

Strengthening Community Safety Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Strengthening Community Safety Bill 2023.

Policy objectives and the reasons for them

Community safety is a key priority of the Queensland Government.

On 29 December 2022, the Queensland Government announced ten new measures aimed at keeping the community safe. The objective of the Bill is to give effect to the announced legislative reforms and strengthen youth justice laws.

Responding to serious offending relating to motor vehicles

Offending involving the unlawful use of motor vehicles is often accompanied by dangerous, risk-taking behaviour that places both the offender and the community at risk of harm, including death. Recent data identifies that unlawful use of a motor vehicle offences represent a greater proportion of youth crime than in previous years. In terms of reported crime, in 2020-21, unlawful use of a motor vehicle became the fourth most prevalent offence committed by child offenders in Queensland, recording the largest increase in the proportion of all child offenders.

There is also an increasing trend where offenders post images and recordings of their offending online and on social media platforms, particularly in relation to motor vehicle offences. By publishing images and recordings of their criminal acts, these offenders encourage others, particularly young people, to engage in similar criminal behaviour involving vehicles.

The Bill seeks to increase the maximum penalties for the offence of unlawful use or possession of motor vehicles, aircraft or vessels (section 408A of the Criminal Code (the Code)), through the amendment of existing penalties and through the introduction of a number of circumstances of aggravation, including where an offender has published material of their offending behaviour on social media. The increases to the maximum penalties reflect the seriousness of this type of offending and the community's denunciation of such conduct.

Strengthening our youth justice laws

The Bill also seeks to respond to the small cohort of serious repeat young offenders who engage in persistent and serious offending with the following amendments to the *Bail Act 1980* (Bail Act), *Youth Justice Act 1992* (YJ Act) and *Police Powers and Responsibilities Act 2000* (PPR Act):

- strengthening the youth justice bail framework through:
 - providing that it is an offence for children to breach a condition of their bail undertaking;
 - extending and expanding the trial of electronic monitoring as a condition of bail for a further two years and to include eligible 15-year-olds;
 - removing the requirement for police to consider alternatives to arrest if they reasonably suspect a child on bail for a prescribed indictable offence or certain domestic violence offences has contravened or is contravening a bail condition;
- strengthening the youth justice sentencing framework through:
 - clarifying that a child's bail history must be taken into account during sentencing;
 - creating the ability of a sentencing court to declare a child a serious repeat offender in certain circumstances to ensure considerations such as community safety are paramount during sentencing and that serious repeat offenders are held in detention on sentence for longer than would normally be the case. This will mean that, where appropriate, child offenders will have the opportunity to complete the necessary rehabilitation programs identified in any pre-sentence report;
 - enabling conditional release orders to operate for a greater period of time;
 - requiring certain child offenders serve their suspended term of detention if they breach their conditional release orders, subject to special circumstances;
- expanding the list of offences included within the definition of 'prescribed indictable offence' to facilitate greater operation of provisions of the YJ Act aimed at serious repeat offenders, including the show cause provision under section 48AF and the new sentencing regime for children declared serious repeat offenders (with the exception that the former definition of prescribed indictable offence will continue to apply to electronic monitoring as a condition of bail under section 52AA);
- enabling the transfer of persons who have turned 18 years on remand or serving a sentence from youth detention centres to adult correctional centres; and
- establishing statutory arrangements similar to the Suspected Child Abuse and Neglect (SCAN) system in the *Child Protection Act 1999* to ensure the continuation of multi-agency collaborative panels (MACPs) which provide intensive case management and holistic support for children identified as high risk or requiring a collaborative response through a multi-agency and multi-disciplinary approach.

Achievement of policy objectives

Amendments to the Criminal Code

The Bill seeks to amend the Code to give effect to legislative amendments arising from the 29 December 2022 announcement, namely:

- increasing the maximum penalty for unlawful use or possession of motor vehicles, aircraft or vessels to 10 years imprisonment;
- introducing a new circumstance of aggravation with a maximum penalty of 12 years imprisonment for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where the offender has published material advertising their involvement in, or of, the offending on social media; and
- introducing new circumstances of aggravation with a maximum penalty of 14 years imprisonment for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where the offending occurs at night or where the offender uses or threatens violence, is or pretends to be armed, is in company or, damages or threatens to damage any property.

The maximum penalty for unlawful use or possession of motor vehicles, aircraft or vessels where the offender uses or threatens to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence under section 408A(1A) of the Code will also be increased from 10 to 12 years.

Clause 9(2) of the Bill provides that charges alleging the circumstances of aggravation under section 408A(1C)(b)(i), (ii) and (iv) must be heard on indictment and cannot be heard and decided summarily (unless the value of property damaged under section 408A(1C)(iv) is less than the prescribed value (currently \$30,000)).

Alongside these amendments to the offences under section 408A of the Code, the reverse onus for the defence under former section 408A(1C) will be amended to ensure its compatibility with human rights. Former section 408A(1C) creates a defence for an accused person to prove that they had the lawful consent of the owner (as opposed to the person in lawful possession) of the motor vehicle, aircraft or vessel to its use or possession. This requires an accused person to prove the defence on the balance of probabilities, thereby reversing the onus of proof. Acknowledging that matters required to be proved are not matters uniquely within an accused person's knowledge (although the defendant may be best placed to provide this information), the Bill seeks (in new sections 408A(1D) and (1E)) to remove the legal burden of proof being on an accused person to prove the defence. Instead, the Bill seeks to place an evidential burden on an accused person. The burden of proof will remain with the prosecution to prove the offence beyond a reasonable doubt. The Bill contains transitional provisions which provide for the operation of new sections 408A(1D) and (1E) of the Code.

As a result of the amendments to create a circumstance of aggravation where the offender damages or threatens to damage any property, the existing circumstance of aggravation relating to wilful damage of a vehicle under former section 408A(1B) of the Code has effectively been amalgamated into new section 408A(1C)(b)(iv). The Bill

includes transitional provisions to provide for the commencement and continuation of proceedings for an offence against former section 408A(1B) prior to the commencement of the Bill.

