle offence involving liquor or other drugs), as well as an offence of dangerous operation of a vehicle under the Criminal Code and the evasion offence in section 754 of the *Police Powers and Responsibilities Act 2000*. It can also include offences where the child has paid a penalty infringement notice and incurred demerit points.

Amendment 10 omits clause 50 and replaces it.

Amendment 10 replicates the amendments to section 150(3)(e) (as renumbered by the Bill) to replace reference to 'previous offending history' with 'criminal history'.

Amendment 10 also amends section 150 to insert a new subsection (8A) which provides that, without limiting the matters a court may have regard to in sentencing a child for an offence, the court may have regard to any relevant matter on the child's traffic history under the TORUM Act.

A child's full traffic history may be relevant, for example, when sentencing a child for vehicular-related offending and imposing disqualification periods under section 254 of the Youth Justice Act. This amendment supports the other amendments in the Bill to enable a court sentencing children and adults to have a more complete picture of the offender and be better placed to frame more appropriate sentences.

*Transitional provisions*

Clause 58 of the Bill provides the transitional approach to the amendments to the Youth Justice Act in Part 4, Division 3 of the Bill. It inserts new section 438, 439 and 440 into the Youth Justice Act.

Amendment 11 omits clause 58 and replaces it.

New clause 58 inserts new sections 438, 438A, 438B, 438C, 439 and 440 into the Youth Justice Act.

Section 438 provides for the transitional approach to the amendments to section 148 (Evidence of childhood finding of guilt not admissible against adult) and new section 148A (Admissibility and use of childhood criminal history in sentencing adults) (as inserted and renumbered by the Bill). These amendments allow a childhood criminal history to be admissible when sentencing an adult.

The effect of the amendment is that new section 438 as inserted by the Bill is amended to:

- replace the heading to ‘Admissibility and use of childhood criminal histories in sentencing adults’;
- provide that the operation of section 438(3) is subject to both subsection 438(2) and section 438A; and
- update references to the *Making Queensland Safer Act 2024* to amending act.

Section 438 as inserted by the Bill is otherwise unchanged.

New section 438A is inserted into the Youth Justice Act by Amendment 11. This section provides that new section 148B (Admissibility of childhood findings of guilt against an adult for particular purposes) (as inserted and renumbered by the Bill) applies to a proceeding before a court in relation to an offence of dangerous operation of a vehicle only if the offence is committed after the commencement.

The effect of the amended section 438 and new section 438A is that:

- a person’s childhood criminal history is admissible when sentencing the person as an adult after commencement, regardless of whether the offence was committed, or the proceedings were started, before commencement;
- a person’s childhood findings of guilt for certain offences (including those committed before commencement) are admissible, subject to the five year time period, to convict the person as an adult of dangerous operation of a vehicle with a circumstance of aggravation in relation to a previous conviction only where that person, as an adult, has committed the offence of dangerous operation of a vehicle after commencement.

Amended section 438 and new section 438A do not affect the transitional approach (new section 439 of the Youth Justice Act) to what is captured on a child’s criminal history from commencement.

Amendment 11 inserts new sections 438B and 438C into the Youth Justice Act. These sections, which provide for the transitional approach for the amendments to sections 150 and 150A, state that the amendments apply in relation to the sentencing of a child for an offence, whether the offence was committed, or the finding of guilt against the child for the offence occurred, before or after commencement.

New section 439 as inserted by the Bill provides for the transitional approach to new section 6 (Meaning of *criminal history* of a child) as inserted by clause 39 of the Bill and amended by Amendments 8 and 9.

New section 439 as inserted by the Bill is amended to:

- make a minor and technical amendment to the wording of section 439(1)(b);
- provide that a reference to a restorative justice agreement in new section 6(1)(b) does not include a restorative justice agreement: (a) made by the child before commencement; or (b) made by the child on or after the commencement as a consequence of a referral of an offence for a restorative justice process that was made before commencement;
- provide that, in relation to a community based order or supervised release order, orders for the resentencing of the child for an offence where a conviction was recorded against the child in relation to the offence as part of the resentencing

of the child are the only orders that will appear on the child's criminal history if the order occurs before the commencement. All other decisions, findings, orders and actions in relation to a community based order or supervised release order must occur after the commencement to be included on a child's criminal history; and

- remove subsection (2).

