



Queensland

Youth Justice and Other Legislation Amendment Bill 2014



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2014

A Bill

for

An Act to amend the *Childrens Court Act 1992*, the *Penalties and Sentences Act 1992* and the *Youth Justice Act 1992* for particular purposes, and to make minor or consequential amendments of other legislation as stated in schedule 1 for purposes related to those purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Youth Justice and Other
Legislation Amendment Act 2014*. 4
5

**Part 2 Amendment of Youth Justice
Act 1992** 6
7

Clause 2 Act amended 8

This part amends the *Youth Justice Act 1992*. 9

**Clause 3 Amendment of s 13 (Police officer's power of arrest
preserved in particular general circumstances)** 10
11

Section 13(1)(a)(iv), note— 12

omit. 13

Clause 4 Insertion of new pt 5, div 1, hdg 14

Part 5, before section 47— 15

insert— 16

Division 1 Bail generally 17

Clause 5 Insertion of new pt 5, div 2 18

Part 5, after section 59— 19

insert—

**Division 2 Offence committed while
 on bail**

59A Finding of guilt while on bail

- (1) This section applies to a child if—
- (a) the child is granted bail after being charged with an offence (the *original offence*); and
 - (b) a finding of guilt is later made against the child for an offence (the *subsequent offence*) committed while on bail for the original offence.
- (2) The finding of guilt made against the child for the subsequent offence is taken to be an offence against this Act.
- Maximum penalty (subject to part 7)—20 penalty units or 1 year’s imprisonment.
- (3) For this section, if a finding of guilt is made against the child for more than 1 subsequent offence arising out of the same, or the same set of, circumstances, subsection (2) applies to only 1 of the subsequent offences.

Clause 6 Amendment of s 62 (Childrens Court judge)

- (1) Section 62(e)—
- omit.*
- (2) Section 62(f)—
- renumber* as section 62(e).

Clause 7 Amendment of s 74 (Chief executive’s right of audience generally)

Section 74(3)(d)—

[s 8]

omit, insert—

- (d) the making of a order under section 299A(2); and
- (e) the making of an order under the *Childrens Court Act 1992*, section 21C; and
- (f) without limiting paragraphs (a) to (e), matters on which the court considers the chief executive should be heard.

Clause 8 Amendment of s 148 (Evidence of childhood finding of guilt not admissible against adult)

(1) Section 148(1), ‘In a proceeding’—

omit, insert—

Subject to subsection (3), in a proceeding

(2) Section 148(3)—

omit, insert—

(3) This section does not prevent a court that is sentencing an adult from—

- (a) admitting evidence that the adult was found guilty as a child of an offence even if a conviction was not recorded; or
- (b) receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court’s sentence.

Clause 9 Amendment of s 150 (Sentencing principles)

(1) Section 150(2)(e)—

omit.

(2) Section 150—

insert—

	(5)	This section overrides any other Act or law to the extent that, in sentencing a child for an offence, the court must not have regard to any principle that a detention order should be imposed only as a last resort.	1 2 3 4 5
Clause 10		Amendment of s 194D (Graffiti removal service to be performed within limited period)	6 7
		Section 194D(b), ‘245’—	8
		<i>omit, insert—</i>	9
		245(1)(aa)(ii)	10
Clause 11		Amendment of s 198 (Community service to be performed within limited period)	11 12
		Section 198(b), ‘245’—	13
		<i>omit, insert—</i>	14
		245(1)(b)(ii)	15
Clause 12		Omission of s 208 (Detention must be only appropriate sentence)	16 17
		Section 208—	18
		<i>omit.</i>	19
Clause 13		Amendment of s 234 (Court may allow publication of identifying information)	20 21
	(1)	Section 234, heading, after ‘information’—	22
		<i>insert—</i>	23
		of first-time offender	24
	(2)	Section 234, ‘child’—	25
		<i>omit, insert—</i>	26
		first-time offender	27

[s 14]

- (3) Section 234(2)(c), ‘child’s’— 1
omit, insert— 2
first-time offender’s 3

Clause 14 Amendment of s 237 (Chief executive must warn child about contravention) 4
5

Section 237(3)— 6
omit, insert— 7

- (3) However, subsection (2) does not apply if the 8
chief executive— 9
- (a) for a community based order that is a boot 10
camp order—reasonably believes the child 11
has contravened the order by leaving the 12
boot camp centre stated in the order without 13
the chief executive’s written consent; or 14
- (b) otherwise—does not know the child’s 15
whereabouts and can not reasonably find 16
out. 17