Amendments to the *Bail Act 1980* and the *Youth Justice Act 1992*

Strengthening the youth justice bail framework

Breach of bail as an offence for children

Currently, section 29 (Offence to breach conditions of bail) of the Bail Act provides that an adult defendant must not break any condition of the undertaking on which the defendant was granted bail requiring their appearance before a court. It is an offence punishable by a maximum of 40 penalty units or 2 years imprisonment.

Clause 5 of the Bill seeks to remove the restriction within this section which prevents the offence from applying to child defendants. This will mean that children can be charged with an offence if they breach a condition of their bail.

As identified in the Human Rights Statement of Compatibility, clause 5 is incompatible with the *Human Rights Act 2019* (HR Act). To ensure that the policy objective is met, clause 5 contains an override declaration which provides that the HR Act does not apply to section 29 of the Bail Act as it applies to children.

Electronic monitoring

Section 52AA of the YJ Act was introduced in 2021 to allow a court, in certain circumstances, to impose on a grant of bail to a child who is at least 16 years, has committed a prescribed indictable offence and has been previously found guilty of at least one indictable offence, a condition that the child must wear a monitoring device while released on bail.

Clause 14 of the Bill extends the operation of section 52AA of the YJ Act, which is currently due to expire on 30 April 2023, and lowers the minimum age for which electronic monitoring can be imposed as a condition of bail from 16 to 15 years of age.

Section 52AA was introduced to facilitate a trial of electronic monitoring as a bail condition. Uptake was low, possibly because the presumption against bail was introduced at the same time and targeted at the same cohort. While there are some benefits associated with electronic monitoring, the review of the trial was not able to confirm its effectiveness in deterring offending behaviour, nor whether any changes to offending can be attributed to engagement with the trial, because of the small sample size.

However, the number of electronic monitoring conditions began to increase towards the end of the trial, and there is reason to expect that a further trial period will result in a sample size that will reveal more useful information.

Police powers to arrest for contravention of bail conditions

The PPR Act includes a power for police to arrest without warrant a person, including a child, who the police officer reasonably suspects has breached or is about to breach a condition of bail. Section 59A of the YJ Act provides guidance to police officers in the application of that provision requiring a consideration of alternatives prior to arrest. This is to ensure that, for example, a minor breach of a curfew with no evidence of reoffending could be dealt with by way of a warning rather than arrest.

The Bill will also dispense with the mandatory requirement to consider alternatives for a child who is on bail for a prescribed indictable offence, or for an offence of contravention of domestic violence order or contravention of police protection notice under the *Domestic and Family Violence Prevention Act 2012*. Police still retain the discretion to consider alternatives in those circumstances.

As a result of this amendment, a consequential amendment to the PPR Act is required.

Strengthening the youth justice sentencing framework

Sentencing courts to consider a child's bail history

The Bill inserts a clarifying provision in the YJ Act confirming that a court is to take into account any bail history information put before it in sentencing. This could include information about compliance or non-compliance with bail conditions, or reoffending or abstaining from offending while on bail. This will enhance community confidence in the sentencing process.

Serious repeat offender declaration

Clause 21 of the Bill introduces new sections 150A and 150B of the YJ Act . The provisions seek to provide a separate sentencing regime for serious repeat offenders. The regime enables courts, on application by the prosecution, to declare a child a 'serious repeat offender' if:

- the court is sentencing the child in relation to a prescribed indictable offence;
- the child has previously been sentenced on at least one occasion to a detention order for a prescribed indictable offence;
- a pre-sentence report has been received and considered;
- the court has had regard to the child's previous offending history and bail history, any efforts of rehabilitation by the child, including rehabilitation carried out under a court order, and any other matter relevant the court considered relevant; and
- the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence.

If a child is declared a serious repeat offender, the court must still consider the sentencing principles under section 150 of the YJ Act, however, the court must have *primary* regard to the following sentencing considerations:

- the need to protect members of the community;
- the nature and extent of violence, if any, used in the commission of the offence;
- the extent of any disregard by the child in the commission of the offence for the interests of public safety;
- the impact of the offence on public safety; and
- the child's previous offending history and bail history.

New section 150B provides for the duration of a declaration once made. Where a subsequent court is sentencing a child for a prescribed indictable offence committed during the relevant period and the original court was of a higher or like jurisdiction to the subsequent court, the subsequent court must have primary regard to the above sentencing considerations contained in new section 150A(3)(a) to (e) of the YJ Act.

A relevant period is defined under new section 150B(4) as meaning 12 months from the day the declaration was made by the original court or, where the child was detained by the original court, commencing on the day the declaration is made and ending 12 months after the day the child is released from detention. This is intended to cover any offences that may occur during the child's detention.

As identified in the Human Rights Statement of Compatibility, clause 21 of the Bill is incompatible with the HR Act. To ensure that the policy objective is met, clause 21 contains an override declaration which provides that the HR Act does not apply to new sections 150A and 150B of the YJ Act.

Conditional release orders

A court making a detention order in relation to a child can immediately suspend the order and make a conditional release order, which results in the release of the child subject to supervision and participation in programs. Currently, the maximum period of a conditional release order is 3 months. If a child breaches their conditional release order (including by committing a further offence), they must demonstrate why they should not be returned to detention and be offered a further opportunity to comply with the conditional release order.

Clause 22 of the Bill seeks to increase the maximum period for which a conditional release order can be imposed to 6 months to facilitate completion of programs and provide a greater period of supervision.

Clause 28 of the Bill seeks to strengthen the consequences for breaching a conditional release order which was made in relation to a prescribed indictable offence. The amendments require the court in these circumstances to revoke the conditional release

order and order the child serve the sentence of detention for which the conditional release order was made, unless the court considers that there are special circumstances.

As identified in the Human Rights Statement of Compatibility, clause 28 is incompatible with the HR Act. To ensure that the policy objective is met, clause 28 contains an override declaration which provides that the HR Act does not apply to new section 246A of the YJ Act.

Expanding the scope of ‘prescribed indictable offence’

The Bill amends the dictionary definition of ‘prescribed indictable offence’, which applies to a number of provisions in the YJ Act, to include further offences.

Transfer of persons turning or who have turned 18 years from youth detention centres

The Bill establishes new arrangements for the transfer of detainees who have become adults to the adult correctional system, to allow detention centres to focus on providing rehabilitation services to children.

