Youth Justice Benchbook

March 2025

QUEENSLAND COURTS

Queensland Courts
Department of Justice & Attorney-General

Published in Brisbane by —

Childrens Court of Queensland

Supreme and District Court

415 George Street Brisbane QLD 4000

PO Box 15167 City East Qld 4002

Office of the Chief Magistrate

Magistrates Courts Service

Level 10, 363 George Street Brisbane QLD 4000

GPO Box 1649 Brisbane QLD 4001

www.courts.qld.gov.au

First Edition

Published November 2020

Updated in May 2021 to incorporate amendments in the *Youth Justice and Other Legislation Amendment Act 2021*

Updated in April 2023 and September 2023 to incorporate amendments in the *Strengthening Community Safety Act 2023*

Updated in March 2024 to incorporate amendments in the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*

Updated in August 2024 to incorporate amendments to the Electronic Monitoring Trial locations in the *Queensland Community Safety Act 2024*

Updated in February 2025 to incorporate amendments from the *Queensland Community Safety Act 2024* and the *Making Queensland Safter Act 2024*

Updated in March 2025 to incorporate further amendments from the *Making Queensland Safer Act 2024*

Foreword

The Youth Justice Benchbook is intended to be a comprehensive guide for judges and magistrates sitting in the criminal jurisdiction of the Childrens Court of Queensland.

The content in relation to each topic is complete for that area. This has entailed some repetition over the body of the work. There are also numerous cross references and explanatory tables where thought appropriate.

I acknowledge the assistance received from the Supreme and District Courts Sentencing Bench Book (Children). Of necessity, there is much overlap between that resource and this book.

Other bench books were also of assistance: The Supreme and District Courts Bench Book; the Queensland Equal Treatment Bench Book and the NSW Equality before the Law Bench Book. The AIJA Bench Book for Children Giving Evidence in Australian Courts was also of great assistance.

I would like to thank the Chief Judge for permission to use the passage in relation to bulk arraignment from the Supreme and District Court Associates' Handbook.

I would also like to thank President of the Childrens Court, Judge Richards and also Deputy Chief Magistrate O'Shea for their assistance.

I acknowledge the assistance given to me by Legal Aid Queensland (LAQ), the Aboriginal and Torres Strait Islander Legal Service (ATSILS), the Youth Advocacy Centre (YAC), the Office of the Public Guardian (OPG), and the Department of Youth Justice. Many of those organisations have allowed documents to be attached as appendices. The LAQ's Youth Justice Practitioner Guide was of particular assistance.

Finally, thanks also to Nicole Drew, Manager, Childrens Court and Samantha Smith, Senior Project Officer, both of the Practice & Innovation Team in Magistrates Court Service, for their assistance and support in relation to the bench book over a compressed time frame and with the restrictions of social isolation in these interesting times.

Michael Shanahan AM

30 October 2020

Disclaimer

The Youth Justice Benchbook contains information prepared and collated by Queensland Courts, the Department of Justice and Attorney-General. Queensland Courts does not warrant or represent that the information contained within this publication is free of errors or omissions. The Benchbook is considered to be correct as at the date of publication, however, changes in circumstances after the time of issue may impact the accuracy and reliability of the information within.

Queensland Courts takes no responsibility for and makes no representation or warranty regarding the accuracy, currency, reliability, and correctness of any information provided to Queensland Courts by third parties. Queensland Courts, its employees, consultants and agents will not be liable (including, but not limited to, liability by reason of negligence) to persons who rely on the information contained in the Benchbook for any loss, damage, cost or expense whether direct, indirect, consequential or special, incurred by, or arising by reason of, any person using or relying on the publication, whether caused by reason of any error, omission or misrepresentation in the publication or otherwise.

Contents Page

Chapter 1 – Childrens Court Act 1992

The *Childrens Court Act 1992* (CCA) established the Childrens Court of Queensland. The Court consists of two tiers: the Childrens Court of Queensland as constituted by a Judge[1] or a District Court Judge if a Childrens Court Judge is not available,[2] and the Childrens Court as constituted by a Childrens Court Magistrate or any Magistrate if a Childrens Court Magistrate is not available[3]. Where a Magistrate is not available, two Justices of the Peace may constitute the court, but their power is limited.[4]

A Childrens Court Judge means a District Court Judge appointed to the District Court and a Childrens Court Magistrate means a Magistrate appointed to the Childrens Court.[5]

The Childrens Court constituted under the CCA is a separate court from the District Court of Queensland and the Magistrates Court.

The Childrens Court, when constituted by a Judge, is not a District Court for the purposes of any appeal pursuant to the *District Court of Queensland Act 1967* (Qld). In *Cousins v HAL & Anor* [2018] QCA 49, Fraser JA at [9] said that the conclusion was unavoidable that these were different courts established by separate legislation with a different, albeit overlapping, membership. See also *CAO v Department of Child Safety & Ors* [2009] QCA 169 and *CAR & Anor v Department of Child Safety* [2010] QCA 27.

In *Compass Health Group v KD* [2012] QChCM 2, the Childrens Court constituted by a Magistrate concluded that the Childrens Court was not a Magistrates Court for the purposes of the UCPR.

1.1 Jurisdiction

In relation to criminal matters, the Childrens Court has jurisdiction conferred by the *Youth Justice Act 1992* (YJA). All proceedings under the *Justices Act 1886* (JA) for the hearing and determination of charges against children, including committal proceedings, must be heard and determined before a Childrens Court Magistrate.[6] A Childrens Court Judge has jurisdiction to "*inquire of and hear and decide*" all indictable offences, wherever committed, charged against a child other than Supreme

[1] s5(2) CCA
[2] s5(2)(b) CCA.
[3] s5(3) CCA.
[4] s5(3)(c) CCA and s29 *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld).
[5] s3 CCA.
[6] s64 YJA

Court offences.[7] A Supreme Court offence means an offence for which the District Court does not have jurisdiction to try an adult because of s61 *District Court of Queensland Act 1967* (Qld).

Section 9 CCA provides for the appointment of the President of the Childrens Court, who is a Childrens Court Judge. The President has the function of ensuring the orderly and expeditious exercise of the jurisdiction of the Court when constituted by a Childrens Court Judge.[8] The Chief Magistrate has the function of ensuring the orderly and expeditious exercise of the jurisdiction of the Court when constituted by a Childrens Court Magistrate, Magistrate or Justice.[9]

Section 18 CCA provides for where the Childrens Court may sit. The Court, as appropriately constituted, may exercise jurisdiction throughout Queensland.[10]

1.2 Closed or Open Court

Section 20 CCA specifies who may be present at a proceeding:

1) *In a proceeding before the court relating to a child, the court must exclude from the room in which the court is sitting any person who is not—*
    a. *the child; or*
    b. *a parent or other adult member of the child's family; or*
    c. *if the proceeding is a criminal proceeding:*
        i. *a victim, or a relative of a victim, of the offence committed by the child; or*
        ii. *a relative of a deceased victim of the offence committed by the child; or*
        iii. *a person who is a representative of the victim, or of a relative of a deceased victim, of the offence alleged to have been committed by the child; or*

Examples for subparagraph (iii)

- *A person who provides support or assistance to a victim, or a relative of a deceased victim, in relation to the proceeding.*
- *A member of an organisation that is providing support or assistance to a victim, or a relative of a deceased victim, in relation to the proceeding.*

        iv. *a person who, in the court's opinion, has a proper interest in the proceeding; or*

[7] s99 YJA.
[8] ss8A(1) and 10 CCA.
[9] s8A(2) CCA.
[10] s18(2) CCA.

v. *a person holding media accreditation; or*

d. *a witness giving evidence; or*
e. *a person who is an intermediary under the Evidence Act 1977, part 2, division 4C for a witness giving evidence; or*
f. *if a witness is a complainant within the meaning of the Criminal Law (Sexual Offences) Act 1978—a person whose presence will provide emotional support to the witness; or*
g. *a party or person representing a party to the proceeding, including, for example, a police officer or other person in charge of a case against a child in relation to an offence; or*
h. *a representative of the chief executive of Child Safety or Youth Justice; or*
i. *the public guardian under the Public Guardian Act 2014; or*
j. *if the proceeding is a child protection proceeding under the Child Protection Act 1999—the chief executive (child safety); or*
k. *if the child is an Aboriginal or Torres Strait Islander person—*
    i. *a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or*
    ii. *a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child; or*
l. *an infant or young child in the care of an adult who may be present in the room.*

2) *Also, the court may permit to be present in the room:*
    a. *a person who is engaged in:*
        i. *a course of professional study relevant to the operation of the court; or*
        ii. *research approved by the chief executive (child safety) or the chief executive (youth justice); or*
    b. *a person who, in the court's opinion, will assist the court.*

3) *Despite subsections (1), if the court is hearing a matter under the Mental Health Act 2016, section 172 or 173, the court must exclude from the room a person mentioned in subsection (1)(c) unless the court is satisfied it is in the interests of justice to permit the person to be present.*

4) *Also, this section does not affect any order made, or that may be made, by the court under the Evidence Act 1977, section 21A—*
    a. *excluding any person (including a defendant) from the place in which the court is sitting; or*
    b. *permitting any person to be present whilst a special witness withing the meaning of that section is giving evidence.*

5) *This section:*
    a. *applies even if the court's jurisdiction is being exercise conjointly with another jurisdiction; and*
    b. *does not apply to the court when constitute by a judge exercising jurisdiction to hear and determine a charge on indictment.*

6) *In this section:*

chief executive (child safety) *means the chief executive of the department in which the* Child Protection Act 1999 *is administered.*
chief executive (youth justice) *means the chief executive of the department in which the* Youth Justice Act 1992 *is administered.*
child's community *means the child's Aboriginal or Torres Strait Islander community, whether it is:*

- a. *an urban community; or*
- b. *a rural community; or*
- c. *a community on DOGIT land under the Aboriginal Land Act 1991 or the Torres Strait Islander Land Act 1991*

community justice group *for a child means:*

- a. *the community justice group established under the Aboriginal and Torres Strait Islander Communities (Justice Land and Other Matters) Act 1984, Part 4, for the child's community; or*
- b. *a group of persons within the child's community, other than a department of government, that is involved in the provision of any of the following:*
    - i. *information to a court about Aboriginal or Torres Strait Islander offenders;*

ii. *diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;*

iii. *other activities relating to local justice issues; or*

c. *a group of persons made up of the elders or other respected persons of the child's community.*

criminal proceeding *means a proceeding against a child under the Youth Justice Act 1992 in relation to an offence committed by a child, and includes an appeal proceeding, a sentence review, or a proceeding for the sentencing of a child.*

media accreditation *means accreditation under the Supreme Court's media accreditation policy.*

offence *committed by a child includes an offence the child is alleged to have committed.*

relative *-*

(a) of a victim of an offence committed by a child means

(i) a spouse, child, stepchild, parent, stepparent, sibling, stepsibling, aunt, uncle, grandparent, or grandchild of the victim; or

(ii) a child, other than a child mentioned in subparagraph (i), for whom the victim had parental responsibility; or

(iii) a person who, under Aboriginal tradition or Island custom, is regarded as a person mentioned in subparagraphs (i) or (ii)

(b) of a deceased victim of an offence committed by a child, means a person who would be a relative mentioned in paragraph (a) if the victim were not deceased.

Supreme Court's media accreditation policy *means the media accreditation policy in effect and made under or appended to a practice direction of the Supreme Court.*

"Victim" is not defined in this section. In *R v CAZ & DA* [2015] QChC 6, Long SC DCJ considered the meaning of "victim" in the context of receiving a victim impact statement during a sentence for a juvenile offender. At [11], His Honour considered that "victim" should be given its ordinary meaning and noted the Macquarie Dictionary meaning of *"sufferer from any destructive, injurious or adverse action."*

Section 20 CCA was amended by the *Making Queensland Safter Act 2024*. Subject to s42 CCA, the amended s20 applies in relation to a proceeding whether the proceeding was started before or after 13 December 2024.[11]

Section 42 CCA applies to existing exclusion orders:

> *(1) This section applies in relation to an exclusion order made by the court under former section 20 if the order*
>
> *(a) was in effect immediately before the commencement; and*
>
> *(b) applies in relation to a proceeding that has not been decided, discontinued, finalised or withdrawn immediately before the commencement.*
>
> *(2) A person who is subject to the exclusion order may apply to the court to have the order set aside.*
>
> *(3) If the court is satisfied the applicant is a person mentioned in the new section 20(1)(c), the court must set aside the exclusion order.*
>
> *(4) In this section*
>
> ***former section 20** means section 20 as in force from time to time before commencement.*

For the role of the Public Guardian see Section 2.11: Role of the Public Guardian and Appendix 1: Role of OPG Child Advocate in Childrens Court (Criminal) Proceedings.

The restrictions in s20 CCA do not apply to the Childrens Court when constituted by a Judge, who is hearing and determining a charge on indictment.[12] Thus such proceedings are open to the public.

Proceedings before the Supreme Court or the District Court sitting as the District Court are not Childrens Court proceedings and the provisions of s20 CCA do not apply.

See also the provisions of the YJA in relation to restrictions on the identification of a child who is being or has been dealt with under that Act.[13]

---

[11] See s41 CCA

[12] s20(5) CCA.

[13] s301 YJA and Schedule 4 YJA as to meaning of "*identifying information*".

See also Part 9 YJA as to confidentiality issues and disclosure of information about a child who is being or has been dealt with under that Act. See s193 *Child Protection Act 1999* (CPA) for further restrictions on reporting of identifying information about a child who is a witness in certain proceedings in relation to sexual offending or offences of a violent nature.

1.2.1 Summary: Who May be Present in Childrens Court (Criminal Jurisdiction)?

Pursuant to s20 CCA, the following persons are permitted in court:

- The child
- A parent or other adult member of child's family
    - Can include Child Safety where the child is in the custody of Child Safety, or carers of the child.
- For a criminal proceeding:
    - A victim or a relative of a victim of a criminal offence committed by the child;
    - A relative of a deceased victim of a criminal offence committed by the child;
    - A person who is a representative of a victim, or a relative of a deceased victim, of a criminal offence committed by the child.
    - A person who, in the court's opinion, has a proper interest in the proceeding; or
    - A person holding media accreditation.
- Witness giving evidence.
- A person who is an intermediary under the *Evidence Act 1977*, Part 2, Division 4C for a witness giving evidence.
- Witness' emotional support person
    - Only if witness is complainant pursuant to *Criminal Law (Sexual Offences) Act 1978* or a special witness (s21A *Evidence Act 1977*) or an affected child witness (Div 4A *Evidence Act 1977*)
- Party or representative of party to the proceeding
- Representative of Youth Justice
- Representative of the Public Guardian
- If the child is Aboriginal or Torres Strait Islander:
    - A representative of organisation providing welfare services to Aboriginal and Torres Strait Islander families and children; or
    - A representative of the community justice group in the child's community
        - Only if making submissions relevant to sentencing the child.
- An infant or young child accompanying an adult who is permitted to be present in the courtroom.

The following persons can be present in the courtroom with leave of the court:

- A person engaged in professional study relevant to the operation of the court.
- A person engaged in research approved by Youth Justice
- A person who will assist the court, in the court's opinion.

1.3 Jury Trials

Section 22(1) CCA provides that all indictable offences prosecuted in the Childrens Court must be tried by a Childrens Court Judge and a jury. That is subject to an Act that allows or requires an indictable offence prosecuted in the Childrens Court to be tried in another way.

Section 98 YJA provides that a child, if legally represented, may elect to be committed on an indictable offence to be tried before a Childrens Court Judge sitting either with or without a jury. If the child is not represented by a lawyer, or does not so elect, the child must be committed to be tried before a Childrens Court Judge sitting with a jury.[14] The child can change the election to have a trial with a jury or without a jury at any time before the child enters a plea to a charge.[15]

If the child is not legally represented before the Judge, the child must be tried by the Judge sitting with a jury.[16]

Section 105 YJA provides a discretion in the trial Judge to decide that, in the particular circumstances, it is more appropriate for the child to be tried by the Judge sitting with a jury. The provisions of the *Jury Act 1995* (Qld) apply to any trial by jury.[17]

1.4 Practice Directions

The Childrens Court has issued various practice direction relevant to juvenile justice matters:

- Practice Direction 1 of 2017: Sentence proceedings
- Practice Direction 1 of 2019: Use of video link or audio link appearances
- Practice Direction 1 of 2022: Digitally recorded proceedings – Means of identifying proceedings, those appearing and witnesses.

See also Chapter 9.7.2: Audio-visual or Audio Link, Chapter 10.6: Sentence Hearing and Chapter 11.11.5: Sentence Submissions

[14] s98(5) YJA.
[15] s103 YJA.
[16] s103(2) YJA.
[17] s22(4) CCA and s101 YJA.

1.5 Youth Justice Regulation 2016

Pursuant to the YJA, the *Youth Justice Regulation 2016* was issued on 26 August 2016. It contains provisions about restorative justice processes, pre-sentence reports and community-based orders, the regulation of detention centres and dealing with confidential information relating to a child.

See also Chapter 7.7: The Restorative Justice Process and Chapter 11.6: Pre-Sentence Reports

Chapter 2 – Youth Justice Act 1992

2.1 General Matters

The criminal jurisdiction in relation to children is set out in the YJA.

2.2 Principles of Youth Justice

The objectives of the Act are set out in s2 YJA:

a. *to establish the basis for the administration of juvenile justice; and*
b. *to establish a code for dealing with children who have, or are alleged to have, committed offences; and*
c. *to provide for the jurisdiction and proceedings of courts dealing with children; and*
d. *to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and*
e. *to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to—*
    i. *rehabilitate children who commit offences; and*
    ii. *reintegrate children who commit offences into the community.*

Section 2(b) provides that the Act is a code for dealing with children in the criminal jurisdiction. It thus exhaustively sets out the way in which a child is to be dealt with in the criminal jurisdiction in Queensland.