These amendments ensure that where the scope of the criminal history of a child is expanded by the Bill, it will only apply to matters that occur after commencement. It also ensures that a child's criminal history excludes restorative justice agreements where a referral was accepted by a child in circumstances that the child was not advised by a police officer that a restorative justice agreement would form part of their criminal history.

New section 439 as inserted by the Bill is otherwise unchanged.

New section 440 as inserted by the Bill is unchanged by the amendment.

## **Alternative Ways of Achieving Policy Objectives**

There is no alternative way to achieve the policy objectives other than by legislative amendment.

## **Estimated Cost for Government Implementation**

The amendments to be moved during consideration in detail do not introduce any new costs not anticipated in the Explanatory Notes of the Bill. Government will monitor demand and the impacts of the legislative amendments. Any cost impacts will be dealt with as part of normal budget processes.

## **Consistency with Fundamental Legislative Principles**

The amendments are consistent with Fundamental Legislative Principles.

## **Consultation**

'Adult crime, adult time' featured significantly in the Government's election campaign for the 2024 Queensland State election.

The Justice, Integrity and Community Safety Committee conducted a public inquiry into the Bill.

No consultation was undertaken in relation to the amendments proposed to the Bill.

## NOTES ON PROVISIONS

*Amendment 1* amends new section 175A (Sentence orders – significant offences to which adult penalties apply) of the Youth Justice Act (inserted by clause 19 of the Bill) by replacing subsection 175A(2)(b).

New subsection 175A(2)(b) provides that, when sentencing a child for an offence under subsection (1), the court may order that the child be detained for a period not more than: (a) if the court is not constituted by a judge – 3 years; or (b) if the court is constituted by a judge – the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve.

*Amendment 2* amends section 186(3) of the Youth Justice Act to include a reference to section 175A. This clarifies that, if a Childrens Court magistrate sentencing a child under section 175A determines that the child should be committed for sentence before a Childrens Court judge, then the Childrens Court judge can also exercise sentencing powers under section 175A.

*Amendment 3* amends section 214 (Limitation on cumulative orders) of the Youth Justice Act by inserting new subsections.

New subsection 214(1A) provides that subsection (1B) applies if a court constituted by a Childrens Court magistrate: (a) makes 1 or more detention orders under section 175 and 1 or more detention orders under section 175A against a child on the same day or in the same proceedings; or (b) makes 1 or more detention orders under section 175A against a child on the same day or in the same proceedings.

New subsection 214(1B) provides that the court as constituted by a Childrens Court magistrate 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 3 years.

*Amendment 4* amends new section 227(3A) (inserted and renumbered to section 227(4) in clause 26 of the Bill) to provide that if a court orders a child to service a period of detention under section 175A: (a) subsections (1) to (3) do not apply; and (b) the court must order the child to be released from detention after serving the proportion of the period of detention that the court considers appropriate, subject to any requirement under the Criminal Code mentioned in section 175A(5) that relates to the offence.

*Amendment 5* amends section 249 (Matters relevant to making further order), section 252D (General options available to a Childrens Court magistrate on chief executive's application) and section 252E (General options available to a court if child found guilty of indictable offence) of the Youth Justice Act.

Section 249 is amended by inserting a new subsection. New subsection 249(2A) provides that if the community based order is a community service order made under section 175A(9), the court need not, when resentencing the child for the offence for which the order was made, make another community service order.



Section 252D is amended by replacing the reference to ‘1 year’ in subsections 252D(4) and (5) with ‘the prescribed period’. A definition of ‘prescribed period’ is inserted into the section to mean: (a) for a sentence imposed under section 175A – 3 years; (b) otherwise – 1 year.

Section 252E is amended by replacing the reference to ‘1 year’ in subsections 252E (3)(b) and (c) with ‘the prescribed period’. A definition of ‘prescribed period’ is inserted into the section to mean: (a) for a sentence imposed under section 175A – 3 years; (b) otherwise – 1 year.

*Amendment 6* removes the amendment to the definition of ‘applicant’ in subclause 38(3).

*Amendment 7* removes the amendment to the definition of ‘nominee’ in subclause 38 (5).

*Amendments 8 and 9* amend section 6 (Meaning of *criminal history* of a child) of the Youth Justice Act (as inserted by clause 39 of the Bill).

