Youth Justice and Other Legislation Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Youth Justice and Other Legislation Amendment Bill 2015.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. Remove boot camp (vehicle offences) orders and boot camp orders from the range of sentencing options for children;
2. Prohibit the publication of identifying information about a child dealt with under the *Youth Justice Act 1992* (the YJ Act);
3. Remove breach of bail as an offence for children;
4. Make childhood findings of guilt for which no conviction was recorded inadmissible in court when sentencing a person for an adult offence;
5. Reinstate the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period when sentencing a child;
6. Reinstate the Childrens Court of Queensland's (the CCQ's) sentence review jurisdiction and expand the jurisdiction to include Magistrates' decisions in relation to breaches of community based orders; and
7. Reinstate into the *Penalties and Sentences Act 1992* (the PS Act) the principle that imprisonment is a sentence of last resort and a sentence that allows the offender to stay in the community is preferable.

Youth Justice Act 1992

During the 2015 general election, the Government committed to repealing reforms made to the YJ Act in 2014 (the 2014 reforms) as introduced by the former Government and effected by the *Youth Justice and Other Legislation Amendment Act 2014* (the 2014 Amendment Act).

The Government's commitment to repeal the 2014 reforms reflects international evidence that increasing the severity of punishment is ineffective in reducing recidivism, particularly by children and young people.

The 2014 reforms were viewed as unduly punitive and inappropriate by the majority of stakeholders. The Legal Affairs and Community Safety Committee (LACSC) consulted widely on the 2014 reforms during its inquiry into the Youth Justice and Other Legislation Amendment Bill 2014 (the 2014 Bill). The measures implemented were not supported by any of the submitters to the Parliamentary inquiry, including the Queensland Law Society (the QLS), Bar Association of Queensland, Anti-Discrimination Commission Queensland, Queensland Council for Civil Liberties, leading church and research organisations and Amnesty International. Stakeholders, instead, urged implementation of measures to divert children and address the causes of offending. The amendments proposed in the Bill address the concerns of key stakeholders.

The Bill also gives effect to the Government's election commitment to undertake an independent evaluation of the former government's trial youth boot camp program. Findings from this evaluation showed that the trial was ineffective in its goal of reducing recidivism and consequently that it did not reflect value for money, with a decision being announced by the Government in August 2015 to cease the trial at its planned conclusion in October 2015.

Sentence reviews were also removed from the YJ Act by the previous Government in the course of the 2014 reforms. That removal occurred in the face of criticism and opposition by the President of the CCQ and other key legal and youth sector stakeholders. Consistent with the expectations of key stakeholders, the Bill reinstates sentence reviews and, in the interests of fairness, justice and the prompt resolution of youth justice matters, expands their former operation to include magistrates' decisions on breaches of community based orders.

Penalties and Sentences Act 1992

A longstanding sentencing principle at common law is that prison, due to the severity of the sanction, should only be imposed when there is no other less onerous sanction appropriate having taken into consideration all of the circumstances of the offending conduct and the need to protect the public.

Prior to the 2014 reforms, this principle was given statutory recognition in the PS Act for all offenders aged 17 years and over. This required Queensland courts to have regard to this sentencing principle for all offenders except when sentencing for an offence of violence, child sex offences and child exploitation material offences. For those offenders, the sentencing principle had been displaced in recognition of the seriousness of such offending and the need to protect the community.

The 2014 reforms inserted what is now subsection 9(12) of the PS Act. That subsection provides that section 9 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.

Achievement of policy objectives

Youth Justice Act 1992

The Bill achieves the objectives by implementing a series of amendments to the YJ Act and the PS Act. These amendments will have the effect of substantially restoring affected provisions of both Acts to their position prior to enactment of the *Youth Justice (Boot Camp Orders) Amendment Act 2013* (which introduced boot camp orders and the boot camp program) and the 2014 Amendment Act.

This is a reasonable and proportionate approach, as it reverses a set of legislative amendments which, as discussed above, are neither evidence based nor effective and do not enjoy wide stakeholder support.

