Youth Justice and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Youth Justice and Other Legislation Amendment Bill 2014.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

1. Permit repeat offenders' identifying information to be published and open the Childrens Court for youth justice matters involving repeat offenders;

2. Create a new offence where a child commits a further offence while on bail;

3. Permit childhood findings of guilt for which no conviction was recorded to be admissible in court when sentencing a person for an adult offence;

4. Provide for the automatic transfer from detention to adult corrective services facilities of 17 year olds who have six months or more left to serve in detention;

5. Provide that, in sentencing any adult or child for an offence punishable by imprisonment, the court must not have regard to any principle, whether under statute or at law, that a sentence of imprisonment (in the case of an adult) or detention (in the case of a child) should only be imposed as a last resort;

6. Allow children who have absconded from Sentenced Youth Boot Camps to be arrested and brought before a court for resentencing without first being given a warning; and

7. Make a technical amendment to the *Youth Justice Act 1992*.

The pattern of youth offending in Queensland is changing. While proportionally fewer young people are offending, those who are offending are doing so more often and are committing more serious offences. In 2012-13, for example, almost half of all offences were committed by approximately 10 percent of young offenders.

In this context, the community expects Government to provide more effective responses to youth crime which hold young offenders accountable for their actions and which deter them from future offending. That is why the Government developed the *Safer Streets*

Crime Action Plan – Youth Justice (the Action Plan) to seek community input into effective responses to youth crime.

The Action Plan introduced a comprehensive and broad review of Queensland's youth justice system aimed at promoting the rehabilitation and accountability of young offenders while better protecting the community from recidivism.

The Action Plan presented a range of strategies to strengthen responses to youth crime. These included expanding the boot camp program, reviewing the *Youth Justice Act 1992*, critically examining options around more effective sentencing, promoting early intervention and diversion from the justice system, responding to the causes of crime, managing demand for youth justice services, improving youth detention services and utilising effective non-government investment options. Feedback received through this consultation process will culminate in development of a *Blueprint for the Future of Youth Justice in Queensland*, which will provide clear direction for the ongoing reform to the youth justice system to deliver a safer Queensland.

The Government has already commenced reforming the youth justice system with the implementation and expansion of the youth boot camp trial. The Early Intervention Youth Boot Camp program was initially established on the Gold Coast and has now been expanded to Fraser/Sunshine Coasts and Rockhampton. The Sentenced Youth Boot Camp program, which provides courts an additional sentencing option, was initially available to young offenders from the Cairns region and has now been expanded to include the Townsville region. The Government has also introduced a mandatory graffiti removal order requiring offenders to participate in graffiti removal and has increased the penalties for serious graffiti offences from five to seven years to better reflect the significant impact these offences have on community infrastructure and private property.

This Bill represents the next stage of the reform to the youth justice system and implements the outcomes of a targeted review of the *Youth Justice Act 1992* which focused on five key elements. Review of the *Youth Justice Act 1992* was also an action under the Government's *Six month action plan (January – June 2013)*. The legislative reforms contained in the Bill are intended to better equip the youth justice system to deter future offending, hold offenders accountable for their actions and respond appropriately to recidivist young offenders.

To ensure the punishments handed down to both child and adult offenders fit the severity of their crimes, communicate the wrongfulness of offending and protect the community from criminal behaviour, the Bill removes the principle that detention or prison is a sentence of last resort from both the *Youth Justice Act 1992* and the *Penalties and Sentences Act 1992*.

Achievement of policy objectives

To achieve its policy objectives, the Bill makes the following amendments:

Publication of identifying information about repeat offenders

The Bill amends part 9 of the *Youth Justice Act 1992* to limit application of the existing prohibition on publishing identifying information about a child the subject of proceedings to first-time offenders only. This means publication of identifying information about

repeat offenders who have been found guilty of another offence will be permitted, both during and after proceedings against them.

Prohibiting publication of first-time offenders' identifying information gives young people whose behaviour is becoming serious enough to bring them into contact with the youth justice system an opportunity to recognise the long term consequences of that behaviour and to engage with the rehabilitative programs available to them. Allowing publication in relation to repeat offenders holds to account those children who fail to act on this opportunity and who persist in a course of criminal behaviour.

To ensure publication does not unduly impact on the conduct of proceedings or the wellbeing of victims, other innocent third parties or offenders, the Childrens Court will have the power to make an order at any time during a proceeding prohibiting publication of a repeat offender's identifying information where it considers this to be in the interests of justice. This power may be exercised on the court's own discretion or on application by a specified party.

The *Youth Justice Act 1992* currently empowers the Childrens Court to make an order allowing publication of identifying information about a child convicted of a particularly heinous and significant violent offence after the finalisation of proceedings against them. This power will no longer be applicable to repeat offenders, to whom the new publication provisions inserted by the Bill will apply. However, the power provides an important means of making clear the community's denunciation of serious violent offences and of holding offenders accountable for their actions, and will be retained in relation to first-time offenders.

The maximum penalty for breaching a non-publication order by publishing identifying information about a repeat offender in breach of a non-publication order will be 100 penalty units or 2 years' imprisonment for individuals and 1000 penalty units for corporations, the same penalty as currently applies in relation to publishing identifying information about any child offenders other than under a court order. The existing penalty will also be retained for publication of identifying information about a first-time offender other than under a court order.

Opening the Childrens Court

While the Childrens Court will remain closed when hearing matters in relation to first-time offenders, the Bill amends part 4, division 2 of the *Childrens Court Act 2000* to provide that Childrens Court proceedings under the *Youth Justice Act 1992* which involve repeat offenders are to be held in open court. Childrens Court proceedings are currently only required to be held in open court where a judge is exercising jurisdiction to hear and determine a charge on indictment. The court will have the discretion to hold some or all of a proceeding in relation to a repeat offender in closed court where it considers this to be in the interests of justice. This strikes an appropriate balance between the deterrent effect of having repeat offenders' matters heard in open court and the protection of the interests of innocent third parties affected by an offender's actions, such as victims and offenders' siblings.

As well as remaining closed when hearing matters in relation to first-time offenders, the Childrens Court will also continue to be closed where:

- A complainant in relation to a sexual offence is giving evidence. This will afford victims of sexual offences by child offenders the same protections as victims sexual offences by adult offenders under the *Criminal Law (Sexual Offences) Act 1978*.

- The Childrens Court is hearing a matter arising under either the *Adoption Act 2009* or the *Child Protection Act 1999*, subject to the court's existing discretion to admit certain categories of person with a specified interest in the matter. As these matters do not involve the hearing of criminal charges against child offenders, the policy rationale for opening the Childrens Court does not apply in these cases.

Opening the Childrens Court for youth justice proceedings involving repeat offenders carries the risk that identifying information may be wrongfully published by members of the public in circumstances where publication is not permitted. This risk will be managed by the retention of existing penalties for the unauthorised publication of identifying information and the implementation by the Childrens Court of appropriate operational practices to inform all attendees that publication is prohibited in certain cases and that penalties apply for breaching this prohibition.