Clause 15 Amendment of s 238 (Chief executive’s application on contravention) 18
19

Section 238(6)(b)(ii)— 20
omit, insert— 21

- (ii) that the chief executive— 22
- (A) does not know the child’s 23
whereabouts and can not 24
reasonably find out; or 25
- (B) reasonably believes the child 26
would not comply with a 27
summons; or 28
- (C) reasonably believes the child has 29
contravened the order by leaving 30
the boot camp centre stated in the 31

	order without the chief executive's written consent.	1 2
Clause 16	Amendment of s 245 (Court's power on breach of a community based order other than a conditional release order or boot camp order)	3 4 5
	(1) Section 245(6)— <i>omit.</i>	6 7
	(2) Section 245(7)— <i>renumber</i> as section 245(6).	8 9
Clause 17	Amendment of s 246 (Court's power on breach of conditional release order)	10 11
	Section 246(6)— <i>omit.</i>	12 13
Clause 18	Amendment of s 246A (Court's power on breach of boot camp order)	14 15
	Section 246A(8)— <i>omit.</i>	16 17
Clause 19	Amendment of s 263 (Management of detention centres)	18
	Section 263(5), '19 and 20'— <i>omit, insert</i> — 18 and 19	19 20 21
Clause 20	Replacement of pt 8, div 2A	22
	Part 8, division 2A— <i>omit, insert</i> —	23 24

[s 20]

Division 2A	Period of detention to be served as period of imprisonment	1
		2
		3
276A Definitions for div 2A		4
In this division—		5
<i>period of detention</i> , for a person who is liable to serve a further period of detention cumulatively with a period of detention being served, includes the further period of detention.		6 7 8 9
<i>period of imprisonment</i> see the <i>Penalties and Sentences Act 1992</i> , section 4.		10 11
<i>prison transfer direction</i> see section 276C(1).		12
<i>relevant individual</i> see section 276B.		13
<i>transfer day</i> see section 276B(a)(iii).		14
<i>transferred detention order</i> see section 276B(b)(iii).		15 16
<i>unserved period of detention</i> see section 276B(a)(iii).		17 18
276B Application of div 2A		19
This division applies to the following (each a <i>relevant individual</i>)—		20 21
(a) a child who—		22
(i) has been ordered to serve a period of detention under a detention order; and		23 24
(ii) will, during the period of detention, turn 17 years; and		25 26
(iii) from the day the child turns 17 years (the <i>transfer day</i>), has to serve part of the period of detention for a period (the <i>unserved period of detention</i>) that is 6 months or more; and		27 28 29 30 31

-
- (iv) will not, within 6 months after the transfer day, be required to be released under section 227; 1
2
3
- (b) an adult who— 4
- (i) is 17 years; and 5
- (ii) is sentenced for an offence committed by the adult as a child; and 6
7
- (iii) is ordered to serve a period of detention under a detention order (the *transferred detention order*) that is 6 months or more; and 8
9
10
11
- (iv) will not, within 6 months after being sentenced, be required to be released under section 227. 12
13
14

276C Chief executive must make prison transfer direction 15
16

- (1) Within 28 days after the child is sentenced to serve a period of detention, the chief executive must give a written direction (a *prison transfer direction*) to— 17
18
19
20
- (a) the child; and 21
- (b) the chief executive (corrective services). 22
- (2) The prison transfer direction must state— 23
- (a) the transfer day; and 24
- (b) that the child is to be transferred to a corrective services facility on the transfer day; and 25
26
27
- (c) that the unserved period of detention must be served as a period of imprisonment. 28
29
- (3) If the child can not be transferred on the transfer day, the child must be transferred as soon as practicable after that day. 30
31
32

[s 20]

276D Application of Corrective Services Act 2006	1
(1) The <i>Corrective Services Act 2006</i> applies to the relevant individual.	2 3
(2) A prison transfer direction or a transferred detention order is taken for all purposes to be a sentence to a period of imprisonment equal to the unserved period of detention or the period of detention.	4 5 6 7 8
(3) Subject to subsection (4), the relevant individual must be released on parole on the day the relevant individual would have been released under a supervised release order as if the prison transfer direction had not been given or transferred detention order had not been made.	9 10 11 12 13 14
(4) Subsection (3) does not prevent—	15
(a) the earlier release of the relevant individual under an exceptional circumstances parole order; or	16 17 18
(b) the continued custody of the relevant individual for the unserved part of any other sentence of imprisonment imposed against the relevant individual.	19 20 21 22
276E Application of Judicial Review Act 1991	23
(1) The <i>Judicial Review Act 1991</i> , part 4 does not apply to a decision of the chief executive to give a prison transfer direction.	24 25 26
(2) Subject to subsection (3), unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision—	27 28 29
(a) is final and conclusive; and	30
(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the <i>Judicial</i>	31 32 33

