## Queensland Community Safety Bill 2024

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Committee Secretary
Community Safety and Legal Affairs Committee
Parliament House
George Street
BRISBANE QLD 4000
By email: CSLAC@parliament.qld.gov.au

Dear Committee Secretary,

Australia's Right to Know coalition of media organisations (**ARTK**) appreciates the opportunity to make this submission to the inquiry into the *Queensland Community Safety Bill 2024* (**the Bill**).

The following two provisions are of material concern to ARTK as they could impact journalism. We offer the following detailed analysis and reasoning for amendments to ensure those provisions meet the objectives operationally and in law.

## 1. Clause 4: Insertion of Online Content Removal Scheme into the *Police Powers and Responsibilities Act 2000*

Clause 4 proposes inserting a new Chapter 21A into the Police Powers and Responsibilities Act (**PPR Act**) that will allow an authorised officer to issue a removal notice to an online service provider in relation to material depicting specified unlawful conduct. Notably, an authorised officer will be a police officer or staff member authorised under PPR Act s. 745C to give removal notices under Chapter 21A.

The removal scheme applies to material communicated via an "online service", namely a "social media service", "relevant electronic service" or "designated internet service" where each of these terms adopts the definitions of the same found in the *Online Safety Act 2021* (Cth). "Designated internet services" are (inter alia) services[1] that allow end-users to access material using an internet carriage service; or, that deliver

[1] Online Safety Act 2010 s. 14

material to people having equipment appropriate for receiving that material by means of an internet carriage service. Consequently, the activities of ARTK's members in communicating their respective news websites and delivering news via apps, push notification systems and to other internet capable devices or via other internet based systems clearly fall within this definition.

A removal notice can require an online service provider to take-down material within not less than 24 hours if (again, inter alia):

(a) material is provided on an online service;

(b) an authorised officer is satisfied the material depicts unlawful conduct that constitutes:
- (i) an offence involving driving or operating a vehicle;
- (ii) an offence involving violence or a threat of violence;
- (iii) an offence involving taking, damaging, destroying, removing, using, interfering with or entering property; or
- (iv) an offence involving a weapon;

(c) that the authorised officer suspects a person posted the material on the online service for the purpose of:
- (i) glorifying the unlawful conduct; or
- (ii) increasing the person's reputation, or another person's reputation, because of their involvement in the unlawful conduct;

(d) the material has been accessed by a person in Queensland; and

(e) the authorised officer suspects either:
- (i) the unlawful conduct happened in Queensland; or
- (ii) the material was posted on the online service by a person who was in Queensland or ordinarily resident in Queensland.

Failure to comply with a removal notice issued in the above circumstances can result in a civil penalty order being made by the Supreme Court of up to $1,548,000[2] against the online service provider, as opposed to the poster of the material.

There is nothing in the Explanatory Note, or in the First Reading Speech made by the Honorable Mark Ryan on 1 May 2024, which indicates the Queensland Government intended the clause 4 amendments to be directed at news reporting. As Mr Ryan said:

> *Despite the tough measures introduced in the Strengthening Community Safety Act 2023, some offenders persist in publishing material on social media, showing themselves and others committing offences. The glorification and glamorisation of their offending is offensive and further traumatises victims and the community. These types of posts not only make the community feel unsafe but also encourage other offenders to commit offences.*
>
> *That is why our government is taking the strong and decisive stance to require the provider of an online service to remove material that depicts criminal offending by someone in Queensland. Particular Queensland Police Service employees, approved by the Commissioner of Police, will be empowered to give a notice to an online social network requiring it to remove the material within 24 hours. To ensure that providers comply with these requirements, there will be strong penalties. The Queensland Police*

[2] Based on the current value of a Queensland penalty unit being $154.80 per unit.