Section 3 provides that the Charter of Youth Justice Principles contained in Schedule 1 YJA underly the operation of the Act. The principles are:

1. *The community should be protected from offences and, in particular, recidivist high-risk offenders.*
2. *A child who commits an offence should be held accountable in a way that recognises that impact of the child's offending on any victim of that offending.*
3. *The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.*
4. *A child being dealt with under this Act should be—*
    a. *treated with respect and dignity, including while the child is in custody; and*

b. *encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.*

5. *Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.*
6. *If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.*
7. *A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.*
8. *If a proceeding is started against a child for an offence—*
    a. *the proceeding should be conducted in a fair, just, and timely way; and*
    b. *the child should be given the opportunity to participate in and understand the proceeding; and*
    c. *the proceeding should be finalised as soon as practicable.*
9. *The youth justice system should give priority to proceedings for children remanded in custody.*
10. *A child who commits an offence should be—*
    a. *held accountable and encouraged to accept responsibility for the offending behaviour; and*
    b. *dealt with in a way that will give the child the opportunity to develop in responsible, beneficial, and socially acceptable ways; and*
    c. *dealt with in a way that strengthens the child's family; and*
    d. *dealt with in a way that recognises the child's need for guidance and assistance because children tend to be dependent and immature.*
11. *A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.*
12. *A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child and supported in the parent's efforts to fulfil this responsibility.*
13. *A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.*
14. *A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural, and religious beliefs and practices.*
15. *If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.*

16. *Programs and services established under this Act for children should—*
    a. *be culturally appropriate; and*
    b. *promote their health and self-respect; and*
    c. *foster their sense of responsibility; and*
    d. *encourage attitudes and the development of skills that will help the children to develop their potential as members of society.*
17. *A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.*
18. *A child should be dealt with under this Act in a way that allows the child—*
    a. *to be reintegrated into the community; and*
    b. *to continue the child's education, training or employment without interruption or disturbance, if practicable; and*
    c. *to continue to reside in the child's home, if practicable.*
19. *A child detained in custody should only be held in a facility suitable for children.*
20. *While a child is in detention, contacts should be fostered between the child and the community.*
21. *A child who is detained in a detention centre under this Act—*
    a. *should be provided with a safe and stable living environment; and*
    b. *should be helped to maintain relationships with the child's family and community; and*
    c. *should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about—*
        i. *the child's participation in programs at the detention centre; and*
        ii. *contact with the child's family; and*
        iii. *the child's health; and*
        iv. *the child's schooling; and*
    d. *should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons, and property); and*
    e. *should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and*
    f. *should have access to dental, medical, and therapeutic and disability services necessary to meet the child's needs; and*
    g. *should have access to education appropriate to the child's age and development; and*

h. *should receive appropriate help in making the transition from being in detention to independence.*

In *R v EI* [2011] 2 Qd R 237, the majority of the Court of Appeal held that neither Schedule 1 YJA nor any other provision of the YJA provided, expressly or impliedly, that any of the Youth Justice Principles had precedence over any of the others.

Australia is a signatory to the United Nations Convention on the Rights of the Child which came into force on 2 September 1990. Australia ratified the Convention in December 1990. The Convention sets out the general rights that apply to all persons, as well as the special rights that apply to children. For the purposes of the Convention, a child means every human being below the age of 18 years unless, under applicable law, majority is attained earlier. Article 37 of the Convention provides for the rights of a child in relation to arrest, detention or imprisonment and Article 40 relates to the rights of a child alleged to have committed a criminal offence. Many of the Youth Justice Principles are based on Australia's obligations under the Convention.

2.3 Human Rights Act

One of the main objects of the *Human Rights Act 2019* (Qld) (HRA) is "*to protect and promote human rights".*[18]

- Section 11 HRA provides that all individuals in Queensland have human rights.
- Section 15(3) HRA provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.
- Section 30 HRA relates to the rights of persons who are deprived of liberty.
- Sections 31 and 32 HRA provide rights in relation to a fair hearing when a person is charged with a criminal offence and specific rights in relation to criminal proceedings.
- Section 32(3) HRA provides that *"a child charged with a criminal offence has the right to a procedure that takes into account the child's age and the desirability of promoting the child's rehabilitation".*
- Section 33 HRA specifically refers to children in the criminal process:
    1. *An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.*
    2. *An accused child must be brought to trial as quickly as possible.*

[18] s3(a) HRA

3. *A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.*

Section 33(1) HRA recognises that a child held in custody with adults has a higher risk of violent victimisation, exposure to illicit substances and escalating criminality.[19]

Section 33(2) HRA again emphasises the need for speedy resolution which is more onerous than the HRA provisions in relation to adults which require proceedings to be resolved *"without unreasonable delay".*[20]

2.4 Definition of a Child

A **"child"** is an individual who is under 18 years.[21] Correspondingly, an **"adult"** means an individual who is 18 years or older.

The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) increased the age of a child to include 17 year olds by adopting the definitions contained in the *Acts Interpretation Act 1954* (Qld). The commencement date of the amendment act was 12 February 2018. Many of the transitional provisions in relation to the Amendment Act expired on 12 February 2020.

Section 387 YJA provides that a person who, as a 17-year-old committed an offence before the commencement of the Amendment Act, is taken to have committed the offence as a child if the proceeding for the offence had not been started before the commencement of the Amendment Act. If a person is alleged to have committed an offence after turning 18 years of age, the law relating to adult offending applies.

2.5 Provisions Concerning Aboriginal and Torres Strait Islander Children

Principles 14 and 15 of the Charter of Youth Justice Principles provide:

14. *A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural, and religious beliefs and practices.*

[19] Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (29 July 2010).
[20] ss29(5) and 32(2)(c) HRA.
[21] Schedule 1 *Acts Interpretation Act 1954* (Qld).

15. *If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.*

Certain provisions of the YJA refer specifically to processes involving Aboriginal and Torres Strait Islander children:

- Section 17 YJA provides that if a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, there must be consideration given to involving a respected person of that community in the cautioning process.

- Section 34(1)(h) YJA provides that a respected person of the child's community or a representative of a Community Justice Group (CJG) of that community may participate in a conference convened as part of a restorative justice process. CJGs are non-government organisations primarily funded by the Department of Justice and Attorney-General. These groups deliver justice-related initiatives within their communities, including participating in court proceedings pursuant to specific legislation provisions, including relevant provisions in the YJA. Some CJGs are established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld) and the corresponding *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Regulation*. More commonly, CJGs are established by the community to provide support to Aboriginal and Torres Strait Islander people in contact with the justice system. Section 19(1) of that Act gives those groups the function of taking part in court hearings, sentencing and bail processes under the YJA. An up-to-date list of funded CJGs can be found on the Queensland Courts website.

- Section 48AA(4)(a)(vii) YJA provides that in relation to bail decisions, a police officer or the court may have regard to any submissions made by a representative of the CJG of the child's community including, for example, submissions about the child's connection with their community, family or kin, cultural considerations or considerations relating to programs and services established for offenders in which the CJG participants. See also s48AC YJA.

- If a police officer or court is making a decision whether to release a child without bail or to grant bail to the child pursuant to s48AA(1)(d) YJA, the court or police officer may, pursuant to s48AA(4)(b)(viii) YJA, have regard to, if the child is an Aboriginal or Torres Strait Islander

person, the desirability of maintaining the child's connection with the child's community, family and kin;

- In sentencing a child who is an Aboriginal or Torres Strait Islander person:
    - Section 150(3)(ha) YJA provides that the court must have regard to any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child.
    - Section 150(3)(i) YJA provides that the court must have regard to any submissions made by the representatives of the community justice group of the child's community. That submission can include information concerning the child's relationship to the community, any cultural considerations or any considerations relating to programs or services for offenders in which the CJG participates. See also s150(8) YJA.

With respect to communication issues with Aboriginal and Torres Strait Islander children, see Chapter 5.7: Children as Defendants

2.6 Diversion

Principle Six of the Charter of Youth Justice Principles states *"if a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started."* [22]

Section 11 YJA provides the police with alternatives to charging a child:

- Take no action;
- Administer a caution to the child;
- Refer the offence for a restorative justice process;
- Refer to a drug diversion program (if the offence is a minor drug offence); or
- Refer to a graffiti removal program (if the offence is a graffiti offence)

[22] Schedule 1 YJA.

These processes can occur even if a similar action has been taken in the past with respect to the child, or if a proceeding for another offence has been started or has ended.[23] Such action may also be taken in relation to a "**serious offence"** as defined in s8 YJA.[24]

Section 21 YJA gives the Childrens Court the power, if a child pleads guilty to a charge, to dismiss the charge instead of accepting the plea of guilty if an application is made to dismiss the charge and the court is satisfied the child should have been cautioned instead of being charged, or no action should have been taken against the child. The court may administer a caution to the child or direct a police office to administer a caution to the child, as directed by the court.[25]

The Childrens Court also has power to refer to diversionary programs. If a child enters a plea of guilty for an offence or a finding of guilt is made against a child before the court, the court must consider referring the offence to the chief executive for a restorative justice process.[26]

Section 163 YJA provides the power of the court to make a restorative justice process referral either as a court diversion[27] or a pre-sentence referral.[28] The court may also make a restorative justice order as part of the sentence imposed on a child, except where the offence is a "significant offence" under s175A YJA committed on or after 13 December 2024.[29] The restorative justice process is set out in Part 3, ss 30-41 YJA.

Any admissions made by the child in the course of, for the purpose of, or as a condition of participating in a conference or alternative diversion program or evidence directly or indirectly obtained from such an admission is not admissible in evidence against a child in any civil, criminal, or administrative proceeding (subject to the child agreeing otherwise or the evidence is otherwise admissible under Part 7, Division 2 YJA). [30] Evidence includes any written material made by the child or anything said or done by the child. [31]

[23] s11(6) YJA.
[24] s11(7) YJA.
[25] s21(3) YJA.
[26] s162(1) and (2) YJA.
[27] s164 YJA.
[28] s165 YJA.
[29] s192A-192D, s175A(8) & s192A YJA.
[30] s148C(1) & (4)
[31] s148C(3)

See Chapter 7.6.2: Restorative Justice Processes, Chapter 7.7: The Restorative Justice Process, Chapter 11.7: Pre-Sentence Restorative Justice Referrals and Chapter 11.13.4: Restorative Justice Order

Section 24A YJA provides that if a child pleads guilty to an offence, the Childrens Court may dismiss the charge instead of accepting the plea of guilty, if an application is made to dismiss the charge and the court is satisfied the offence should have been referred to the Chief Executive for a restorative justice process, regardless of whether the child admitted the offence to the police officer. The Court may refer the offence for a restorative justice process.

The Childrens Court also has the power to refer an **"eligible child"**[32] who has pleaded guilty to an **"eligible drug offence"** [33] to a drug assessment and education session.[34] Successful completion of a such a session brings the court proceedings to an end and the child is not liable to be further prosecuted for the offence and the child is taken to have been found guilty of the offence without a conviction being recorded.[35]

See Chapter 7.6.1: Referral to a drug assessment and education session

2.7 Child Offenders who Become Adults

Division 11 YJA contains provisions in relations to circumstances where child offenders or alleged offenders become adults. Subject to the division and part 8, division 2A, the person must be treated as a child, for the purposes of the Act, in relation to an offence committed as a child ("**child offence**").[36]

Section 140 YJA specifies when an offender must be treated as an adult.

- If the offender has turned 19 years old and the proceeding has started after that date, the offender must be treated as an adult.[37] See ss7 and 12 YJA for police officer starting a proceeding and s42 for the preferred way of starting proceedings.
- If a proceeding has started against an offender for a child offence, or if the proceeding has not been completed to a verdict by the time one year has passed after the offender became an

[32] s168 YJA.
[33] s169 YJA.
[34] s172 YJA.
[35] s173 YJA.
[36] ss132 and 134 YJA.
[37] s140(1) YJA.

adult, the proceeding must be finished in the way provided for in the YJA for a child but, if found guilty, the offender must be sentenced as an adult.[38]

- If, after a finding of guilt has been made in a proceeding against an offender as a child, the court has been unable to sentence the offender because the offender has escaped from detention or, without reasonable excuse, failed to appear and one year has passed after the offender has become an adult, the offender must be sentenced as an adult.[39]

However, an offender must not be treated as an adult under s140 YJA if the court is satisfied that there was undue delay on the part of the prosecution in starting or completing the proceeding.[40] See *R v Knight* [1997] QCA 55.

Section 141 YJA specifies when an offender may be treated as an adult.

Where a proceeding has started against an offender for a child offence, and by the time one year has passed since the offender became an adult, the proceeding has not been completed to a verdict and the offender, for another offence has been proceeded against or sentenced as an adult, the court hearing the proceeding for the child offence may continue the proceeding as if the offender was an adult when the offence was committed. If the offender is found guilty, the offender must be sentenced as an adult.[41]

Section 144 YJA provides the principles applicable for sentencing an adult for a child offence. The court must have regard to the fact the offender was a child when the offence was committed and the sentence that might have been imposed if the offender had been sentenced as a child.[42] The court cannot order the offender to serve a term of imprisonment longer than the period of detention that the court could have imposed if the offender was sentenced as a child or to pay a monetary penalty greater than that which the court could have ordered if the offender was sentenced as a child.[43] Subsection (3) applies even though an adult would otherwise be liable to have a heavier penalty which by operation of law could not be reduced.[44]

See also Chapter 11.17: Child Offenders who Become Adults.

[38] s140(2) YJA.
[39] s140(3) YJA.
[40] s140(4) YJA.
[41] s141(4) YJA.
[42] s144(2) YJA.
[43] s144(3) YJA.
[44] s144(4) YJA.

Section 148 YJA provides that, subject to ss148A and 148B YJA, evidence of a childhood finding of guilt is not admissible against an adult if a conviction was not recorded.[45] In *R v Duncombe* [2005] QCA 142, the Court of Appeal held that this restriction only applied to offences committed in Queensland and did not apply to offences committed interstate.

Section 148A YJA applies in relation to a court that is sentencing a person who is an adult for an offence:

> *(2) During the prescribed period –*
>
> *(a) section 148 does not prevent the court admitting evidence that the person was found guilty as a child of an offence without the recording of a conviction; and*
>
> *(b) the court may admit other evidence from the person's criminal history as a child' and*
>
> *(c) a previous finding of guilt, other than an excluded previous finding of guilt, against the person as a child, for an offence without the recording of a conviction that forms part of the person's criminal history as a child is taken to be a previous conviction of the person.*
>
> *(3) Also, section 148 does not prevent the court from receiving information about any other sentence to which the person is subject under this Act if that is necessary to mitigate the effect of the court's sentence.*
>
> *(4) In this section –*
>
> ***excluded previous finding of guilt** means a finding of guilt to which section 148B(2) applies.*
>
> ***prescribed period** for a person means a period of five years starting on the latest day that a matter became part of the person's criminal history as a child.*

Section 148B applies to a proceeding before a court to hear and determine a charge against a person who is an adult of an offence under s328A Criminal Code (on indictment or summarily) which is alleged to have been committed after a previous conviction mentioned in that section or a proceeding before a court for the sentencing of a person who is an adult convicted of an offence under s328A(2)(c) or s328A(3) applies:

[45] s148(1) YJA.

(2) Section 148 does not prevent the court admitting a previous finding of guilt against the person, as a child, for a relevant offence without the recording of a conviction if the finding of guilt –

(a) forms part of the person's criminal history as a child; and

(b) was made during a period of 5 years before the offence mentioned in subsection (1) was committed.

(3) In this section –

***relevant offence** means an offence mentioned in the Criminal Code, section 328A(2)(c) or (3)*

Section 148B YJA was inserted by the Making Queensland Safer Act 2024. It applies to a proceeding before a court in relation to an offence under s328A *Criminal Code (Qld)* only if the offence is committed after 28 February 2025.[46]

Sections 135 & 136 YJA specify where an offender is to be held if remanded in custody or serving a sentence in relation to both a child offence and an adult offence.

See Chapter 10.12.3: Application to be held in Detention Centre

Sections 142 and 143 YJA relate to the continuation of orders made against a child when the child becomes an adult and the conversion of such orders to adult orders.

See Chapter 11.17: Child Offenders who Become Adults

2.8 Identification and Confidentiality Issues

As noted above, the Childrens Court when constituted by a Magistrate is closed to the general public. Only specific persons may be in court.[47] Where the Childrens Court constituted by a Judge is dealing with a matter on indictment, the same restrictions do not apply.[48] The restrictions do apply in relation to other criminal proceedings before a Childrens Court Judge.

See Chapter 1.2: Closed or Open Court

[46] s438A YJA
[47] s20 CCA.
[48] s20(5) CCA.

There are also restrictions on the identification of a child in proceedings under the YJA. Part 9 YJA sets out the provisions about disclosure of information. Section 301 YJA creates offences in relation to the publication of identifying information about a child. **"Identifying information"** is defined as "*information that identifies the child or is likely to lead to the identification of the child, as a child who is being, or has been, dealt with under this Act*." [49] Examples given are the child's name, address, school or place of employment or a photograph, picture, video or other visual representation of the child or someone else.

Publication may be permitted by court order or under written authority by the relevant chief executive if the chief executive is satisfied the publication is necessary to ensure a person's safety.[50]

Section 234 YJA provides the power for the court to allow publication of identifying information about a child. That power is limited to:

- any offence that is a "life offence", if the offence involves the commission of violence against a person and the court considers the offence to be a particularly heinous offence having regard to all the circumstances.[51]
- where a court sentences a child for an offence under s175A YJA committed on or after 13 December 2024, the offence involves the commission of violence against a person and the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

A **"life offence"** means an offence for which a person sentenced as an adult would be liable to life imprisonment.[52]

Section 234(3) YJA sets out the considerations to be taken into account by the court. The power is not available to a Childrens Court constituted by a Magistrate.[53]

See *R v Rowlingson* [2008] QCA 395, *R v SBU* [2011] QCA 203 and *R v SDK* [2020] QCA 269.

See also Chapter 11.13.9.3: "Particularly Heinous Offence"

[49] Schedule 4 YJA
[50] s301(2) and (3) YJA.
[51] s176(3)(b) YJA.
[52] Schedule 4 YJA.
[53] s234(4) YJA.

See also ss21A and 21AU *Evidence Act 1977* (EA) as to the exclusion of the public in cases where a child under 16 years or an affected child witness is to give evidence.