Penalties and Sentences Act 1992

The Bill also gives effect to the Government's election commitment to give statutory recognition in the PS Act to the common law sentencing principle that imprisonment is a sentence of last resort for all offenders except those convicted of certain offences in recognition of the serious nature of the offending and need for community protection.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

Any costs in relation to the amendments will be met from existing agency resources. The future allocation of any necessary resources will be determined through the normal budgetary processes.

Consistency with fundamental legislative principles

Youth Justice Act 1992

The removal of the court's power to make boot camp (vehicle offences) orders and boot camp orders will have some limited retrospective operation. While such retrospectivity is ordinarily a breach of fundamental legislative principles,[1] this is justified in both cases as the omissions do not adversely affect rights and liberties nor impose obligations.

In the case of the omission of the boot camp (vehicle offences) order, this absence of any adverse effect arises from the fact the omission operates to the benefit of young people who are defendants.[2] It does this by removing a mandatory sentence which must be imposed regardless of the tariff which would otherwise be applicable. This

[1] *Legislative Standards Act 1992* s 4(3)(g).
[2] See the Legal Affairs and Community Safety Committee Report No. 14 (2012) pp 25-26.

has in a number of instances resulted in young people receiving a boot camp (vehicle offences) order in circumstances in which a lower tariff would otherwise have been appropriate.

The omission of the boot camp order, meanwhile, removes a discretionary option for a court which has made a detention order to suspend that order and divert the young person into a boot camp program. As the YJ Act does not create any entitlement to be diverted in this way, the retrospective omission of the boot camp order does not diminish any rights and liberties which have already accrued to a person.

The following amendments to the 2014 reforms will also have limited retrospective application. While such retrospectivity is ordinarily a breach of fundamental legislative principles, this approach is justified in the case of these amendments as they operate to the benefit of defendants[3] and therefore appropriate to implement retrospectively. In particular:

- Under the Bill's transitional provisions, the proposed prohibition on publication of identifying information about repeat offenders will have limited retrospective application.[4] New section 384 provides that, regardless of whether a court has previously made a publication prohibition order pursuant to section 299A of the YJ Act, the question of whether to allow publication of the identifying information of a child is to be resolved with reference to the amended sections 234 and 301 of the YJ Act. This will ensure that all children engaged with the justice system receive the benefit of the amended publication provisions, regardless of any orders made by courts under the previous regime. This is consistent with leading evidence and opinion.
- The omission from the YJ Act of the offence of breaching bail by offending also has a limited retrospective effect by virtue of the transitional provisions. The effect of new section 380 is that any child involved in a proceeding in which it is alleged that they have committed the offence of breaching bail by offending and which is not finalised by the court at the time of the Act's commencement cannot result in the child's continued prosecution, conviction or punishment for that offence. The retrospective removal of the offence is warranted given that it was widely criticised by the judiciary and relevant stakeholders as unnecessarily punitive and contrary to existing sentencing principles.

Penalties and Sentences Act 1992

Clause 65 of the Bill provides for the transitional arrangements for amendments to the PS Act. New section 240 clarifies that amendments to section 9 apply to the sentencing of an offender after commencement, irrespective of whether the offence or conviction happened before or after the commencement.

The amendment means that the amendments may have limited retrospective application. For example, an offender may enter a plea of guilty prior to commencement but the sentencing hearing may be adjourned pending preparation of a medical report. Upon commencement of the amendments the offender will be

[3] Ibid.
[4] See clause 55.

sentenced in accordance with the sentencing practice and procedure applying at the time of sentence.

While retrospectivity is ordinarily a breach of fundamental legislative principles, this approach is justified on the basis that it is consistent with the common law, it is limited in application and operates to the benefit of offender.

Consultation

The Bill is reflective of both community and stakeholder feedback received in response to the former government's Safer Streets Crime Action Plan—Youth Justice publically released survey and the LACSC inquiry into the 2014 Bill. This consultation showed a lack of support for the 2014 reforms with diversionary measures and addressing the causes of offending instead seen as being more effective in reducing youth offending.

Community and legal sector representatives, including the QLS and Youth Advocacy Centre, have continued to make submissions to the Government reiterating their concerns and advocating for the removal of the 2014 amendments.

