

Juvenile Justice and Other Acts Amendment Bill 2009

Explanatory Notes

Title of the Bill

Juvenile Justice and Other Acts Amendment Bill 2009

General Outline

The objectiveness of this Bill are to amend the *Juvenile Justice Act 1992*, *Child Protection Act 1993* and the *Young Offenders (Interstate Transfer) Act 1987* and other relevant legislation to provide a best practice youth justice system with the capacity to respond to current demands and challenges.

Summary

A review of the Act was publicly announced on 31 May 2007 to provide a best practice youth justice system with the capacity to respond to current demands and challenges. In line with the terms of reference for the review, the Bill proposes legislative amendments to:

- give courts specific powers to place curfews on juvenile offenders to reduce the chances of them reoffending and to ensure they are properly supervised;
- widen court powers in relation to naming juvenile offenders, allowing orders to be issued allowing publication of identifying information if the court considers it to be in the interests of justice to do so;
- increase the minimum mandatory detention period for young people convicted of multiple murders from 15 years to 20 years' imprisonment;
- give police stronger powers to arrest and take to court young people who:
 - do not comply with youth justice conferencing requirements; or

- contravene an agreement; or
- fail to attend a drug assessment session;
- require courts to consider setting a date for the transfer of offenders from youth detention to adult prison when sentencing young offenders to be detained beyond the age of 18;
- automatically prohibit the publication of information which identifies a child victim;
- contribute to reducing remand levels by:
 - requiring courts to consider the likely sentence when making bail decisions;
 - clarifying that if a young person is remanded in detention because of a threat of harm to their safety, the threat must arise from the circumstances of the alleged offence (such as a threat of retribution from a victim or a co-accused);
- update the name of the *Juvenile Justice Act 1992* to the *Youth Justice Act 1992*; and
- make minor amendments (eg to give victims the right to bring more than one support person with them to a formal youth justice conference) to improve the workability of the relevant Acts.

Assessment of administrative cost to government

The amendments in the Bill can be made without additional resourcing and will contribute to the Queensland Government's package of funded initiatives which support a robust and fiscally responsible youth justice system that is based on evidence and community feedback, will support victims of crime, meet community expectations of the justice system, and address the underlying causes of crime.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

Section 198 – time to complete community service order

It is proposed to allow the court to shorten the period within which a young offender must complete a community service order of less than 50 hours.

This could impact on the rights and liberties of the individual by making it more onerous to complete the order within the specified timeframe. However, the amendment is intended to ensure that orders are completed in line with the Juvenile Justice Principle 11 which requires that a decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.

In stipulating the timeframe, the court will be required to consider what is reasonable in the circumstances of the case. Allowing the order to be completed in a more timely way will ensure that young people do not have the order 'hanging over their head' any longer than necessary.

Increased minimum detention times for young people charged with multiple murders

The proposal to increase the mandatory minimum non-parole period from 15 to 20 years for multiple murders is a potential breach of fundamental legislative principles. Currently, a mandatory minimum period of 15 years applies for juveniles and adults convicted of murder. However, for multiple murders, only adults are subject to a minimum 20 year non-parole period.

The potential to infringe on the rights and liberties of the individual subject to this provision is present in two respects. Firstly, it represents an increase in penalty. This is justified on the grounds of making the multiple murder provisions for juveniles consistent with the provisions relating to a single murder. The penalty reflects the seriousness of the offending. Parliament has previously determined that parity between juveniles and adults is appropriate for single murders where there is a life sentence and there appears to be no factors to justify a different principle being applied for multiple murders.

Secondly, the amendment will prescribe a mandatory minimum sentence which potentially impacts on judicial independence by limiting the court's discretion. However, the amendment only applies to children sentenced to life imprisonment for multiple murders under section 176(3)(b) of the JJA, at which point the court will already have given consideration to the specific circumstances of the offence and determined that it is particularly heinous having regard to all the circumstances of the case. It is not intended to apply unless a life sentence is given for more than one of the murders and so achieves a balance between protection of the community and the rights of the person who may be subject to the order. The Parliament has previously decided that a mandatory minimum sentence is appropriate for a

single murder and there appear to be no factors to justify a different approach being applied for multiple murders.

Confidentiality (disclosure of information to Queensland Police Service)

This amendment would have the effect of allowing information, such as possible further offending, to be passed on to the Queensland Police Service, thereby potentially impacting on the rights and liberties of the young person.