See also Chapter 5.5: Evidence of Special Witnesses and Chapter 5.6: Evidence of Affected Children

See also s193 CPA for further restrictions on the reporting of identifying information about a child who is to be a witness in certain proceedings (in relation to sexual offences or offences of a violent nature). The Part 9 restrictions continue to apply after the child becomes an adult[54] and also apply to information relating to an adult who is being or has been dealt with under the YJA for a child offence, as if the person was still a child.[55]

Other sections in Part 9 relate to the authorised sharing of confidential information for various purposes. Section 25 YJA allows a police officer to apply to a Childrens Court Magistrate to have identifying particulars of a child taken. The section applies if a child has been charged, but not arrested, with an indictable offence or an offence contained in specified statutes that is an arrest offence.[56] The procedures for that application are set out in s25(3)-(12) YJA. The term "**identifying particulars"** is defined as those set out in Schedule 6 of the *Police Powers and Responsibilities Act 2000* (PPRA). [57]

The Court may order that the identifying particular be taken if it is satisfied on the balance of probabilities of all the following facts:[58]

a) someone has committed the charged offence;
b) there is evidence of identifying particulars of the offender that are of the same type as the identifying particulars the applicant seeks to have taken from the child;
c) the child is reasonably suspected of being the offender;
d) the order is necessary for the proper conduct of the investigation of the offence.

Section 255 YJA provides that if a child is found guilty of an indictable offence or an offence against specific Acts that is an arrest offence, the court may make an order that the child's identifying particulars be taken.

[54] s283(3) YJA.
[55] s283(4) YJA.
[56] s25(1) YJA.
[57] Schedule 4 YJA
[58] s25(6) YJA.

See Chapter 11.14.5: Order for Identifying Particulars to be Taken

2.9 Role of Parents

Principle 12 of the Charter of Youth Justice Principles provides:

> *12. A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child and supported in the parent's efforts to fulfil this responsibility.*

Section 69 YJA provides that if a parent of a child is not present when the child appears before a court when charged with an offence, the court, after making enquiries of those present as to the whereabout of the child's parents, and whether a parent has been informed of the proceedings as required, may adjourn the proceeding to allow a parent to be present.

The court may recommend that the chief executive of the responsible department provide financial assistance to a parent of the child to ensure a parent is present at the proceeding.[59]

"Parent" is defined in Schedule 4 YJA to mean:

a) *a parent or guardian of a child; or*
b) *a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence; or*
c) *a person who has the day-to-day care and control of a child.*

The definition thus includes the chief executive of the Department of Child Safety, Youth and Women where the child is subject to an order under the CPA placing them in the custody of or under the guardianship of the chief executive.

Pursuant to s70 YJA, the court may order a parent of the child to attend the proceeding as directed by the court. That order may be made on the prosecutor's application or on the court's own initiative.[60] Written notice of the order can be by the proper officer of the court who may request the Commissioner of Police to assist in giving the notice.[61] The court may recommend the chief executive

[59] s69(2) YJA.
[60] s70(2) YJA.
[61] s70(3) and (4) YJA.

provide financial assistance to the parent to ensure attendance.[62] It is an offence to contravene such a notice.[63]

Pursuant to s71 YJA, the parent of a child, who is not present when a finding or order has been made by the court, may apply to the court to set aside the finding or the order. To grant the application, the court must be satisfied that the child was dealt with when no parent was present and the parent making the application was not aware of the time and place of the proceeding in sufficient time to allow the parent to be present or the parent was unable to attend for sufficient reason.[64] The court must also be satisfied that it is in the interests of justice to set aside the finding or order.[65] The application must be made within 28 days of the order being made.[66] If the application is successful, the matter must be heard and determined afresh.

See Chapter 9.16.4: Application to set aside finding or order by a parent and Chapter 10.12.1: Application to set aside finding or order by a parent for the provisions relating to a Childrens Court constituted by a Magistrate and Judge respectively.

In certain circumstances where a child has been found guilty of a personal or property offence, the court may order a parent to pay compensation for the offence.[67] **"Parent"** is defined to mean a guardian of the child other than the chief executive (child safety).[68]

See Chapter 11.14.2: Compensation Orders Against Parents

The role of parents in relation to bail considerations was expanded in 2021. The following provisions were inserted the YJA:

YJA section	Role of parent / another person
48AA(4)(a)(vi)	When considering decisions regarding release and bail the court or police officer may have regard to:

[62] s70(5) YJA.
[63] s70(6) YJA.
[64] s71(1) YJA.
[65] s71(2) YJA.
[66] s71(4) YJA.
[67] s258 YJA.
[68] s257 YJA.

	(vi) whether a parent of the child, or another person, has indicated a willingness to the court or police officer that the parent or other person will do any of the following things:* *(A) support the child to comply with the conditions imposed on a grant of bail;* *(B) notify the chief executive or a police officer of a change in the child's personal circumstances that may affect the child's ability to comply with the conditions imposed on a grant of bail;* (C) *notify the chief executive or a police officer of a breach of the conditions imposed on a grant of bail.* The definition of '**parent'** appears in Schedule 4 of the YJA. **"Another person"** could be, for example, immediate or extended family, a relative, kin, other community member, neighbour, employer or a staff member or volunteer from a support service.[69]
48AA (6)	The court or police officer must not decide there is an unacceptable risk of a matter mentioned in s48AAA(2) or (3), or to refuse to release a child from custody, solely because 1 or both of the following apply: *(a) the child has no apparent family support;* (b) *the child will not have accommodation, or adequate accommodation, on release from custody.*
52AA (1)(f) (ii) & (iii)	The court may impose a monitoring device condition if satisfied it is appropriate to do so having regard to a number of matters, including: *(ii) whether the child is likely to comply with the condition and any conditions under subsection (2) having regard to the personal circumstances of the child (express examples provided include whether the child has the support of a parent or another person)* *(iii) whether a parent of the child, or another person, has indicated a willingness to the court to do any of the things mentioned in section 48AA(4)(a)(vi).*

[69] Page 4, Youth Justice and Other Legislation Amendment Bill 2021, Explanatory Notes.

2.10 Explanation of Proceedings

Principle Seven of the Charter of Youth Justice Principles provides that a child being dealt with under the YJA should have procedures and other matters explained in a way that the child understands.

Section 72 YJA provides that the court must take steps to ensure, as far as practicable, that the child and any parent of the child present has full opportunity to be heard and participate in the proceeding. The court must ensure that the child and the parent understand, as far as practicable, the nature of the proceedings and the consequences of any order that may be made.[70]
Section 72 YJA provides:

1. *In a proceeding before a court in which a child is charged with an offence, the court must take steps to ensure, as far as practicable, that the child and any parent of the child present has full opportunity to be heard and participate in the proceeding.*

2. *Without limiting subsection (1), the court must ensure that the child and parent understand, as far as practicable—*
    a. *the nature of the alleged offence, including the matters that must be established before the child can be found guilty; and*
    b. *the court's procedures; and*
    c. *the consequences of any order that may be made.*

3. *Examples of the steps a court may take are—*
    a. directly explaining these matters in court to the child and parent; and
    b. having some appropriate person give the explanation; and
    c. having an interpreter or another person able to communicate effectively with the child and parent give the explanation; and
    d. causing an explanatory note in English or another language to be supplied to the child and parent.

Section 73 YJA provides that the ordinary practice in relation to explanations can apply even if the child is represented by a lawyer and allows the lawyer to answer on behalf of the person.

[70] s72(2) YJA.

Section 158 YJA requires that a court must take steps to ensure the child understands any sentence imposed on the child and the consequences that might follow if the child fails to comply with the order.

Section 32(i) and (j) HRA require that a person charged with a criminal offence has the right to the assistance of an interpreter if required and to specialised communication tools and technology and assistance if there are communication or speech difficulties that require assistance.

2.11 Chief Executive's Right of Audience

Section 74 YJA entitles the Chief Executive (Youth Justice) to be heard by the court on the various matters set out in subsection (3) before a court in which a child in charged with an offence.

3. *The matters are—*
    a. *adjournment of the proceeding; and*
    b. *matters relating to the custody or release from custody of the child pending completion of the proceeding; and*
    c. *sentence orders that may be made against the child; and*
    d. *without limiting paragraphs (a) to (c), matters on which the court considers the chief executive should be heard.*

This applies even if the chief executive is not a party to the proceeding.[71] Where the chief executive is a party to the proceeding the chief executive may appear and be represented by an officer of the department.[72] The chief executive has no right to be heard in relation to an issue under s234 YJA (court may allow publication of identifying information about a child).[73]

2.12 Role of the Public Guardian

The Office of the Public Guardian has a role in criminal matters before the Childrens Court in its criminal jurisdiction in relation to a "relevant" child who is subject to a child protection order or intervention (s52 *Public Guardian Act 2014* (PGA)). Section 13(1)(l) PGA provides that the Public Guardian has a "child advocate function" in supporting the child at a proceeding before the court.

[71] s74(2) YJA.
[72] s74(5) YJA.
[73] s74(4) YJA.

Pursuant to s29 CCA, the Public Guardian may be present in court proceedings. That support may include:

- Supporting a child's direct legal representation to understand underlying issues that may be impacting on the child;
- Provision of supplementary submissions in mitigation of sentence;
- Provision of complimentary submissions to support case conferencing or negotiation of charges;
- Supporting direct legal representation to access relevant information to inform submissions to the court.

Note s150(9) YJA that in sentencing a child, the court may receive any information or a sentencing submission from a party to the proceeding as it sees fit.

See Appendix 1: Role of OPG Child Advocate in Childrens Court (Criminal) Proceedings

2.13 Legal Representation

Principle 17 of the Charter of Youth Justice Principles provides that a child being dealt with under the YJA should have access to legal and other support services, including services concerned with advocacy and interpretation.

Section 79 YJA provides that if a child appears before a Childrens Court charged with an indictable offence, but is not legally represented, the court may only proceed with a hearing and determination if it is satisfied that the child has had reasonable opportunity to obtain representation by a lawyer and has decided not to be represented by a lawyer.

Legal Aid Queensland's (LAQ) policy is that legal aid is automatically available to children charged with indictable offences. A merit test is applied in relation to summary and regulatory offences, bail applications to the Childrens Court constituted by a Judge, appeals and sentence reviews. When processing an application for aid for a child, LAQ has a policy of not taking the parents' assets into account. [74] LAQ applies a means test to persons 18 years and over who are alleged to have committed an offence as a child. Pursuant to s22 *Legal Aid Queensland Act 1997* (Qld), a court may recommend that a person be given legal assistance by LAQ if the person is before the court in a specified criminal

[74] Youth Justice Practitioners Guide, LAQ, August 2018, at page 44

proceeding and the court considers it appropriate to make the recommendation. **"Specified criminal proceeding"** is defined in the Schedule to the *Legal Aid Queensland Act 1997* to include a criminal proceeding under the YJA in relation to an indictable offence.

2.14 Reopening and Removal of Proceedings

Pursuant to s128(1) YJA, a court, whether or not differently constituted, may reopen a proceeding if the court has:

- Made a finding or order in relation to a child that is not in accordance with the law;
- Failed to make a finding or order in relation to a child that the court legally should have made; or
- Made a finding or order in relation to a child decided on a clear factual error of substance.

"Finding or order" means a finding of guilt, conviction, sentence or other finding or order that may be made in relation to a person charged with an offence.[75]

The court may reopen the proceeding on its own initiative or, on the application of the party to the proceeding, the chief executive (Youth Justice) or the Registrar or clerk of the court, within 28 days after the finding or order is made or with any further time the court may allow.[76] The court may amend any relevant finding or order as necessary to take into account the error.[77]

Section 128 YJA provides:

1. *If a court has—*
    a. *made a finding or order in relation to a child that is not in accordance with the law; or*
    b. *failed to make a finding or order in relation to a child that the court legally should have made; or*
    c. *made a finding or order in relation to a child decided on a clear factual error of substance; the court, whether or not differently constituted, may reopen the proceeding.*

[75] s128(7) YJA.
[76] s128(4) YJA.
[77] s128(3) YJA.

2. *The power under subsection (1)(c) includes power to reopen proceedings because the finding or order was incorrectly made—*
    a. *in relation to the wrong person; or*
    b. *because a summons issued on a complaint originating the proceedings that resulted in the finding or order did not come to the knowledge of the child; or*
    c. *because it was made for a matter for which the child had been previously dealt with; or*
    d. *because of someone's deceit.*

3. *If a court reopens a proceeding, it—*
    a. *must give the parties an opportunity to be heard; and*
    b. *may make a finding or order in relation to the child—*
        i. *for a reopening under subsection (1)(a)—in accordance with law; or*
        ii. *for a reopening under subsection (1)(b)—the court legally should have made; or*
        iii. *for a reopening under subsection (1)(c)—taking into account the factual error; and*
    c. *may amend any relevant finding or order to the extent necessary to take into account the finding or order made under paragraph (b).*

4. *The court may reopen the proceeding—*
    a. *on its own initiative at any time; or*
    b. *on the application of a party to the proceeding, the chief executive or the court's registrar or clerk of the court, made within—*
        i. *28 days after the day the finding or order was made; or*
        ii. *any further time the court may allow on application at any time.*

5. *Subject to subsection (6), this section does not affect any right of appeal.*

6. *For an appeal under any Act against a finding or order made under subsection (3), the time within which the appeal must be made starts from the day the finding or order is made under subsection (3).*

7. *In this section—*

finding or order *means a finding of guilt, conviction, sentence or other finding or order that may be made in relation to a person charged with or found guilty of an offence.*

Section 129 YJA provides that if a court is satisfied it does not have jurisdiction to hear and determine a proceeding before it, it may remove the proceeding to a court of competent jurisdiction.

Section 129 YJA provides:

1. *If a court is satisfied that it does not have jurisdiction to hear and determine a proceeding before it because of this Act, it may remove the proceeding to a court of competent jurisdiction.*

2. *To remove and deal with the proceeding that remains before it, the court may—*
    a. *give directions it considers necessary; and*
    b. *take or make any procedural action or order the court of competent jurisdiction could take or make.*

3. *Subsection (2) does not limit any other power the court may have to deal with the proceeding.*

Section 130 YJA provides that if, in the course of a proceeding, a court finds that it does not have jurisdiction to hear and determine the matter, if the court has concurrent jurisdiction, it may continue the proceeding in the concurrent jurisdiction. If it does not have concurrent jurisdiction, it may remove the proceeding to a court of competent jurisdiction under s129 YJA.

Section 131 YJA sets out the procedure if the lack of jurisdiction is discovered after the proceeding has ended:

1. *This section applies if a finding or order has been made in a proceeding—*
    a. *on the assumption that the person charged was a child, when the person was an adult; or*
    b. *on the assumption that the person charged was an adult when the person was a child.*

2. *Application may be made to the court that made the finding or order to set aside the finding or order.*

3. *The application may be made by—*
    a. *a party to the proceeding; or*

b. *if the person charged in the proceeding was a child—the chief executive acting in the child's interests; or*

c. *the director of public prosecutions.*

4. *The application must be made—*

   a. *within 28 days after the error is discovered by the applicant; or*

   b. *by a later day that the court may at any time allow.*

5. *On hearing the application, the court may set aside the finding or order and—*

   a. *make the finding or order the court considers should have been made in the first place, if necessary, after deciding what facts the court when differently constituted must have found when making the finding or order set aside; or*

   b. *take any action or make any order that could have been made by the court if it had discovered the error immediately before making the finding or order.*

6. *A court cannot set aside an acquittal under this section or an order dismissing a charge or discharging a person.*

Chapter 3 – Jurisdiction

3.1 Children

As noted above, a child is an individual who is under 18 years of age.[78] Section 29 *Criminal Code (Qld)* (CC) provides that a person under 10 years of age is not criminally responsible for any act or omission.

A person under 14 years of age is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, the person had capacity to know that the person ought not to do the act or make the omission.

See also Chapter 4: Capacity

3.2 Definitions of Offences

For the purposes of the criminal law, s3 CC defines offences as of two kinds, criminal offences and regulatory offences (*Regulatory Offences Act 1985* (Qld)). Criminal offences comprise crimes, misdemeanours and simple offences.[79] (For some simple offences see *Summary Offences Act 2005* (Qld)). Crimes and misdemeanours are indictable offences (the offender cannot, unless otherwise expressly stated, be prosecuted, or convicted except upon indictment).[80] A person guilty of a regulatory offence or a simple offence may be summarily convicted by a Magistrates Court.[81] An offence not otherwise designated is a simple offence.[82]

Section 60 YJA provides that the Act does not affect the jurisdiction a court has, apart from the YJA, in relation to a child charged with an offence, unless the YJA otherwise provides.

Section 8 YJA defines a **"serious offence"** as follows:

1. *Subject to subsection (2), in this Act serious offence means—*
    a. *a life offence; or*

[78] Schedule 1, *Acts Interpretation Act 1954* (Qld).
[79] s3(2) CC.
[80] s3(3) CC.
[81] s3(4) CC.
[82] s3(5) CC.

b. an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more.

2. An offence is not a serious offence if—

a. it is a relevant offence under the Criminal Code, section 552BA; or

b. it is an offence that is the subject of a charge to which the Criminal Code, section 552A or 552B applies; or

c. under the Drugs Misuse Act 1986, section 13, proceedings for a charge for the offence may be taken summarily; or

d. under the Drugs Misuse Act 1986, section 14, proceedings for a charge for the offence may be taken summarily.

Note— Proceedings for a charge for an offence may not be taken summarily under section 14 if the prosecution allegations include an allegation as to a commercial purpose.

2A. If it is necessary for the purposes of subsection (2) to have reference to the table of excluded offences included in the Criminal Code, section 552BB, a reference in that table to the circumstance that the offender does not plead guilty to an offence is taken to be a reference to a child not admitting to committing the offence.

3. For the purpose of this section, the type of an offence includes the circumstances in which it is committed.

The offences detailed in subsection (2) are those that may or must be dealt with summarily.

A **"life offence"** means an offence for which a person sentenced as an adult would be liable to life imprisonment.[83] A **"Supreme Court offence"** means an offence for which the District Court does not have jurisdiction to try an adult because of s61 *District Court of Queensland Act 1967*.[84]

3.3 Jurisdiction of the Childrens Court Constituted by a Magistrate

Section 64 YJA provides that a Childrens Court Magistrate can hear and determine all proceedings of charges against children under the JA including committal proceedings. A Magistrates Court and justices conducting committal proceedings do not have that jurisdiction.[85] A Childrens Court

[83] Schedule 4 YJA.
[84] Schedule 4 YJA.
[85] s64(3) YJA.