Consistency with legislation of other jurisdictions

Youth Justice Act 1992

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. The repeal of the boot camp (vehicle offences) order and boot camp order as sentencing options, and reversal/repeal of the 2014 reforms will bring Queensland back into alignment with the majority of other jurisdictions.

Penalties and Sentences Act 1992

As a result of the 2014 reforms, Queensland is currently the only Australian jurisdiction not to give any recognition at all (under statute or common law) to this sentencing principle for 'adult' offenders. The amendments to the PS Act contained within the Bill will ensure that Queensland is once again aligned with all other jurisdictions in Australia applying the common law.

Notes on provisions

Part 1 – Preliminary

Clause 1 states that, when enacted, the Bill may be cited as the *Youth Justice and Other Legislation Amendment Act 2015*.

Clause 2 provides that the Act, other than parts 3 and 5 and schedule 1 to the extent it amends the *Victims of Crime Assistance Act 2009*, commences on a day to be fixed by proclamation.

Part 2 – Amendment of Youth Justice Act 1992

Clause 3 provides that the Act amends the YJ Act.

Clause 4 amends subsection 13(1)(a) of the YJ Act (Police officer's power of arrest preserved in particular general circumstances) by inserting a note indicating that in addition to the matters detailed in subsections 13(a)(i)–(iv), a Police officer's power to arrest a child without warrant pursuant to section 365(3) of the *Police Powers and Responsibilities Act 2000*, must also be exercised consistently with principle 17 of the Charter of Youth Justice Principles as detailed in Schedule 1of the YJ Act. Principle 17 requires that a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

Clause 5 amends section 42 of the YJ Act (Preferred way of starting proceedings) by omitting the phrase 'or an offence under section 59A'. The omission is a consequential amendment related to the omission of part 5, division 2 (Offence committed while on bail) of the YJ Act effected by clause 8 of the Bill.

Clause 6 omits part 5, division 1, heading (Bail generally) resulting in the removal of the heading 'Division 1—Bail generally' from Part 5 from the YJ Act. This amendment is a consequence of the omission of part 5, division 2 (Offence committed while on bail) effected by clause 8 of the Bill.

Clause 7 amends section 47 of the YJ Act by inserting subsection (2) which deems a review of a sentence order pursuant to part 6, division 9 of the YJ Act an appeal for the purposes of the Bail Act 1980 (the Bail Act). The effect of this amendment is that a child may be granted bail or have bail enlarged, varied or revoked by a court while a sentence review is being determined.

Clause 8 omits Part 5, Division 2 (Offence committed while on bail) of the YJ Act, with the effect that a finding of guilt for a further offence committed while on bail is no longer itself an offence for a child.

Clause 9 inserts new subsection 62(e), which invests a Childrens Court Judge with jurisdiction to review a sentence order of a Childrens Court Magistrate pursuant to section 118 of the YJ Act.

Clause 10 omits subsection 67(2)(b) of the YJ Act consequentially by removing boot camp orders from the list of orders a Childrens Court constituted by two justices are prohibited from making.

Clause 11 omits subsection 74(3)(d) of the YJ Act, removing the chief executive's right of audience before a Court in relation to orders made pursuant to subsection 299A(2) of the YJ Act, that is orders prohibiting the publication of identifying information about a child who is not a first-time offender. This is consistent and consequential with the omission of section 299A by clause 51 of the Bill.

Clause 12 amends the heading to part 6, division 9 (Appeal) by inserting the phrase 'and review'. This reflects the reintroduction of the sentence review jurisdiction into the YJ Act by clause 14.

Clause 13 amends subsection 117(1) and (2) of the YJ Act by removing decisions of Magistrates in proceedings for breaches of community based orders from the actions to which Part 9, Division 1 of the *Justices Act 1886* applies. This reflects that these decisions are to be reviewable by a Childrens Court Judge under the sentence review jurisdiction as reintroduced by clause 14.

Clause 14 inserts a new part 6, division 9, subdivision 4 into the YJ Act to give effect to the reintroduction of the sentence review jurisdiction. The new subdivision inserts sections 118 to 126 into the YJ Act.