This is considered to be justified given the need to hold young people accountable for their offending in accordance with Juvenile Justice Principle 8 which states that a young person who commits an offence should be held accountable and encouraged to accept responsibility for the offending behaviour. It is also considered to be justified given the need to protect the public from the ongoing commission of offences.

As a safeguard, disclosure is only permitted by the Chief Executive of the Department of Communities who may only disclose the information to the Queensland Police Commissioner, and only where disclosure is in the public interest. In addition, the decision by the Chief Executive to disclose the information would be reviewable under the *Judicial Review Act 1991*.

Strengthened compliance with youth justice conferencing – s 164, 165, 166 and 174 – warrant for child failing to appear after and unsuccessful conference, a contravention of an agreement and failure to attend a drug assessment and education session

Sections 164, 165, 166 and 174 are to be amended to allow a warrant for arrest to be issued for children who fail to appear at court following an unsuccessful conference, contravention of an agreement or failure to attend a drug assessment and education session. This may infringe on the rights and liberties of children subjected to such warrants.

However, the infringement is justified as the arrest warrant process is required to ensure that the child can be brought back to the court and resented as is intended by the JJA. Further, it will ensure consistency between the above circumstances and the process for dealing with a young person who has breached a term of a community based order.

An additional amendment will be made to require that a warning be given to children that an arrest warrant may be issued if the child fails to appear in court. This provides further protection of the child's liberty in these circumstances.

Consultation

The review of the Act was publicly announced on 31 May 2007. A three-month consultation period commenced with the release of an Issues Paper on 19 July 2007. More than 1100 copies of the Issues Paper were sent directly to stakeholders or supplied to regional offices of the Department of Communities for distribution locally.

The consultation was widely promoted to the public through newspaper and radio advertisements, including announcements on the National Indigenous Radio Service; media releases; and the Department of Communities website. Posters about the consultation were distributed to youth justice service providers, and notices about the consultation were placed on the Queensland Government's youth consultation website and other related government portals.

Regional Department of Communities offices supported the review by meeting with local youth justice stakeholders such as court and legal services staff, youth advocates, police officers, community representatives and Indigenous Elders.

The Department of Communities received a total of 174 submissions of which 53 were from young people. A consultation report on the results of consultation was published on the Department of Communities internet site and sent to stakeholders who made submissions to the review.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 provides that the short title of the Bill is the *Juvenile Justice and Other Acts Amendment Act 2009*.

Commencement

Clause 2 specifies that Part 2 is taken to have commenced on 31 January 2009. The clause provides that remainder of the Bill commences on a day to be fixed by proclamation. This delayed commencement is to allow sufficient time for complimentary administrative arrangements to be made and for promotion and awareness raising of the amendments.

Part 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Act amended

Clause 3 states that this part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Replacement of s 60V (Annual report by IIB)

Clause 4 amends section 60V to change the reporting period for the Island Industries Board to 1 February to 31 January in the succeeding year.

This amendment is to take effect on 31 January 2009 (retrospectively) to ensure that the Board is not required to recast its accounts for the 2008 operational year and make subsequent adjustments to its accounts for two financial years.

Part 3 Amendment of Child Protection Act 1999

Act amended

Clause 5 states that this part amends the *Child Protection Act 1999*.

Amendment of s 193 (Restrictions on reporting certain court proceedings)

Clause 6 amends section 193 to omit references to the person in relation to whom the offence is alleged to have been committed, but to retain its application to child witnesses in relation to certain court proceedings. The definition of ‘proceedings’ is amended to include proceedings for a charge against a child.

Insertion of new ch 6, pt 6, div 4

Clause 7 inserts a new Chapter 6, Part 6, Division 4, sections 194-194B. Under the clause:

- section 194 makes it an offence to publish identifying information about a person who is or was a child in relation to whom an offence was committed or is alleged to have been committed, and sets out the circumstances in which the publication is not an offence;
- section 194A enables a defendant to apply to the court for a direction that section 194(1) does not apply;
- section 194B enables an appellant to apply to the court for a direction that section 194(1) does not apply.

Part 4 Amendment of Juvenile Justice Act 1992

Act amended

Clause 8 states that this part amends the *Juvenile Justice Act 1992*.

Amendment of s 1 (Short title)

Clause 9 changes the short title of the Act to the *Youth Justice Act 1992* to reflect contemporary terminology.