These provisions enliven some human rights issues, which are discussed in the Human Rights Statement of Compatibility.

Multi-agency collaborative panels (MACPs)

MACPs have existed since 2021, and have proved effective in bringing together relevant agencies and non-government service providers to ensure timely and coordinated assessments of the needs of serious repeat offenders, and respond to those needs.

The Bill establishes MACPs in legislation in a way similar to the establishment of the SCAN system under the *Child Protection Act 1999*.

Alternative ways of achieving policy objectives

The Human Rights Statement of Compatibility discusses in detail whether there are any less restrictive (on human rights) and reasonably available ways to achieve the policy objectives underpinning the Bill. It is considered there are no such alternative ways to achieve the policy objectives.

Estimated cost for government implementation

The amendments in the Bill are likely to increase demand in both the adult and youth criminal justice system thereby resulting in operational impacts for Queensland Courts, the Queensland Police Service, the Office of the Director of Public Prosecutions, Legal Aid Queensland and Youth Justice Services. Funding required beyond existing agency resources is subject to normal budget processes.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles (FLPs) outline in the *Legislative Standards Act 1992* (LSA) by achieving the appropriate balance between individual rights and liberties and the protection of the broader Queensland community. Potential breaches of the FLPs are addressed below.

Amendments to the Criminal Code

Clause 8 of the Bill increases the maximum penalties for unlawful use or possession of motor vehicles, aircraft or vessels simpliciter and where the offender uses or threatens to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence. The amendments may impact on the rights and liberties of individuals, however, the increases are considered justified to address and reflect the community's denunciation of this offending behaviour.

Clause 8 of the Bill also creates new circumstances of aggravation for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where:

- the offending is committed in the night;
- the offender uses or threatens to use actual violence, is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance, is in company with 1 or more persons, and damages, or threatens or attempts to damage, any property;
- the offender publishes material on a social media platform or an online social network to advertise their involvement in the offence or the offending.

The creation of new circumstances of aggravation may impact on the rights and liberties of individuals; however, they are considered justified to address and reflect the community's denunciation of this offending behaviour.

Clause 8 of the Bill also amends the defence in former section 408A(1C) of the Code. The amendments alter the operation of former section 408A(1C) to place only the evidential burden on an accused person. Whilst the evidential onus of proof is still reversed, it is considered justified as the defendant is best placed to provide evidence that they had the lawful consent of the owner of the motor vehicle, aircraft or vessel to its use or possession.

Amendments to the *Bail Act 1980*, the *Youth Justice Act 1992* and the *Police Powers and Responsibilities Act 2000*

Strengthening the youth justice bail framework

Breach of bail as an offence for children

Clause 5 removes the restriction within section 29 of the Bail Act which prevents the offence from applying to child defendants. This will mean that children can be charged with an offence if they breach a condition of their bail.

Enabling children to be charged with an offence of breach of bail under section 29 of the Bail Act will impact on the rights and liberties of child defendants as it exposes them to criminal proceedings and penalties. This is considered justified to ensure that children comply with bail conditions.

Clause 6 of the Bill provides that this offence will only apply to children who enter into an undertaking after commencement. This ensures that the amendment does not adversely rights and liberties retrospectively (section 4(3)(g) of the LSA).

Extension and expansion of electronic monitoring device trial

Clause 14 extends and expands the existing provisions at section 52AA of the YJ Act, which enable a trial of electronic monitoring devices as a condition of bail.

The electronic monitoring device trial's impact on the rights and liberties of children was assessed when section 52AA was inserted into the YJ Act by the *Youth Justice and Other Legislation Amendment Act 2021* (2021 Act). It is considered that the amendments in this Bill will have the same impact on the rights and liberties of children, including on the right to privacy and confidentiality. These matters are also discussed in the Human Rights Statement of Compatibility.

As noted above, uptake during the current electronic monitoring device trial was low (8 children) resulting in the review of the trial not being able to confirm its effectiveness in deterring offending behaviour. The extension of the trial for a further two years and expansion of the criteria to include 15-year-olds will increase the potential cohort size of the trial, which in turn will better enable the Government to determine the effectiveness of the trial in achieving its objectives.

As outlined in the Explanatory Notes to the 2021 Act, the electronic monitoring device trial facilitates an appropriate level of monitoring while a child is on bail, deterring them from committing further offences and, in so doing, protecting the community. The existing safeguards will be retained, including the requirement for a child to have allegedly committed a prescribed offence and been convicted previously for an indictable offence. The power to order an electronic monitoring condition will continue to be limited to the courts and may only occur following a comprehensive assessment of the child's ability to comply.

The provisions will be subject to a new sunset clause on 30 April 2025 and a further review prior to any Government decision about the future use of electronic monitoring devices in the youth justice system.

In light of the above limitations and safeguards on the use of the electronic monitoring orders and the intention to further review their efficacy prior to any determination on future use, it is considered that the amendments have sufficient regard to the rights and liberties of children.

Police powers to arrest for contravention of bail conditions

Clause 15 of the Bill amends section 59A of the YJ Act to provide that a police officer is not required to consider alternatives to arrest for contravening a bail condition, if the grant of bail related to a prescribed indictable offence, contravention of a domestic violence order, or contravention of a police protection notice. This may impact on a child's rights and liberties, as it may increase the chances of a child being arrested for breaching their bail conditions.

However, new section 59AA provides that police officers will still have the discretion to take actions other than arrest (e.g. take no action, issue a warning, or make an application to vary or revoke bail). Further, a police officer may take into account the seriousness of the contravention or likely contravention, whether the child has a reasonable excuse, the child's particular circumstances, and any other relevant information of which the police officer is aware, in deciding whether arrest is the most appropriate course of action.

Decisions by police officers, in these circumstances, will also be subject to the youth justice principles under the YJ Act.

It is, therefore, considered that the amendments have sufficient regard to the rights and liberties of children in these circumstances.

Strengthening youth justice sentencing framework

Serious repeat offender declaration

Clause 21 introduces a new sentencing regime for children declared to be 'serious repeat offenders'. Under a serious repeat offender declaration, the court must have primary regard to certain matters, including the need to protect members of the community. A serious repeat offender declaration will remain current for 12 months and binds subsequent courts of a like or lower jurisdiction when sentencing a child for a further prescribed indictable offence which was committed within the relevant period the declaration is in operation.