Magistrate thus has the power to hear and determine regulatory, summary, and simple offences, indictable offences (other than supreme court offences and serious offences) for which the child has elected summary disposition, and committal proceedings.

Section 76 YJA provides that a child may elect to have an indictable offence dealt with by a Magistrate even though more than one year has passed since the commission of the offence. See s552F CC which provides, as to summary disposition of charges, the Magistrates Court has jurisdiction despite the time that has elapsed from the time when the matter of the complaint arose. Section 52 JA establishes the limitation on proceedings for a simple offence or a breach of duty.

As to which offences can be dealt with summarily, see Chapter 9.1: Jurisdiction, Chapter 9.4.1-5: Sentence Matters, Chapter 9.11.1-6: Summary Trials/Hearings and Appendix 6: Jurisdictional Guide for Juvenile Matters 2019

Section 77 YJA provides that the Childrens Court Magistrate should refrain from summarily hearing a relevant indictable offence, unless the court is satisfied that the charge can be adequately dealt with summarily. The court may make that decision at any stage of the proceeding. Any further proceeding before the court must be conducted as a committal proceeding.[86]

If a Childrens Court Magistrate, in a proceeding for the sentencing of a child, considers that the circumstances require the making of an order beyond the powers of the Magistrate but within the powers of a Childrens Court Judge, the Magistrate may commit the child for sentence before a Childrens Court Judge.[87]

Section 65 YJA provides that for the purpose of the jurisdiction in relation to persons and matters assigned to a Childrens Court Magistrate under the YJA, the Magistrate has the same powers and jurisdictions as a Magistrates Court has under the JA in relation to persons and matters assigned to the Magistrates Court.

For the purposes of the powers and jurisdiction of the Childrens Court conferred by the YJA, the provisions of the CC, JA and other Acts apply to the institution and conduct of proceedings, the

[86] s77(4) YJA.
[87] s186 YJA.

exercise of the Childrens Court's power and jurisdiction and the enforcement of an order made by the Childrens Court Magistrate in the way they apply in relation to a Magistrates Court.[88]

If the Childrens Court is constituted by two justices, the court's jurisdiction is limited to the hearing and determination of a charge of a simple offence where the child pleads guilty and taking or making a procedural action or order.[89] The justices cannot make a detention order or a conditional release order.[90]

Section 26(3) CCA provides that a Childrens Court magistrate, a magistrate or justices have the same power to punish for contempt of court as a magistrate or justices have to punish for contempt of a Magistrates Court. Section 40 JA applies in relation to the court when so constituted in the same way as it applies to a Magistrates Court.[91]

3.4 Jurisdiction of the Childrens Court Constituted by a Judge

Section 62 YJA provides that a Childrens Court Judge has jurisdiction to inquire and decide all indictable offences, wherever committed, charged against a child other than Supreme Court offences.[92] It does not matter where an offence is committed or whether or not the child has been committed to be tried or sentenced before the Childrens Court Judge on a charge. Any trial on an indictable offence can be with a jury or by a Judge alone at the child's election.[93]

Pursuant to s105 YJA, if the child is not represented by a lawyer or, if represented, the child has not elected, or withdraws an election, to be tried without a jury or, if the Judge decides in the particular circumstances it is more appropriate for the child to be tried by the Judge sitting with a jury, the child must be tried before the Judge sitting with a jury.

See Chapter 10.2: Trial

[88] s66 YJA.
[89] s67(1) YJA.
[90] s67(2) YJA.
[91] s26(4) CCA.
[92] s99(1) YJA.
[93] ss102-105 YJA.

The provisions of the Criminal Code or any other Act (such as the *Jury Act 1995*) relating to the hearing and deciding on indictment of an indictable offence apply to the proceeding for the hearing of an indictable offence before a Childrens Court Judge.[94]

The Childrens Court Judge may also:

- Delegate sentencing power to a Childrens Court Magistrate under s185 YJA;[95]
- Under s100 YJA, sentence a child on any charge for a summary offence on which the child consents to being sentenced pursuant to s651 CC;
- Hear bail applications under s185 YJA;[96]
- Perform other functions and exercise other powers conferred on the Judge under the YJA;[97]
- Review a sentence order made by a Childrens Court Magistrate under s118 YJA;[98]
- Decide an application pursuant to s139 YJA for a child who has become an adult to be held in custody in a detention centre rather than a corrective services facility.

Section 63 YJA provides that for the purpose of the jurisdiction in relation to persons and matters assigned to a Childrens Court Judge under the YJA, the Judge has the same powers and jurisdictions as the District Court has in its criminal jurisdiction in relation to persons and matters assigned to the District Court. For the purposes of the powers and jurisdictions of a Childrens court conferred by the YJA, the provisions of the CC, JA and other Acts apply to the institution and conduct of proceedings, the exercise of the Childrens Court's power and jurisdiction and the enforcement of an order made by the Childrens Court Judge in the way they apply to the District Court.[99]

Section 26 CCA provides that a Childrens Court judge has the same powers to punish a person for contempt of court as a judge has for contempt of the District Court. Section 129 *District Court of Queensland Act 1967* applies in relation to a Childrens Court judge in the same way as it applies to a District Court judge.[100]

[94] s101 YJA.
[95] s62(b) YJA.
[96] s62(c) YJA.
[97] s62(d) YJA.
[98] s62(e) YJA. See also s117A YJA which provides a sentence order includes a declaration under s150A(2) YJA that a child is a serious repeat offender.
[99] s66 YJA.
[100] s26(2) CCA.

3.5 Jurisdiction of the Supreme Court in relation to Childrens Matters

If the indictable offence for which a child is to be committed is a "Supreme Court offence", [101] the court must order that the child is to be tried before the Supreme Court.[102] Proceedings in the Supreme Court are not Childrens Court proceedings. The provisions on restricted access to the hearings specified in s20 CCA (outlined above) do not apply to such proceedings.

Sentence proceedings in the Supreme Court are governed by the YJA.[103] Mandatory sentence provisions in relation to monetary penalties or imprisonment under other Acts do not apply.[104] For sentence orders in relation to life and other significant offences, see s176 YJA.

See Chapter 11.4: No Mandatory Sentence and Chapter 11.12.2: Sentence Orders – Life and Other Significant Offences

3.6 Jurisdiction of the District Court in relation to Childrens Matters

The District Court can still try or sentence a child on indictment if the child is also charged as an adult with an offence[105] or if a child is a co-accused with an adult on a joint trial.[106] Such a trial must be conducted with a jury.[107] If convicted, the child must be sentenced pursuant to the YJA.[108] As noted above, proceedings against a child on indictment in the District Court are not subject to the restrictions contained in s20 CCA.

3.7 Application of Mental Health Act 2016

The *Mental Health Act 2016* (Qld) (MHA) applies to a child charged with an offence as it applies to an adult.[109]

[101] Defined in Schedule 4 YJA
[102] s95 YJA.
[103] s149 YJA.
[104] s155 YJA.
[105] s141 YJA.
[106] ss107-113 YJA.
[107] s113 YJA.
[108] s149 YJA.
[109] s61 YJA.

3.8 Summary Table: Jurisdictions

Constitution	Jurisdiction
Two Justices	• Hearing and determination of a charge of a simple offence, where the child pleads guilty. • Hearing or making a procedural action or order. • Cannot make a detention order or conditional release order.
Childrens Court constituted by a Magistrate if a Childrens Court Magistrate is not available	• Bail applications and applications to review police bail or release decisions. • Sentences of regulatory, summary, and simple offences and indictable offences which are not serious offences with the child's consent. • Trials in relation to regulatory, summary, and simple offences and indictable offences that are not serious offences with the child's consent. • Committal proceedings
Childrens Court constituted by a Childrens Court Magistrate	• All proceedings under the JA for the hearing and determination of charges against children for offences, including committal proceedings, must be heard, and determined before a Childrens Court magistrate. • Bail applications and applications to review police bail and release decisions. • Has the power to hear and determine regulatory, summary, and simple offences, indictable offences other than serious offences, with the child's consent, and committal proceedings. • Other specific applications under the YJA and the PPRA.
Childrens Court constituted by a Judge	A Childrens Court Judge has jurisdiction— • to hear and determine, under Division 7 YJA, a charge of an indictable offence against a child; • sentence for a summary offence transferred pursuant to s651 CC;

Constitution	Jurisdiction
	• to delegate sentencing power to a Childrens Court magistrate under s185 YJA; and • to hear bail applications under s59 YJA; and • to perform other functions and exercise other powers conferred on the judge under YJA; and • to review under s118 YJA a sentence order[110] made by a Childrens Court Magistrate.
District Court	May try or sentence a child on indictment if: • The child is also charged as an adult for an offence; or • If the child is a co-accused with an adult on a joint trial. • Trial must be conducted with a jury. • If convicted, child must be sentenced pursuant to YJA. • The jurisdiction of a Childrens Court Judge if a Childrens Court Judge is not available.
Supreme Court	• All Supreme Court offences. • Means an offence for which the District Court does not have jurisdiction to try an adult because of s61 *District Court of Queensland Act 1967.* • General rule is where maximum penalty is more than 20 years imprisonment, with multiple exceptions. • Not considered to be Childrens Court proceedings and closed court provisions do not apply. • If convicted, child must be sentenced pursuant to YJA. • Mandatory sentence provisions do not apply.
Mental Health Court	• The MHA applies to a child charged with an offence as it applies to an adult.

[110] s117A YJA provides a sentence order includes a declaration under s150A(2) YJA that a child is a serious repeat offender.

Chapter 4 – Capacity

Section 29 *Criminal Code* (CC) provides that a person under the age of 10 years is not criminally responsible for any act or omission.[111] Section 29(2) CC provides that a person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, the person had capacity to know that the person ought not to do the act or make the omission. This is a common law presumption known as *doli incapax* (incapable of crime). It is based on the rationale that "*a child under 14 is not sufficiently intellectually and morally developed to appreciate the difference between right and wrong*".[112]

4.1 Doli Incapax

Section 29(2) CC establishes a rebuttable presumption against criminal responsibility for children between the ages of 10 and under 14 years. The onus is on the prosecution to rebut that presumption by admissible evidence to prove the child had the relevant capacity. That capacity is an element of the offence charged and should be proved as part of the prosecution case. It must be proved to the criminal standard, proof beyond a reasonable doubt. The capacity must be proved to a Magistrate or Judge alone who is conducting a trial, or to the jury in a criminal trial.[113] In *R v B (an infant)* [1979] Qd R 417, WB Campbell J said at [425] "*It seems to me that this proof, this rebuttal of the presumption, may be done only by the calling of proper and admissible evidence.*"

The application of s29 CC was summarised by the High Court in *BDO v The King* [2023] HCA 16 to provide for "*an irrebuttable presumption that a child under ten years of age lacks the capacity to understand the wrongness of their conduct, and a rebuttable presumption to that effect with respect to a child whose age is between ten and 14 years of age.*" [114]

4.2 What Must be Proved

In *R v B* [1997] QCA 486, the Court of Appeal held that what was required was for the prosecution to prove that at the relevant time the child had the capacity to know the child ought not do the act (or make the omission) which is different from proving actual knowledge that the act was wrong. The court also commented that the closer the child was to 14 years old, the less strong the evidence must

[111] s29(1) CC
[112] *RP v R* [2016] 91 ALJR 248, [8].
[113] *R v LAH* [2016] QCA 82.
[114] [4]

be to rebut the presumption. That proposition was questioned by the High Court of Australia in *RP v R* [2016] 91 ALJR 248 on the basis that it presupposed that children mature at a uniform rate.

The mere commission of the offence is not, in itself, evidence sufficient to rebut the presumption.[115] In *RP v R,* the High Court quashed convictions of an 11-year-old defendant convicted of rape where the prosecution relied principally on the surrounding circumstances of the offences which could be construed as indicating only that the child considered them to be *"naughty"* or *"mischievous".* The joint judgement considered what needed to be proved to rebut the presumption (footnotes omitted):

> *[9] …From the age of 10 years until attaining the age of 14 years, the presumption may be rebutted by evidence that the child knew that it was morally wrong to engage in the conduct that constitutes the physical element or elements of the offence. Knowledge of the moral wrongness of an act or omission is to be distinguished from the child's awareness that his or her conduct is merely naughty or mischievous. This distinction may be captured by stating the requirement in terms of proof that the child knew the conduct was "seriously wrong" or "gravely wrong". No matter how obviously wrong the act or acts constituting the offence may be, the presumption cannot be rebutted merely as an inference from the doing of that act or those acts. To the extent that the decision of the Court of Appeal of the Supreme Court of Victoria in* R v ALH *suggests a contrary approach, it is wrong. The prosecution must point to evidence from which an inference can be drawn beyond reasonable doubt that the child's development is such that he or she knew that it was morally wrong to engage in the conduct. This directs attention to the child's education and the environment in which the child has been raised.*
>
> *…….*
>
> *[12] What suffices to rebut the presumption that a child defendant is doli incapax will vary according to the nature of the allegation and the child. A child will more readily understand the seriousness of an act if it concerns values of which he or she has direct personal experience. For example, a child is likely better able to understand control of his or her own possessions and the theft of others' property compared to offences such as damaging public property, fare evading, receiving stolen goods, fraud, or forgery. Answers given in the course of a police interview may serve to prove the child possessed the requisite knowledge. In other cases, evidence of the child's progress at school and of the child's home life will be required. It has been said that the closer the child defendant is to the age of 10 the stronger must be the*

[115] *R v Kershaw* (1902) 18 TLR 357.

evidence to rebut the presumption. Conversely, the nearer the child is to the age of 14, the less strong need the evidence be to rebut the presumption. The difficulty with these statements is that they are apt to suggest that children mature at a uniform rate. The only presumption which the law makes in the case of child defendants is that those aged under 14 are doli incapax. Rebutting that presumption directs attention to the intellectual and moral development of the particular child. Some 10-year-old children will possess the capacity to understand the serious wrongness of their acts while other children aged very nearly 14 years old will not."

The High Court in *BDO v The King* [2023] HCA 16 concluded that the jury needed to be told that, in considering each of the counts on the indictment, they needed to assess capacity *"at the time of doing the act*" which required the prosecution to *"point to evidence from which an inference could be drawn beyond reasonable doubt that the appellant had the requisite capacity at the time the specific act is said to have occurred."*

4.3 Methods of Proof

The presumption may be rebutted by:

- Evidence of previous convictions of the child in relation to relevant offences.[116] The court has a residual power to exclude such evidence because of its prejudicial effect;
- Evidence of prior police questioning of a child about prior offences;[117]
- Evidence of cautions administered to the child and restorative justice agreements made by the child;[118]
- Proof that the child knew the conduct was "*seriously wrong"* or "*gravely wrong"* including evidence of the child's development to show that the child knew it was morally wrong to engage in the conduct;[119]
- Evidence of the surrounding circumstances of the offence e.g., rendering a victim incapable of resistance, the wearing of a disguise, asserting a false alibi.[120]

Note s148C YJA which prohibits the use of admissions made by the child in the course of, for the purpose or, or as a condition of participating in a youth justice program (such as a conference or

[116] *B and A* (1979) 69 Cr App R 362; *R v F; ex parte Attorney-General* [1999] 2 Qd R 157.
[117] *R v M* (1977) 16 SASR 589.
[118] s147 YJA.
[119] *RP v R* [2016] 91 ALJR 248.
[120] *R v F; ex parte Attorney-General* [1999] 2 Qd R 157.

alternative diversion program) or evidence directly or indirectly derived from such an admission as evidence against the child in any civil, criminal, or administrative proceeding. This includes any written material made by the child or anything said or done by the child. [121]However, this evidence may be admissible if the child agrees to its admission or, for a conference or alternative diversion program, is admissible under part 7, division 2 YJA. [122]

4.4 Where Prosecution Fail to Prove Capacity

After the close of the prosecution case, if the prosecution has not proved the capacity to the required standard, the child is entitled to be acquitted.

However, the prosecution may apply to reopen its case to prove the capacity. In *R v CDR* [1996] 1 Qd R 183, the Court of Appeal held that a trial Judge did not err in the exercise of the discretion to allow the prosecution to reopen its case to prove the capacity in circumstances where any mistake by the prosecution was not culpable and the evidence which was proposed to be called was not of a controversial kind.

4.5 Interplay with Section 27 Criminal Code: Insanity

The provisions of s27 CC are inapplicable to children under 14 years because, if the child is under 10 years, the presumption against responsibility is absolute and so sanity is irrelevant, while if the child is between 10 and 14 years old, there is a rebuttal presumption against responsibility, and it is for the prosecution to prove the capacity and not for the child to prove his or her insanity.[123]

Note: If the requisite capacity is proved, it may well be open to a child under 14 years to raise s27 CC as the capacities in that section are different from that contained under s29 CC.

Section 61 YJA provides that the MHA applies to a child charged with an offence as it applies to an adult.

[121] s148C(3)
[122] s148C(4)
[123] *R v Brooks* [1945] NZLR 584.

Chapter 5 – Children in Court

5.1 General Matters

When dealing with a child either as a witness in a court proceeding or as a person accused of a criminal offence, it is important to recognise that a child is not a small adult. Depending on the development of the individual child, there may be a number of abilities not yet fully developed that will impact on the ability to understand and participate in court proceedings. These include the ability to understand meanings and concepts, to communicate, to remember aspects of past events, to maintain attention, to react to the stress of being in court and many other impacts. There has been much research in recent years on the stages of development of the brain, particularly in relation to adolescents.

The judicial officer needs to be aware of the particular difficulties faced by the particular person in the court environment. A particular child may face specific difficulties because of disadvantaged background and education, or significant intellectual, physical, or mental health problems (e.g., the impact of FASD) or difficulties with language and communication because of speech and language disorders or hearing difficulties. This may be of particular relevance in relation to Aboriginal and Torres Strait Islander children.