*Service will be able to apply to the Supreme Court for a civil penalty up to $1.5 million for failure to comply with a removal notice.*

*The bill also creates a new offence in the Summary Offences Act 2005 for sharing material online to advertise the act or omission that constitutes a prescribed offence. The offence captures select property offences, stealing offences, violent offences, offences involving a vehicle and weapons offences. The bill also inserts a new circumstance of aggravation for certain offences in the Criminal Code mirroring the circumstance of aggravation for the unlawful use of a motor vehicle offence that was introduced last year.*

*The advertising of these offending behaviours online to incite fear within the community and promote their continuation or more serious offending will not be tolerated. The government recognises the importance of community members and journalists sharing images and videos in relation to offences within the community, and the bill makes it very clear that this conduct is not to be captured by the offence. These offences are intended to address the use of social media by offenders and their associates to glorify and glamorise the offender's criminal behaviour, which, in turn, is further traumatising for victims and impacts on community safety.*[3]

That said, ARTK is concerned that clause 4 does not include a clear statement that removal notices cannot be issued in relation to journalism. We hold that concern for the following reasons:

(i) News reports about Queensland crime communicated by ARTK's members will easily meet the requirements set out at (a), (b), (d) and (e). It is only the requirement at (c) which should fail on the basis that journalistic material is being communicated to report news and inform the Queensland public about issues of importance to them: not "for the purpose of" glorifying unlawful conduct or increasing another's person's reputation because of their involvement in the unlawful conduct. Nonetheless, the absence of a clear statement that journalism cannot trigger the issuing of a removal notice leaves room for doubt.

(ii) While not meaning to disparage the Queensland Police Service officers and staff who will be the arbiters of removal notices, they are not judicial officers and, consequently, will not be applying a judicial officer's rigour to their task. A well-intentioned authorised officer could form the misplaced suspicion that online material meets the purpose set out in (c), and issue a removal notice forcing the removal of a news report, since there is nothing presently in the clause 4 amendments telling him or her not to do so. The journalist wishing to continue to communicate that material would then have to find a way to force the revocation of the removal notice or face civil penalty proceedings. Either way, a removal notice issued in relation to news reporting is highly likely to result in litigation of one form or another with its attendant costs and the unnecessary use of court time and resources.

(iii) In its current drafting, clause 4 is inconsistent with the complimentary offence provision proposed by clause 7 of the Bill which, as noted above, clearly exempts journalism from the operation of the offence. It is also inconsistent with the Online Safety Act – from which clause 4 draws its inspiration – which states that removal notices issued under that Act in relation to abhorrent violent material do not apply to news or current affairs reports made in the public interest by a person working in a professional capacity as a journalist.[4]

In the circumstances, ARTK submits that it is incongruous that journalism is to be exempt from the criminal offence provision proposed by the Bill but not from the civil penalty provision which should be remedied before the Bill is enacted.

[3] Hansard at p1365

[4] See Online Safety Act s. 104

**Recommendation**
Addition of a subparagraph 7 to proposed section 745D of the Bill as follows:

*(7) Subsection (1) does not apply to publication of material by a journalist in the course of their activities as a journalist.*

## 1. Clauses 111 & 112: Amendment of Section 20 of the Children's Court Act

For ease of reference, **Annexure 1** to this submission shows the amendments that will be made to section 20 should the Bill be enacted in its current form.

As the Committee may recall, the Queensland public was outraged by reports in early 2024 which drew attention to the fact that journalists cannot currently attend most Children's Court proceedings without making an application to do so and that such applications are often refused. It was the refusal of the court to grant journalists access to report on the proceedings concerning the youths now charged in relation to the murder of Vyleen White that prompted Premier Steven Miles to commit to amending section 20.[5]

Before going further, it would be remiss of ARTK if we did not take this opportunity to thank the Queensland Government for engaging in the revision of section 20. Perhaps unsurprisingly, the current section has been a source of much frustration to our members who merely wish to attend and report on Children's Court proceedings for the information of the public, as they do in any other Queensland court, and ARTK is generally supportive of any steps that go towards achieving that goal.

That said, the solution ARTK first proposed to amend section 20 was simple: omit the reference to "a representative of mass media" from subsection 20(3)(c)(i) where it is currently located and insert a reference to the media – however you wish to define us – into the list of people authorised to attend Children's Court proceedings found in subsection 20(1). Instead, insofar as journalists are concerned, clause 112 of the Bill additionally:

(a) Despite the amendment to subsection 20(1), allows a journalist to be excluded from Children's Court on application by a party, or on the court's own motion, if the court it is satisfied the order is necessary to prevent prejudice to the proper administration of justice (**the Justice Ground**) or for the safety of any person, including the child (**the Safety Ground**);

(b) Prescribes a list of eleven factors relevant to making an exclusion order, all of which "must" be taken into account by the court and, consequently, all of which have equal weight; and

(c) Despite the amendment to section 20(1), provides that journalists must be excluded from the courtroom if the court is hearing a matter under the *Mental Health Act 2016* sections 172 or 173[6] unless the court is satisfied it is in the interests of justice to permit the journalist to be present.