	<i>Review Act 1991</i> or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and	1 2 3
	(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.	4 5 6 7
	(3) The <i>Judicial Review Act 1991</i> , part 5 applies to the decision to the extent it is affected by jurisdictional error.	8 9 10
Clause 21	Insertion of new s 299A	11
	Part 9, division 3—	12
	<i>insert</i> —	13
	299A Prohibition of publication of identifying information about a child who is not a first-time offender	14 15 16
	(1) This section applies in a proceeding before a court for a child who—	17 18
	(a) has been charged with an offence; and	19
	(b) is not a first-time offender.	20
	(2) The court may, at any time during a proceeding, make an order it considers is in the interests of justice prohibiting the publication of identifying information about the child (a <i>publication prohibition order</i>).	21 22 23 24 25
	(3) The court may make a publication prohibition order—	26 27
	(a) on its own initiative; or	28
	(b) on application by a relevant party.	29
	(4) In considering whether it would be in the interests of justice to make a publication	30 31

[s 21]

prohibition order, the court must have regard to the following—	1 2
(a) the number of the child’s previous findings of guilt;	3 4
(b) the seriousness of the offence;	5
(c) the period between the proceeding and any previous offence committed by the child;	6 7
(d) the need to protect the community;	8
(e) the effect of publication on—	9
(i) the safety of the child; or	10
(ii) the rehabilitation of the child; or	11
(iii) the safety or wellbeing of a person other than the child;	12 13
(f) any other relevant matter.	14
(5) A person must not publish identifying information about the child if the court has made a publication prohibition order in relation to the child.	15 16 17 18
Maximum penalty (subject to part 7)—	19
(a) for an individual—100 penalty units or 2 years imprisonment; or	20 21
(b) for a corporation—1000 penalty units.	22
(6) In this section—	23
<i>relevant party</i> means—	24
(a) the child; or	25
(b) a parent or other member of the child’s family; or	26 27
(c) a party or person representing a party to the proceeding, including, for example, a police officer or another person in charge of a case	28 29 30

	against the child in relation to the offence	1
	the subject of the proceeding; or	2
(d)	the chief executive; or	3
(e)	the chief executive (child safety); or	4
(f)	if the child is an Aboriginal or Torres Strait Islander person—	5 6
(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	7 8 9 10 11
(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.	12 13 14 15
Clause 22	Replacement of s 301 (Prohibition of publication of identifying information about a child)	16 17
	Section 301—	18
	<i>omit, insert—</i>	19
	301 Prohibition of publication of identifying information about a first-time offender	20 21
(1)	A person must not publish identifying information about a first-time offender.	22 23
	Maximum penalty (subject to part 7)—	24
(a)	for an individual—100 penalty units or 2 years imprisonment; or	25 26
(b)	for a corporation—1000 penalty units.	27
(2)	Subsection (1) does not apply to—	28
(a)	publication in a way permitted by a court order; or	29 30

[s 23]

	(b) publication under written authority given under subsection (3).	1 2
	(3) The chief executive may give written authority to a person to publish identifying information about a first-time offender if the chief executive is satisfied the publication is necessary to ensure a person's safety.	3 4 5 6 7
Clause 23	Amendment of s 303 (Chief executive must collect and keep information)	8 9
	Section 303(3), 'section 301'—	10
	<i>omit, insert—</i>	11
	sections 299A and 301	12
Clause 24	Insertion of new pt 11, div 11	13
	Part 11—	14
	<i>insert—</i>	15
	Division 11 Transitional provisions for Youth Justice and Other Legislation Amendment Act 2014	16 17 18 19
	358 Definitions for div 11	20
	In this division—	21
	<i>amending Act</i> means the <i>Youth Justice and Other Legislation Amendment Act 2014</i> .	22 23
	<i>commencement</i> means the commencement of this section.	24 25
	<i>pre-amended Act</i> means the <i>Youth Justice Act 1992</i> as in force immediately before the commencement.	26 27 28