Section 118 states that a Childrens Court Judge on application may review a sentence order made by a Childrens Court Magistrate.

Section 119 establishes the criteria in relation to an application for review.

Subsection 119(1) establishes that a child against whom a sentence order was made, the chief executive acting in the child's interests or the complainant or arresting officer for the charge for which the sentence order was made may make an application for a review of a sentence order.

Subsection 119(2) requires that an application for review of a sentence order must be made within 28 days after the sentence order is made.

Subsection 119(3) defines the term complainant for the purposes of the section as the person who makes a complaint under the Justices Act.

Section 120 establishes the preliminary procedure for dealing with an application seeking the review of a sentence order made by a Childrens Court Magistrate.

Subsection 120(1) requires that the Childrens Court at the place where the Childrens Court Judge is sitting must notify the applicant and all other parties of the place and time of the hearing of the application to review a sentence order.

Subsection 120(2) requires that if the application for review of a sentence order is not made by the Chief Executive the Childrens Court must notify the Chief Executive of

the of the making of the application and the place and time of the hearing of the application.

Section 121 provides for circumstances in which a sentence order subject to an application for review will be stayed or suspended.

Subsection 121(1) provides that, without affecting another power to stay the effect of an order of a court or the operation of a law that has that effect, a Childrens Court Judge may order a stay of all or any proceedings under a sentence order that is subject to a review application.

Subsection 121(2) provides that a Childrens Court Judge may impose any conditions the Judge considers appropriate on the stay.

Subsection 121(3) provides that, without limiting subsections 121(1) and 121(2), the effect of a community based order subject to review under the division is stayed until the end of the review.

Subsection 121(4) provides that, if the period for which a community based order operates is relevant to the effect of the order or a program or anything else under the order, the period between the start and the end of the review is not counted for the purpose of the effect of the order, program or other thing.

Subsection 121(5) requires that if a Children's Court Judge orders a stay of a proceeding under a sentence order, the Childrens Court at the place where the Chldrens Court Judge is sitting must notify the chief executive of the making of the order.

Section 122 establishes how a sentence order review is to be conducted.

Subsection 122(1) requires that a review of sentence must be by way of rehearing on the merits.

Subsection 122(2) provides that a Children's Court Judge hearing a review may have regard to the record of proceeding before the Childrens Court Magistrate and any further submissions and evidence by way of affidavit or otherwise.

Subsection 122(3) requires that a review of sentence order must be conducted expeditiously and with as little formality as possible.

Section 123 provides for the nature of the decision which a Childens Court Judge may make when determining a review of a sentence order.

Subsection 123(1) provides that, on reviewing a sentence order, a Childrens Court Judge may confirm the order, vary the order or discharge the order and substitute another order which was within the jurisdiction of the Childrens Court Magistrate to make.

Subsection 123(2) provides that the Childrens Court Judge may also make any other order a Childrens Court Magistrate could have made in connection with the sentence as confirmed, varied or substituted under subsection (1).

Section 124 establishes how a review of a sentence order interrelates with other types of appeal.

Subsection 124(1) provides that, if a child starts a proceeding for an ordinary appeal against a sentence order, an application by the child for a review of the sentence order cannot be started and that any application by the child for a review of the sentence order pending at the start of the proceeding for an ordinary appeal lapses.

Subsection 124(2) provides that if a child starts a proceeding for an ordinary appeal against a finding of guilt against the child in relation to which a sentence order was made or a person other than a child against which a sentence order has been made starts a proceeding for an ordinary appeal against the sentence order a Childrens Court Judge cannot proceed to hear and decide any pending application by the child for a sentence review against the sentence order until the ordinary appeal is finished.

Subsection 124(3) provides that if a complainant or arresting officer applies for a sentence review of a sentence order made against a child and the child starts a proceeding for an ordinary appeal against the sentence order or the finding of guilt for which it was made a Childrens Court Judge cannot proceed to hear and decide the application for the sentence review until the ordinary appeal is finished.