Finding of guilt while on bail

The Bill inserts new division 2 into part 5 of the *Youth Justice Act 1992* making it an offence for a child to commit a further offence while on bail. This new offence will be taken to have been committed where a finding of guilt is made against the young person in relation to that further offence.

Having regard to the different sentencing treatment afforded to youth and adult offending, the maximum penalty for the new breach of bail offence will be 20 penalty units or one year's imprisonment, half the maximum penalty under section 29 of the *Penalties and Sentences Act 1992* for breach of a condition of bail by an adult.

The intention behind this new penalty is to create a disincentive to children offending while on bail, rather than to substantially multiply the penalties to which these children are liable. Accordingly, where multiple offences may arise out of a single series of criminal acts committed by a young person while on bail, the young person will only be liable to be found guilty of one breach of bail offence.

Admissibility of childhood findings of guilt

The Bill amends section 148 of the *Youth Justice Act 1992* to provide that a childhood finding of guilt for which no conviction was recorded is admissible where a person is being sentenced during a proceeding for an offence committed as an adult.

Giving courts sentencing adult offenders a more complete picture of these offenders' histories will enable them to frame more appropriate sentences. However, this amendment does not affect the circumstances in which a conviction may or must not be recorded, and does not affect the range of matters included in an offender's criminal history.

Of note, the purposes for which a childhood finding of guilt for which no conviction was recorded is admissible in an adult criminal proceeding will be limited to sentencing only.

This means that unrecorded childhood findings of guilt will continue to be otherwise immune from disclosure, even for those prescribed purposes for which equivalent adult convictions may be required to be disclosed under the *Evidence Act 1977* or the *Criminal Law (Rehabilitation of Offenders) Act 1986*. As the objectives of the *Youth Justice Act 1992* include rehabilitating and reintegrating child offenders, it is not considered appropriate to overturn these existing restrictions other than for the purpose of supporting more appropriate sentencing by adult courts.

Detention as a last resort

The Bill omits and ousts the sentencing principle that prison or detention should only be imposed when there is no other less onerous sanction appropriate in all of the circumstances of the offence and the offender from both the youth and adult justice systems. This overarching common law sentencing principle has been legislatively enshrined under the *Penalties and Sentences Act 1992* for offenders 17 years and over and under the *Youth Justice Act 1992* for offenders aged 16 years and under.

The Bill displaces this sentencing principle for Queensland for all offences and for all offenders. This means that, in structuring an appropriate sentence for an adult or young offender for any offence punishable by imprisonment, the court is not required to have regard to any principle that a sentence of imprisonment or detention should only be imposed as a last resort.

The Bill omits the principle from the *Youth Justice Act 1992* by:

- Omitting the principle that detention should be imposed only as a last resort and for the shortest appropriate period from the sentencing principles in section 150 of the *Youth Justice Act 1992* and from the charter of youth justice principles in schedule 1 of the Act.

  The Childrens Court must currently have regard to these statements of principle in sentencing a child for an offence. Following their removal, the court will continue to be required to have regard to other existing statutory principles—such as proportionality between the offence and the sentence imposed, the nature of the offence and the child's criminal history and the importance of holding the child accountable for their actions—in framing an appropriate sentence in relation to an offence.

- Omitting section 208, which permits a court to impose a detention order on a child only if satisfied that no other sentence is appropriate in the circumstances.

To fully displace this sentencing principle in practice, the Bill also inserts an express provision into the *Youth Justice Act 1992* ousting any other Act or law to the extent that a court, in sentencing a child for an offence, must not have regard to any principle that detention should only be imposed as a last resort. This ensures that, following the removal of the principle from the Act, the corresponding common law principle is not revived by the courts in sentencing child offenders.

The intended effect of these amendments is to hold young offenders to account for their actions by permitting the Childrens Court to properly consider detention as a realistically available sentence and to impose a sentence of detention even though a less restrictive sentence may also have been appropriate in the circumstances. This will give the courts greater scope to impose sentences which properly reflect the severity of the offending for

which the sentences are being imposed, deter future offending and protect the community from the impact of youth offending.

The Bill similarly omits the principle from section 9 of the *Penalties and Sentences Act 1992* and inserts an express provision overriding any other Act or law to the extent that a court, in sentencing an offender for an offence, must not have regard to any principle that a sentence of imprisonment should only be imposed as a last resort.

Transfer to adult correctional facilities

The Bill replaces existing part 8, division 2A of the *Youth Justice Act 1992*, which provides for a court to order in certain circumstances that an offender be transferred to an adult correctional facility on turning 18 (or on turning 17 where they have previously been held in prison under a sentence or on remand). Replacement division 2A provides that all offenders sentenced to a period of detention must be automatically transferred to an adult correctional facility on turning 17 if, at that time, they have at least 6 months left to serve in detention. If an offender is already 17 at the time of sentence to a period of detention of six months or more, that sentence will automatically be taken to be a sentence to a period of imprisonment to be served in a corrective services facility.

The remainder of the period which the offender must serve in detention will be taken, from the time of their transfer, to be a sentence for a term of imprisonment to which the *Corrective Services Act 2006* applies. The offender will be required to be released on parole on the day they would have been required to be released from detention under a supervised release order had they remained in a youth detention facility, subject to the provisions of the *Corrective Services Act 2006* providing for the person's earlier release in exceptional circumstances or continued custody under another sentence of imprisonment.

The chief executive will be required to make a prison transfer direction detailing these matters within 28 days of an offender being sentenced. The direction must be given to the offender and to the chief executive of the department in which the *Corrective Services Act 2006* is administered immediately on being made. In the case of an eligible offender who is already 17 at the time of sentence, transfer will be effected under the terms of the statute rather than by administrative direction.

To promote equity, the statutory requirement of automatic transfer under new division 2A will also apply to offenders already serving a period of detention for whom no court-ordered transfer date has been set under the existing transfer provisions. This includes offenders in detention who have either already turned 17 and have more than six months left to serve in detention or who will turn 17 and become eligible for transfer during the course of their detention. The chief executive must give these offenders notice of their transfer date as soon as practicable after the legislation's commencement.

New division 2A is intended to operate equitably and transparently, with all transfers occurring automatically under the same specified conditions in relation to all offenders. For this reason, new division 2A will expressly prohibit any merit-based review or appeal of the chief executive's decision to make a prison transfer direction.

Absconding from Sentenced Youth Boot Camps

The Bill also amends the *Youth Justice Act 1992* to allow authorities to respond rapidly and appropriately where a child offender has absconded from a Sentenced Youth Boot Camp.

At present, the Act does not include a power to seek a warrant to arrest a child who breaches a boot camp order by absconding from a boot camp centre, unless the child cannot be located or it is reasonably believed the child would not comply with a summons. Further, an absconder must first be warned under section 237 of the *Youth Justice Act 1992* of the consequences of further contravention before they may be brought before a magistrate for a finding of breach of order and resentencing for the offence in relation to which the boot camp order was originally made.

A boot camp order is an alternative sentencing option which is only available where a young offender is otherwise liable to a period of detention, and represents a final opportunity for that young person to avoid serving a period of detention. Accordingly, it is inappropriate that a young offender in breach of a boot camp order be permitted to continue at large or be entitled to a warning before they can be brought before a court to be resentenced.