359 Evidence of childhood finding of guilt	1
(1) This section applies to a proceeding against an adult for an offence.	2 3
(2) This Act, as amended by the amending Act, applies even if 1 or both of the following happened before the commencement—	4 5 6
(a) the commission of the offence;	7
(b) the start of the proceeding for the offence.	8
360 Detention orders and sentencing principles	9
(1) This section applies to a child who is found guilty of an offence after the commencement.	10 11
(2) This Act, as amended by the amending Act, applies even if 1 or both of the following happened before the commencement—	12 13 14
(a) the commission of the offence;	15
(b) the start of the proceeding for the offence.	16
361 Publication of identifying information	17
This Act, as amended by the amending Act, applies to a proceeding against a child or first-time offender for an offence started before the commencement.	18 19 20
362 Court's power on particular proceedings	21
This Act, as amended by the amending Act, applies to a proceeding against a child under the pre-amended Act, section 245, 246 or 246A that is started before the commencement.	22 23 24 25 26
363 Application of amendments about transfer direction for a child who will turn 17 years	27 28
(1) This section applies to a child who—	29

[s 24]

- (a) is subject to a detention order made after the commencement; or 1
2
- (b) at the commencement— 3
 - (i) is serving a period of detention; and 4
 - (ii) during the period of detention, will turn 5
17 years; and 6
 - (iii) on the transfer day, will have 6 months 7
or more to be served in detention. 8
- (2) This Act applies to the child even if 1 or both of 9
the following happened before the 10
commencement— 11
 - (a) the commission of the offence for which the 12
child is subject to a detention order or is 13
serving a period of detention; 14
 - (b) the start of the proceeding for the offence. 15
- (3) In this section— 16
transfer day see section 276B. 17

**364 Application of amendments about transfer 18
direction for a person who is 17 years 19**

- (1) This section applies to a person who, at the 20
commencement— 21
 - (a) is 17 years or more and is serving a period 22
of detention; and 23
 - (b) is not subject to an order made under the 24
pre-amended Act, section 276B or 276C; 25
and 26
 - (c) will have 6 months or more to be served in 27
detention. 28
- (2) The chief executive must, as soon as practicable 29
after the commencement, comply with section 30
276C. 31

365 Applications not granted before commencement 1
2

- (1) This section applies to an application made under the pre-amended Act, section 276C or 276E but not granted before the commencement. 3
4
5
- (2) The application is taken to have never been made. 6

366 Orders made before commencement 7

A transfer order made under the pre-amended Act, section 276B or 276C in relation to a person, and in force immediately before the commencement, continues to apply to the person. 8
9
10
11

Clause 25 Amendment of sch 1 (Charter of youth justice principles) 12

- (1) Schedule 1, item 17— 13
omit. 14
- (2) Schedule 1, items 18 to 20— 15
renumber as items 17 to 19. 16

Clause 26 Amendment of sch 4 (Dictionary) 17

- (1) Schedule 4— 18
insert— 19
- first-time offender*** means a child who at any time during a proceeding has not been found guilty of an offence. 20
21
22
- period of detention***, for part 8, division 2A, see section 276A. 23
24
- period of imprisonment***, for part 8, division 2A, see section 276A. 25
26
- prison transfer direction***, for part 8, division 2A, see section 276C(1). 27
28

[s 27]

	<i>relevant individual</i> , for part 8, division 2A, see section 276B.	1 2
	<i>transfer day</i> , for part 8, division 2A, see section 276B(a)(iii).	3 4
	<i>transferred detention order</i> , for part 8, division 2A, see section 276B(b)(iii).	5 6
	<i>unserved period of detention</i> , for part 8, division 2A, see section 276B(a)(iii).	7 8
(2)	Schedule 4, definition <i>publish</i> , after ‘radio,’—	9
	<i>insert—</i>	10
	internet,	11

Part 3 **Amendment of Childrens Court Act 1992** 12 13

Clause 27	Act amended	14
	This part amends the <i>Childrens Court Act 1992</i> .	15

Clause 28	Amendment of s 3 (Definitions)	16
	Section 3—	17
	<i>insert—</i>	18
	<i>child’s community</i> means the child’s Aboriginal or Torres Strait Islander community, whether it is—	19 20 21
	(a) an urban community; or	22
	(b) a rural community; or	23
	(c) a community on DOGIT land under the <i>Aboriginal Land Act 1991</i> or the <i>Torres Strait Islander Land Act 1991</i> .	24 25 26