Subsection 124(4) provides the following definitions for the purposes of s112:

- "Application" by a child for a sentence review includes an application by the chief executive acting in the child's interests.
- "Ordinary appeal" means –
  (a) an appeal or application for leave to appeal under the Criminal Code, Chapter 67; or
  (b) an appeal under *Justices Act 1886*, part 9.
- "Sentence review" means a review under section 118 of a sentence order.

Section 125 provides for the incidents of review.

Subsection 125(1) provides that no costs may be ordered against a party on a sentence review.

Subsection 125(2) provides that the decision of a Childrens Court Judge on a sentence review takes effect as the decision of the Childrens Court Magistrate who made the sentence order reviewed and subject to subsection 125(3) may be enforced or appealed against in the same way as the decision of the Childrens Court Magistrate.

Subsection 125(3) provides that subsection 125(2) does not authorise a further review by a Childrens Court Judge of the sentence already reviewed or an appeal to the Childrens Court Judge under the *Justices Act 1886*, section 222.

Subsection 126(1) provides that, subject to section 311, if a child is required to serve a period of detention or the unserved part of a period of detention as a result of a decision of a Childrens Court Judge on a sentence review, the judge, as part of the order, must direct that a warrant be issued to arrest the child and commit the child to a detention centre.

Subsection 126(2) provides that any justice may issue the warrant.

Clause 15 amends section 148 of the YJ Act to again provide that a court sentencing a person for an offence committed as an adult cannot have regard to a finding of guilt for an offence committed by that person as a child where no conviction was recorded.

Subclause 15(1) amends subsection 148 (1) of the YJ Act by omitting the phrase 'Subject to subsection (3)' and inserting in its place 'In'. This establishes that, in a proceeding against an adult for an offence, there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded.

Subclause 15(2) omits and inserts new subsection 148(3) of the YJ Act providing that 'this section does not prevent a court that is sentencing an adult from receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court's sentence'.

Clause 16 reinstates the longstanding sentencing principle that detention is an option of last resort for a child sentenced under the YJ Act.

Subclause 16(1) amends subsection 150(2) of the YJ Act by inserting subsection (e), which establishes that a detention order should be imposed only as a last resort and for the shortest appropriate period. Subclause 16 (2) also omits subsection 150 (5) YJ Act.

Clause 17 consequentially omits references to boot camp (vehicle offences) orders and boot camp orders contained in subsections 151(3A) and (3B).

Clause 18 consequentially amends subsection 175(3) by omitting the subsection and inserting in its place 'a court may make an order for a child's detention under subsection (1)(g) with or without a conditional release order under section 220'.

Clause 19 consequentially amends subsection 176(4) by omitting the subsection and inserting in its place 'A court may make an order for a child's detention under subsection (2) or (3) with or without a conditional release order under section 220'.

Clause 20 omits section 176B 'Sentence orders—recidivist vehicle offences'. This is required to give effect to the removal of the boot camp (vehicle offences) order from the sentencing code under the YJ Act.

Clause 21 consequentially amends subsection 177 by omitting the reference to '180B' and inserting '180A' in its place.

Clause 22 omits section 178B (Combination of boot camp (vehicle offences) order and other community based order), consequent to the removal of the boot camp (vehicle offences) order from the sentencing code.

Clause 23 consequentially amends subsection 180(2) by omitting the subsection and inserting in its place 'A court may make the detention order only for a maximum period of 6 months and may not make a conditional release order'.

Clause 24 omits section 180B (Combination of detention order and boot camp (vehicle offences) order) consequentially to the omission of the boot camp (vehicle offences) order.

Clause 25 omits part 7, division 9A (Boot camp (vehicle offences) order). Together with the omission of section 176B by clause 20, this omission is the key amendment required to remove boot camp (vehicle offences) orders from the sentencing code under the YJ Act.

Clause 26 inserts new section 208, which provides that a court may make a detention order against a child only if the court is satisfied that no other sentence is appropriate in the circumstances of the case, after considering all other available sentences and taking into account the desirability of not holding a child in detention. This reflects the reinstatement of the principle that detention is a sentence of last resort for a child.

Clause 27 consequentially amends subsection 209(3) by inserting the words 'or review' after 'appeal'.