The Bill therefore inserts a head of power permitting the chief executive to apply for a warrant for the arrest of a child in breach of a boot camp order, allowing absconders to be remanded pending their return to court. The Bill also removes the requirement that the chief executive must first warn a child in breach of a boot camp order, instead providing for the child to be brought before the Childrens Court immediately on their absconding for a finding that the child has breached the order and for resentencing.

Technical amendment

The Bill makes a technical amendment to the *Youth Justice Act 1992* to remove an ambiguity in relation to the Childrens Court's powers under part 7, division 12 on finding that a child offender has breached a community based order. Sections 245, 246 and 246A provide for the court to take a range of actions, including extending the period of the order or discharging the order and resentencing the child for the original offence.

Where court action against the child in relation to the breach has been commenced during the period of the order, these provisions permit the court to take any of these actions even though the period of the order has expired in the interim. To make abundantly clear that the court may act in this way, these provisions each contain a subsection providing that an order which has expired is taken to continue in force until court proceedings in relation to the breach have been heard and decided.

However, the Childrens Court has raised some doubt about the effect which providing that an order is taken to continue in force may have, suggesting this may administratively extend the period of the order's full effect beyond its court-ordered or statutory expiration date.

To remove this doubt and to clarify that a child the subject of an expired order is not subject to ongoing compliance with the order's requirements beyond the date fixed by the court or by the legislation for its expiration, the ambiguous subsections will be removed from each of these provisions. This will ensure the provisions operate as intended and

will provide fairness to child offenders by clarifying that community based orders may only be extended or adjusted by court order.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the intended reforms in these areas of the statutory youth justice system.

Estimated cost for government implementation

Any costs in relation into the amendments will be met from existing agency resources, with the future allocation of resources determined through normal budgetary processes. The following costs are anticipated:

Numbers of children in detention

While not precisely quantifiable, several of the amendments made by the Bill may increase the likelihood that some children who come in contact with the youth justice system will spend time in detention, either on remand or subject to a detention order. Removal of the principle of detention as a last resort, for example, is intended to result in offenders whose offences are serious enough to warrant a period of detention being more readily sentenced to periods of detention rather than being placed on a community based order. The principle's removal could also increase the likelihood of children arrested for serious offences being held on remand rather than being released on bail.

Further, introduction of the offence for committing a further offence while on bail may result in a greater proportion of bail applications being refused where repeat offenders have previously been found guilty of breaching bail. Any increase in bail applications being refused would result in greater numbers of children being held on remand.

However, any increase in the proportion of these categories of offenders being held in detention is likely to be offset by reductions in the number of children entering and becoming entrenched in the youth justice system as a result of initiatives to be delivered under the Government's comprehensive reform agenda. Initiatives such as expansion of the Early Intervention Youth Boot Camp program, development of the Blueprint to guide long term, evidence-based reform and the close engagement of non-government organisations and partner agencies in integrated service delivery are intended to address the causes of offending and reduce the incidence of children becoming entrenched in a life of offending.

Accordingly, any increases in the number of children held on remand or subject to a detention order are expected to be largely limited to that cohort of serious repeat young offenders whose offending behaviour the Bill is seeking to address.

Court administration costs

The Bill is expected to have a modest impact on court administration costs. This includes additional costs associated with considering applications to close the court or prohibit publication of repeat offenders' identifying information, appropriately managing open court and closing the court in the interests of justice.

This modest impact will be accommodated within existing court resources. Further, these increased costs will be partially offset by the automatic transfer of young offenders to corrective services facilities on turning 17, which will relieve the court of its current workload associated with hearing applications for transfer orders.

Information management costs

The Bill amendments also involve some small information management cost implications. In particular, the provision of details of unrecorded childhood convictions to adult courts, the identification of first-time offenders when they come before the court for the purposes of determining when to open the court and the publication provisions and the recording of new categories of orders will all need to be accommodated by existing information management systems and processes.

Imprisonment as a sentence of last resort

The removal of the sentencing principle, under the *Penalties and Sentences Act 1992*, that imprisonment should only be imposed as a last resort when sentencing for any offence punishable by imprisonment will likely result in greater rates of actual imprisonment, as the starting point will no longer be that a sentence that allows the offender to remain in the community is to be preferred (with the exception of offences involving violence, child sexual offending and child exploitation material, where this sentencing principle had already been excluded). The extent of such impacts cannot be quantified in advance.

Consistency with fundamental legislative principles

Administrative power

Whether legislation has sufficient regard to the rights and liberties of individuals depends in part on whether the legislation makes those rights and liberties dependent on administrative power only in circumstances where that power is sufficiently defined and subject to appropriate review.[1]

Clause 20 of the Bill provides for the transfer of a young offender from a youth detention centre to an adult correctional facility on the written direction of the chief executive. The chief executive's decision to issue a direction will be taken to be a sentence of imprisonment and will not be subject to review or appeal, other than to the extent (if any) to which it is affected by jurisdictional error.

While this amendment makes the rights and liberties of affected offenders subject to an administrative power—the chief executive's power to issue a transfer direction— this does not infringe the FLP that administrative power should be subject to appropriate review as:

- the Bill clearly defines and limits the power by prescribing the factual circumstances in which it must be exercised and its precise effect, with no real discretion afforded to the chief executive; and

- Where the chief executive's administrative power is exceeded in the making of a direction, the exercise of that power is subject to the court's review jurisdiction under part 5 of the *Judicial Review Act 1991*.

[1] *Legislative Standards Act 1992* s 4(3)(a).

Retrospectivity

Legislation may not have sufficient regard for the rights and liberties of individuals where it adversely affects these rights and liberties retrospectively.[2]

Clause 24 of the Bill provides that the provisions of the Bill dealing with the following matters operate retrospectively in some way:

Admissibility of childhood findings of guilt

In a proceeding against an adult for an offence, any childhood finding of guilt for which no conviction was recorded will be admissible for the purposes of sentencing. This includes where the adult offence was committed or the proceeding against the adult started before commencement of the legislation.

However, it does not affect rights and liberties retrospectively. Unrecorded childhood findings of guilt will only be relevant in determining the nature and quantum of the sentence to be imposed for the adult offence once criminal responsibility has been established. The amendment does not expose the adult to a greater likelihood of being found guilty of an offence, nor to a risk of being found guilty for acts which were not criminally liable at the time of their commission.

Finding of guilt while on bail

A child found guilty of a subsequent offence while on bail for an earlier offence will also thereby be guilty of an offence of breaching bail. While the act constituting the subsequent offence must have been committed after commencement of the legislation, the earlier offence may have been committed and the offender granted bail before commencement.

Applying the offence uniformly to all subsequent offences committed following commencement provides fairness and equity to offenders and simplifies application of the legislation. All offenders who commit a subsequent offence after the same point in time will be subject to the same penalties, regardless of when the earlier offence was committed and bail granted.

Further, while commission of, and bail for, the earlier offence can have occurred prior to commencement, the breach of bail offence itself only arises on commission of a subsequent offence. That commission of this subsequent offence must follow commencement means affected offenders will only become exposed to additional punishment for wrongful acts committed after the new offence is in force.