Whilst the primary responsibility for bringing specific difficulties to the attention of the court rests with the child's legal representative, or the party calling the child as a witness, the judicial officer needs to be alert to the difficulties faced by a child in a court environment. This is particularly important in relation to enabling a child witness to give the best evidence with respect to the child's capacity and fulfilling the court's obligation to ensure that a child defendant understands and participates in what is happening.

With respect to child witnesses, the court needs to be alert to changes in the demeanour of the child or in the way the child answers questions. Repeated answers of *"I don't know"* or *"I can't remember"* and fidgeting and changes in body posture such as drooping the head, may well indicate the child is tired and in need of a break. The court needs to be alert to such matters.

For further details on childhood development issues and the impact they have on court proceedings, see:

Agency	Title	Edition/Date
Supreme Court Library Queensland	Supreme Court of Queensland Equal Treatment Benchbook Pages 151-157	Second Edition 2016
Judicial Commission of New South Wales	New South Wales Equality Before the Law Benchbook Section Six	February 2024
Australian Institute of Judicial Administration Incorporated	Bench Book for Children Giving Evidence in Australian Courts	March 2020
Judicial Commission of New South Wales	Childrens Court of New South Wales Resource Handbook	July 2024
Judge Peter Johnstone President of Children's Court of New South Wales	"The Grey Matter Between Right and Wrong" Neurobiology and Young Offending Children's Legal Services Conference	October 2014
Judge John Walker Principal Youth Court Judge for New Zealand	Barriers to Engagement: Enabling full participation in the justice system for young people Justice for Young People Conference	November 2018

Additionally, Legal Aid Queensland has developed the following materials available in the Appendix:

- Appendix 2: Neurodevelopmental Domains: What to Look For
- Appendix 3: Practical tips to assist young people with neurodevelopmental impairments

5.2 Children as Witnesses

5.2.1 Competency

Section 9 EA provides that every person, including a child, is presumed to be competent to give evidence in a proceeding and competent to give evidence in a proceeding on oath. **"Oath"** includes affirmation, declaration, and promise.[124]

There is thus a presumption of competence, but an issue may be raised by a party to the proceeding or by the court in respect of whether the person is competent to give evidence[125] or whether the person is competent to give evidence on oath.[126]

5.2.2 Competence to Give Evidence

In relation to the issue whether the witness is competent to give evidence, it is decided by the judicial officer alone. If in a trial by jury, in the absence of the jury.[127] The test is whether, in the court's opinion, *"the person is able to give an intelligible account of events which he or she has observed or experienced".*[128] That test applies whether or not the evidence is on oath.[129]

See comment in the Supreme and District Court's Criminal Directions Benchbook:

> *The phrase "the person is able to give an intelligible account of events" probably means no more than that the person's account of events is capable of being understood, rather than that it is necessarily truthful or accurate.*

In making the decision as to whether a witness is competent, the judicial officer can refer to various sources of information: The evidence of the child on voir dire, any previous recordings of the child's evidence (pursuant to s93A EA) and expert evidence. Section 9C(2) EA makes admissible expert evidence in relation to the child's "*level of intelligence, including the person or child's powers of perception, memory or expression, or another matter relevant to the person's or child's competence to give evidence, competence to give evidence on oath or ability to give reliable evidence."*

---

[124] Schedule 1 *Acts Interpretations Act 1954* (Qld); see also ss17 and 25 *Oaths Act 1867* (Qld).
[125] s9A EA.
[126] s9B EA.
[127] *R v Harding* [1989] 2 Qd R 373.
[128] s9A(2) EA.
[129] s9A(3) EA.

Note that expert evidence to those issues is admissible on a trial where the evidence of the child under 12 years is admitted.[130] Thus, where a child under 12 years has given evidence on a trial, evidence as to those matters is admissible where a child is competent to give evidence, whether on oath or not.

Notwithstanding the provisions of s9C EA, the competence of the child witness is usually determined by the judicial officer without the assistance of expert evidence.[131] In *R v D* (2003) 141 A Crim R 471, the Court of Appeal considered the approach a trial Judge should take in determining whether evidence under this section should be admitted, and the extent of the admissibility of the expert evidence, particularly in relation to reliability issues. Jerrard JA at [66] commented that where the court found that the evidence could not be safely and justly relied on, or where there was a real risk of unreliability, the court was empowered to exclude the evidence under ss98 or 130 EA.

A finding that a child witness is not competent to give evidence in a proceeding precludes the admission of an earlier out of court statement under s93A EA. The evidence may however be admissible under s93B EA.[132]

5.2.3 Competence to Give Sworn Evidence

Section 9B EA applies if an issue is raised by a party or the court about the competency of a person called to give evidence on oath. Again, the issue is decided by the judicial officer alone and if in a jury trial, in the absence of the jury.

The test is that the person is competent to give evidence on oath if, in the court's opinion, the person understands the giving of evidence is a serious matter and, in giving evidence, the person has an obligation to tell the truth that is over and above the ordinary duty to tell the truth.[133]

If the person is competent to give evidence in the proceeding but is not competent to give evidence on oath, the court must explain to the person the duty of speaking the truth.[134] In *R v BBR* [2010] 1 Qd R 546, the failure by the trial Judge to explain to a child witness that duty, was an error of law of a fundamental kind and the statutory pre-condition for the reception of the child's evidence had not been satisfied. See also *R v Chalmers* [2013] 2 Qd R 175. If the evidence is not given on oath, s9D(2)

[130] s9C(1)(c) EA.
[131] *R v FAR* [1996] 2 Qd R 49 at 52.
[132] *R v SCJ; ex parte AG* [2015] QCA 123.
[133] s9B(2) EA.
[134] s9B(3) EA.

EA provides that the probative value of the evidence is not decreased only because the evidence is not given on oath. On a jury trial, the jury should be so directed.

The test in s9B(2) EA has nothing to do with a belief in God or divine sanctions.[135] It derives from the test in *R v Hayes* [1977] 1 WLR 234 "*whether the child has a sufficient appreciation of the solemnity of the occasion and the added responsibility to tell the truth, which is involved in taking an oath, over and above the duty to tell the truth, which is an ordinary duty of normal social conduct*". See also *R v Amber* [2013] QCA 360.

It is a fundamental error of law to permit a child to give unsworn evidence without determining the question of competence to give sworn evidence under s9B EA.[136]

The Supreme and District Court's Criminal Directions Benchbook sets out some approaches and questions the court might ask in relation to the test under s9B(2) EA:

> *The court forms its opinion as to the witness's understanding in any manner in which it sees fit. In practice the age of the witness and the submissions of counsel will bear upon the court's opinion. The following are suggestions, but not a template, for questions which might be asked in assessing whether a person is competent to give evidence on oath:*
>
> > *(a) Do you understand you are here in court today to answer questions about something involving [the defendant]?*
> > *(b) Do you understand that answering questions in court is very serious? Why do you think that is?*
> > *(c) Do you know what the difference is between telling the truth and telling a lie? Can you tell me?*
> > *(d) If I were to say there was a tiger in the room where you are, would that be the truth or a lie?*
> > *(e) Do you understand that it is even more important than usual to tell the truth when you answer questions in court?*
> > *(f) Why do you think it would be particularly important that you tell the truth here in court?*

[135] *R v BBR* [2010] 1 Qd R 546.
[136] *R v BBR* [2010] 1 Qd R 546; *R v MBT* [2012] QCA 343.

(g) Do you understand that if you don't tell the truth, you could get into trouble, and you might hurt other people?

The provisions of s9C EA as to the admissibility of expert evidence also applies to the decision under s9B EA.[137]

5.2.4 Summary Table: Competence to Give Evidence -v- Competence to Give Sworn Evidence

	Giving Evidence	**Giving Sworn Evidence**
Who decides competence	• Judicial Officer alone. If on a jury trial, without jury present. • There is a fundamental presumption that a person is competent to give evidence.	• Judicial Officer alone. If on a jury trial, without jury present. • There is a fundamental presumption that a person is competent to give evidence on oath.
Test	• The person is able to give an intelligible account of events which he or she has observed or experienced	• The person understands the giving of evidence is a serious matter and, in giving evidence, the person has an obligation to tell the truth that is over and above the ordinary duty to tell the truth
Information considered when making determination	• Can refer to the evidence of the child on voir dire, any previous recordings of the child's evidence (pursuant to s93A EA) and expert evidence. • Section 9C(2) EA makes admissible expert evidence in relation to the child's *"level of*	• Can refer to the evidence of the child on voir dire, any previous recordings of the child's evidence (pursuant to s93A EA) and expert evidence. • Section 9C(2) EA makes admissible expert evidence in relation to the child's *"level of*

[137] s9C(1)(b) EA.

	intelligence, including the person or child's powers of perception, memory or expression, or another matter relevant to the person's or child's competence to give evidence, competence to give evidence on oath or ability to give reliable evidence."	*intelligence, including the person or child's powers of perception, memory or expression, or another matter relevant to the person's or child's competence to give evidence, competence to give evidence on oath or ability to give reliable evidence."*
Effect of finding not competent	• Precludes the admission of the evidence and the admission of an earlier out of court statement under s93A EA. • The evidence may however be admissible under s93B EA. • The probative value of the evidence is not decreased only because the evidence is not given on oath; a person charged with an offence may be convicted on the evidence; and the person giving the evidence is liable to be convicted of perjury to the same extent as if the person had given the evidence on oath.	• If the person is competent to give evidence in the proceeding but is not competent to give evidence on oath, the court must explain to the person the duty of speaking the truth. • It is a fundamental error of law to permit a child to give unsworn evidence without determining the question of competence to give sworn evidence under s9B EA.

5.3 Principles for Dealing with a Child Witness

Section 9E EA sets out the principles for dealing with a child witness:

1. *Because a child tends to be vulnerable in dealings with a person in authority, it is the Parliament's intention that a child who is a witness in a proceeding should be given the benefit of special measures when giving the child's evidence.*

2. *The following general principles apply when dealing with a child witness in a proceeding—*
    a. *the child is to be treated with dignity, respect, and compassion;*
    b. *measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence;*
    c. *the child should not be intimidated in cross-examination;*
    d. *the proceeding should be resolved as quickly as possible.*

3. *In this section—*

    ***child** means a child under 16 years.*

Section 21 EA empowers the court to disallow improper questions:

1. *The court may disallow a question put to a witness in cross-examination or inform a witness a question need not be answered, if the court considers the question is an improper question.*

2. *In deciding whether a question is an improper question, the court must take into account—*
    a. *any mental, intellectual, or physical impairment the witness has or appears to have; and*
    b. *any other matter about the witness the court considers relevant, including, for example, age, education, level of understanding, cultural background, or relationship to any party to the proceeding.*

3. *Subsection (2) does not limit the matters the court may take into account in deciding whether a question is an improper question.*

4. *In this section—*

    ***improper question** means a question that uses inappropriate language or is misleading, confusing, annoying, harassing, intimidating, offensive, oppressive, or repetitive.*

5.4 Section 93A Evidence Act 1977

Section 93A EA provides that, in any proceeding where direct oral evidence of a fact would be admissible, any statement tending to establish that fact contained in a document shall be admissible as evidence of that fact if the maker of the statement was a child at the time of making the statement

and had personal knowledge of the matters dealt with by the statement and the maker of the statement is available to give evidence in the proceeding.

"Child" is defined in s93A(5) EA as a person who is under 16 years when the statement was made, whether or not the person is under 16 years at the time of the proceeding; or a person was 16 or 17 years old when the statement was made and who, at the time of the proceeding, is a special witness. *"***Special witness"** is defined in s21A EA.

In most cases involving child witnesses and the prosecution cases, the evidence in chief of the child will be by video or audio interviews with police tendered pursuant to this section.

Statements made under s93A EA are subject to exclusion under ss98 or 130 EA. The discretion should not be exercised to frustrate the policy of s93A.[138]

See also *R v Cowie; ex parte Attorney-General* [1994] 1 Qd R 326, *R v Cumner* [1994] QCA 270 and *R v D* (2003) 141 A Crim R 471.

Section 102 EA authorises, in appropriate cases, directions to a jury on the circumstances relevant to the weight to be given to a s93A statement: [139]

> *In estimating the weight (if any) to be attached to a statement rendered admissible as evidence by this part, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement, including—*
>
> *a) the question whether or not the statement was made, or the information recorded in it was supplied, contemporaneously with the occurrence or existence of the facts to which the statement or information relates; and*
>
> *b) the question whether or not the maker of the statement, or the supplier of the information recorded in it, had any incentive to conceal or misrepresent the facts.*

See also Supreme and District Court's Criminal Directions Benchbook, sections 10.1 and 10.2.

[138] *R v FAR* [1996] 2 Qd R 49; *R v Morris; ex parte Attorney-General* [1996] 2 Qd R 68.
[139] *R v TQ* (2007) 174 A Crim R 385; *R v Flynn* [2010] QCA 254; *R v HBN* [2016] QCA 341.

5.5 Evidence of Special Witnesses

A child under 16 years is a special witness pursuant to s21A EA.

A 16 or 17 year old person could also be a special witness if, in the court's opinion, the witness would, as a result of a mental, intellectual or physical impairment or another relevant matter be likely to be disadvantaged as a witness or would be likely to suffer severe emotional trauma or would be likely to be so intimidated to be disadvantaged as a witness if required to give evidence in the usual way.[140]

A 16- or 17-year-old person could also be a special witness in a domestic violence matter or as a complainant in a sexual offence.[141]

Section 21A EA does not apply if the child is an **"affected witness"** under Division 4A EA (below).[142] A party (i.e., the defendant) in a criminal proceeding may be a special witness.[143]

Where a special witness is to give or is giving evidence in any proceeding, the court may, of its own motion, or upon application made by a party to the proceeding make one or more orders or directions pursuant to s21A(2) EA:

a) in the case of a criminal proceeding—that the person charged or other party to the proceeding be excluded from the room in which the court is sitting or be obscured from the view of the special witness while the special witness is giving evidence or is required to appear in court for any other purpose;

b) that, while the special witness is giving evidence, all persons other than those specified by the court be excluded from the room in which it is sitting;

c) that the special witness give evidence in a room—

i. other than that in which the court is sitting; and

ii. from which all persons other than those specified by the court are excluded;

d) that a person approved by the court be present while the special witness is giving evidence or is required to appear in court for any other purpose in order to provide emotional support to the special witness;

[140] s21A(1) EA.
[141] s21A(1) EA.
[142] s21A(1) EA.
[143] s21A(1B) EA.

e) that a videorecording of the evidence of the special witness or any portion of it be made under such conditions as are specified in the order and that the videorecorded evidence be viewed and heard in the proceeding instead of the direct testimony of the special witness;

f) another order or direction the court considers appropriate about the giving of evidence by the special witness, including, for example, any of the following—

i. a direction about rest breaks for the special witness;

ii. a direction that questions for the special witness be kept simple;

iii. a direction that questions for the special witness be limited by time;

iv. a direction that the number of questions for a special witness on a particular issue be limited.

If the defendant in a proceeding in which a special witness is giving evidence is excluded from the courtroom, provision must be made for the defendant to see and hear the special witness whilst the witness is giving evidence.[144] The special witness should not, of course, be able to see or hear the defendant in those circumstances.

Section 21A(2)(b) EA empowers the court to exclude the public whilst the special witness is giving evidence. Section 21A(5) EA empowers the court to exclude the public where the making of a video recording of the evidence is to take place. Section 21AAA EA gives the court the power to exclude the public while a videotape recording of the evidence of a special witness is presented. The defendant cannot be so excluded.[145]

In a jury trial, if an order or direction is made under s21A(2)(a)-(c), the jury **must** be instructed that:

a) They should not draw any inference as to the defendant's guilt from the order or direction; and

a) The probative value of the evidence is not increased or decreased because of the order or direction; and

b) The evidence is not to be given any greater or lesser weight because of the order or direction.[146]

[144] s21A(4) EA.
[145] s21AAA(3) EA.
[146] s21A(8) EA.

The failure to give the warning in full is an irregularity which may lead to a successful appeal against conviction.[147]

See the Supreme and District Court's Criminal Directions Benchbook pages 11.1-11.3 as to special witnesses and draft directions as to the requirements of s21A(8) EA.

5.6 Evidence of Affected Children

Division 4A EA sets out procedures for the taking of evidence from an "affected child". An **"affected child"** is defined in s21AC EA to mean a child who is a witness in a relevant proceeding who is not a defendant in the proceeding. A **"relevant proceeding"** means a criminal proceeding for a relevant offence.[148] A **"relevant offence"** is an offence of a sexual nature or an offence involving violence, if there is a prescribed relationship between the child and the defendant.[149] The terms **"offence of a sexual nature"** and **"prescribed relationship"** are also defined in s21AC EA.

For the purposes of Division 4A EA, the meaning of **"child"** is defined in s21AD EA. A **"child"** in a criminal proceeding is an individual who is under 16 years when the first of the following things happen:

a) the defendant in the proceeding is arrested;
b) a complaint is made under the s42 JA in relation to the defendant in the proceeding; or
c) a notice to appear is served on the defendant in the proceeding under s382 PPRA.

An affected child can also be an individual who was 16 or 17 years when the first of the matters mentioned in (a)-(c) happened and who is a special witness.[150] A child under 16 years who is not an affected witness is a special witness under s21A EA (above).

An individual remains a child for the purposes of giving evidence in a proceeding if the child gives evidence for the proceeding at any time before the child turns 18 years of age.[151]

[147] *R v Kovacs* [2008] QCA 417; *R v Samson* [2011] QCA 112; *R v Little* [2013] QCA 223; *R v AJH* [2018] QCA 86.
[148] s21AC EA.
[149] s21AC EA.
[150] s21AD(1)(a)(ii) EA.
[151] s21AD(2) EA.

Division 4A EA establishes a system of pre-recording an affected child's evidence and limits the evidence to be given on committal. Pre-recorded evidence, containing the cross-examination of the child, is then played on the trial.