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[5] https://www.abc.net.au/news/2024-02-11/childrens-court-public-and-media-access-in-queensland/103450710 and the Explanatory Speech in Hansard at pp1368-1369 where the Honourable Mark Ryan notes:
*The Miles government has heard victims and the media calling for greater access to Childrens Court criminal proceedings…The amendments will also allow a victim's representative and accredited media entities to be present during these criminal proceedings unless the court considers it necessary to exclude them to prevent prejudice to the proper administration of justice or to protect the safety of any person. Otherwise, Childrens Court criminal proceedings not heard on indictment will remain closed to the general public. Offences regarding the prohibition of the publication of certain information, such as a child defendant's identifying information, will continue to operate.*

[6] Which grant the court the power to dismiss charges on the grounds that the accused is of unsound mind or unfit to stand trial or adjourn the hearing of charges because the accused is temporarily unfit to stand trial, respectively

ARTK regards the amendment at (c) above as being uncontroversial. We agree with the Explanatory Note[7] that this amendment is generally consistent with Mental Health Act s. 695 and, that being the case, ARTK says nothing further about it.

However, ARTK is concerned that the amendments at (a) and (b) above are likely to be routinely relied upon by Queensland defence practitioners to exclude journalists from the courtroom and are, consequently, contrary to the Queensland Government's intention of getting journalists into children's courtrooms. ARTK makes this submission on the following basis:

- There is no consistency throughout Australian legislation in relation to when or why a journalist can be excluded from a children's court.[8] Consequently, there is no benchmark ARTK can point to as being the preferable approach that the Queensland Government should adopt.

- The grounds for an exclusion order being made proposed by clause 112 have been drawn by the drafters from the non-publication order regime recently introduced into the *Criminal Law (Sexual Offences) Act 1978*:[9] the Justice Ground mirrors CLSO Act s. 7B(a) and the Safety Ground CLSO Act s. 7B(c).

- ARTK cannot argue with the court being granted the power to govern its own proceedings and does not raise any particular objection to the Justice Ground per se (but see our submissions in relation to the factors going to whether this ground is made out below).

- ARTK is concerned that the Safety Ground will prove fruitful territory for defence lawyers who don't want proceedings to be the subject of reporting. For example, it was the equivalent of that ground in the CLSO Act that was pressed by Bruce Lehrmann when he made the first application for a non-publication order pursuant to the CLSO Act after its non-publication order scheme commenced operation; and, which was the subject of much consideration by His Honour Justice Applegarth on Mr Lehrmann's application for review of the decision to deny him such an order.[10] While his review application ultimately failed, it is worth noting that the specific safety risk Mr Lehrmann raised was the risk of self-harm.[11]

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[7] At p17

[8] In the ACT, the court can only exclude a victim of an offence from the courtroom if it considers it is appropriate to do so having regard to the person's behaviour or expected behaviour or the nature of the person's relationship with the child or young person: *Court Procedures Act 2004* (ACT) s. 72. In NSW, the court may direct any person to leave the proceedings during the examination of any witness if such a direction is in the interests of the child: *Children (Criminal Proceedings) Act 1987* (NSW), s. 10. In NT, the court may order a person to leave any room or place in which the court is being held having regard to to any prejudicial impact on the interests of the youth of the person's presence: *Youth Justice Act 2005* (NT), s. 49. In SA, the court may exclude any person authorised to be in the courtroom if it is necessary to do so in the interests of the proper administration of justice: *Youth Court Act 1993* (SA), s. 24. Tasmanian law is of no assistance in relation to this issue because it makes no provision for a journalist to attend children's court proceedings in the first place: *Magistrates Court (Children's Division) Act 1998* (Tas), s. 11. In Victoria, a court may – with or without an application – order that the whole or part of a proceedings be heard in closed court or that only a specified persons or classes of person be present during the whole or part of proceedings and there is no test applicable as to when such an order can be made: *Children, Youth and Families Act 2005* (Vic) s. 523. In WA, at any hearing or trial relating to a charge against, or any application concerning, a child or where the interests of a child may be prejudicially affected, the Court may order that any persons shall be excluded from the court-room or place of hearing: *The Children's Court of Western Australia Act 1988* (WA) s. 31.