<i>community justice group</i> , for a child, means a group of persons made up of any of the following—	1 2 3
(a) an entity within the child’s community, other than a department of government, that is involved in the provision of any of the following—	4 5 6 7
(i) information to a court about Aboriginal or Torres Strait Islander offenders;	8 9
(ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;	10 11 12 13
(iii) other activities relating to local justice issues;	14 15
(b) elders or other respected persons of the child’s community.	16 17
<i>first-time offender</i> , for part 4, division 2, see section 21A.	18 19
<i>interested person</i> , for part 4, division 2, see section 21A.	20 21
<i>non-youth justice matter</i> , for part 4, division 2, see section 21A.	22 23
<i>relevant person</i> , for part 4, division 2, see section 21A.	24 25
<i>youth justice matter</i> , for part 4, division 2, see section 21A.	26 27
Clause 29 Insertion of new pt 4, div 1, hdg	28
Part 4, before section 18—	29
<i>insert</i> —	30

[s 30]

	Division 1	Constitution and sitting times	1 2
Clause 30	Omission of s 20 (Who may be present at a proceeding)		3
	Section 20—		4
	<i>omit.</i>		5
Clause 31	Insertion of new pt 4, div 2		6
	After section 21—		7
	<i>insert—</i>		8
	Division 2	Closed and open proceedings	9 10
	21A Definitions for div 4		11
	In this division—		12
	<i>first-time offender</i> means a child who, at any time during a proceeding for a youth justice matter, has not been found guilty of an offence.		13 14 15
	<i>interested person</i> means—		16
	(a) a person who is engaged in—		17
	(i) a course of professional study relevant to the operation of the court; or		18 19
	(ii) research approved by the chief executive; or		20 21
	(b) a person who, in the court’s opinion, will assist the court.		22 23
	<i>non-youth justice matter</i> means a proceeding under the <i>Adoption Act 2009</i> or the <i>Child Protection Act 1999</i> .		24 25 26
	<i>relevant person</i> , for a proceeding in relation to a child, means—		27 28

-
- (a) the child; or 1
- (b) for a non-youth justice matter—a parent or 2
other adult member of the child’s family; or 3
- (c) for a youth justice matter—a parent or other 4
member of the child’s family; or 5
- (d) a witness giving evidence in the proceeding; 6
or 7
- (e) a party or person representing a party to the 8
proceeding, including, for example, a police 9
officer or another person in charge of a case 10
against the child in relation to the offence 11
that is the subject of the proceeding; or 12
- (f) the chief executive; or 13
- (g) if the child is an Aboriginal or Torres Strait 14
Islander person— 15
- (i) a representative of an organisation 16
whose principal purpose is the 17
provision of welfare services to 18
Aboriginal and Torres Strait Islander 19
children and families; or 20
- (ii) a representative of the community 21
justice group in the child’s community 22
who is to make submissions that are 23
relevant to sentencing the child. 24
- youth justice matter* means a proceeding under 25
the *Youth Justice Act 1992*. 26

**21B Who may be present at non-youth justice 27
matters or particular youth justice matters 28**

- (1) In a proceeding before the court for a non-youth 29
justice matter in relation to a child or for a youth 30
justice matter in relation to a child who is a 31
first-time offender, the court must exclude from 32

[s 31]

the room in which the court is sitting a person who is not—	1 2
(a) a relevant person for the proceeding; or	3
(b) an interested person whom the court permits to be present under subsection (2).	4 5
(2) The court may permit an interested person to be present.	6 7
(3) Subsection (1) applies subject to any order made by the court under the <i>Evidence Act 1977</i> , section 21A—	8 9 10
(a) excluding any person (including a defendant) from the place in which the court is sitting; or	11 12 13
(b) permitting any person to be present while a special witness within the meaning of that section is giving evidence.	14 15 16
(4) Also, subsection (1) applies even though the court's jurisdiction is being exercised conjointly with another jurisdiction.	17 18 19
(5) However, subsection (1) does not prevent an infant or young child in the care of an adult being present in court with the adult.	20 21 22
21C Who may be present at other youth justice matters	23 24
(1) A proceeding before the court for a youth justice matter in relation to a child who is not a first-time offender must be held in open court, other than if the court—	25 26 27 28
(a) orders the court be closed; or	29
(b) excludes a person under section 21E.	30
(2) The court may close the court to the public or particular persons if it considers it is necessary and desirable in the interests of justice.	31 32 33