Removal of detention as a last resort

The principle of detention as a last resort will be inapplicable in the sentencing of any child for whom a finding of guilt is made following commencement of the legislation, including where the offence for which the child is being sentenced was committed or the proceeding started before commencement.

However, it is only where the finding of guilt against a child is made after commencement of the legislation that that child will be sentenced under the amended

[2] *Legislative Standards Act 1992* s 4(3)(g).

Youth Justice Act 1992. This means that any child who pleads guilty prior to commencement and whose plea is accepted by the court must be sentenced according to the *Youth Justice Act 1992* as it applied at the time of the plea. The child's rights and liberties (in this case, the right to plead guilty to an offence and to be sentenced according to the then applicable sentencing regime) are determined by the law in force at the time of their seeking to exercise them, rather than retrospectively.

Similarly, the omission and ousting of this principle in the sentencing of any adult under the *Penalties and Sentences Act 1992* applies in the sentencing of any person convicted after commencement, including where the offence was committed or the proceeding started before commencement. Again, this means the current sentencing regime will continue to apply to those persons convicted prior to commencement but not finally sentenced until after commencement.

Publication of identifying information

Publication of repeat offenders' identifying information will be permitted at any time during proceedings after commencement of the legislation, including proceedings started before commencement. This means a child who is immune from having their identifying information published on the opening of a proceeding against them may, as a result of the intervening commencement of the legislation, lose this immunity in the course of the proceeding.

This removal of immunity previously enjoyed by children the subject of proceedings started prior to commencement of the legislation is justified on the grounds that it minimises any potential disruption to the courts from having to treat contemporaneous proceedings differently and promotes equity and fairness to offenders.

Automatic transfer to corrective services facility

All children in detention who, on turning 17, have at least six months left to serve in detention and do not have a court-ordered transfer date will be automatically transferred to a corrective services facility. This includes children already serving a period of detention and who committed the offence or offences for which the detention order was imposed before commencement of the legislation.

Under the current *Youth Justice Act 1992*, children in detention for whom the court has not made an order setting a transfer date do not thereby enjoy a right to avoid transfer to an adult correctional facility, with section 276C permitting the court to order the offender's transfer to a corrective services facility in certain circumstances. The effect of this amendment is therefore not to remove or retrospectively alter an existing right, but simply to amend the specified circumstances under which this transfer is to take place.

Criminal history

Whether legislation has sufficient regard for the rights and liberties of individuals depends in part on whether the legislation expands the scope of matters included in an offender's criminal history, as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986* (the CLRO Act), without sufficient justification.[3]

[3] Legislation Alert No. 10 of 2009, at page 11.

Clause 8 of the Bill removes the current prohibition on admitting evidence of unrecorded childhood findings of guilt for the purposes of sentencing adult offenders. However, this removal does not expand the range of findings of guilt for which a conviction may or must be recorded and which are consequently included in an offender's criminal history.

The admissibility of childhood findings of guilt for which no conviction is recorded will now mean that the offending history of a child is able to be considered by a court in sentencing a person for an adult offence in the same way as an unrecorded adult conviction is able to be considered. Providing courts a more accurate picture of these offenders' offending trajectories will allow them to frame more appropriate sentences, better holding offenders to account for their behaviour.

Principles arising from the general and international law

As identified by the former Scrutiny of Legislation Committee, the fundamental legislative principles enumerated in sections 4(3) and 4(4) of the *Legislative Standards Act 1992* are not intended as an exhaustive list of the principles which underlie a parliamentary democracy based on the rule of law.[4] Accordingly, whether legislation has sufficient regard to the rights and liberties of individuals can involve consideration of whether it infringes principles arising from the general law and other sources of legal obligations, such as international law, without sufficient justification.

Detention as a last resort

It is a principle of the common law that a sentence of imprisonment should only be imposed when no other sentence is appropriate and that, where imprisonment is warranted, the shortest possible sentence should be imposed.[5]

The Bill abrogates this principle as it applies to the sentencing of child offenders by removing it from the list of sentencing principles in section 150 of the *Youth Justice Act 1992* and the charter of youth justice principles and by omitting section 208, which requires a court to satisfied no other sentence is appropriate in the circumstances before making a detention order. The Bill also prevents revival of the corresponding common law principle by inserting an expression provision into the *Youth Justice Act 1992* overriding any contrary Act or law.

Removing this principle is justified on the basis that it otherwise unduly inhibits courts in making sentencing orders which appropriately reflect the severity of offending, hold offenders properly to account for their offending behaviour and reflect the community's denunciation of serious offending. Its removal is intended to empower courts to use sentencing more effectively for the purposes of punishing, denouncing and deterring offending and protecting the community.

Courts will still be required to have regard to a range of prescribed mitigating and aggravating factors—such as the wellbeing and rehabilitation of the offender, the seriousness of their offending, the need to protect the community, the offender's level of maturity and accountability for their actions and the interests of victims and others affected by the offending—in framing sentences which appropriately balance the various purposes of sentencing. How these complex factors are appropriately balanced will continue to be a matter for the courts on a case-by-case basis.

[4] Alert Digest No. 2 of 1996, at page 17.

[5] *R v James* (1985) 14 A Crim R 364; *R v O'Connor* [1987] VR 496.

The Bill also amends the *Penalties and Sentences Act 1992* to omit and oust any sentencing principle that imprisonment should only be imposed as a last resort when sentencing for any offence punishable by imprisonment. The amendment impacts on the rights and liberties of individuals as it represents a fundamental shift to the current purposes of sentencing in Queensland for offenders aged 17 years and over. It will likely result in greater rates of actual imprisonment as the starting point will no longer be that a sentence that allows the offender to remain in the community is to be preferred (with the exception of offences involving violence, child sexual offending and child exploitation material, where this sentencing principle had already been excluded under the Penalties and Sentences Act).

The amendment is justified as it ensures the punishment fits the severity of the crime and communicates the wrongfulness of the offending, and is intended to better promote the community's safety and its protection from criminal behaviour. The amendment will apply to offenders convicted after commencement.

Privacy of children before the youth justice system

Rules 8.1 and 8.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)[6] provide that a young offender's privacy should be respected and their identifying information withheld from publication. Article 40.2(b)(vii) of the Convention on the Rights of the Child (CRC)[7] similarly provides that every child accused of committing an offence should have their privacy fully respected at all stages of a proceeding against them.

The amendments to open the Childrens Court when hearing matters in relation to repeat offenders and to permit publication of repeat offenders' identifying information are arguably inconsistent with these provisions of the Beijing Rules and the CRC. However, this inconsistency must be balanced against the need to hold repeat offenders properly to account for their actions and the long term benefit to society and to individual offenders themselves from having in place real deterrents which discourage young offenders from persisting in a course of criminal behaviour.

By amending the *Childrens Court Act 1992* to open Childrens Court proceedings under the *Youth Justice Act 1992* in relation to repeat offenders, the Bill makes abundantly clear the community's denunciation of young offenders' behaviour and emphasises the gravity of the situation they face when that behaviour again brings them before court. By operating only in relation to repeat offenders, the new provisions to open the court give first-time offenders an opportunity to avoid the consequences attached to further offending.