It is expected that courts sentencing a serious repeat offender will more likely impose harsher penalties, including imposing a period of detention. The regime will operate with a degree of retrospectivity in that it will apply to sentences for offences committed before commencement. This breaches section 4(3)(g) of the LSA.

In this regard, Clause 21 will impact on the rights and liberties of child offenders; however, it is considered justified to address the acute problem presented by serious

repeat offenders who continue to put the community at harm. It is noted that there are provisions in the Bill to require a court to provide reasons for making the declaration. Further, the Bill provides that a child is still able to make an application for review of, and appeal, the making of a declaration as though it were part of the sentence. This ensures that the regime is still subject to appropriate review and appeal.

Conditional release orders

Clause 22 of the Bill increases the maximum operational period for a conditional release order from 3 to 6 months. Clause 22 will operate with a degree of retrospectivity in that it will apply to sentences for offences committed prior to commencement. This breaches section 4(3)(g) of the LSA; however, it is considered justified to facilitate a greater period of supervision and rehabilitation of a child offender.

Clause 28 requires a court dealing with a breach of a conditional release order which was made in relation to a prescribed indictable offence to revoke the conditional release order and order the child serve the sentence of detention for which the conditional release order was made, unless the court considers that there are special circumstances. This increases the likelihood that the child will serve a period of detention. Similar to clause 22, clause 28 will operate with a degree of retrospectivity in that it will apply to conditional release orders which were imposed before commencement (although it will not apply to breaches that occur prior to commencement). This breaches section 4(3)(g) of the LSA.

In this regard, Clause 28 will impact on the rights and liberties of child offenders; however, it is again considered justified to address youth offenders who continue to put the community at harm. The court may, however, consider whether there are special circumstances when deciding whether to revoke the order and order the child to serve a period of detention. If there are special circumstances, the court may otherwise deal with the child pursuant to section 246(2) of the YJ Act.

Expanding the scope of 'prescribed indictable offence'

Clause 41 amends the dictionary definition of 'prescribed indictable offence' to include the following new offences into the definition: unlawful use or possession of a motor vehicle under section 408A(1) of the Code where the child is alleged to be a passenger and entering or being in premises with the intent to commit an indictable offence under section 421(1) of the Code.

The definition of prescribed indictable offence applies to a number of provisions throughout the YJ Act, including the presumption against bail under section 48AF. As noted in the Explanatory Notes to the 2021 Act, section 48AF raises potential FLP issues as it reverses the onus of proof (section 4(3)(d) of the LSA) and has retrospective application (section 4(3)(g) of the LSA,).

The amendments in this Bill are limited to adding to the list of prescribed indictable offences and the existing safeguards will remain in place. These include the limited application of the provisions to a small cohort of children (i.e. those charged with a prescribed indictable offence, if the offence was alleged to have been committed while

at large or awaiting trial or sentence) and clear guidance on the considerations to be taken into account by the courts.

It is considered that the inclusion of additional offences and their retrospective application, are justified on the basis of ensuring the community is safe from serious repeat offenders.

Transfer of persons turning or who have turned 18 years from youth detention centres

The Bill amends the current provisions in relation to the transfer of 18 year-olds sentenced to detention in a youth detention centre to adult correctional facilities, and makes new provisions to enable the transfer of 18 year-olds on remand. These provisions include discretionary powers for the chief executive to decide to transfer a young person to adult correctional facilities in limited circumstances.

Section 4(3)(a) of the LSA states that whether the legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. Section 4(3)(b) of the LSA requires that provisions are consistent with the principles of natural justice.

These provisions may impact on the rights and liberties of 18-year-olds in detention, for example their continued access to the services, programs and interventions. The provisions may also impact on the rights of vulnerable 18-year-olds whose needs may be better addressed in a youth detention setting.

However, these impacts need to be balanced with the right of children in detention to be segregated from adults (section 33(1) of the HR Act).

The provisions are limited in their scope to those young people in detention who have, or are close to, turning 18-years-old. The inclusion of the following safeguards also ensure that the provisions are consistent with natural justice and procedural fairness. Prior to determining whether to transfer a young person, the chief executive must provide a written notice to the young person, provide an opportunity to comment and facilitate a consultation with a lawyer. The Bill also specifies the issues the chief executive may consider in deciding whether to proceed with a transfer, including any submission made by the affected person, the vulnerability of the person, and the interventionist and rehabilitation services available if the person is transferred.

The decision of the chief executive is also subject to review by the Childrens Court.

Multi-agency collaborative panels

Right to privacy - Information sharing provisions

The establishment of MACPs, and associated information sharing arrangements, raises potential FLP issues in relation to a person's right to privacy and confidentiality.

Provisions authorising or requiring particular entities to share information are not uncommon, particularly information relating to child protection or crime prevention. While information about children will be shared amongst MACP members, it is considered justified as the purposes are directed to meeting the needs and reoffending behaviour of children who fall within the scope of operation of the MACP system.

In addition, section 297G(2) of the YJ Act limits the sharing of information about a particular child with MACP members to the extent that the information will assist that member to provide services or referrals or otherwise address the child's needs. This ensures the amendments represent the least curtailment of the right to privacy possible.

It is, therefore, considered that the amendments have sufficient regard to the rights and liberties of children who are engaged with MACPs.

Administrative powers – categories of children

Clause 37 of the Bill provides that the chief executive must decide the categories of children who may be referred to the MACP system.

Section 4(3)(a) of the LSA states that whether the legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

In reaching a decision as to the category of children who may be referred, the chief executive will be limited by the purpose of the MACP system at new section 282J, that is meeting the needs of particular children charged with offences or at risk of offending. New section 282L of the YJ Act provides that in deciding the category of children who may be referred to the MACP system, they must consult the chief executives of the other core members. This will ensure that the chief executive considers a wide variety of factors before reaching a decision on a category.

The chief executive's decision in relation to the category of children who may be referred to the MACP system will be subject to judicial review under the *Judicial Review Act 1991*.

In addition, the decision as to whether to accept the referral of specific children will be one for the MACP members based on the child's individual circumstances.