Clause 28 consequentially amends subsection 210(3) by omitting the subsection and inserting in its place 'Subsection (2) does not apply if the court makes a conditional release order under section 220'.

Clause 29 amends subsection 211(3) to provide that that subsection operates in the same way in relation to sentence reviews as in relation to appeals.

Clause 30 expands the operation of section 215, which currently operates in relation to appeals, to also operate in the same way in relation to sentence reviews.

Subclause 30(1) amends section 215(a) after the word 'appeal' by inserting 'or a review of'.

Subclause 30(2) amends section 215(b) by inserting 'or review' after the words 'the appeal'.

Clause 31 omits part 7, division 10, subdivision 2A (Boot camp orders), which provides for the making and effect of a boot camp order, and subdivision 2B (Boot camp programs), which prescribes the program in which a child must participate under either a boot camp (vehicle offences) order or boot camp order. Due to the discontinuation of the boot camp program and the removal of both relevant sentence orders from the sentencing code, these provisions are no longer required.

Clause 32 amends section 234, which provides for the circumstances in which identifying information about a first-time offender may be published, to again apply to all offenders.

Subclause 32(1) amends the heading to section 234 by omitting the phrase 'of first-time offender' and inserting in its place the phrase 'about a child'.

Subclause 30(2) amends sections 234(1), (2) and (3), omitting the phrase 'first-time offender' and inserting in its place the word 'child's'.

Subclause 30(3) amends section 234(2)(c) by omitting the phrase 'first-time offender' and inserting in its place the word 'child'.

Clause 33 consequentially amends section 237(3)(a) of the YJ Act to remove reference to a boot camp (vehicle offences) order.

Clause 34 consequentially omits section 238(6)(b)(ii)(c) by removing subsections (b)(ii) and (c) which made reference to a boot camp centre.

Clause 35 amends section 240, which deals with a court's powers generally on breach of a community based order, to remove all provisions dealing with breach of a boot camp (vehicle offences) order or boot camp order.

Clause 36 amends section 241, which deals with a superior court's powers on breach of a community based order, to remove all provisions dealing with breach of a boot camp (vehicle offences) order or boot camp order.

Clause 37 amends section 242, which deals with the powers of a court which finds a child guilty of an indictable offence committed while subject to a community based order, to remove all provisions which operate where the breached order is a boot camp (vehicle offences) order or boot camp order.

Clause 38 amends section 243, which provides for a higher court to take action in relation to breach by a child of a community based order made by a lower court, to remove all provisions which operate where the breached order is a boot camp (vehicle offences) order or boot camp order.

Clause 39 amends section 244, which deals with the powers of a court before which a child is ordered to appear for resentencing in relation to breach of a community based order, to remove provisions which operate where the order breached is a boot camp (vehicle offences) order or boot camp order.

Clause 40 amends section 245, which deals with a court's powers on breach of a community based order other than a boot camp (vehicle offences) order, conditional release order or boot camp order, to remove all references to either a boot camp (vehicle offences) order or boot camp order.

Subclause 40(5) inserts a new subsection 245(6) which provides that an order or decision made by a Magistrate under section 245 is a sentence order for the purposes of part 6, division 9, subdivision 4, with the effect that the order or decision is

therefore reviewable by a Childrens Court Judge under the reinstated sentence review jurisdiction.

Clause 41 amends section 246, which deals with a court's powers on breach of a conditional release order, to remove the option for a court which revokes a conditional release order to instead make a boot camp order.

Subclause 41(3) inserts a new subsection 246(6) which provides that an order made by a Magistrate under section 246 is a sentence order for the purposes of part 6, division 9, subdivision 4, with the effect that the order is therefore reviewable by a Childrens Court Judge under the reinstated sentence review jurisdiction.

Clause 42 omits sections 246AA and 246A which provide for the court's power on breach of a boot camp (vehicle offences) order and boot camp order, respectively.

Clause 43 amends sections 247(1) (b) & 247(1) (c) and (d) by removing references to the chief executive being able to make application for a boot camp order to be varied, discharged or resentenced in the interests of justice.