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

Clause 10 makes a minor amendment to section 21(3)(a) to change a reference from ‘the caution’ to ‘a caution’.

Amendment of s 34 (Who may participate in a conference)

Clause 11 amends section 34 to enable a victim to invite more than 1 person to participate in a conference.

Clause 11 also makes minor amendments to sections 34(1)(h) and 34(3)(a) to change each reference of ‘member’ to ‘person’ consistent with terminology used throughout the Act.

Amendment of s 48 (Decisions about bail and related matters)

Clause 12 amends section 48 to require a court to have regard to the sentence order or other order likely to be made if a child is found guilty when deciding whether or not to grant bail.

Clause 12 also amends section 48(7)(a) to provide that a child is only to be kept in custody where if released, the child’s safety would be endangered because of the alleged offence. The clause removes the examples for paragraph (a) to reflect the amendment.

Amendment of s 52 (Conditions of release on bail)

Clause 13 amends section 52 to specify a court’s power to impose a curfew as a bail condition.

Amendment of s 62 (Childrens court judge)

Clause 14 makes a minor amendment to section 62 to replace a reference to ‘section 270’, with a reference to ‘part 8, division 2A’. The amendment reflects the changes created by clause 38 and clause 39.

Amendment of s 120 (Preliminary procedure)

Clause 15 amends section 120 to require the proper officer of a court to notify the chief executive when a child makes an application.

Amendment of s 121 (Stay of proceedings and suspension of orders)

Clause 16 amends section 121 to require the proper officer of a court to notify the chief executive if a Childrens Court judge orders a stay of a proceeding under a sentence order.

Amendment of s 135 (Offender remanded in custody for adult offences)

Clause 17 amends section 135 to clarify that if an offender is in custody in a youth detention centre and then becomes subject to adult custody (either remand or sentence) the adult custody is to be served in a youth detention centre, until such time as the childhood custody expires. This section does not limit the transfer of a person in a youth detention centre to a prison as set out in clause 39. The time spent serving a term of custody in a youth detention centre under this section is to be counted as part of the term of imprisonment.

The clause also makes a minor amendment to section 135 to replace a reference to 'section 270' with a reference to 'part 8, division 2A'. The amendment reflects the changes created by clause 38 and clause 39.

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

Clause 18 makes a minor amendment to section 139 to replace a reference to 'section 270' with a reference to 'part 8, division 2A'. The amendment reflects the changes created by clause 38 and clause 39.

Amendment of s 151 (Pre-sentence report)

Clause 19 amends section 151 to clarify that the reference to 'days' means 'business days', as defined in the *Acts Interpretation Act 1954*.

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

Clause 20 amends section 160 to clarify that the proper officer of a court sentencing a child for an offence must promptly reduce to writing specified decisions or orders and give a copy of the decision or order to the child, the parent of the child and the chief executive.

Amendment of s 164 (Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court's indefinite referral)

Clause 21 inserts new provisions in section 164 to:

- ensure that a notice given to a child under section 164(4) includes a warning that the court may issue a warrant for the child's arrest if the child fails to appear before the court in answer to the notice;
- provide that if the child fails to appear before the court in answer to the notice, the court may issue a warrant for the child's arrest;
- provide that a child arrested under the warrant must be treated as if arrested on a charge of an offence.

Amendment of s 165 (If an agreement is made on a referral by a court to a conference before sentence)

Clause 22 amends section 165 to clarify that where a child contravenes a term of a conference agreement included in a community based order, contraventions proceed under division 12. Contraventions of a conference agreement included in or as part of any other sentence order proceed under section 165. The clause amends the section heading to better reflect the section itself.

The clause also inserts new provisions to:

- ensure that a notice given to a child under section 165(6) includes a warning that the court may issue a warrant for the child's arrest if the child fails to appear before the court in answer to the notice;
- provide that if the child fails to appear before the court in answer to the notice, the court may issue a warrant for the child's arrest;
- provide that a child arrested under the warrant must be treated as if arrested on a charge of an offence.

Amendment of s 166 (Court may take no further action if agreement is made)

Clause 23 inserts new provisions in section 166 to:

- ensure that a notice given to a child under section 166(4) includes a warning that the court may issue a warrant for the child's arrest if the child fails to appear before the court in answer to the notice;

- provide that if the child fails to appear before the court in answer to the notice, the court may issue a warrant for the child's arrest;
- provide that a child arrested under the warrant must be treated as if arrested on a charge of an offence;
- clarify that a decision by the court to take no further action does not form part of the child's criminal history.