[9] Which in turn drew from the recommendations made in the Hear Her Voice Report

[10] *Lehrmann v QPS & Ors* [2023] QSC 238

[11] Ibid at [21] and [23]

- The problems that beset the Queensland juvenile justice system are well understood, and to highlight just a few:

    - 20% of young people in the 2022/2023 reporting period were responsible for 54.5% of charges before the court and First Nations minors are disproportionately more likely to be the subject of proceedings than others;[12]

    - Over 500 children a month – some as young as 10 or 11 – spent time in a watchhouse during that reporting period where "*there are no facilities suitable for children and no programs offered to children*";[13]

    - Six youths died in detention centres during the 2022/2023 reporting period in relation to two of whom the Child Death Review Board commented, *"Despite the youth justice system existing to try and help young people address the disadvantage and circumstances that contribute to offending, the system appeared ineffective at achieving improvements in safety and wellbeing for either boy. Arguably, their experiences in detention served to cause further trauma, disconnection, and hopelessness*";[14] and

    - Minors who interact with the justice system – both in Queensland and elsewhere – often come from disadvantaged backgrounds. The Children's Court 2022/2023 Annual Report cites South Australian research, equally applicable to the Queensland experience, which found that 89% of children in detention had experienced a combination of maltreatment and household dysfunction and 94% were known to the child protection system.[15] Similarly, the Child Death Review Board notes, "*Many of the children and young people in detention have experienced a life of significant disadvantage and marginalisation, with many being the victims of abuse and neglect. Being confined in a cell for extended periods of time, without interaction with peers, family, culture, and support networks creates an environment of re-traumatisation. Research has shown pre-existing mental health problems are likely exacerbated by experiences during incarceration, such as isolation, boredom and victimisation*".[16]

  In the circumstances, ARTK submits that applications made on the Safety Ground are far more likely to be raised, and to succeed, in Children's Court matters, founded on self-harm risk and poor mental health.

- Once an application is made, the factors clause 112 proposes to insert into subsection 20(3) are, in many case, stacked against a journalist opposing an exclusion order. ARTK notes that these factors have also been borrowed from the CSLO Act s. 7C and, for ease of reference, provide a table comparing s. 7C with proposed subsection 20(3) at **Annexure 2** to this letter.

  The primacy of the principle of open justice and the public interest should fall in the journalist's favour. The same cannot be said for the other nine factors to be added to section 20(3):

    i. *The youth justice principles under the Youth Justice Act 1992*
    Unsurprisingly, there is nothing in the Schedule 1 Principles in favour of children's court proceedings being openly reported. The principles focus on the rights of the child including,

[12] Children's Court of Queensland Annual Report 2022/2023 at p2
[13] Ibid at pp11-12
[14] Child Death Review Board Annual Report 2022-2023 at p22
[15] Ibid at p4
[16] Ibid at p38

but not limited not, the right to privacy. This factor will inevitability favour the exclusion order applicant.

ii. *The age of the child*
ARTK anticipates that the younger the defendant is, the more likely it will be that an exclusion order will be granted (particularly in circumstances of a first offence). In any case involving a child under, say, 15 years of age, this factor will inevitability favour the exclusion order applicant.

iii. *Any special vulnerabilities of the child*
The disadvantaged backgrounds most child defendants come from has been outlined above. This clear vulnerability also falls in favour of an exclusion order being granted.

iv. *Whether the child is unable to meaningfully participate in the proceeding because of the resence of the person proposed to be excluded by the exclusion order*

While journalists are well versed on court conduct and their presence in the courtroom should be wholly unobtrusive, ARTK's members expect to be met with the counter-argument that any publication of a youth criminal matter is adverse to the child participating with the proceedings. This factor could go for or against the exclusion order applicant.

v. *The seriousness of the offence alleged to have been committed by the child*
There is no guidance in either the Explanatory Note or the First Reading Speech about the intended effect of this factor. However, as noted above, it was the Vyleen White case that led to the Queensland Government committing to the amendment of section 20 and from that ARTK infers that this factor is meant to have the effect of rebutting exclusion order applications in circumstances where similarly serious charges apply.

If that is correct then it is by no means clear from the current drafting. Moreover, it is just as much in the public interest to report on cases concerning lesser offences so that the Queensland community can gain a greater understanding of how defendants are dealt with throughout the justice system. Youth Justice Act s. 301 does not discriminate on the basis of the seriousness of the charges concerned: nor should section 20.