Clause 44 amends sections 248(1) and (2) by omitting references to a boot camp order.

Clause 45 omits 'or a boot camp order' from section 249(1), which applies to a court which discharges a community based order and resentences the child to whom the order applies.

Clause 46 omits references to a boot camp order from section 252, which details the court's power to vary a community based order with the consent of the chief executive and the child to whom the order applies.

Clause 47 inserts a reference to a review into section 252G, which deals with the powers of a court in relation to a child who has breached a supervised release order.

Clause 48 consequentially amends section 263(5) to reflect the renumbering of the charter of youth justice principles by clause 57.

Clause 49 omits part 8A 'Boot camp centre administration'. This part is no longer required consequent to the discontinuation of the boot camp program.

Clause 50 amends section 285, which provides for when certain persons gain information through involvement in the administration of the YJ Act for the purposes of the confidentiality provisions under part 9, to continue to apply to information gained by a for boot camp centre provider despite the discontinuation of the boot camp program.

Clause 51 omits section 299A, which provides for a court to make an order prohibiting publication of information identifying a child who is being dealt with under the YJ Act and is not a first-time offender. This omission is consequent to the expansion by clause 52 of the general prohibition in section 301 against the

publication of information identifying a first-time offender to also apply to children who are not first-time offenders.

Clause 52 amends section 301 to expand the prohibition in that section against the publication of information identifying a child who has been dealt with under the YJ Act from first-time offenders only to all child offenders.

Clause 53 amends section 303(3) by removing reference to the omitted section 299A.

Clause 54 inserts new sections 305A and 305B, which, as detailed below, impose an ongoing obligation to report harm to children in former boot camp centres and complaints about boot camp programs.

Section 305A

- Subsection (1) details the obligations of a former boot camp centre employee to report harm or suspected harm to the chief executive and associated penalties for not reporting such matters;
- Subsection (2) clarifies it is immaterial how the harm was caused for the purposes of the obligation to report;
- Subsection (3) and (4) provide a former boot camp centre employee is not required to report harm if reporting the harm might tend to incriminate the person or if they know or reasonably believe the chief executive is already aware of the harm; and
- Subsection (5) provides definitions in support of the new section 305A.

Section 305B

- Subsections (1) provides for a child or a parent of a child who participated in a boot camp program to make a complaint about a matter that affects the child;
- Subsection (2) requires the chief executive to issue written instructions on how a complaint may be made and dealt with, which may include requiring that the complaint be made directly to a child advocacy officer or other appropriate authority;
- Subsection (3) provides that a child is entitled to complain directly to a child advocacy officer;
- Subsections (4) to (6) detail how the chief executive is to deal with complaints; and
- Subsection (7) provides a definition for the purposes of section 305B.

Clause 55 inserts a new part 11, division 13 providing transitional provisions for amendments to the YJ Act.

Subdivision 1 creates definitions for the purposes of the transitional provisions.

Subdivision 2 provides that, if a child was sentenced to a boot camp (vehicle offences) order or boot camp order prior to the removal of those orders from the YJ

Act, the order will continue to have effect as if the Act had not been amended. This ensures that a child can complete their sentence order.

Subdivision 3 details how a breach of a boot camp (vehicle offences) order or boot camp order continued under subdivision 2 is to be dealt with and the orders which may be made. Subdivision 3 applies to all contraventions, including those which occurred prior to the legislation's commencement.

Subdivision 4 provides that, following commencement of the legislation, a court cannot make a boot camp (vehicle offences) order or boot camp order. This is regardless of when the offence was committed or whether there was a pre-sentence report requested to consider a boot camp order or boot camp (vehicle offences) order.

Subdivision 5 provides that:

- if, before commencement a child was charged with an offence under repealed section 59A (Breach of bail) but on commencement the charge had not been finally dealt with, the child cannot be prosecuted for, convicted of or punished for the offence;
- any childhood findings of guilt for which a conviction was not recorded are inadmissible in the sentencing of any person for an adult offence after commencement, regardless of when the offence was committed;
- a Childrens Court Judge may conduct a review under section 118 whether the sentence order to be reviewed was made before or after commencement;
- a court sentencing a child after commencement must have regard to the reinsertion into section 150 of the principle of detention as a sentence of last resort, whether the offence was committed or the finding of guilt made before or after commencement; and
- sections 234 and 301 as amended by this Bill apply to the publication of identifying information regardless of whether the information was subject to an order under repealed section 299A.