The amendment to the *Youth Justice Act 1992* to permit the publication of identifying information about repeat offenders will directly target the behaviour of that group of recidivist young offenders who are increasingly offending more often and committing more serious offences. Again, by operating only in relation to repeat offenders, the new publication provisions give first-time offenders an opportunity to avoid the more serious consequences of further offending.

To prevent the safety or rehabilitation of affected offenders being put at undue risk, the Bill empowers courts to be closed to the public or specified persons and publication of a

[6] Adopted by General Assembly resolution 40/33 of 29 November 1985.

[7] Ratified by Australia on 17 December 1990.

repeat offender's identifying information prohibited if necessary or desirable in the interests of justice.

These amendments are accordingly justified on the basis that they strike an appropriate balance between protecting children appearing before the youth justice system while holding young offenders—and particularly repeat offenders—more properly to account.

Separate facilities from adult offenders

The automatic transfer of 17 year olds from youth detention to adult correctional facilities appears to infringe rule 26.3 of the Beijing Rules, which provides that juveniles in correctional institutions should be detained in separate institutions from adults or in separate parts of institutions also holding adults.

However, the Queensland criminal justice system recognises that 17 year olds are of sufficient maturity to be held fully accountable for their actions, including by being treated as adults when charged with an offence or being held in an adult correctional facility when sentenced to a custodial sentence. The automatic transfer of 17 year olds from youth detention centres to adult correctional facilities is justified as it treats all 17 year olds serving custodial sentences equally, regardless of whether they were originally convicted and sentenced as juveniles or as adults.

Consultation

The community was engaged in the review of the *Youth Justice Act 1992* through the *Safer Streets Crime Action Plan – Youth Justice* discussion paper and survey, conducted in early 2013. Of the 4184 respondents to this survey:

- 65.9% believed that giving courts access to an adult offender's juvenile criminal history would be 'quite effective' or 'very effective';
- 66.3% agreed with making it an offence for a child to breach their bail conditions;
- 49.9% agreed with removing barriers to the naming and shaming of child offenders; and
- 47.8% agreed with removing detention as a last resort for young offenders.

Key criminal justice experts, community agencies and the legal sector were invited to provide submissions on policy proposals. External stakeholders including the Queensland Law Society, the Bar Association of Queensland, Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services, the Chief Justice of Queensland, President of the Childrens Court, Chief Judge of the District Court, Chief Magistrate, University of Queensland, Griffith University, Queensland Council of Social Services and the Youth Advocacy Network Queensland provided submissions. Departmental officers also met with interested parties to discuss their ideas and concerns.

Consistency with legislation of other jurisdictions

The Bill is specific to Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state. However, the amendments to the *Childrens Court Act 1992* to open the Childrens Court subject to the court's power to

close the court in the interests of justice are similar to provisions of Victoria's *Children, Youth and Families Act 2005* and the Northern Territory's *Youth Justice Act 2005*.

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that the short title of the Act is the *Youth Justice and Other Legislation Amendment Act 2014*.

Part 2 – Amendment of Youth Justice Act 1992

Clause 2 provides that part 2 amends the *Youth Justice Act 1992*.

Clause 3 omits the note to section 13(1)(a)(iv) of the *Youth Justice Act 1992*, which refers to a principle which is being omitted from the charter of youth justice principles by clause 25 of the Bill.

Clause 4 inserts a new divisional heading, 'Bail generally', into part 5 of the *Youth Justice Act 1992*, and renumbers the group of provisions to which the heading applies as division 1. This renumbering is required as clause 5 inserts a new division 2 into part 5.

Clause 5 inserts a new division 2, 'Offence committed while on bail', consisting of new section 59A, into part 5 of the *Youth Justice Act 1992*. New subsection 59A(2) makes it an offence for a young person to commit a further offence while on bail. A young person who has been granted bail in relation to an initial offence by police or a court commits an additional offence where they are subsequently found guilty of a further offence committed while on bail.

Having regard to the different sentencing treatment afforded to child and adult offenders, the maximum penalty for the new offence will be 20 penalty units or one year's imprisonment, half the maximum penalty under section 29 the *Penalties and Sentences Act 1992* for breach of a condition of bail by an adult. Any penalty imposed is subject to part 7 of the *Youth Justice Act 1992*, which deals generally with sentencing of young offenders.

New subsection 59A(3) provides that, where multiple offences arise out of a single series of acts committed by a young person while on bail, the young person will only be liable to be found guilty of one breach of bail offence.

Clause 6 omits from section 62 a reference to an order to transfer a person to a prison under part 8, division 2A, consequential to the omission and replacement of that division by clause 20. Subclause (2) consequentially renumbers the remaining subsections of section 62.

Clause 7 amends existing section 74 to extend the chief executive's right of audience to include the making of a publication prohibition order under new subsection 299A(2), inserted by clause 21 of the Bill, and the making of an order closing the Childrens Court under new section 21C of the *Childrens Court Act 1992*, inserted by clause 31 of the Bill. This entitles the chief executive or delegate, even where not a party to the proceeding before the court, to be heard by a court on an application to make a publication prohibition order in relation to a repeat offender or to close the court when hearing a matter involving either a first-time or repeat offender.

This will enable the chief executive in both cases to ensure the court is properly informed of any potential impact of its decision in relation to an application before it, including on the interests of third parties affected by proceedings against a child.

Clause 8 amends section 148 of the *Youth Justice Act 1992* to provide that, for the purposes of sentencing, a court may receive evidence that an adult the subject of a proceeding before it had an unrecorded childhood finding of guilt made against them. Section 148 otherwise prevents a court receiving evidence for any other purpose that an adult the subject of a proceeding before it had an unrecorded finding of guilt made against them as a child.

Clause 9 amends subsection 150(2) of the *Youth Justice Act 1992* to omit the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period from the special considerations to which a court must have regard in sentencing a child for an offence. This is one of several amendments required to give full effect to removal of the principle of detention as a last resort in the sentencing of children for offences.

The clause also adds a new subsection 150(5) to explicitly provide that section 150 overrides any other Act or law to the extent that that other Act or law requires the court, in sentencing a child for an offence, to have regard to any principle that a detention order should only be imposed as a last resort. This has the effect of preventing courts, in sentencing child offenders, from reviving the equivalent common law principle to the statutory principle omitted by the clause.

Clause 10 replaces a reference to section 245 of the *Youth Justice Act 1992* in subsection 194D(b) with a reference to subsection 245(1)(aa)(ii). This makes clearer the specific head of power in section 245—which contains a number of similar heads of power—to which the cross-reference in section 194D is referring.

Clause 11 replaces a reference to section 245 of the *Youth Justice Act 1992* in subsection 198(b) with a reference to subsection 245(1)(b)(ii). As with clause 10, this makes clearer the specific head of power in section 245 to which the cross-reference in section 198 is referring.

Clause 12 omits existing section 208, which provides that a court may only impose a detention order if satisfied that no other sentence is appropriate in the circumstances of the case. This is one of several amendments required to give full effect to the removal of the principle of detention as a last resort in the sentencing of children for offences.