Amendment of s 174 (If child fails to attend drug assessment and education session)

Clause 24 amends section 174 to:

- ensure that a notice given to a child under section 174(4) includes a warning that the court may issue a warrant for the child's arrest if the child fails to appear before the court in answer to the notice;
- provide that the commissioner of the police service must help the proper office to give notice if request;
- provide that if the child fails to appear before the court in answer to the notice, the court may issue a warrant for the child's arrest;
- provide that a child arrested under the warrant must be treated as if arrested on a charge of an offence.

Amendment of s 176 (Sentence orders — serious offences)

Clause 25 amends section 176 to provide that despite section 155, section 305(2) and (3) of the *Criminal Code Act 1899* applies to a court sentencing a child to detention for life on a conviction of murder.

Amendment of s 193 (Probation orders — requirements)

Clause 26 amends section 193 to specify a court's power to impose a curfew as a condition of a probation order.

Amendment of s 196 (Requirements to be set out in community service order)

Clause 27 amends section 196 to enable the parent of a child to inform the chief executive of every change in the child's place of residence.

The clause also enables a court to make a requirement that a community service order of less than 50 hours be performed within a period that is less than 1 year. Before imposing this requirement, the court must consider what period is reasonable in all the circumstances.

Amendment of s 198 (Community service to be performed within limited period)

Clause 28 amends section 198 to clarify the period in which community service orders must be performed.

Amendment of s 200 (Limitation on number of hours of community service)

Clause 29 amends section 200 to clarify that where a child is subject to more than one community service order, the hours ordered to be performed in the community service orders operate cumulatively — if an order is made where there is an existing order, the number of hours in each order is added together to give the total number of hours to be performed.

Amendment of s 204 (Intensive supervision order — requirements)

Clause 30 amends section 204 to specify a court's power to impose a curfew as a condition of an intensive supervision order.

Amendment of s 218 (Period of custody on remand to be treated as detention on sentence)

Clause 31 inserts an example after section 218 to clarify that, in determining when to release a child from detention under section 227 and 228, the chief executive counts the period of time for which the child was held in custody pending the proceeding for an offence.

Amendment of s 221 (Conditional release order — requirements)

Clause 32 amends section 221 to specify a court's power to impose a curfew as a condition of a conditional release order.

Amendment of s 227 (Release of child after service of period of detention)

Clause 33 amends the example in section 227 to clarify that the chief executive reduces the period of detention a child has been ordered to serve by the custody period before releasing the child on a supervised release order.

Amendment of s 228 (Chief executive's supervised release order)

Clause 34 amends section 228 to provide circumstances in which the chief executive is not required to make a supervised release order.

Omission of s 231 (Cancellation of supervised release order)

Clause 35 omits section 231. This section is replaced by clause 37.

Amendment of s 234 (Court may allow publication of identifying information)

Clause 36 amends section 234 to provide that if a court makes a detention order against a child under section 176(3)(b), it may order that identifying information about the child be published if it considers it would be in the interests of justice.

In determining whether it would be in the interests of justice to allow the publication, the court has regard to:

- the need to protect the community; and
- the safety or wellbeing of a person other than the child; and
- the impact of the publication on the child's rehabilitation; and
- any other relevant matter.

Division 12A Contravention of supervised release orders and related matters

Clause 37 inserts a new part 7 division 12A after section 252 to step out how a child who has contravened a supervised release order can be dealt

with. A new provision is also added to step out how a child can be dealt with if found guilty of breaching a supervised release order by being found guilty of committing an indictable offence. In addition, the clause replaces section 231. Under the clause:

- section 252A provides definitions for the division;
- section 252B states the circumstances in which the chief executive must warn the child of the consequences of contravening a supervised release order;
- section 252C enables the chief executive to make application to a Children's Court magistrate for a finding that a child has contravened a supervised release order;
- section 252D applies to applications under section 252C and provides the options available to a Children's Court magistrate who is satisfied beyond a reasonable doubt that a child has contravened a supervised release order;
- section 252E specifies the options available to a court when it finds a child guilty of an indictable offence while on release from detention under a supervised release order;
- section 252F outlines the options available to the court before which a child is ordered to appear;
- section 252G provides that a court must have regard to anything done by a child in compliance with the supervised release order when making an order under section 252D, 252E or 252F, clarifies the right of appeal or review of a finding or order made under sections 252D, 252E or 252F, and clarifies that a finding that the child has contravened a supervised release order is not part of the child's criminal history;
- section 252H enables a court to commit a child to custody or release under Part 5 pending appearance before another court;
- section 252I enables a justice or a court to issue a warrant for a child's arrest if the child fails to appear before a court in answer to a summons under section 252C(2) or cannot be found;
- section 252J provides that an application under this division expires if a child's supervised release order expires before the application is finalised, and that a child in custody under a warrant or court order in these circumstances must be released from custody.