-
- (3) The court may order the court to be closed for all or part of the proceedings—
- (a) on its own initiative; or
 - (b) on application under section 21D.
- (4) However, an order under subsection (3) must not exclude from the room in which the court is sitting—
- (a) a relevant person; or
 - (b) 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.
- (5) Subsection (4) applies subject to any order 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.
- (6) Also, despite an order under subsection (3), the court may permit to be present—
- (a) an interested person; or
 - (b) a representative of the media; or
 - (c) a person, in the court’s opinion—
 - (i) who has a proper interest in the proceeding; and
 - (ii) whose presence would not be prejudicial to the interests of the child.

[s 31]

- (7) Subsection (2) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment. 1
2
3

21D Application for closed proceedings 4

- (1) An application to the court to close the court for all or a part of the proceeding may be made by— 5
6
(a) a relevant person for the proceeding; or 7
(b) the chief executive (child protection); or 8
(c) the child guardian. 9
(2) An application under subsection (1) may be made at any time during the proceeding. 10
11
(3) In this section— 12
chief executive (child protection) means the chief executive of the department in which the *Child Protection Act 1999* is administered. 13
14
child guardian means the commissioner under the *Commission for Children and Young People and Child Guardian Act 2000*. 15
16
17
18

21E Exclusion of public in particular youth justice matters 19
20

- (1) This section applies to a proceeding in relation to a child who is charged with a sexual offence. 21
22
(2) When a complainant is giving evidence in any examination of a witness or trial, the court must exclude from the room in which it is sitting all persons other than— 23
24
25
26
(a) a person representing the complainant; or 27
(b) the defendant and any person representing the defendant; or 28
29

-
- (c) a Crown law officer or a person authorised by a Crown law officer; or
- (d) the prosecutor; or
- (e) any person whose presence is, in the court's opinion, necessary or desirable for the proper conduct of the examination or trial; or
- (f) any person whose presence will provide emotional support to the complainant; or
- (g) if the complainant is under or apparently under 17 years—the parent or guardian of the child unless, in the court's opinion, the presence of that person would not be in the child's interests; or
- (h) any person who makes application to the court to be present and whose presence, in the court's opinion—
- (i) would serve a proper interest of the applicant; and
- (ii) would not be prejudicial to the interests of the complainant; or
- (i) the chief executive.
- (3) Subsection (2) does not limit the power of the court under any other provision or rule of law to exclude from the room in which it is sitting any person, including the defendant.
- (4) In this section—
- complainant*** means a person in respect of whom a sexual offence is alleged to have been committed.
- defendant*** means a person charged with having committed a sexual offence.
- prescribed sexual offence*** means any of the following offences—

[s 32]

	(a) rape;	1	
	(b) attempt to commit rape;	2	
	(c) assault with intent to commit rape;	3	
	(d) an offence defined in the Criminal Code, section 352.	4 5	
	<i>sexual offence</i> means any offence of a sexual nature, and includes a prescribed sexual offence.	6 7	
Clause 32	Insertion of new pt 7, div 4	8	
	Part 7—	9	
	<i>insert—</i>	10	
	Division 4	Transitional provision for Youth Justice and Other Legislation Amendment Act 2014	11 12 13 14
	37 Application of provision about open and closed proceedings	15 16	
	Part 4, division 2 applies to a proceeding for an offence even if 1 or both of the following happened before the commencement of this section—	17 18 19	
	(a) the commission of the offence;	20	
	(b) the start of the proceeding for the offence.	21	
Part 4	Amendment of Penalties and Sentences Act 1992	22 23	
Clause 33	Act amended	24	
	This part amends the <i>Penalties and Sentences Act 1992</i> .	25	

Clause 34	Amendment of s 9 (Sentencing guidelines)	1
(1)	Section 9(2)(a)— <i>omit.</i>	2 3
(2)	Section 9(2)(b) to (r)— <i>renumber</i> as section 9(2)(a) to (q).	4 5
(3)	Section 9(3)— <i>omit.</i>	6 7
(4)	Section 9(4), ‘an offender to whom subsection (3) applies’— <i>omit, insert—</i> a violent offender	8 9 10
(5)	Section 9(5)— <i>omit, insert—</i> (5) In sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years, the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.	11 12 13 14 15 16 17
(6)	Section 9(5A), ‘(5)(b)’— <i>omit, insert—</i> (4)	18 19 20
(7)	Section 9(6), ‘(5)’— <i>omit, insert—</i> (4)	21 22 23
(8)	Section 9(6A)— <i>omit.</i>	24 25
(9)	Section 9(6B), ‘an offender to whom subsection (6A) applies’— <i>omit, insert—</i> a child-images offender	26 27 28 29