The purposes of Division 4A EA are to preserve, to the greatest extent possible, the integrity of the affected child's evidence and to require, wherever practicable, that an affected child's evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence.[152]

To achieve those purposes, s21AB EA prescribes various measures for a criminal proceeding:

i. *the child's evidence is to be pre-recorded in the presence of a judicial officer, but in advance of the proceeding;*
ii. *if the measure in subparagraph (i) cannot be given effect, the child's evidence is to be given at the proceeding, but with the use of an audio-visual link or with the benefit of a screen; or*
iii. *for a committal proceeding, the child's evidence-in chief is to be given only as a statement and, ordinarily, the child is not to be called as a witness for cross-examination.*

In relation to committal proceedings, Division 4A, Subdivision 2 applies. It applies whether or not the committal proceeding also relates to other offences.[153] The affected child's evidence in chief must be given as a statement without the child being called as a witness. The affected child may be cross-examined only if, under s21AG EA, a Magistrate requires a party to call the child for the purposes of cross-examination.

The requirement by the Magistrate may be made on an application at a directions hearing under s83A JA or by the Magistrate presiding at the committal proceeding.[154]

Section 21AG(3)-(9) EA sets out the considerations to be taken into account by a Magistrate when deciding such an issue:

3. *A magistrate at a direction hearing must not require the child to be called as a witness for cross-examination unless the magistrate is satisfied that—*
    a. *the party seeking to cross-examine the child has—*

[152] s21AA EA.
[153] s21AE EA.
[154] s21AG EA.

i. *identified an issue to which the proposed questioning relates; and*
ii. *provided a reason why the evidence of the child is relevant to the issue; and*
iii. *explained why the evidence disclosed by the prosecution does not address the issue; and*
iv. *identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and*

b. *the interests of justice cannot adequately be satisfied by leaving cross-examination of the child about the issue to the trial.*

4. *The magistrate presiding at the committal proceeding must not require the child to be called as a witness for cross-examination unless the magistrate is satisfied that—*
   a. *the evidence before the court at the committal has identified an issue to which the proposed questioning relates that could not reasonably have been anticipated before the committal; and*
   b. *the party making the application has—*
      i. *provided a reason why the evidence of the child is relevant to the issue; and*
      ii. *explained why the evidence before the court does not address the issue; and*
      iii. *identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and*
   c. *the interests of justice cannot adequately be satisfied by leaving cross-examination of the child about the issue to the trial.*

5. *Without limiting the matters to which the magistrate may have regard for subsection (3)(b) or (4)(c), the magistrate-*
   a. *must consider whether—*
      i. *the prosecution case is adequately disclosed; and*
      ii. *the charge is adequately particularised; and*
   b. *must have regard to the vulnerability of children, the general principles stated in section 9E and the undesirability of calling a child as a witness for a committal proceeding.*

6. *The magistrate must give reasons for the magistrate's decision on the application.*

7. *If, under this section, the magistrate requires a party to call the child as a witness for cross-examination—*
    a. *the child's evidence must be taken under subdivision 3 or 4; and*
    b. *when the magistrate decides the application, the magistrate must decide whether the child's evidence is to be taken under subdivision 3 or under subdivision 4, and how it is to be taken, and give a direction accordingly.*

8. *In deciding whether the child's evidence is to be taken under subdivision 3 or 4, and how it is to be taken, the magistrate must have regard to the following—*
    a. *the distress or trauma likely to be suffered by the child when giving evidence and the need to minimise the child's distress or trauma;*
    b. *whether a local court has an audio-visual link and, if not, the availability of another appropriate place with appropriate equipment and facilities for taking or videorecording the child's evidence under subdivision 3 or 4;*
    c. *whether the parties would be substantially inconvenienced if the proceeding were to be adjourned to another place mentioned in paragraph (b) that is not within the same locality as the court;*
    d. *the need for committal proceedings to be conducted expeditiously.*

9. *In this section—*

    ***local court** means—*

    a. *in relation to a magistrate at a direction hearing—a court at which the committal proceeding would ordinarily be held; or*
    b. *in relation to the magistrate presiding at the committal proceeding—the court in which the committal proceeding is being held or another court within the court precincts.*
    c. *Magistrate, presiding at a committal proceeding, includes justices presiding at the proceeding.*

Section 21AH EA sets out the limits on cross-examination if it is ordered that the affected child is to be cross examined on the committal:

1. *If the affected child is to be cross-examined, the party calling the child may first ask the child questions for identifying the child and establishing that the child made the statement mentioned in section 21AF and the truthfulness of the statement.*

2. *The presiding magistrate or justices must not allow the child to be cross-examined about an issue other than the issue in relation to which the child was required to be called unless the magistrate or justices are satisfied as mentioned in section 21AG(3)(a) and (b) or section 21AG(4)(a) to (c), whichever is relevant, in relation to the issue.*

3. *Also, the presiding magistrate or justices—*
    a. *must not allow cross-examination to continue to the extent it—*
        i. *does not appear relevant to an issue for which it may be conducted; or*
        ii. *consists of exploratory questions asked in the hope of receiving any answer of any assistance to the party conducting the cross-examination, commonly known as a 'fishing expedition'; and*
    b. *must disallow a question that may be disallowed under section 20 or 21.*

4. *The child may be re-examined by the party calling the child.*

Subdivisions 3 and 4 of Division 4A EA sets out the procedures for taking an affected child's evidence by pre-recording or by using audio visual link or screen.

Section 21AS requires the prosecutor or applicant in a relevant proceeding to inform the court before the proceedings start that an affected child may give evidence. On indictment, the prosecutor must inform the court at the presentation of the indictment.

Section 21AU provides that the court must exclude from the court all non-essential persons while the evidence of an affected child is being taken or presented in a relevant proceeding.

Section 21AV provides that an affected child is entitled to have a support person to be in close proximity to the child as the child gives evidence. A person may be the support person only if approved by the court on application by the party proposing to call the child.[155] An affected child may waive that entitlement with the agreement of the court.[156]

[155] s21AV(2) EA.
[156] s21AV(4) and (5) EA.

Where a child under 16 years is not an affected witness under Division 4 EA, the child would be a special witness under s21A EA (above).

Note that a defendant child in a relevant proceeding is not an affected child for the purposes of Division 4A.[157]

Section 21AW EA provides that in a jury trial, if a special measure is ordered under ss21AI-21AR EA (the prerecording of the child's evidence or the use of an audio-visual link or a screen or a person is excluded from the courtroom or the child has a support person, the jury **must** be instructed that:

(a) The measure is a routine practice of the court and that they should not draw any inference as to the defendant's guilt from it: and
(b) The probative value of the evidence is not increased or decreased because of the measure; and
(c) The evidence is not to be given any or greater or lesser weight because of the measure.

The failure to give the full warning is an error of law and may be a fundamental irregularity in the trial. See *R v MAL* [2005] QCA 438, *R v SAW* [2006] QCA 378, *R v Hellwig* [2007] 1 Qd R 17 and *R v MBE* (2008) 191 A Crim R 264.

See the Supreme and District Court's Criminal Directions Benchbook pages 9.1-9.4 about Division 4A, the use of pre-recorded evidence in a jury trial and the warnings to be given to a jury in compliance with s21AW EA. Again, the failure to give the full warning is a fundamental defect in the trial.

5.7 Children as Defendants

As noted above, a defendant in a criminal proceeding is not an "affected witness" under Division 4A EA[158] if the defendant gives evidence. The defendant may be a special witness if under 16 years or fall within another category under s21A(1) EA. Again, this would only apply if the defendant child gave evidence (above).

[157] s21AC EA.
[158] s21AC EA.

Principle Seven of the Charter of Youth Justice Principles provides that a child being dealt with under the YJA should have procedures and other matters explained in a way the child understands. Section 72 YJA requires that the court must take steps to ensure, as far as practicable, that the child and any parent of the child present has the full opportunity to be heard and to participate in the proceeding. This involves an understanding of the nature of the proceedings and the consequences of any order made or sentence imposed.

See Chapter 2.10: Explanation of Proceedings and Chapter 5.1: General Matters

Section 72(3) YJA provides some examples of how such explanations may be made. As noted above, a specific child defendant may suffer from particular difficulties in relation to mental or intellectual capacity, language problems or other deficits caused by such things as foetal alcohol syndrome or drug use, which make the required explanations problematic and time consuming. Communication with Aboriginal and Torres Strait Islander children may pose particular issues. The Aboriginal and Torres Strait Legal Service has developed a number of resources to assist.

See Appendix 7: Tips for Effective Communication with Indigenous Clients

The legal representatives of the child, officers of Youth Justice or Child Safety who have had dealings with the child and parents should bring particular difficulties to the attention of the judicial officer. Recourse may be had through them to properly explain to the child what is required.

See also Chapter 2.12: Role of the Public Guardian for the role of the Public Guardian in Childrens Court criminal proceedings and Appendix 1: Role of OPG Child Advocate in Childrens Court (Criminal) Proceedings.

In some geographic locations, it is also open to a Magistrate sitting as a Childrens Court to refer a child for a mental health assessment. Such an assessment should be required to recommend appropriate ways to communicate with a child who has specific difficulties.

See also Chapter 9.3: Mental Health Matters and Appendix 9: Mental Health: Child and Youth Court Liaison Service

In relation to trials, it is specifically important to ensure the child understands his or her rights when called upon to elect whether to give evidence or not. In the absence of appropriate steps to ensure a child understands and participates in a trial, it may mean that the trial lacks procedural fairness and the trial may be unfair. It is also crucial for a court to explain to a child, in a way that he or she understands, any proposed orders or sentences that require the child's consent. Obviously, this needs to be informed consent. Again, legal representatives, Youth Justice or Child Safety officers or a parent may be availed to help with those explanations.

See also:

Agency	Title	Edition/Date
New South Wales Courts and Tribunals Services	New South Wales Equality Before the Law Benchbook Chapter 6.3.4	February 2024
New South Wales Courts and Tribunals Services	Explaining legal terms to children: Quick reference guide	
Law Society of South Australia	Lawyer's Protocols for Dealing with Aboriginal Clients	3rd Edition March 2020
Northern Territory Agencies	Plain English Legal Dictionary: A Resource for Judicial Officers, Aboriginal Interpreters and Legal Professionals working with speakers of Aboriginal Languages	2015
Northern Territory Government	Aboriginal Language and a Plain English Guide	
Australian Institute of Criminology	Youth (in)justice: Oral language competence in early life and risk for engagement in antisocial behaviour in adolescence	April 2012
Legal Aid (West Australia)	Blurred Borders Resources (Story Cards)	

See also in the Appendix:

- Appendix 4: Legal Aid Queensland resource "Legal terms in easy English"
- Appendix 7: ATSILS resource "Tips for Effective Communication with Indigenous Clients"
- Appendix 11: Department of Justice and Attorney-General resource "Aboriginal English in the Courts"

5.8 Summary Table: Comparison of Types of Child Witness

	Child Witness	**Special Witness**	**Affected Children**
Relevant sections of EA	Section 9E: Principles for dealing with a child witness	Section 21A: Evidence of special witnesses	Sections 21AA-21AX: Evidence of Affected Children
Definition	A child under 16 years	A child under 16 years; or person who meets other conditions under s21A EA.	A child witness in a relevant proceeding who is not the defendant (a child under 16 or 16 or 17 if a special witness under s21A EA
Can definition be applied to defendant?	Yes	Yes	No
General principles under EA	• The child is to be treated with dignity, respect, and compassion; • Measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence;	• The widening of s21A EA to include children under 16 by the *Evidence (Protection of Children) Amendment Act 2003* was "*to improve the treatment of child witnesses by the criminal justice*	• To preserve, to the greatest extent practicable, the integrity of an affected child's evidence; and • To require, wherever practicable, that an affected child's evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might

	Child Witness	Special Witness	Affected Children
	• The child should not be intimidated in cross-examination; • The proceeding should be resolved as quickly as possible	*system":* Explanatory Notes	otherwise be experienced by the child when giving evidence.
Court has power to disallow improper questions under s21 EA	Yes	Yes	Yes
Special provisions	Depends on whether child is a special witness or an affected witness.	The court may: • Exclude certain persons from the court whilst the special witness is giving evidence; • Allow an emotional support person to be present with the witness; • A videorecording of the evidence may be presented instead of the witness giving direct testimony; • Another order or direction the court	• The child's evidence is to be pre-recorded in the presence of a judicial officer, but in advance of the proceeding; • If the measure in the first point cannot be given effect, the child's evidence is to be given at the proceeding, but with the use of an audio-visual link or with the benefit of a screen; or • For a committal proceeding, the child's evidence-in chief is to be given only as a

	Child Witness	Special Witness	Affected Children
		considers appropriate, including rest breaks, simple questions only, time limits and questions limited to a certain number.	statement and, ordinarily, the child is not to be called as a witness for cross-examination.
Warnings to jury		Section 21A(8) EA	Section 21AW EA

Chapter 6 – Release of Child from Custody and Bail

6.1 General

Principle 18 of the Charter of Youth Justice Principles provides that:

> *A child should be dealt with under this Act in a way that allows the child—*
>
> *(a) to be reintegrated into the community; and*
>
> *(b) to continue the child's education, training or employment without interruption or disturbance, if practicable; and*
>
> *(c) to continue to reside in the child's home, if practicable.*

Section 47 YJA provides that, subject to the provisions of the YJA, the *Bail Act 1980* (Qld) (BA) applies in relation to a child charged with an offence. There are specific provisions of the YJA that supersede some provisions of the BA:

Topic	**Section of YJA**	**Supersedes sections of BA**
Power of police officer to grant bail	ss48, 48AA, and 48AE	s7
Conditions on release of bail	ss52 and 52A	s11
Refusal of bail generally	ss48(4) and 48AA	s16 See s16(5)
Refusal of bail for defendants convicted of terrorism offences or subject to Commonwealth control orders	ss48(2), 48AB and 48A	s16A

Section 48(2) YJA requires a court or police officer to release a child unless required under the YJA or another Act to keep the child in custody or if exercising a discretion under the YJA or another Act to keep the child in custody. **"Keep the child in custody"** includes, for a court, remand the child in custody.[159] There is thus a presumption in favour of the release of a child unless superseded by the requirement of an Act or the exercise of a specified discretion.

[159] Schedule 4 YJA.

Section 48 YJA provides:

1. *This section applies if a court or police officer is deciding whether to release a child in custody in connection with a charge of an offence or keep the child in custody.*

2. *The court or police officer must decide to release the child unless required under this Act or another Act to keep the child in custody or exercising a discretion under this or another Act to keep the child in custody.*

Notes

1. See, for example, section 48AAA(2), 48AE, 48AF and 48A for when a child must not be released from custody.

2. See also the Bail Act 1980, section 13 for when only particular courts may grant a person bail.

6.2 Risk Assessment – Bail Considerations

Pursuant to s48(2) YJA, the right to bail is qualified by any requirement to keep the child in custody or, in the exercise of a discretion, under the YJA or another Act, to keep the child in custody. Section 48AAA YJA sets out the risk assessment to be undertaken by a court or police officer in deciding whether to release a child in custody in connection with an offence or to keep the child in custody.

Section 48AAA YJA provides:

1. *This section applies if a court or police officer is deciding whether to release a child in custody in connection with a charge of an offence or keep the child in custody.*

2. *The court or police officer must decide to keep the child in custody if satisfied—*
    a. *if the child is released, there is an unacceptable risk that the child will commit an offence that endangers the safety of the community or the safety or welfare of a person; and*
    b. *it is not practicable to adequately mitigate that risk by imposing particular conditions of release on bail.*

3. *Also, the court or police officer may decide to keep the child in custody if satisfied that, if the child is released, there is an unacceptable risk that—*
    a. *the child will not surrender into custody in accordance with a condition imposed on the release or a grant of bail to the child; or*

b. *the child will commit an offence, other than an offence mentioned in subsection (2)(a); or*

c. *the child will interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person.*

4. *Subsection (5) applies if—*
   a. *the child is before a court; and*
   b. *the court has information indicating there may be an unacceptable risk of a matter mentioned in subsection (2) or (3) but does not have enough information to properly consider the matter.*

5. *The court may remand the child in custody while further information about the matter is obtained.*

Section 48AAA(2)YJA provides that the court or police officer **must** keep the child in custody if satisfied of the matters in s48AAA(2)(a) and (b) YJA.

Section 48AAA(3) YJA provides a **discretion** to keep a child in custody if satisfied that there is an unacceptable risk of one of the matters in s48AAA(3)(a),(b) or (c) YJA.

A court may remand a child in custody for further information to be obtained to properly consider the matters in s48AAA(2) or (3) YJA.[160]

Section 48AA YJA sets out the matters to be considered by a court or police officer in making a decision about whether there is an unacceptable risk of a matter in s48AAA(2) or(3) YJA, whether to release a child despite there being an unacceptable risk of a matter mentioned in s48AAA(3) YJA or whether to release the child without bail or grant bail to the child.

See ss50 and 51 YJA for the power of a police officer to release a child without bail and s55 YJA for the power of a court to release a child without bail.

Section 48AA YJA was amended by the Making Queensland Safer Act 2024. For offences allegedly committed on or after 13 December 2014, s48AA provides:

[160] s48AAA(5) YJA.

1. *This section applies if a court or police officer is making any of the following decisions in relation to a child in custody in connection with a charge of an offence (the alleged offence)—*
    a. *whether there is an unacceptable risk of a matter mentioned in section 48AAA(2);*
    b. *whether there is an unacceptable risk of a matter mentioned in section 48AAA(3);*
    c. *whether to release the child despite being satisfied there is an unacceptable risk of a matter mentioned in section 48AAA(3);*
    d. *whether to release the child without bail or grant bail to the child;*
    e. *whether the child has shown cause under section 48AF(2) why the child's detention in custody is not justified.*

2. *The court or police officer must have regard to the following matters of which the court or police officer is aware—*
    a. *any promotion by the child of terrorism;*
    b. *any association the child has or has had with a terrorist organisation, or with a person who has promoted terrorism, that the court or police officer is satisfied was entered into by the child for the purpose of supporting the organisation or person—*
        i. *in the carrying out of a terrorist act; or*
        ii. *in promoting terrorism.*

        Note— See also section 48AB.