ARTK submits that the seriousness of the offence should not be a factor relevant to whether anyone – journalist or otherwise – is excluded from the court and recommends it be deleted.

vi. *Any cultural considerations relating to the child*
"*Aboriginal and Torres Strait Island children continue to be significantly overrepresented in the youth justice system accounting for 53 per cent of all distinct young people convicted in 2022/23. This represents a slight increase from previous years and disturbingly, a higher proportion of the younger group of children convicted are indigenous*".[17] Thus in at least 53% of cases this factor weighs in favour of the exclusion order applicant.

vii. *Whether the presence of the person proposed to be excluded by the exclusion order may prejudice any future court proceedings*
As previously noted, journalists working for accredited media entities know how to behave in court and attend for the purpose of preparing fair and accurate reports of the

[17] At p6

proceedings. There is nothing inherent about reporting any criminal case that should have this effect. This factor should favour the journalist.

viii. *Any submissions made under subsection (4) and any other matter the court considers relevant*
What these may comprise will be particular to the case in question and, consequently, cannot be commented on here.

In summary, the starting point for any exclusion order application is three factors that should favour of the journalist; two which unquestionably favour the applicant plus a further two (age and cultural background) which in a large number of cases will add to the applicant's tally; three which could fall either way; and, one which ARTK has submitted should be deleted. 3:4 as a starting point means the journalist is on a hiding to nothing and results in reporters being excluded from the courtroom.

To resolve this issue, ARTK recommends that the first two factors be given greater weight than the remaining factors, giving journalists a greater change of successfully opposing an exclusion order application.

**Recommendation**
Amend clause 112 of the Bill, in relation to what will become subsection 20(3), by adding the green text below and making the strike through amendments in red (as below):

*(3) In considering whether to make the exclusion order, the court must consider the following matters–*

*(a) the primacy of the principle of open justice;*
*(b) the public interest;*
*and may consider the following matters–*
*(c) the youth justice principles under the Youth Justice Act 1992;*
*(a) the age of the child;*
*(b) any special vulnerabilities of the child;*
*(c) whether the child in unable to meaningfully participate in the proceeding because of the presence of the person proposed to be excluded by the exclusion order;*
~~*(d) the seriousness of the offence alleged to have been committed by the child;*~~
*(g~~h~~) any cultural considerations relating to the child;*
*(h~~i~~) whether the presence of the person proposed to be excluded by the exclusion order may prejudice any future court proceedings;*
*(i~~j~~) any submission made under subsection (4);*
*(j~~k~~) any other matters the court considers relevant.*

We trust this detailed submission assists the Committee's consideration of the requirement for modest but meaningful amendments to ensure those provisions meet the objectives operationally and in law.

Yours sincerely

[redacted]
Georgia-Kate Schubert
On behalf of Australia's Right to Know coalition of media organisations

## ANNEXURE 1

***Key***
*Black – existing s. 20*
*Red/struck-through – words omitted by the Bill*
*Green –words inserted by the Bill*

**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~~

(c) if the proceeding is a criminal proceeding—

(i) a victim, or a relative of a deceased victim, of the offence alleged to have been committed by the child; or

(ii) a person who is a representative of a victim, or of a relative of a deceased victim, of the offence alleged to have been committed by the child; or

*Examples for subparagraph*

*• a person who provides support or assistance to a victim or a relative of a deceased victim*

*• a member of an organisation that is providing support or assistance to a victim, or a relative of a deceased victim, of an offence in relation to a proceeding for the offence*

(iii) a person who, in the court's opinion, has a proper interest in the proceeding; or

(iv) an accredited media entity; or

(d) a witness giving evidence; or

(e~~da~~) a person who is an intermediary under the *Evidence Act 1977*, part 2, division 4C for a witness giving evidence; or

(f~~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

(g~~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~~

(h~~g~~) a representative of the chief executive (child safety) or the chief executive (youth justice); or

(i~~ga~~) the public guardian under the *Public Guardian Act 2014*; or

(j~~gb~~) if the proceeding is a child protection proceeding under the *Child Protection Act 1999*—the chief executive (child safety); or

(k~~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

(l~~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.~~

(2) However, the court may, on application by a party to the proceeding or on its own initiative, make an order (an exclusion order) excluding from the room a person mentioned in subsection (1)(c)(ii), (iii) or (iv) if the court is satisfied that the order is necessary—

(a) to prevent prejudice to the proper administration of justice; or

(b) for the safety of any person, including the child.