Clause 13 amends the heading and body of section 234 of the *Youth Justice Act 1992* by inserting references to 'first-time offender' after references to the identifying information the subject of the provision. 'First time offender' is defined by clause 26 as a child who, at any time during a proceeding against them, has not been found guilty of an offence. This has the effect of restricting the scope of section 234—which enables the court to make an order permitting publication of identifying information about a child the subject of a detention order imposed in relation to a particularly heinous violent offence—to first-time offenders only. Restricting the scope of this prohibition means, in effect, that the *Youth Justice Act 1992* imposes no restrictions on the publication of identifying information about repeat offenders (subject to the court's power, inserted by clause 21, to make an order restricting publication).

Clause 14 amends subsection 237(3) by inserting an additional exception to the requirement under subsection (2) that the chief executive warn a child reasonably believed to have contravened a community based order of the consequences of a further contravention before taking any further action. This exception will apply where the child is reasonably believed to have contravened a boot camp order by leaving the boot camp centre stated in the order without written consent. This will allow a child who has absconded from a boot camp centre to be brought immediately before the Childrens Court for a finding that the child has breached their boot camp order and for resentencing for the offence in relation to which the order was originally made.

Clause 15 amends subsection 238(6)(b)(ii) to insert an additional circumstance under which, when substantiated on oath before a justice by the chief executive, a justice may issue a warrant for the arrest of a child who is reasonably believed to have breached a community based order. This additional circumstance is made out where the chief executive reasonably believes the child has contravened a boot camp order by leaving the boot camp centre stated in the order without written consent. This complements the amendment of section 237 by clause 14 by enabling an offender who has absconded from a boot camp centre to be detained pending their return to court for resentencing.

Clause 16 omits subsection 245(6), which provides that a community based order (other than a conditional release order or boot camp order) whose period has otherwise expired is taken to continue in force for the purpose of a court exercising its power under subsection 245(1) to extend, vary or discharge the order. This technical amendment removes an unintended implication identified by the Childrens Court that providing that an order is taken to continue in force may administratively extend the period of its full effect beyond its court-ordered or statutory expiration date.

Subclause (2) renumbers existing subsection 245(7) consequential to the omission of subsection 245(6).

Clause 17 has the same intended effect in relation to the court's power under section 246 to extend, vary or discharge a conditional release order as clause 16 has in relation to other community based orders.

Clause 18 has the same intended effect in relation to the court's power under section 246A to extend, vary or discharge a boot camp order as clause 16 has in relation to other community based orders.

Clause 19 renumbers two references to the youth justice principles in subsection 263(2), consequential to the renumbering of these principles by clause 25.

Clause 20 replaces current part 8, division 2A of the *Youth Justice Act 1992*, which deals with the transfer of children in detention to adult correctional facilities, with a new division dealing with this matter.

New section 276A defines several terms used in the division.

New section 276B provides that the division applies to the following offenders—

- Children who will turn 17 while serving a period of detention and who, on turning 17, will have at least six months of that period of detention left to serve and are not required to be released under a supervised release order within those six months. This confines operation of the division to those children who, on turning 17, have at

least six month left to serve in actual detention, and excludes those children who, on turning 17, will have less than six months remaining before expiration of their detention order or who will be required under section 227 to be released from detention and placed under a supervised release order within six months of turning 17.

- Persons who are already 17 at the time of being sentenced to a period of detention of six months or more for an offence committed as a child and who are not required to be released under a supervised release order within those six months. Again, this confines operation of the division to persons who will be required to serve at least six months in actual detention.

Limiting operation of the division to offenders who will serve at least six months in actual detention in effect targets serious violent or sexual offenders, for whom custodial sentences of six months or longer may be appropriate. Further, as 'period of detention' is defined for the purposes of the division in new section 276A as including any further periods of detention which an offender is liable to serve cumulatively, the division also particularly targets those offenders who have offended repeatedly. New section 276C requires the chief executive to issue a written prison transfer direction in relation to any child to whom the division applies within 28 days of the child being sentenced to the period of detention under a detention order. The direction must state:

- the day on which the child becomes eligible to be transferred (that is, the child's 17th birthday);

- that the child is to be transferred to a corrective services facility on that day; and

- that the remainder of the child's period of detention is to be served as a period of imprisonment.

The chief executive must immediately give a copy of that direction to the child to whom it applies and to the chief executive of the department which administers the *Corrective Services Act 2006*.

New subsection 276C(3) provides that a child who cannot be transferred under a prison transfer direction on the day they become eligible to transfer must be transferred as soon as practicable after that day.

New section 276D makes explicit that the *Corrective Services Act 2006* applies to a person who is either 17 at the time of being sentenced to a period of actual detention of six months or more or who is transferred to a corrective services facility under a prison transfer direction. The person's detention order (in relation to the former of these categories) or prison transfer direction (in relation to the latter) is taken to be a sentence of imprisonment for a period equal to the remaining length of the unserved period of detention, with the person required to be released on parole on the day they would otherwise have been released from detention under a supervised release order. Under part 7, division 10, subdivision 3 of the *Youth Justice Act 1992*, a child sentenced to a period of detention must be released from detention and placed under a supervised release order after having served either 70 percent of that period in actual detention or, if ordered by the court in special circumstances, between 50 and 70 percent.

New subsection 276D(4) confirms that the requirement that a person transferred to a corrective services facility under the division be released on parole on the day they would

otherwise have been eligible for supervised release does not prevent the person's earlier release under an exceptional circumstances parole order or their continued custody beyond their parole release date under another sentence of imprisonment.

Section 276D has the effect of requiring a person transferred to a corrective services facility under the division to be managed in the same way as a person imprisoned in the facility under a sentence of imprisonment. However, while a court under section 160B of the *Penalties and Sentences Act 1992* may only set a parole release date for a person subject to a sentence of imprisonment where that person's period of imprisonment is not more than three years and does not include a term of imprisonment for a serious violent or sexual offence, the date a person transferred under a prison transfer direction would otherwise have been released under a supervised release order must be treated as their parole release date regardless of the length of the person's period of detention or the offence or offences for which it was imposed.

New section 276E provides that there is to be no merit-based review of, or appeal against, a decision by the chief executive to make a prison transfer direction. However, the provision makes clear that the Bill does not seek to oust the Supreme Court's review jurisdiction under part 5 of the *Judicial Review Act 1991* where the chief executive's administrative power is exceeded in the making of a direction.

Clause 21 inserts a new section 299A into the *Youth Justice Act 1992* dealing with publication of identifying information about repeat offenders the subject of proceedings before the Childrens Court.

Subsection (1) provides that the section applies in a proceeding in relation to a child who has been charged with an offence and is not a first-time offender. That is, a proceeding in relation to a repeat offender.

Subsection (2) provides that the court may, at any time during a proceeding against a repeat offender, make a publication prohibition order—a new category of order prohibiting publication of identifying information in relation to that offender—if it considers it in the interests of justice. Publication of repeat offenders' identifying information will not otherwise be prohibited under the *Youth Justice Act 1992*.