Accordingly, it is considered that these provisions are sufficiently defined and subject to appropriate review.

Consultation

The Government invited community consultation on the proposed announcements via an online survey portal. The Government received 197 submissions through the website and four via email.

Consistency with legislation of other jurisdictions

Amendments to the Bail Act

Australian jurisdictions have differing approaches to breach of bail offences in relation to children. For example New South Wales and Tasmania provide an equivalent offence for failing to appear in accordance with an undertaking but do not specifically provide for breaching of bail conditions, whilst Victoria has an offence for failure to appear and breaching of bail conditions – the latter does not apply to children (see section 30A of the Bail Act 1977 (Vic)).

Amendments to the Criminal Code

Australian jurisdictions have differing offences, including circumstances of aggravation, and sentencing schemes to cover unlawful use or possession of motor vehicles, aircraft or vessels.

Maximum penalties for offending related to the unlawful use or possession of motor vehicles, simpliciter, in other Australian jurisdictions range from 2 years to 10 years imprisonment.

Several jurisdictions have aggravated offences relating to the unlawful use or possession of motor vehicles. In Western Australia, for example, under section 378 of the *Criminal Code Compilation Act 1913* (WA), if the offender drives the motor vehicle dangerously, they are liable to an increased penalty of 8 years imprisonment (which is greater than 7 years imprisonment for the simpliciter offence). Similarly, in the Northern Territory, section 218 of the *Criminal Code Act 1983* (NT) contains a greater maximum penalty of 7 years imprisonment for circumstances of aggravation, including if the offender causes injury to any person or any danger to the lives or safety of the public or any member of it.

Amendments to the Youth Justice Act 1992

Electronic monitoring

Three Australian jurisdictions (Western Australia, Northern Territory and South Australia) permit electronic monitoring of children in certain circumstances. Electronic monitoring is also used in New Zealand for children on bail.

The South Australian electronic monitoring program caters for bail conditions, including twenty-four hour curfew monitoring, curfew between specified hours, and gradual release from prison as a way to re-integrate child offenders in the community. In Western Australia, electronic monitoring is only available for sentenced cases, and may be used for supervised release orders. Electronic monitoring in the Northern Territory is a sentencing option and may be used for children on bail.

Police powers to arrest for contravention of bail conditions

All other Australian jurisdictions allow for a child to be arrested for contravening their bail conditions or the police officer believes on reasonable grounds they will contravene their bail conditions.

Expanded application of presumption against bail

A number of Australian jurisdictions have presumptions against bail for child defendants in specified circumstances. The additions of passengers in a car in relation to unlawful use or possession of a motor vehicle offences, and entering or being in premises with intent to commit an indictable offence, are unique to Queensland.

Court must consider bail history when sentencing

No other Australian jurisdiction refers specifically to bail history being a consideration upon sentencing in their legislation. In other jurisdictions, the court when sentencing can consider any other relevant factor or offending history, which may include bail history.

Serious repeat offender declaration

South Australia and Western Australia have separate sentencing regimes for serious repeat youth offenders.

South Australia's regime under Part 3, Division 4 of the *Sentencing Act 2017* (SA) enables a child to be declared a recidivist young offender in certain circumstances. The effect of the declaration is that the court is not bound to ensure that the sentence imposed is proportional to the offence and any non-parole period fixed in relation to the sentence must be at least four-fifths the length of the sentence.

The proposed serious repeat offender declaration contained in the Bill adapts sections 124 and 125 of Western Australia's *Young Offenders Act 1994* (WA Act). Section 124 of the WA Act provides a test to determine whether Part 7, Division 9 (Dealing with young persons who repeatedly commits serious offences) of the WA Act applies to a child offender. The test requires the following conditions to be met:

- the offender is a person who has committed and been found guilty of an offence for which a custodial sentence (sentence 1) was imposed; and
- after being released from custody having served a portion or the whole of sentence 1, the offender committed and was found guilty of another offence for which another custodial sentence (sentence 2) was imposed; and
- after being released from custody having served a portion or the whole of sentence 2, the offender committed the current offence; and
- the court, after taking into account the offender's history of re-offending after release from custody, is satisfied that there is a high probability that the offender would commit further offences of a kind of which custodial sentences could be imposed.

If the court is satisfied under section 124 of the WA Act, section 125 of the WA Act provides that the sentencing court is to give primary consideration to the protection of the community ahead of all other principles and matters that apply to children.

The Western Australia Court of Appeal¹ has considered that the ‘high probability’ test in section 124 of the WA Act does not involve being satisfied to a high degree of probability; rather, a court must do nothing more than be reasonably satisfied that the chances are such that there is a ‘high probability’ that the offender would reoffend in the relevant way. ‘High probability’ means a probability that is more than a bare probability and less than a certainty.

Transfer of persons turning or who have turned 18 years from youth detention centres

The new amendments propose trigger points for the transfer of young persons in the youth detention centre to adult correctional centres. This regime applies to young persons on remand or serving a sentenced order.

A similar approach is adopted in the Northern Territory. Under the *Youth Justice Act 2005* (NT) a detainee who turns 18-years-old while serving a sentence of detention or on remand in custody must be transferred to an adult correctional centre within 28 days of turning 18. The Chief Executive Officer may direct that the automatic transfer does not apply in relation to youth who have six months or less remaining on their sentence or if they are remanded for a period less than six months.

New South Wales, Western Australia and Victoria allow for the transfer of children under 18-years-old to adult correctional centres. In the ACT, once a person reaches 18-years-old they can be transferred to adult prison, whether or not they are on remand or on a sentence.

Multi-agency collaborative panels

Multi-agency approaches to service coordination and information sharing have been established in the United Kingdom, United States of America and New Zealand in the domestic violence and child protection contexts to manage serious family violence risk. South Australia has established the Multi-Agency Protection Service, and Tasmania has established the Safe Families Coordination Unit.

The proposed amendments at clause 37 of the Bill are consistent with the child protection SCAN system at Part 3 of the *Child Protection Act 1999*.

¹ JSA v State of Western Australia [2012] WASCA 25

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

This clause provides the short title of the Act is the *Strengthening Community Safety Act 2023*.

Part 2 Amendment of Bail Act 1980

Clause 2 Act amended

This clause states that the part amends the *Bail Act 1980*.