3. *Also, if the decision is being made by a court, the court must have regard to the sentence order or other order likely to be made for the child if found guilty.*

4. *In making a decision mentioned in subsection (1)—*
    a. *the court or police officer may have regard to any of the following matters of which the court or police officer is aware—*
        i. *the nature and seriousness of the alleged offence;*
        ii. *the child's criminal history and other relevant history, associations, home environment, employment, and background;*
        iii. *the history of a previous grant of bail to the child;*
        iv. *the strength of the evidence against the child relating to the alleged offence;*
        v. *the child's age, maturity level, cognitive ability, and developmental needs;*
        vi. *whether a parent of the child, or another person, has indicated a willingness to the court or police officer that the parent or other person will do any of the following things—*

a. *support the child to comply with the conditions imposed on a grant of bail;*
b. *notify the chief executive or a police officer of a change in the child's personal circumstances that may affect the child's ability to comply with the conditions imposed on a grant of bail;*
c. *notify the chief executive or a police officer of a breach of the conditions imposed on a grant of bail;*

vii. *if the child is an Aboriginal person or Torres Strait Islander—a submission made by a representative of the community justice group in the child's community, including, for example, a submission about—*
a. *the child's connection with the child's community, family, or kin; or*
b. *cultural considerations; or*
c. *considerations relating to programs and services established for offenders in which the community justice group participates;*

Note— See also section 48AC.

viii. *any other relevant matter; and*

b. *for a decision mentioned in subsection (1)(d)—the court or police officer may have regard to any of the following—*
i.
ii. *the desirability of strengthening and preserving the relationship between the child and the child's parents and family;*
iii. *the desirability of not interrupting or disturbing the child's living arrangements, education, training, or employment;*
iv. *the desirability of minimising adverse effects on the child's reputation that may arise from being kept in custody;*
v. *the child's exposure to, experience of and reaction to trauma;*
vi. *the child's health, including the child's need for medical assessment or medical treatment;*
vii. *for a child with a disability—the disability and the child's need for services and supports in relation to the disability;*

viii. *if the child is an Aboriginal person or Torres Strait Islander—the desirability of maintaining the child's connection with the child's community, family, and kin;*

ix. *if the child is under 14 years—the particular desirability of releasing children under 14 years from custody due to their vulnerability and community expectations that children under 14 years are entitled to special care and protection.*

x. *the likely effect that refusal to release the child would have on –*

a. *a person with whom the child is in a family relationship[161] and for whom the child is the primary caregiver; or*

b. *a person with whom the child is in an informal care relationship;[162] or*

c. *if the child is pregnant – the child of the pregnancy.*

5. *In deciding whether there is an unacceptable risk of a matter mentioned in section 48AAA(3), the court or police officer may—*

   a. *consider whether a condition could, under section 52A, be imposed on a grant of bail to the child; and*

   b. *have regard to the effect on the risk of imposing the condition.*

6. *The court or police officer must not decide there is an unacceptable risk of a matter mentioned in section 48AAA(2) or (3), or to refuse to release a child from custody, solely because 1 or both of the following apply—*

   a. *the child has no apparent family support;*

   b. *the child will not have accommodation, or adequate accommodation, on release from custody.*

7. *In this section—*

   terrorist organisation *see the Criminal Code (Cwlth), section 102.1(1).*

In relation to s48AA(1) YJA considerations on terrorism offences, the court or police officer **must** have regard to the matters in s48AA(2). See s48A YJA for the requirement of showing exceptional circumstances in relation to terrorism matters.

[161] 'Family relationship' is defined in Schedule 4 YJA to have "the meaning given by the *Domestic and Family Violence Protection Act 2012*, s19."

[162] 'Informal care relationship' is defined in Schedule 4 YJA to have "the meaning given by the *Domestic and Family Violence Protection Act 2012*, s20."

In relation to a court making a bail decision, the court **must** have regard to the sentence order or other order likely to be made if the child is found guilty.[163] The court or police officer may have regard to the matters in s48AA(4)(a) YJA. In relation to a decision under s48AA(1)(c) YJA *whether to release the child despite being satisfied that there is an unacceptable risk of a matter mentioned in s*48AAA(3), the court or police officer may have regard to the matters in s48AA(4)(b) YJA. Section 48AA(5) YJA provides that in deciding whether there is an unacceptable risk of a matter in s48AAA(3), the court or police officer may consider whether a condition under s52 YJA could be imposed and the impact on the risk of such a condition.

The court or police officer **must not** decide there is an unacceptable risk of a matter in s48AAA(2) or (3) YJA **only** because the child will not have accommodation, or adequate accommodation, on release from custody or the child has no apparent family support.[164]

See Chapter 2.9: Role of Parents for further information about the role of parents or other adults in bail decisions.

As to the meaning of "unacceptable risk", see *Williamson v DPP [2001] 1 Qd R 99* at [22] where Thomas J said:

> *No grant of bail is risk free. The grant of bail, however, is an important process in civilised societies which reject any general right of the executive to imprison a citizen upon mere allegation or without trial. It is a necessary part of such a system that some risks have to be taken in order to protect citizens in those respects. This does not depend on the so-called presumption of innocence which has little relevance in an exercise which includes forming provisional assessments upon very limited material of the strength of the Crown case and of the defendant's character. Recognising that there is always some risk of misconduct when an accused person or for that matter any person, is free in society, one moves to consideration of unacceptable risk.*

6.3 Releasing Children Whose Safety is Endangered Because of Offence

Section 48AE YJA provides that a court or police officer **must not** release a child from custody if satisfied that the child's safety would be endangered because of the circumstances of the offence.

[163] s48AA(3) YJA.
[164] s48AA(6) YJA.

Section 48AE YJA provides:

1. *This section applies in relation to a child in custody in connection with a charge of an offence.*

2. *A court or police officer must not release the child from custody if satisfied—*
    a. *the child's safety would be endangered if the child were released; and*
    b. *the factors endangering the child's safety arise from the circumstances of the offence; and*
    c. *in the circumstances, there is no reasonably practicable way of ensuring the child's safety other than by keeping the child in custody.*

3. *A court or police officer must not decide it is satisfied of the matters mentioned in subsection (2) only because—*
    a. *the child has no apparent family support; or*
    b. *the child will not have accommodation, or adequate accommodation, on release from custody.*

6.4 Show Cause / Reverse Presumption of Bail

On 30 April 2021, amendments were passed to the YJA to create a presumption against bail for young people charged with a prescribed indictable offence, if the offence is alleged to have been committed while the young person was on bail or at large for another indictable offence.[165] Show cause applications for young people are different to adult show cause applications under s16(3) BA as they are limited to circumstances where the subsequent offending includes a **"prescribed indictable offence**", as defined in the Schedule 4 YJA to include:

- A life offence
- An offence, if committed by an adult, that would make the adult liable to imprisonment for 14 years or more.
    - Exception: offence against s9(1) *Drugs Misuse Act 1986* (DMA) for which the maximum penalty is 15 years imprisonment
- An offence against the following *Criminal Code* (CC) provisions:
    - s315A – Choking, suffocation or strangulation in domestic setting
    - s323 – Wounding
    - s328A – Dangerous operation of a motor vehicle

[165] s48AF(1) YJA.

- s339 – Assaults occasioning bodily harm
- s408A(1) – Unlawful use of motor vehicle - if the offence involves a motor vehicle
- s408A(1) – to which s408A(1A) applies
- s412 – Attempted robbery
- s421(1) – Entering or being in any premises with intent to commit an indictable offence in the premises.

A full list of prescribed indictable offences can be found at Appendix 12 – Prescribed Indictable Offences triggering show cause under s48AF YJA.

Transitional provisions enable retrospective application of show cause provisions.[166] Show cause provisions apply whether the prescribed indictable offence[167] or the other indictable offence[168] was allegedly committed, or the child was charged or any step in the proceeding for the offence was taken, before or after the commencement of the amendments (30 April 2021).

6.4.1 Show Cause Case Law

Case law developed to support the interpretation of s16(3) BA may assist with the interpretation of s48AF YJA. Case law provides that, if the Crown case is strong, the application must be '*somewhat special*', '*abnormal*' or of an '*extraordinary nature'* to discharge the onus.[169]

In *Lacey v DPP* [2007] QCA 413 at [13], the Court of Appeal stated the essence of judicial discretion [in assessing show cause]: *'is to balance competing considerations and to weigh the relative importance which the different factors bear in the context of the decision which needs to be made. That exercise of discretion is not an empirical exercise; there are no bright lines drawn to determine conclusively when on important factor outweighs another*'.[170]

Section 48AA(3) YJA requires that where the decision is made by a court, the court must have regard to the sentence order or other order likely to be made for the child if found guilty.[171]

---

[166] s408 YJA.
[167] s408 (1) YJA.
[168] s408 (2) YJA.
[169] *R v Iskandar* (2001) 120 A Crim R 302 at 305 [14] per Sperling J, approved by P Lyons J in *Turbill* and cited by Chesterman JA in *Sica v DPP* [2010] QCA 18 at [54] referring to the abnormal or extraordinary nature of the grant of bail in cases to which s16(3) applies.
[170] *Lacey v DPP* [2007] QCA 413 at [13].
[171] See *Lacey v DPP (Qld)* where the court noted that where the time in custody on remand is likely to exceed the custodial sentence post-conviction, the relative importance of time may outweigh the other relevant factors. However, the Court in *Lacey* indicated that '*s.16(3) of the Bail Act cannot be read as if its operation was conditioned by guarantee of a trial within*

In making a decision regarding whether the child has shown cause why detention in custody is not justified, the court or police officer may have regard to any of the following matters of which the court or police officer is aware:[172]

- The nature and seriousness of the alleged offence;
- The child's criminal history and other relevant history, associations, home environment, employment, and background;
- The history of a previous grant of bail to the child;
- The strength of the evidence against the child relating to the alleged offence;[173]
- The child's age, maturity level, cognitive ability, and developmental needs;
- Whether a parent of the child, or another person, has indicated a willingness to the court or police officer that the parent or other person will do any of the following things –
    - support the child to comply with the conditions imposed on a grant of bail;
    - notify the chief executive or a police officer of a change in the child's personal circumstances that may affect the child's ability to comply with the conditions imposed on a grant of bail;
    - notify the chief executive or a police officer of a breach of the conditions imposed on a grant of bail;
- If the child is an Aboriginal person or a Torres Strait Islander – a submission made by a representative of the community justice group in the child's community, including, for example, a submission about –
    - the child's connection with the child's community, family, or kin; or
    - cultural conditions; or
    - considerations relating to programs and services established for offenders in which the community justice group participates;
- Any other relevant matters.

a given timeframe'. That approach was endorsed by Chesterman JA in the Court of Appeal in *Keys v Director of Public Prosecutions (Qld)* [2009] QCA 220 stating with respect to the length of time that might pass before the appellant is tried: '*This is always an important factor as is recognised by this Court in Lacey but it is not a factor which outweighs all others as that authority explains'.*

[172] s48AA(4)(a) YJA.

[173] In *Sica v DPP*, Chesterman JA indicated at [51] that s16(2)(d) BA "*requires only that, to the extent the strength of the case is apparent, it must be taken into account*."

Where making a decision to release the child without bail or grant bail to the child,[174] the court or police officer may have regard to any of the following:[175]

- The desirability of strengthening and preserving the relationship between the child and the child's parents and family;
- The desirability of not interrupting or disturbing the child' living arrangements, education, training, or employment;
- The desirability of minimising adverse effects on the child's reputation that may arise from being kept in custody;
- The child's exposure to, experience of and reaction to trauma;
- The child's health, including the child's need for medical assessment or medical treatment;
- For a child with a disability – the disability and the child's need for services and supports in relation to the disability;
- If the child is an Aboriginal person or Torres Strait Islander – the desirability of maintaining the child's connection with the child's community , family, and kin;
- If the child is under 14 years – the particular desirability of releasing children under 14 years from custody due to their vulnerability and community expectations that children under 14 years are entitled to special care and protection;
- The likely effect that refusal to release the child would have on –
    - a person with whom the child is in a family relationship[176] and for whom the child is in the primary caregiver; or
    - a person with whom the child is in an informal care relationship;[177] or
    - if the child is pregnant – the child of the pregnancy.

If a court releases the child, the order releasing the child must state the reasons for the decision.[178]

Additional provisions remain in the YJA requiring a court to be satisfied of exceptional circumstances in order to release the child from custody if the child has been previously found guilty of a terrorism

[174] s48AA(1)(d) YJA.
[175] s48AA(4)(b) YJA.
[176] 'Family relationship' is defined in Schedule 4 YJA to have "the meaning given by the *Domestic and Family Violence Protection Act 2012*, s19."
[177] 'Informal care relationship' is defined in Schedule 4 YJA to have "the meaning given by the *Domestic and Family Violence Protection Act 2012*, s20."
[178] s48AF(3) YJA.

offence or is or has been the subject of a Commonwealth control order.[179] **"Terrorism offence"** and **"Commonwealth control order"** are defined in Schedule 4 YJA.

See also s48AA(2) YJA which requires a court or police officer to have regard to specific matters regarding terrorism in the decision as to whether there is an unacceptable risk in relation to the matters in ss48AAA(2) and (3) YJA, whether to release the child despite there being an unacceptable risk or whether to release the child without bail or to grant bail.[180]

6.5 Reasons to be Given for Keeping a Child in Custody

Section 48B(1) YJA provides that if a court makes an order keeping a child in custody, the court **must** state the reasons for the decision. Section 48B(2) YJA provides that if a police officer decides to keep a child in custody, the police officer **must** make a record of the reasons for the decision. Failure to comply does not make unlawful the keeping or remanding of the child in custody (s48B(3) YJA). Section 48B(1) and (2) are subject to the restrictions on the publication of information contained in s12 BA (s48B(4) YJA), as well as the other restrictions on identifying children in the YJA.

6.6 Police Powers with Respect to Bail

The provisions about bail decisions under the YJA apply both to a court or a police officer. A police officer's decision about bail under Part 5 YJA may be reviewed by a Magistrate upon application by the defendant, complainant, or a prosecutor.[181] The Magistrate's decision on that review may be reviewed by a Supreme Court Judge by leave.[182] A police officer may not grant bail if the charge is defined in s13 BA.

A police officer also has the power to release a child from custody without bail if a release notice or a notice to appear is given to the child.[183]

A police officer has power to release a child in some circumstances pursuant to s379 PPRA (minor drug offence) which results in any proceeding against a child being discontinued.[184]

[179] s48A YJA.
[180] See also s48AB YJA.
[181] s19B BA.
[182] s19C BA.
[183] s50(2) and 51 YJA.
[184] s50(3) YJA.

See also s380 PPRA for an additional case where an arrested child may be released:

1. *This section applies to an arrested person who is a child.*

2. *It is the duty of a police officer to release the child at the earliest reasonable opportunity if—*
    a. *the reason for arresting the child no longer exists or is unlikely to happen again if the child is released; and*
    b. *after considering the following, it is more appropriate to deal with the child in a way provided by subsection (3)—*
        i. *the circumstances of the alleged offence;*
        ii. *the child's previous history known to the police officer.*

3. *For subsection (2)(b), the police officer may decide it is more appropriate—*
    a. *to take no action; or*
    b. *to administer a caution to the child under the Youth Justice Act 1992; or*
    c. *to refer the offence to the chief executive (communities) for a restorative justice process under the Youth Justice Act 1992; or*
    d. *to take the child before a court by notice to appear or summons.*

4. *Subsection (2) does not apply to a child who is arrested if, because of the nature or seriousness of an offence for which the child is a suspect, it is inappropriate to release the child.*

5. *Also, subsection (2) does not apply to the arrest of a child by a police officer while the police officer reasonably believes the child is an adult.*

6. *In deciding whether the police officer had the reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest.*

6.7 Requirements to Bring Child Before a Childrens Court

Section 49 YJA provides that if a child has been arrested on a charge for an offence and is in custody in connection with the charge, the child must be brought before the Childrens Court to be dealt with according to law –

a) as soon as practicable and within 24 hours after the arrest; or

b) *if it is not practicable to constitute the court within 24 hours after the arrest—as soon as practicable on the next day the court can practicably be constituted.*

Section 49(2A) YJA provides that if the child is being detained under Chapter 15, Part 2 PPRA (investigation and questioning for indictable offences which allow detention for a reasonable time to complete investigations or questioning),[185] the child must be brought before the Childrens Court to be dealt with according to law:

a) *as soon as practicable and within 24 hours after the child's detention under that part ends; or*
b) *if it is not practicable to constitute the court within 24 hours after the child's detention under that part ends— as soon as practicable on the next day the court can practicably be constituted.*

Section 49 YJA does not apply if the child is being held under s393(2)(c) PPRA,[186] s393(2)(d) PPRA[187] or s393(3)(b) PPRA.[188]

Section 50 YJA applies where a child is not brought before the Childrens Court in accordance with s49 YJA. Pursuant to s50(2) YJA, an authorised police officer must:

a) *give the child a release notice or a notice to appear and release the child from custody under section 51 (release without bail); or*
b) *grant bail to the child and release the child from custody under section 52 (conditions of release upon bail generally); or*
c) *keep the child in custody.*

As noted above, if a child is released under s379 PPRA, s50(2) YJA does not apply and proceedings against the child are discontinued.[189] Section 50(2) YJA applies subject to ss48, 48AAA and 48AE YJA.[190] Subsection (2)(b) above applies subject to s13 BA (when only particular courts may grant bail – the Supreme Court in relation to certain offences and only a court in relation to a child who has been convicted of a terrorism offence or a child who is or has been subject to a Commonwealth control order). Section 50(4)(b) YJA provides that a police officer may not release a child under s50(2)(a) if the

[185] s403 PPRA.
[186] Being detained under s80 *Transport Operations (Road Use Management) Act 1995*
[187] Arrested under a warrant that requires the police officer to take the person before another body or to another place.
[188] Where the person escaped from lawful custody while a prisoner of the court, taking the person to a police station or watchhouse before the person can be conveniently returned to the custody of the proper officer of the court.
[189] s50(3) YJA.
[190] General powers as to releasing a child on bail.

child has previously been found guilty of a terrorism offence or the child is or has been subject to a Commonwealth control order.

If a child is held in custody until brought before the court, s54 YJA specifies who must have the custody of the child.

6.8 Court's Power with Respect to Bail

The provisions about bail decisions under the YJA apply both to a court and a police officer. Section 48(2) YJA provides that the court **must** decide to release the child subject to certain qualifications. A child may be released on bail or released without bail.[191] There is thus a presumption against keeping the child in custody.