*Amendment 8* replaces section 6(1)(d) of the Youth Justice Act (as inserted by clause 39 of the Bill) to provide that the following are included in the *criminal history*, of a child: all decisions, findings and orders made, and actions taken, by a court, a Childrens Court judge, Childrens Court magistrate or other judicial officer –

- (i) under section 245, 246 or 246A in relation to the child’s contravention of a community based order; or
- (ii) under section 247 on an application made by the child or the chief executive in relation to a community based order made against the child; or
- (iii) under section 252D, 252E or 252F in relation to the child’s contravention of a supervised release order.

*Amendment 9* inserts new subsection 6(4) which provides the following definitions of *action* and *child*:

- *action*, includes a decision to take no further action;
- *child*, (a) in relation to a child against whom a community based order has been made, see section 236; and (b) for a child on release from detention under a supervised release order, see section 252A.

*Amendment 10* omits clause 50 of the Bill and inserts a new clause 50 into the Bill which amends section 150 (Sentencing principles) of the Youth Justice Act.

Section 150(3)(e), as renumbered by the Bill, is amended to replace the reference to a ‘previous offending history’ with a ‘criminal history’.

A new subsection is inserted into section 150. New subsection 150(8A) provides that, without limiting the matters a court may have regard to in sentencing a child for an offence, the court may have regard to any relevant matter on the child’s traffic history under the *Transport Operations (Road Use Management) Act 1995*.

*Amendment 11* omits clause 58 of the Bill and inserts a new clause 58 into the Bill which inserts section 438, 438A, 438B, 438C, 439 and 440 into the Youth Justice Act.

New section 438 (Admissibility and use of childhood criminal histories in sentencing adults) applies in relation to a proceeding against an adult for an offence. New section 438(2) provides that the former Act applies to a proceeding for an appeal from a sentence that happened before the commencement. New section 438(3) provides that, subject subsection (2) and section 438A, the new Act applies in relation to a proceeding for an offence:

- (a) whether the proceeding was started before, or is started after, the commencement of this section; or
- (b) whether the offence was committed before, or is committed after, the commencement of this section.

New section 438(4) provides definitions of *former Act* and *new Act*.

New section 438A (Admissibility of childhood findings of guilt against an adult for particular purposes) provides that new section 148B applies to a proceeding before a court in relation to an offence under section 328A of the Criminal Code only if the offence is committed after the commencement. *new section 148B* is defined to mean section 148B as in force from the commencement of part 4, division 3 of the amending Act.

New section 438B (Application of new s 150) provides that new section 150(3)(e) and (8A) applies in relation to the sentencing of a child for an offence: (a) whether the offence was committed before, or is committed after, the commencement of this section; or (b) whether the finding of guilt against the child for the offence occurred before or after the commencement of this section. *new section 150(3)(e) and (8A)* is defined to mean section 150(3)(e) and (8A) as in force from the commencement of part 4, division 3 of the amending Act.

New section 438C (Application of new s 150A) provides that new section 150A(2)(c)(i) and (3)(e) applies in relation to the sentencing of a child for a prescribed indictable offence: (a) whether the offence was committed before, or is committed after, the commencement of this section; or (b) whether the finding of guilt against the child for the offence occurred before or after the commencement of this section. *new section 150A(2)(c)(i) and (3)(e)* is defined to mean section 150A(2)(c)(i) and (3)(e) as in force from the commencement of part 4, division 3 of the amending Act.

New section 439 (Criminal histories) provides that, in new section 6:

- (a) a reference to a caution does not include a caution administered to a child before the commencement; and
- (b) a reference to a finding of guilt includes a finding of guilt against a child that occurred before the commencement; and
- (c) a reference to a restorative justice agreement does not include a restorative justice agreement:
  - (i) made by a child before the commencement; or
  - (ii) made by a child on or after the commencement as a consequence of a referral of an offence for a restorative justice process that was made before the commencement; and

- (d) a reference to a decision, finding, order or action of a court, a Childrens Court judge, Childrens Court magistrate or other judicial officer in relation to a community based order or a supervised release order for a child does not include a decision, finding or order made, or action taken, before the commencement unless:
- (i) an order was made for the resentencing of the child for an offence; and
  - (ii) the court ordered that a conviction be recorded against the child in relation to the offence as part of the resentencing of the child.

Subsection 439(2) is omitted.

*Amendment 12* omits clause 59 of the Bill and inserts a new clause 59 into the Bill which inserts new, and amends existing, definitions in schedule 4 (Dictionary) of the Youth Justice Act.

A new definition of *criminal history* is inserted and the definitions of *applicant* and *nominee* are amended.