Clause 3 Amendment of s 11 (Conditions of release on bail)

This clause makes a consequential amendment to replace reference to former section 29(2)(c) with new renumbered section 29(2)(b).

Clause 4 Amendment of s 11AB (Condition requiring completion of DAAR course)

This clause makes a consequential amendment to replace reference to former section 29(2)(c) with new renumbered section 29(2)(b).

Clause 5 Amendment of s 29 (Offence to breach conditions of bail)

Subclause (1) omits section 29(2)(a).

Subclause (2) provides for the renumbering of provisions as sections 29(2)(a) and (b).

Subclause (3) inserts new section 29(3) which contains an override declaration. This provides that insofar as section 29 relates to a child, the HR Act does not apply. In accordance with section 45(2) of the HR Act, this provision will expire 5 years after commencement.

Clause 6 Insertion of new s 50

This clause inserts new section 50 (Transitional provision for Strengthening Community Safety Act 2023). New section 50 provides for a transitional provision which applies to the operation of amended section 29 in relation to children. The provision operates to confirm that the offence at section 29 of the Bail Act only applies to children if their bail undertaking is entered into after commencement of the Act.

Part 3 Amendment of Criminal Code

Clause 7 Code amended

This clause states that the part amends the Criminal Code.

Clause 8 Amendment of s 408A (Unlawful use or possession of motor vehicles, aircraft or vessels)

Subclause (1) amends section 408A(1) to provide a maximum penalty of 10 years for the simpliciter offence of unlawful use or possession of motor vehicles, aircraft or vessels.

Subclause (2) amends section 408A(1A) to provide a maximum penalty of 12 years imprisonment for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where the offender uses or intends to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence.

Subclause (3) inserts new subsection 408A(1B) to provide that if the offender publishes material on a social media platform or an online social network to advertise the offender's involvement in the offence or the act or omission constituting the offence, they are liable to 12 years imprisonment.

Subclause (3) also replaces current section 408A(1B) with new subsection 408A(1C) to provide that in the following circumstances the offender is liable to a maximum of 14 years imprisonment:

- a) the offence is committed in the night;
- b) the offender:
 - i) uses or threatens to use actual violence;
 - ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance;
 - iii) is in company with 1 or more persons; or
 - iv) damages or threatens or attempts to damage any property.

Subclause (3) also renumbers and replaces current section 408A(1C) with new subsection 408A(1D) and 408A(1E) to reflect the insertion of the new circumstances of aggravation at section 408A(1B) and, ensure the provision is compatible with human rights.

Former section 408A(1C) provides an exculpatory provision for an accused person to prove that they had the lawful consent of the owner (as opposed to the person in lawful possession) of the motor vehicle, aircraft or vessel to its use or possession. This requires an accused person to prove the matters contained in former section 408A(1C) on the balance of probabilities, thereby reversing the onus of proof. Acknowledging that

matters required to be proved are not matters uniquely within an accused person's knowledge (although the defendant may be best placed to provide this information), new sections 408A(1D) and (1E) remove the legal burden of proof being on an accused person.

New subsection 408A(1E) identifies that the accused person bears to evidential burden to prove these matters. The burden of proof will remain with the prosecution to prove the offence beyond a reasonable doubt.

Subclause (4) inserts new subsection 408A(3) to provide a definition for 'advertise' and 'material'.

Clause 9 Amendment of s 552BB (Excluded offences)

Subclause (1) amends the reference to the maximum penalty for the offence under section 408A(1A) to reflect the increased maximum penalty of 12 years imprisonment.

Subclause (2) replaces reference to section 408A(1C) as an excluded offence and provides that the following circumstances are excluded offences:

- The offender is liable to imprisonment for 14 years under section 408A(1C)(b)(i) or (ii);
- The offender is liable to imprisonment for 14 years under section 408A(1C)(b)(iv), the value of any damage caused to property is equal to or more than the prescribed value and the offender does not plead guilty.

Clause 10 Insertion of new pt 9, ch 107

Chapter 107 Transitional provisions for Strengthening Community Safety Act 2023

New section 758 provides that former section 408A(1B) continues to apply in relation to proceedings against a person who has committed an offence prior to commencement and the person may be convicted of and punished as if the *Strengthening Community Safety Act 2023* had not commenced.

New section 759 provides that new sections 408A(1D) and (1E) apply in relation to offences under section 408A(1) and former section 408A(1B) prior to commencement, whether proceedings were taken before or after commencement of the *Strengthening Community Safety Act 2023*. Further, former section 552BB, as it applied to former section 408A(1B), continues to apply in relation to proceedings against a person who committed an offence prior to commencement.

Part 4 Amendment of Police Powers and Responsibilities Act 2000

Clause 11 Act amended

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

Clause 12 Amendment of s 367 (Arrest of person granted bail)

This clause amends the note in section 367(3)(a)(i) to reflect the amendments made to section 59A and new section 59AA of the *Youth Justice Act 1992*.

Part 5 Amendment of Youth Justice Act 1992

Clause 13 Act amended

This clause states that the part amends the *Youth Justice Act 1992*.

Clause 14 Amendment of s 52AA (Court may impose monitoring device condition)

Subclause (1) replaces reference to a child being of at least 16 years of age to 15 years.

Subclause (2) replaces the sunset period for section 52AA to 4 years.

Subclause (3) inserts the definition of ‘prescribed indictable offence’ that has applied since section 52AA was inserted in 2021. This is to preserve the integrity of the monitoring device trial being facilitated by the section, while the definition of ‘prescribed indictable offence’ for other purposes of the *Youth Justice Act 1992* is being amended in schedule 4.

Clause 15 Amendment of s 59A (Police officers must consider alternatives to arrest for contraventions of bail conditions)

Clauses 15 and 16 have the effect that where a child is on bail for a prescribed indictable offence (defined in schedule 4), a contravention of a domestic violence order or a contravention of a police protection notice, police officers will not be compelled to consider the alternatives to arrest required in section 59A. However, they will retain the discretion to do so.

Clause 15 excludes prescribed indictable offences and certain *Domestic and Family Violence Prevention Act 2012* offences from the operation of section 59A.