Subsection (4) prescribes those matters to which a court must have regard in determining whether making an order would be in the interests of justice, including the offender's antecedents, the need to protect the community and the impact of publication on the offender and on any third parties.

The court will have wide discretion to make an order appropriate to the circumstances of each case. For example, where a serious offence has met with substantial public opprobrium, the court may consider the media attention likely to be generated by publication could adversely affect the conduct of the proceeding in relation to the offence. In this circumstance, it may order that publication be prohibited until finalisation of the proceeding only, with the order terminating and publication being permitted after that time. By contrast, where the court is hearing a proceeding for a relatively minor offence against a repeat offender, or for an offence involving a young and vulnerable victim, it may consider the interests of justice are best served by an order prohibiting publication until the offender or the victim turns 18.

Under subsection (3), the court will be able to make an order either on its own initiative or on application by a relevant party, defined in subsection (6) as including the offender

and members of their family, the offender's lawyer, a prosecutor, the chief executive and the chief executive of the department administering the *Child Protection Act 1999*.

Subsection (5) provides that publication of identifying information which is prohibited under new section 299A will be subject to a maximum penalty of 100 penalty units or two years' imprisonment, or 1000 penalty units for a corporation.

Clause 22 omits existing section 301, which prohibits the publication of identifying information about a child the subject of Childrens Court proceedings, and replaces it with an otherwise identical provision whose application is limited to first-time offenders only. Under new section 301, publication of identifying information about first-time offenders will continue to be prohibited unless permitted by a court order under section 234 or in certain circumstances by the chief executive's written authority. A definition of 'first-time offender' is inserted into the dictionary to the Act at schedule 4 by clause 26. As with publication of identifying information about a repeat offender which is prohibited under new section 299A, unauthorised publication of information about a first-time offender will be subject to a maximum penalty of 100 penalty units or two years' imprisonment, or 1000 penalty units for a corporation.

Clause 23 replaces a reference to section 301 in existing subsection 303(3) with a reference to new sections 299A and 301. Subsection 303(3) identifies that subsection 303(2), which provides for requirements about reporting and publishing information about children dealt with under the Act to be prescribed by regulation, is subject to section 301, which prohibits publication of identifying information other than in prescribed circumstances. As section 301 is replaced and the matters it deals with in part dealt with under new section 299A, the cross-reference in subsection 303(3) must be updated.

Clause 24 inserts the following transitional provisions into the *Youth Justice Act 1992* as new part 11, division 11:

- New section 358, which provides definitions for the division.

- New section 359, which has the effect of applying new subsection 148(3)—which provides for evidence of unrecorded childhood findings of guilt to be admissible in sentencing a person for an offence committed as an adult—to any proceeding against an adult, including where the offence to which the proceeding relates was committed or the proceeding started before commencement. This means that unrecorded childhood findings of guilt will be admissible in the sentencing of all adults where that sentencing occurs after commencement.

- New section 360, which has the effect of applying those provisions omitting or otherwise ousting the principle of detention as a sentence of last resort to every child found guilty of an offence after commencement, including where the offence was committed or the proceeding started before commencement. This means that the law in force at the time a court finds a child guilty or accepts a guilty plea is to be applied in sentencing the child.

- New section 361, which has the effect of applying replacement section 301 and new section 299A dealing with publication of identifying information about children the subject of proceedings to proceedings started before commencement. This means that all proceedings occurring in whole or part after commencement are subject to a

single regime governing when identifying information may and may not be published.

- New section 362, which has the effect of applying sections 245, 246 and 246A as amended by clauses 16 to 18 to all proceedings in relation to breaches of community based orders which occur in whole or in part after commencement.

- New section 363, which has the effect of applying new part 8, division 2A providing for the automatic transfer of children from detention to corrective services facilities, as inserted by clause 20, to:

    - children subject to detention orders made after commencement, including where the offence was committed or the proceeding started before commencement; and

    - children in detention at commencement who will become eligible to be transferred while in detention.

  Regardless of whether the making of an offender's detention order preceded or followed commencement, all offenders in detention who, on turning 17, will have at least six months left to serve in actual detention, will be transferred on turning 17. New section 363 must be read subject to new section 366, which provides that a court-ordered transfer date continues to apply.

- New section 364, which provides that a person in detention who is already 17 years or more and who has at least six months to serve in actual detention must—unless subject to a court-ordered transfer date under existing section 276B or 276C—be transferred to a corrective services facility as soon as practicable. Where a person who would otherwise be transferred under this section has a court-ordered transfer date, that date will stand.

- New section 365, which has the effect that an application by the offender or chief executive under existing part 8, division 2A for the court to make, vary or revoke a transfer order which has not been granted at commencement is taken to have never been made. Where the affected offender has a court-ordered transfer date, new section 366 will apply and that date will stand. Where the offender has no court-ordered transfer date, new section 363 will apply in determining the offender's transfer date.

- New section 366, which provides that, where a court has made an order establishing the date an offender is to be transferred from detention to a corrective services facility, either at the time of sentencing or during the offender's period of detention, the court's order continues to have effect despite omission of the provisions under which the order was made.

Clause 25 omits principle 17—that a child should be remanded or detained only as a last resort and for the least time justified in the circumstances—from the charter of youth justice principles in schedule 1 of the *Youth Justice Act 1992*, and consequentially renumbers the remaining principles. These principles underlie operation of the Act, and are required under subsection 150(1)(b) to be taken into account by a court in sentencing a child for an offence under the Act. This is one of several provisions required to be omitted to give full effect to the removal of the principle of detention as a last resort in the sentencing of children for offences.

Clause 26 inserts a definition of 'first-time offender' into the dictionary in schedule 4 of the *Youth Justice Act 1992*. 'First time offender' means a child who, at any time during a proceeding against them, has not been found guilty of an offence. This definition is required for the purposes of replacement section 301 and new section 299A, which provide for whether publication of identifying information about an offender the subject of proceedings is permitted to differ according to whether the offender is a first-time or repeat offender.

The clause expands the definition of 'publish' to include publication via the internet. This recognises that unauthorised publication of identifying information about children the subject of proceedings could potentially occur through social media or other online media. The clause also identifies that a number of terms are defined for the purposes of particular parts in specified sections of the Act.

Part 3 – Amendment of Childrens Court Act 1992

Clause 27 provides that part 3 amends the *Childrens Court Act 1992*.

Clause 28 inserts definitions of 'child's community' and 'community justice group' into the definitions in section 3. These definitions reproduce existing definitions in current section 20 which are displaced by the omission of that section by clause 30. The clause also defines several other terms for the purposes of part 4, division 2 by reference to specific sections.

Clause 29 inserts a new division heading, division 1, into part 4 of the *Childrens Court Act 1992*, consequential to the insertion of a number of new provisions into that part and its separation into two divisions. New division 1 consolidates existing provisions of part 4 which deal with the constitution and sitting times of the Court.

Clause 30 omits existing section 20 of the *Childrens Court Act 1992*, which prescribes who may be present at a Childrens Court proceeding, as this matter is dealt with under new part 4, division 2.

Clause 31 inserts a new part 4, division 2 into the *Childrens Court Act 1992* prescribing the circumstances in which the Childrens Court may be open or must be closed to members of the public.