[s 34]

- (10) Section 9(7), ‘(2)(p)’— 1
omit, insert— 2
 (2)(o) 3
- (11) Section (9)(7A) and (7B)— 4
omit, insert— 5
 (7A) In sentencing an offender, a court must not have 6
 regard to the following— 7
 (a) the offender levy imposed under section 8
 179C; 9
 (b) whether or not the offender— 10
 (i) may become, or is, the subject of a 11
 dangerous prisoners application; or 12
 (ii) may become subject to an order 13
 because of a dangerous prisoners 14
 application. 15
- (12) Section 9(9), ‘(8)’— 16
omit, insert— 17
 (10) 18
- (13) Section 9— 19
insert— 20
 (9A) This section overrides any other Act or law to the 21
 extent that, in sentencing an offender for any 22
 offence, the court must not have regard to any 23
 principle that a sentence of imprisonment should 24
 be imposed only as a last resort. 25
- (14) Section 9(10)— 26
insert— 27
 child-images offender means an offender being 28
 sentenced for any of the following offences— 29
 (a) an offence against the *Classification of* 30
 Computer Games and Images Act 1995, 31

-
- section 28, if the objectionable computer game is a child abuse computer game under the Act; 1
2
3
- (b) an offence against any of the following provisions of the *Classification of Films Act 1991*— 4
5
6
- (i) section 41(3) or 42(3) or (4); 7
- (ii) section 43, if the offence involves a child abuse film under the Act; 8
9
- (c) an offence against any of the following provisions of the *Classification of Publications Act 1991*— 10
11
12
- (i) section 14; 13
- (ii) section 12, 13, 15, 16 or 17, if the offence involves a child abuse publication or child abuse photograph under the Act; 14
15
16
17
- (d) an offence against the Criminal Code, section 228A, 228B, 228C or 228D. 18
19
- violent offender*** means an offender being sentenced for any offence— 20
21
- (a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or 22
23
24
25
- (b) that resulted in physical harm to another person. 26
27
- (15) Section 9(4) to (10)— 28
renumber as section 9(3) to (13). 29

[s 35]

Clause 35	Amendment of s 172D (Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003)	1 2 3
	Section 172D, note, '9(7B)'—	4
	<i>omit, insert—</i>	5
	9(9)(b)	6
Clause 36	Amendment of s 195B (Access to court files by representative of community justice group in offender's community)	7 8 9
	Section 195B(2), '9(2)(o)'—	10
	<i>omit, insert—</i>	11
	9(2)(n)	12
Clause 37	Amendment of s 195C (Confidentiality)	13
	Section 195C(2)(a)(i), '9(2)(o)'—	14
	<i>omit, insert—</i>	15
	9(2)(n)	16
Clause 38	Amendment of s 195D (Protection from liability)	17
	Section 195D(1)(b), '9(2)(o)'—	18
	<i>omit, insert—</i>	19
	9(2)(n)	20
Clause 39	Insertion of new pt 14, div 9	21
	Part 14—	22
	<i>insert—</i>	23

Division 9	Transitional provision for Youth Justice and Other Legislation Amendment Act 2014	1 2 3 4
234 Sentencing guidelines		5
	This Act applies to the sentencing of an offender convicted after the commencement of this section even if 1 or both of the following happened before the commencement—	6 7 8 9
	(a) the commission of the offence the subject of the conviction;	10 11
	(b) the start of the proceeding for the offence.	12
Part 5	Minor and consequential amendments	13 14
Clause 40	Acts amended in sch 1	15
	Schedule 1 amends the Acts mentioned in it.	16

Schedule 1	Minor and consequential amendments	1 2
	section 40	3
	Police Powers and Responsibilities Act 2000	4
1	Section 365(3), editor’s note — <i>omit.</i>	5 6
	Victims of Crime Assistance Act 2009	7
1	Section 15(3), note, paragraph (a), ‘section 9(2)(c)(i)’— <i>omit insert—</i> section (9)(2)(b)(i)	8 9 10