Clause 15(1) retains the existing policy position that section 59A applies where the contravention is not an offence, but carves out the offence of breaching a bail condition. The effect is that section 59A will continue to apply to contraventions of bail conditions such as breaching a curfew or failing to report to police and will still require a police officer to consider alternatives to arrest. It will continue *not* to apply where the contravention is also a separate offence such as an assault of a witness.

Clause 16 Insertion of new s 59AA

This clause provides for discretionary consideration of alternatives to arrest for contraventions of bail conditions in relation to prescribed indictable offences and certain *Domestic and Family Violence Prevention Act 2012* offences excluded from section 59A above.

Decisions about how to exercise the discretion will need to be made in accordance with the youth justice principles.

New section 59AA(1)(b) has the same effect as the words inserted by clause 15(1).

Clause 17 Insertion of new s 117A

This clause provides that the meaning of sentence order under the subdivision includes a declaration under new section 150A(2) that a child is a serious repeat offender. This ensures a Childrens Court judge can review the making of a declaration by a Childrens Court magistrate on application for review.

Clause 18 Amendment of s 136 (Offender remanded in custody for child offence)

This clause amends section 136 so that a person aged 18 years or older who is freshly remanded in custody in relation to a child offence goes to an adult corrective services facility. The current threshold is 19 years.

The clause also inserts a discretion for the court to order that the person instead be held in a youth detention centre, with appropriate criteria, equivalent to the discretion given to the chief executive in relation to remandees in clause 36.

Clause 19 Amendment of s 138 (Dealing with offender held in corrective services facility)

This clause omits and renumbers a provision.

Clause 20 Amendment of s 150 (Sentencing principles)

This clause inserts reference to a child's bail history in section 150(1)(h) to require a sentencing court to consider this information in making a determination.

Clause 21 Insertion of new ss 150A and 150B

This clause inserts new sections 150A (Serious repeat offenders) and 150B (Court must rely on earlier serious repeat offender declaration) which provide for the making and operation of a serious repeat offender declaration.

New section 150A(1) provides that the section operates where a court is sentencing a child for a prescribed indictable offence. The definition of prescribed indictable offence to be relied upon in this context is the definition contained in Schedule 4 of the YJ Act. Subsection (2) provides that the court may, on application by the prosecution, declare the child to be a serious repeat offender if:

- a) at least 1 detention order has previously been made against the child in relation to a prescribed indictable offence; and
- b) the court has ordered the chief executive to prepare a pre-sentence report and received and considered the report; and

- c) the court has had regard to: the child's previous offending history and bail history, any efforts of rehabilitation by the child, including rehabilitation carried out under a court order, and any other matter the court considers relevant; and
- d) the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence.

If the court has made a declaration under subsection (2), subsection (3) provides that the court must have primary regard to the following sentencing considerations:

- a) the need to protect members of the community; and
- b) the nature and extent of violence, if any, used in the commission of the offence; and
- c) the extent of any disregard by the child in the commission of the offence for the interests of public safety; and
- d) the impact of the offence on public safety; and
- e) the child's previous offending history and bail history.

Subsection (4) provides that the court must give reasons for making the declaration.

Subsection (5) provides that a declaration is taken to be a sentence imposed on conviction. This means that Chapter 67 (Appeal – pardon) of the Criminal Code applies to a declaration.

Subsection (6) contains an override declaration which provides that the HR Act does not apply to new section 150A of the YJ Act. In accordance with section 45(2) of the HR Act, this provision will expire 5 years after commencement.

New section 150B provides that if a court is sentencing a child for a prescribed indictable offence which was committed within the 'relevant period' and a court of like or higher jurisdiction has previously made a serious repeat offender declaration under section 150A, they must have primary regard to the matters in new section 150A(3)(a) to (e) of the YJ Act.

A relevant period is defined under new section 150B(4) as meaning 12 months from the day the declaration was made by the original court or, where the child was detained by the original sentencing court, commencing on the day the declaration is made but ending 12 months after the day the child is released from detention. This is intended to cover any offences that may occur during the child's detention.

Subsection (3) contains an override declaration which provides that the HR Act does not apply to new section 150B of the YJ Act. In accordance with section 45(2) of the HR Act, this provision will expire 5 years after commencement.

Clause 22 Amendment of s 221 (Conditional release order – requirements)

This clause increases the current maximum period of 3 months for which a conditional release order can operate to 6 months.

Clause 23 Amendment of s 240 (General options available on breach of order)

This clause makes consequential amendments to insert references to new renumbered section 246(3) and new section 246A.

Clause 24 Amendment of s 241 (General options available to superior court to which child committed for breach)

This clause makes a consequential amendment to insert reference to new section 246A.

Clause 25 Amendment of s 242 (General options available to court before which child found guilty of an indictable offence)

This clause makes consequential amendments to insert references to new renumbered section 246(3) and new section 246A.

Clause 26 Amendment of s 244 (General options available to court to which child committed for breach by indictable offence)

This clause makes a consequential amendment to insert reference to new section 246A.

Clause 27 Amendment of s 246 (Court’s power on breach of conditional release order)

Subclause (1) amends the title of the section.

Subclause (2) inserts new section 246(1A) which provides that the section applies if the conditional release order was made in relation to an offence other than a prescribed indictable offence.

Subclause (3) increases the maximum period for which a conditional release order can be extended under section 246(2)(b) from 3 months to 6 months. This is to ensure consistency with the amendment made to extend the potential operational period of a conditional release order in section 221 of the YJ Act.

Subclause (4) seeks to renumber the subsections as sections 246(1) to (7).

Clause 28 Insertion of new s 246A

This clause inserts new section 246A (Court’s power on breach of conditional release order – order made for prescribed indictable offence).

New section 246A provides that if the conditional release order was made in relation to a prescribed indictable offence, the court must revoke the conditional release order and order the child to serve the sentence of detention for which the conditional release order

was made, unless the court considers that there are special circumstances. The definition of prescribed indictable offence to be relied upon in this context is the definition contained in Schedule 4 of the YJ Act.

Subsection (3) provides that if the court considers that there are special circumstances, the court may deal with the breach of conditional release order pursuant to renumbered section 246(3) of the YJ Act, with renumbered section 246(5) applying to any extension of the period of the conditional release order. The subsection also provides that renumbered sections 246(6) and (7) apply in relation to any order made by a court dealing with a breach of a conditional release order made for a prescribed indictable offence under renumbered section 246(3).