New section 21A inserts several definitions for the purposes of new division 2. These include an identical definition of 'first-time offender' to that inserted into the *Youth Justice Act 1992* by clause 26. This definition will be used by the court in determining whether a particular youth justice matter must be heard in closed or open court.

New section 21B requires that the Childrens Court must be closed when dealing with either a youth justice matter involving a first-time offender or a non-youth justice matter, and prescribes who must and may be permitted to be present in a closed court. A 'youth justice matter' is defined in the definitions inserted in new section 21A as a proceeding under the *Youth Justice Act 1992*, and a 'non-youth justice matter' is defined as a proceeding under the *Adoption Act 2009* or the *Child Protection Act 1999*. New section 21B reproduces the relevant content from existing section 20, which requires the court to be closed for all matters and prescribes who must and may be permitted to be present in the closed court, but limits its application to these specified types of proceedings.

The Childrens Court has jurisdiction to hear matters under the *Adoption Act 2009*, the *Child Protection Act 1999* and the *Youth Justice Act 1992*. As matters arising under the first two of these Acts do not involve proceedings against children for offences, the policy intent of the legislation does not require that the current operation of the Childrens Court as it relates to these matters be disturbed.

New section 21C provides that a Childrens Court proceeding for a youth justice matter involving a repeat offender must be held in open court, unless the court orders the court closed for all or part of the proceeding or a complainant in relation to a child charged with a sexual offence is giving evidence.

New subsection 21C(2) provides that the court may close the court to the public or to particular persons where it considers this necessary and desirable in the interests of justice. Subsection (3) provides that the court may exercise this power either on its own discretion or on application by a party specified in new section 21D. Where the court elects to exercise its power to close the court, subsection (4) prescribes who must be permitted to be present in court and subsection (6) prescribes who the court may permit to be present. Subsection (5) clarifies that the presence in court of those parties who must under subsection (4) be permitted to be present is subject to the court's power under section 21A of the *Evidence Act 1977* to exclude some or all of these parties when a special witness is giving evidence.

Subsection (7) provides that the power under subsection (2) to close the court does not apply where a judge is exercising jurisdiction to hear and determine a charge on indictment. This reproduces existing subsection 20(5) of the *Childrens Court Act 1992*, which limits the requirement to close the court to circumstances

New section 21D specifies who may make an application to close the court. An application may be made at any time during a proceeding.

New section 21E requires the court, when a complainant in relation to a proceeding against a child charged with a sexual offence is giving evidence, to exclude all but certain specified parties from the court. A sexual offence is defined by subsection (4) as either a prescribed sexual offence or an offence of a sexual nature. This requirement to close the court affords victims of sexual offences by child offenders the same privacy as afforded to victims of sexual offences by adult offenders under the *Criminal Law (Sexual Offences) Act 1978*.

Clause 32 inserts a new part 7, division 4 containing transitional provisions into the *Childrens Court Act 1992*. New section 37 provides that new part 4 division 2, which provides for the circumstances in which the Childrens Court may or must be closed, applies to proceedings where the offence was committed or the proceeding started before commencement of the legislation.

Part 4 – Amendment of Penalties and Sentences Act 1992

Clause 33 provides that part 4 amends the *Penalties and Sentences Act 1992.*

Clause 34 amends section 9 (Sentencing guidelines) to omit and exclude the sentencing principle that prison is a sentence of last resort. That is, in sentencing any offender for any offence (punishable by imprisonment), the court must not have regard to any principle, whether under statute or at law, that a sentence of imprisonment should only be imposed as a last resort.

Subclause (1) omits section 9(2)(a), namely the principles that a sentence of imprisonment should only be imposed as a last resort and a sentence that allows the offender to stay in the community is preferable.

Subclause (2) renumbers section 9(2) consequential to the omission in subclause (1).

Subclause (3) omits section 9(3) consequential to the omission in subclause (1).

Subclause (4) amends section 9(4) consequential to the omission in subclause (3) and inserts the term 'a violent offender', which is defined under section 9(10), as inserted by subclause (14). Section 9(4) otherwise continues to list the matters to which the court must primarily have regard to in sentencing a 'violent offender'.

Subclause (5) amends section 9(5) consequential to the omission in subclause (1).

Subclause (6) amends section 9(5A) consequential to the renumbering of section 9 in subclause (15).

Subclause (7) amends section 9(6) consequential to the renumbering of section 9 in subclause (15).

Subclause (8) omits section 9(6A) consequential to the omission in subclause (1).

Subclause (9) amends section 9(6B) consequential to the omission in subclause (8) and inserts the term 'a child-images offender', which is defined under section 9(10), as inserted by subclause (14). Section 9(6B) otherwise continues to list the matters to which the court must primarily have regard to in sentencing a 'child-images offender'.

Subclause (10) amends section 9(7) to make a consequential amendment due to the renumbering of section 9(2) in subclause (2).

Subclause (11) amends sections 9(7A) and 9(7B) to combine them into a single subsection.

Subclause (12) amends section 9(9) consequential to the renumbering of section 9 in subclause (15).

Subclause (13) inserts new section 9(9A) to provide that this section overrides any other Act or law to the extent that, in sentencing an offender for any offence, the court must not have regard to any principle that a sentence of imprisonment should be imposed only as a last resort. The policy intention is to expressly oust this fundamental sentencing principle, including at common law, in Queensland when sentencing for all offences (punishable by imprisonment) and for all offenders.

Subclause (14) inserts a new definition into section 9 for 'child-images offender' and 'violent offender' consequential to the amendments to section 9(4) and section 9(6B).

Subclause (15) renumbers section 9.

Clause 35 amends the note to section 172D (Court not to have regard to possible order under *Dangerous Prisoner (Sexual Offenders) Act 2003*) consequential to the renumbering of section 9 in clause 34, subclause 15.

Clause 36 amends section 195B (Access to court files by representative of community justice group in offender's community) consequential to the renumbering of section 9(2) in clause 34, subclause 2.

Clause 37 amends section 195C (Confidentiality) consequential to the renumbering of section 9(2) in clause 34, subclause 2.

Clause 38 amends section 195D (Protection from liability) consequential to the renumbering of section 9(2) in clause 34, subclause 2.

Clause 39 inserts new part 14, division 9, section 234 which deals with the transitional application of the amendments to section 9. It provides that the amendments apply to the sentencing of an offender convicted after commencement, irrespective of whether the commission of the offence or the start of the proceedings for the offence has happened prior to commencement.

Part 5 – Minor and consequential amendments

Clause 40 provides that schedule 1 amends other Acts consequential to the amendments under the Bill.

Schedule 1 – Minor and consequential amendments relating to part

Schedule 1 makes two consequential amendments to other Acts.

The *Police Powers and Responsibilities Act 2000* is amended to omit a reference to the principle of detention as a last resort, consequential to the omission of this principle from the charter of youth justice principles by clause 25 of the Bill.

The *Victims of Crime Assistance Act 2009* is amended consequential to the renumbering of section 9(2) of the *Penalties and Sentences Act 1992* in clause 34 of the Bill.