Clause 56 inserts a new principle 17—that a child should be detained in custody whether on arrest or sentence only as a last resort and for the least time that is justified in the circumstances— into the Charter of Youth Justice Principles and consequentially renumbers the principles.

Clause 57 amends the regulation-making head of power in schedule 2 of the YJ Act to reflect the omission of boot camp (vehicle offences) orders and boot camp orders and the discontinuation of the boot camp program. This involves omission of items 13 and 14, which provide for areas to be prescribed for the purpose of eligibility for a boot camp order or for a boot camp (vehicle offences) order, and removal of references to either order from items 5, 6, 7, 9 and 10.

Clause 58 amends the dictionary to omit a range of references relating to boot camp (vehicle offences) orders, boot camp orders and the discontinued boot camp program.

Clause 59 omits schedule 5 of the YJ Act, which prescribes those offences which disqualify a child from participating in a boot camp program.

Part 3 – Amendment of the Penalties and Sentences Act 1992

Clause 60 provides that part 3 amends the PS Act.

Clause 61 amends section 9 (Sentencing guidelines).

Subclause (1) makes a consequential amendment due to subclause 2.

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

Subclause (3) inserts a new subsection 9(2A) to provide that new subsection 9(2)(a) does not apply to the sentencing of an offender for offences of violence.

Subclause (4) omits the term "a violent offender" from subsection 9(3) and replaces it with a reference to new subsection 9(2A).

Subclause (5) replaces existing subsection 9(4) to provide that in sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years the principles mentioned in new subsection 9(2)(a) do not apply and the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.

Subclause (6) amends subsection 9(5) consequential to the new subsection 9(4).

Subclause (7) inserts a new subsection 9(6A) to provide that new subsection 9(2)(a) does not apply in sentencing an offender for the specified offences under the Criminal Code and classifications legislation (child exploitation material offences).

Subclause (8) replaces the reference to "a child-images offender" in subsection 9(7) with a reference to subsection (6A).

Subclause (9) makes a consequential amendment to subsection 9(8) due to the renumbering of subsection 9(2).

Subclause (10) omits subsection 9(12) consequential to insertion of new subsection 9(2)(a*).*

Subclause (11) omits the definitions child-image offender and violent offender from subsection 9(13), which are no longer required due to insertion of new subsections 9(6A) and 9(2A).

Subclause (12) renumbers subsection 9(13).

Clause 62 amends section 195B (Access to court files by representative of community justice group in offender's community) consequential to renumbering of subsection 9(2).

Clause 63 amends section 195C (Confidentiality) consequential to the renumbering of subsection 9(2).

Clause 64 amends section 195D (Protection from liability) consequential to the renumbering of subsection 9(2).

Clause 65 inserts a new part 14, division 13, section 240, which provides for the transitional arrangements for the *Youth Justice and Other Legislation Amendment Act 2015*.

Part 4 – Amendment of the Public Guardian Act 2014

Clause 66 notes that this part amends the *Public Guardian Act 2014.*

Clause 67 and *68* omits references to a boot camp centre as a visitable site, consequent to the discontinuation of the boot camp program and the closure of the boot camp centre.

Part 5 – Minor and consequential amendments

Clause 69 identifies that schedule 1 makes minor and consequential amendments to the Acts mentioned therein.

Schedule 1 – Minor and consequential amendments

Schedule 1 inserts a note into the *Police Powers and Responsibility Act 2000* identifying that, under the YJ Act, it is a principle that a child should be detained in custody, either on arrest or sentence, only as a last resort and for the least time justifiable in the circumstances.

Schedule 1 also renumbers a section in the *Victims of Crime Assistance Act 2009* consequential to the renumbering of subsection 9(2) of the PS Act by part 3 of the Bill.