Subsection (4) contains an override declaration which provides that the HR Act does not apply to new section 246A of the YJ Act. In accordance with section 45(2) of the HR Act, this provision will expire 5 years after commencement.

Clause 29 Amendment of s 276A (Definitions for subdivision)

This clause inserts a definition of ‘temporary delay’ for the purposes of the following provisions about the transfer of detainees.

Clause 30 Amendment of s 276B (Particular detainees liable to be transferred to corrective services facility)

This clause changes the duration of custody beyond which a detainee is liable to be transferred from six months to two months.

Clause 31 Amendment of s 276C (Transfer of particular detainees to corrective services facility)

This clause inserts safeguards into the current process: timeframes, the provision of relevant information to assist the detainee to understand the implications of a transfer, and an obligation on the chief executive to arrange a consultation with a lawyer.

Clause 32 Amendment of s 276D (Application for temporary delay of transfer)

This clause makes consequential amendments to section 276D.

Clause 33 Insertion of new ss276DA and 276DB

This clause establishes a new administrative process in place of the current need for an application to the Childrens Court for considering a delay of a transfer. The provisions contain appropriate safeguards, including a review on the merits by the Childrens Court.

Clause 34 Amendment of s 276E (Transferee subject to Corrective Services Act from transfer)

This clause addresses a drafting anomaly, an inconsistency between the current section and section 138. The amendment makes clear that the transferee will only be subject to the *Corrective Services Act 2006* for the purposes of being held at a corrective services

facility – for example, the day to day operational requirements of the facility – and not for other purposes.

Clause 35 Amendment of s 276F (Persons over 18 years and 6 months should not serve period of detention at detention centre)

This clause makes a consequential amendment.

Clause 36 Insertion of new pt 8, div 2A, sbdiv 3

This clause introduces new arrangements for the transfer of remandees that are consistent, with appropriate variations, with the provisions for sentenced detainees.

The chief executive must facilitate a consultation with a lawyer, who would be expected to be the detainee’s lawyer for their court matters for which they are remanded, and who will be able to provide information on expected timeframes for resolution of the matters – which will affect the chief executive’s decision.

Appropriate safeguards apply, including a review on the merits by the Childrens Court.

New section 276K will be consistent with section 276E, as amended by clause 34.

Clause 37 Insertion of new pt 8A

This clause legislates for MACPs, which have been operating administratively since 2021 and have proved effective.

The provisions establish the MACP system’s purpose, membership (including the participation of non-core members as appropriate), and the responsibilities of core members - monitoring and reviewing the effectiveness of recommendations made about assessing and responding to the needs and behaviours of these children.

Information sharing will be pursuant to an arrangement under part 9, division 2A, which includes an underlying principle that information sharing will be by consent wherever possible and practical. The *Youth Justice Regulation 2016* includes further safeguards to the sharing of information under that division.

The provisions will be based on the Suspected Child Abuse and Neglect (SCAN) system provisions in the *Child Protection Act 1999*.

Clause 38 Amendment of s 297D (Definitions for division)

This clause adds the agency responsible for corrective services (currently Queensland Corrective Services (QCS)) as a prescribed entity for part 9, division 2A. QCS often provides services to children charged with offences – for example, where the ‘child’ is over 18 and under QCS supervision; or where a close relative of the child, such as a parent or partner, is under QCS supervision.

Clause 39 Omission of s 404

This clause removes section 404 from the Act.

Clause 40 Insertion of new pt 11, div 21

Division 21 Transitional provisions for Strengthening Community Safety Act 2023
1

This clause inserts new Division 21 into part 11 of the YJ Act providing transitional provisions for the *Strengthening Community Safety Act 2023*.

New section 408 provides that the expanded list of prescribed indictable offences will apply for the presumption against bail regardless of when the prescribed indictable offence or the other indictable offence were committed or when proceedings started.

New section 409 provides that new sections 150A and 150B apply to a court sentencing a child to a prescribed indictable offence, whether the offence was committed before or after commencement.

New section 410(a) provides that new section 246A will only apply to a breach of conditional release order that occurs after commencement. New section 410(b) provides that existing section 246 will apply to a breach of conditional release order that occurs prior to commencement, even if proceedings are not commenced until after commencement.

New section 411 provides that the new arrangements for transfer of sentenced detainees apply regardless of when the detainee entered detention, subject to section 412.

New section 412 provides that the old arrangements will continue to apply if a prison transfer direction was given to a detainee before commencement.

New section 413 provides that the new arrangements for transfer of remanded detainees apply regardless of when the detainee was remanded in custody.

Clause 41 Amendment of sch 4 (Dictionary)

This clause replaces the definitions for ‘prescribed indictable offence’ and ‘sentence order’ and creates new definitions for particular terms.

The new definition of ‘prescribed indictable offence’ omits reference to former section 408A(1B) of the Criminal Code. Given the amendments in Clause 8(3), section 408A(1B) of the Criminal Code will automatically constitute a ‘prescribed indictable offence’ as an offence liable to 14 years imprisonment.

This clause inserts new section 408A(1B) of the Criminal Code into the list of offences which constitute a ‘prescribed indictable offence’.

The words ‘and the child charged with the offence was allegedly the driver of the motor vehicle’ are omitted from the entry for section 408A(1) of the Criminal Code, meaning passengers are now within the definition.

Entering or being in premises with intent to commit an indictable offence under section 421(1) of the Criminal Code is also added.

Subclause (2) replaces the definition of ‘sentence order’ in Schedule 4 (Dictionary) of the YJA to include reference to the new serious repeat offender declaration. The effect of this amendment will be that the existing appeal and review provisions in part 6, division 9 of the YJ Act will apply to serious repeat offender declarations. The new definition of ‘sentence order’ is defined as:

- (a) for part 6, division 9, subdivision 4 – see section 117A; or
- (b) otherwise – means any of the following –
 - i) an order made under section 1775 or 176, including a reprimand;
 - ii) the recording of a conviction under section 183;
 - iii) a conditional release order made under section 220;
 - iv) an order under section 234.