(3~~2A~~) In considering whether to make the exclusion order, the court must consider the following matters—

(a) the primacy of the principle of open justice;

(b) the public interest;
(c) the youth justice principles under the *Youth Justice Act 1992*;
(d) the age of the child;
(e) any special vulnerabilities of the child;
(f) whether the child is unable to meaningfully participate in the proceeding because of the presence of the person proposed to be excluded by the exclusion order;
(g) the seriousness of the offence alleged to have been committed by the child;
(h) any cultural considerations relating to the child;
(i) whether the presence of the person proposed to be excluded by the exclusion order may prejudice any future court proceedings;
(j) any submissions made under subsection (4);
(k) any other matter the court considers relevant.

(4~~2B~~) The following persons may make submissions to the court in relation to the making of the exclusion order—
(a) a party to the proceeding;
(b) a person proposed to be excluded by the exclusion order;
(c) another person mentioned in subsection (1), with the leave of the court.

(5~~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~~
(ii) research approved by the chief executive (child safety) or the chief executive (youth justice); 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.~~

(6~~3A~~) Despite subsections (1) and (2), if the court is hearing a matter under the *Mental Health Act 2016*, section 172 or 173, the court must exclude from the room a person mentioned in subsection (1)(c) unless the court is satisfied it is in the interests of justice to permit the person to be present.

(7~~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.

(8~~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.

(9~~6~~) In this section—
**accredited media entity** means an entity listed as an accredited media entity in the Supreme Court's media accreditation policy.
**chief executive (child safety)** means the chief executive of the department in which the *Child Protection Act 1999* is administered.
**chief executive (youth justice)** means the chief executive of the department in which the *Youth Justice Act 1992* 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

(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.

**relative**, of a deceased victim of an offence alleged to have been committed by a child, means—

(a) a spouse, child, stepchild, parent, step-parent, sibling, step-sibling, aunt, uncle, grandparent or grandchild of the deceased victim; or

(b) a child, other than a child mentioned in paragraph (a), for whom the deceased victim had parental responsibility; or

(c) a person who, under Aboriginal tradition or Island custom, is regarded as a person mentioned in paragraph (a) or (b).

**Supreme Court's media accreditation policy** means the media accreditation policy in effect and made under or appended to a practice direction of the Supreme Court.

**ANNEXURE 2**

| ***Criminal Law (Sexual Offences) Act 1978***<br><br>**s. 7C(3)(b)** | **Proposed *Childrens Court Act 1992***<br><br>**s. 20(3)** |
|---|---|
| (i) The primacy of the principle of open justice | (a) The primacy of the principle of open justice |
| (ii) The public interest; | (b) The public interest |
| | (c) The youth justice principles under the *Youth Justice Act 1992* |
| | (d) The age of the child |
| (iii) Any submissions made or views expressed by or on behalf of the complainant about the application | (j) Any submissions made under subsection (4)<br><br>*NB: where proposed s. 20(4) allows a party to the proceeding, a person proposed to be excluded by an order or any other person in s. 20(1) to make submissions in relation to the making of an exclusion order* |
| (iv) Any special vulnerabilities of the complainant or the defendant | (e) Any special vulnerabilities of the child |
| | (f) Whether the child is unable to meaningfully participate in the proceeding because of the presence of the person proposed to be excluded by the exclusion order |
| *NB: while s. 7C(3)(b) does not have an equivalent of (g) ARTK notes that a non-publication order application can only be made in relation to charges for a prescribed sexual offence, all of which are serious sexual offence* | (g) The seriousness of the offence alleged to have been committed by the child |
| (v) Any cultural considerations relating to the complainant or the defendant | (h) Any cultural considerations relating to the child |
| (vi) The potential effect of publication in a rural or remote community | |
| (vii) The potential to prejudice any future court proceedings | (i) Whether the presence of the person proposed to be excluded by the exclusion order may prejudice any future court proceedings |
| (viii) The history and context of any relationship between the complainant and the defendant (including, for example, any domestic violence history) | |
| (ix) Any other matter the court considers relevant | (k) Any other matter the court considers relevant |