Omission of s 270 (Childrens Court may order transfer to prison)

Clause 38 omits section 270. This section is replaced by clause 39.

Insertion of new pt 8, div 2A

Division 2A Period of detention to be served as term of imprisonment

Clause 39 inserts a new Part 8, division 2A, sections 276A-276E. These sections enable a court to make an order (transfer order) that the unserved part of a child's period of detention be served as a period of imprisonment. Under the clause:

- section 276A provides definitions for the division;
- section 276B requires a court to consider making a transfer order when it sentences a person who is 16 years or more to a period of detention and the person will be detained when they are 18 or more;
- section 276C sets out the circumstances in which a person serving a period of detention under a detention order or the chief executive may apply for a transfer order;
- section 276D provides matters for the court to consider when deciding whether to make a transfer order, and outlines appeal rights relating to transfer orders;
- section 276E enables a person serving a period of detention, or the chief executive, to make application to vary or revoke a transfer order where there has been a material change in circumstances since the transfer order was made;
- section 276E also enables a court to grant an application if it considers it would be in the interests of justice, having regard to the matters in section 276D(1).

Insertion of new s 289AA

289AA Disclosure to the commissioner of the police service

Clause 40 inserts a new provision after section 289 to enable the chief executive to disclose confidential information to the commissioner of the police services if the chief executive is satisfied the disclosure is in the public interest.

Insertion of new pt 11, div 6

Division 6 Transitional provisions for Juvenile Justice and Other Acts Amendment Act 2009

Clause 41 inserts a new Part 11, division 6 to provide transitional provisions for the *Juvenile Justice and Other Acts Amendment Act 2009*. Under the clause:

- section 343 provides definitions for the division;
- section 344 specifies references to the term ‘juvenile’ which are taken to be references to the term ‘youth’ from the commencement of this Act;
- section 345 clarifies when a court can issue a warrant under section 164(7), 165(9), 166(7) and 174(7) after the commencement of this Act;
- section 346 clarifies the powers of a court dealing with a child who has been given a notice under section 165(6) for a contravention of a term of a conference agreement, but who has not been entirely dealt with before the commencement of this Act ;
- section 346 also specifies that, despite the commencement of this Act, a child in these circumstances must be dealt with for the contravention under the section as it existed at that time;
- section 347 clarifies the effect of the new clause 25;

- section 348 provides for circumstances where an application is made under the repealed section 231, but not entirely dealt with before the commencement of clauses 35 and 37;
- section 349 clarifies the powers of a court dealing with an application made under the repealed section 270, but not entirely dealt with before the commencement of clauses 38 and 39;
- section 350 clarifies the power of the Governor in Council to further amend or repeal a regulation which is amended by this Act.’.

Amendment of Schedule 4 (Dictionary)

Clause 42 inserts a definition for ‘curfew’ in the dictionary. The clause also corrects the dictionary reference to the *Commission for Children and Young People and Child Guardian Act 2000* within the definition of ‘community visitor’.

Part 5 Amendment of Youth Offenders (Interstate Transfer) Act 1987

Act amended

Clause 43 states that this part amends the *Youth Offenders (Interstate Transfer) Act 1987*.

Amendment of s 17 (Escape from custody — penalty)

Clause 44 amends section 17 to make it consistent with the provisions in the *Juvenile Justice Act 1992* relating to the escape of a young offender from custody.

The clause also amends section 17 to remove reference to section 20 of the *Criminal Code Act 1899* which was omitted by the *Penalties and Sentences Bill 1992*.

Part 6 Other amendments

Schedule amendments

Clause 45 inserts Schedule Part 1, Part 2, Part 3 and Part 4 to replace references to the term 'juvenile' in specified legislation with the term 'youth'.

Schedule Consequential amendments

The schedule lists the legislation amended by clause 45.

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