That presumption is qualified by s48(2) YJA which requires a court to keep the child in custody if required under the terms of the YJA (e.g., ss48AAA and 48A) or another Act (e.g., s13 BA).

The Childrens Court as constituted by a Magistrate does not have jurisdiction to grant bail for an offence defined in s13(1) BA.[192]

That presumption is further qualified by s48AAA(3) YJA. That provides that a court **may** decide to keep the child in custody if satisfied that, if the child is released, there is an unacceptable risk of specified things:

a) *the child will not surrender into custody in accordance with a condition imposed on the release or a grant of bail to the child; or*
b) *the child will commit an offence, other than an offence mentioned in subsection (2)(a); or*
c) *the child will interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person.*

The Court may remand the child in custody where the court does not have enough information about whether there may be an unacceptable risk.[193]

[191] s55 YJA.
[192] s59(3) YJA.
[193] s48AAA(4) and(5) YJA.

Section 48AA YJA specifies the matters to be considered in making particular decisions about release and bail including what must be taken into account in deciding whether there is an unacceptable risk (see above). Section 48AAA(3) YJA further provides a discretion in the court to release a child from custody despite there being an unacceptable risk of the child not appearing as required, committing an offence (other than one mentioned in s48AAA(2)(a)) or interfering with a witness or otherwise obstruct the course of justice, whether for the child or another person. In those circumstances, the court **may** keep the child in custody (see above).

If a court makes an order keeping or remanding a child in custody in relation to an offence, the order must state the reasons for the decision.[194] Section 48B(1) YJA is subject to the restrictions of the publication of information contained in s12 BA,[195] as well as the other restrictions on identifying children contained in the YJA.

Section 55 YJA provides that the court may, if under the YJA or BA a court may grant bail to a child, release the child without bail into the custody of a parent or permit the child to go at large. The release without bail is subject to the condition that the child surrenders into custody at the time and place appointed.[196] An example of an appropriate case may be where the child suffers cognitive deficits such that the child does not understand the concept of bail or any of the conditions of bail.

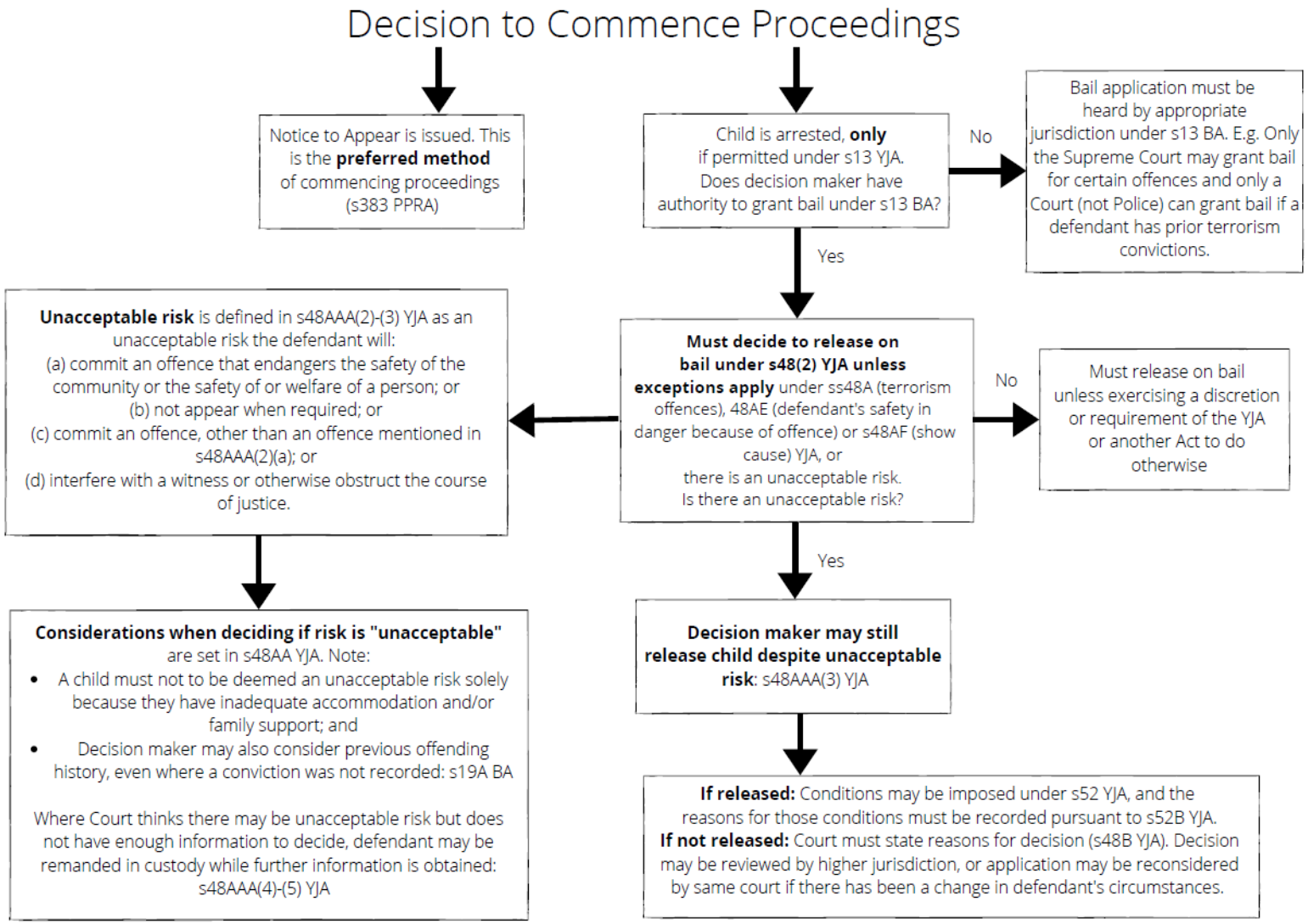
Where a court remands a child in custody (except if the child remains in the custody of the court), the court must remand the child into the custody of the chief executive.[197] Section 56(1) YJA does not apply to a person who is an adult being dealt with for a child offence if under ss136-138 YJA the person must be held in a corrective services facility.[198] The Commissioner of Police must take immediate custody of the child and deliver the child as soon as reasonably practicable into the custody the chief executive after the date notified by the chief executive.[199] The chief executive does not take custody where a child is in custody in a watch house and the child turns 18 years. [200]

Section 53 YJA empowers a court to hear a bail application by audio or audio-visual link if the child agrees and the court is satisfied the child has had an opportunity to obtain independent legal advice.

---

[194] s48B(1) YJA.
[195] s48B(4) YJA.
[196] s55(2) YJA.
[197] s56(1) YJA.
[198] s56(2) YJA. s136(2) – (4) YJA provides the court may order the person be remanded in a detention centre if satisfied of certain matters.
[199] s56(2) YJA.
[200] See s276A YJA.

6.8.1 Summary: Bail Decision Making Process



6.9 Power of Childrens Court Judge as to Bail

Section 59(1) YJA provides that, subject to Part 5 YJA, a Childrens Court Judge may:

a) *grant bail to a child held in custody on a charge of an offence; or*
b) *enlarge, vary, or revoke bail granted to a child in, or in connection with, a criminal proceeding within the meaning of the Bail Act 1980;*
c) *whether or not the child has appeared before the Childrens Court Judge in, or in connection with, the offence or criminal proceeding.*

A Childrens Court Judge thus has jurisdiction to determine bail matters, even if an indictment has not been presented to the court. The application may be heard by audio or audio-visual link, [201] as outlined in the Childrens Court Practice Direction No 1 of 2019.

The Childrens Court Judge has that jurisdiction even if the child has previously been refused bail by the Childrens Court.[202] This jurisdiction is not bound by the restrictions under the BA that, in a subsequent application after a court's refusal of bail, additional facts or changed circumstances need to be shown.[203]

A Childrens Court Judge may grant bail to a child even if the child is charged with an offence to which s13(1) BA applies.[204] A Childrens Court constituted by a Magistrate does not have jurisdiction to make bail decisions in relation to those matters referred to in s13(1) BA.

A review of a sentence by a Childrens Court Judge pursuant to Part 6, Division 9, Subdivision 4 YJA is an appeal for the purposes of the BA.[205]

[201] s53 YJA.
[202] s59(2) YJA.
[203] *Ex Parte Edwards* [1989] 1 Qd R 139 at 142.
[204] s59(3) YJA.
[205] s47(2) YJA.

6.9.1 Summary: Who may release or grant bail?

A police officer may release a child without bail if a release notice or a notice to appear is given to the child (ss50 and 51 YJA) or may release a child on bail except:

- where the offence is defined in s13(1) BA;
- where the child has been previously convicted of a terrorism offence or is or has been subject to a Commonwealth control order (s13(2) BA)

A decision by a police officer is reviewable by a Magistrate (s19B(2) BA).

A Childrens Court constituted by a Magistrate may release a child without bail into the custody of a parent, or permit the child to go at large subject to a condition that the child will appear before the court as required (s51 YJA) or grant the child bail except:

- where the offence is defined in s13(1) BA (s59(3) YJA);

A Childrens Court constituted by a Judge may release without bail into the custody of a parent, or permit the child to go at large subject to a condition that the child will appear before the court as required (s51 YJA) or release on bail:

- for all charges including offences defined in s13(1) BA even if an indictment has not yet been presented (s59 YJA).

The Supreme Court may grant bail in all cases in its inherent jurisdiction.

6.10 Conditions of Bail

The general conditions of bail are contained in s52 YJA –

1. *This section applies if a court or police officer decides to grant bail to a child who is being held in custody in connection with a charge of an offence.*

2. *The court or officer must release the child on the child's own undertaking, without sureties and without deposit of money or other security, unless the court or officer is satisfied it would be inappropriate in all the circumstances.*

3. *If the court or officer does not release the child under subsection (2), the court or officer must consider the conditions for the release of the child on bail in the following sequence-*
    a. *the release of the child on the child's own undertaking with a deposit of money or other security of stated value;*

b. *the release of the child on the child's own undertaking with a surety or sureties of stated value;*
c. *the release of the child on the child's own undertaking with a deposit of money or other security of stated value and a surety or sureties of stated value.*

That section establishes a sequence of available conditions of bail, starting with the least onerous, which must be considered by the court if it is satisfied that it would be inappropriate to grant bail only on the child's own undertaking.

Section 52A YJA imposes qualifications on what other conditions of bail can be imposed pursuant to s52(3) YJA:

1. *This section applies if a court or police officer decides to grant bail to a child mentioned in section 52(1) and the child is being released from custody.*

2. *The court or police officer may impose another condition on the grant of bail, other than a condition about appearing before a court or surrendering into custody, only if the court or police officer is satisfied—*
    a. *There is a risk of the child doing a thing mentioned in section 48AAA(2)(a) or (3);*
    b. *the condition is necessary to mitigate the risk; and*
    c. *the condition does not, having regard to the following matters of which the court or police officer is aware, involve undue management or supervision of the child—*
        i. *the child's age, maturity level, cognitive ability, and developmental needs;*
        ii. *the child's health, including the child's need for medical assessment or medical treatment;*
        iii. *for a child with a disability—the disability and the child's need for services and supports in relation to the disability;*
        iv. *the child's home environment;*
        v. *the child's ability to comply with the condition.*
    d. *the condition does not unduly restrict the child's ability to carry out the child's responsibilities[206] for –*

[206] See s52A(2)(d) YJA for the following examples of responsibilities: *transporting a child of the child to an appointment, childcare or school; attending a medical appointment in relation to a pregnancy; or cultural obligations to a family member.*

i. *a person with whom the child is in a family relationship*[207] *and for whom the child is the primary caregiver; or*

ii. *a person with whom the child is in an informal care relationship;*[208] *or*

iii. *if the child is pregnant – the child of the pregnancy.*

3. *A condition imposed under subsection (2)—*
   a. *must state the period the condition has effect (the stated period); and*
   b. *stops having effect at the end of the stated period.*

4. *In deciding the stated period for a condition, the court or police officer must—*
   a. *consider the matters mentioned in subsection (2)(c); and*
   b. *ensure the stated period is no longer than is necessary to mitigate the risk mentioned in subsection (2)(a).*

5. *The court or police officer must not impose on a grant of bail to the child a condition that the child must wear a monitoring device while released on bail.*
   Note – see also section 52AA.

6. *If the child is not an Australian citizen or a permanent resident, the court or police officer must consider imposing a condition under subsection (2) requiring the child to surrender the child's current passport.*

7. *Subsection (2) does not limit the power of a court to impose conditions on a grant of bail under section 151(9).*

8. *In this section—*

   Australian citizen *see the Australian Citizenship Act 2007 (Cwlth), s4.*
   Permanent resident *see the Bail Act 1980, s11(10).*

Section 151(9) YJA relates to the imposition of conditions on releasing a child from custody pending the preparation of a pre-sentence report.

[207] 'Family relationship' is defined in Schedule 4 YJA to have "the meaning given by the *Domestic and Family Violence Protection Act 2012*, s 19."
[208] 'Informal care relationship' is defined in Schedule 4 YJA to have "the meaning given by the *Domestic and Family Violence Protection Act 2012*, s20."

Section 48AAA(2)(b) YJA requires a court or police officer to consider whether conditions would adequately mitigate the risk of the matters in s48AAA(2)(a) YJA.

Section 48AA(5) YJA requires that a court or police officer, in deciding whether there is an unacceptable risk of a matter mentioned in s48AAA(3) YJA, may consider whether a condition could be imposed under s52A YJA that may affect that risk.

Section 52B(1) YJA requires that if a court imposes a condition on the grant of bail to a child under s52A, the order must sate how the condition is intended to mitigate the risk mentioned in s52A(2)(a), that is, a risk specified in s48AAA(2)(a) or (3). Section 52B(2) YJA imposes a similar condition on a police officer who grants bail under s52A.

There are a number of programs available through Youth Justice to support a child on bail with special conditions:

6.10.1 Conditional Bail Program

The court may consider that a young person poses an unacceptable risk of breaching bail without more intensive support whilst in the community. A legal representative or court may ask youth justice to prepare a conditional bail program (CBP).

A CBP should not replace a young person's usual entitlement to bail. Except in instances of more serious charges and/or the presence of a significant criminal history, it should generally only be considered where the young person had already been afforded prior opportunities on bail with less onerous conditions and that the young person is likely to be remanded into detention otherwise.

A young person can only be placed on a CBP when a court grants them bail and makes participation in the CBP a condition of their bail undertaking. Where a young person is in remand and a CBP has been requested by defence, youth justice service centre (YJSC) managers are required to make the decision whether to decline this request and to provide their rationale for this to defence.

The program engages a young person in activities to develop their capacity to comply with their bail undertaking. It does not specifically address the young person's alleged offending behaviour, nor does it include monitoring other bail conditions, which do not include youth justice. A program may be

complemented by a bail support referral where the young person experiences unstable accommodation.

The program is available across Queensland; however, the type of support may vary with the location.

See also: Appendix 5: DYJ Core Initiatives and Interventions

6.10.2 Electronic Monitoring Devices

In April 2021, amendments were introduced to the YJA which allowed a court to impose the wearing of an electronic monitoring device as a condition of bail pursuant to s52A(2).

Section 52AA(1) provides a court may impose on a grant of bail a condition that the child wear an electronic monitoring device if:

(a) the child is at least 15 years old; and

(b) the offence in relation to which bail is being granted is a prescribed indictable offence; and

(c) the child:

(i) has previously been found guilty of at least 1 indictable offence; or

(ii) has, in the previous 12 months, been charged with a prescribed indictable offence and the charge:

(1) has not been dealt with by a court, withdrawn or otherwise discontinued; and

(2) does not arise out of the same, or the same set of, circumstances as the charge for the prescribed indictable offence mentioned in paragraph (b) and;

(d) the court is in a geographical area prescribed by regulation; and

(e) the child lives in a geographical area prescribed by regulation; and

(f) the court is satisfied, in addition to being satisfied of the matters mentioned in section 52A(2), that imposing the monitoring device condition is appropriate having regard to the following matters:

(i) whether the child has the capacity to understand the condition and any conditions under subsection (2);

(ii) whether the child is likely to comply with the condition and any conditions under subsection (2) having regard to the personal circumstances of the child;

Examples of personal circumstances for a child for subparagraph (ii) –

- *whether the child has stable accommodation*
- *whether the child has the support of a parent or another person to assist with compliance with the conditions*
- *whether the child has access to a mobile phone to facilitate contact with any monitoring device monitoring service*
- *whether the child has access to an electricity supply*

(iii) whether a parent of the child, or another person, has indicated a willingness to the court to do any of the things mentioned in s48AA(4)(a)(vi);

(iv) any other matter the court considers relevant.

'Prescribed indictable offence' for the purposes of s52AA is defined in s52AA(11) to mean:

(a) a life offence; or

(b) an offence of a type that, if committed by an adult, would me the adult liable to imprisonment for 14 years or more, other than an offence against the Drugs Misuse Act 1986, section 9(1) for which the maximum penalty is 15 years imprisonment; or

(c) an offence against any of the following provisions of the Criminal Code –

(i) section 69
(ii) section 75
(iii) section 315A;
(iv) section 323;
(v) section 328A;
(vi) section 339;
(vii) section 340, to the extent the offence is not a type mentioned in paragraph (b);
(viii) section 359
(ix) section 359E
(x) section 408A(1), if the offence involves a motor vehicle and the child charged with the offence was allegedly the driver of the motor vehicle;
(xi) section 408A(1) to which section 408A(1A) applies;
(xii) section 412, to the extent the offence is not of a type mentioned in paragraph (a) or (b)
(xiii) section 413
(xiv) section 414

See Chapter 2.9: Role of Parents for further information about the role of parents or other adults in bail decisions.

Before a court can impose a monitoring device condition on bail, the court **must** order the chief executive to complete a Suitability Assessment Report (SAR).[209] The SAR will contain an assessment of the child's suitability for a monitoring device condition, having regard to the matters in s52AA(1)(f). The chief executive must complete the SAR within the period stated by the court or if no period was stated, as soon as practicable after the order was made.[210] The court **must** consider the SAR in determining whether to impose the condition.[211]

Electronic monitoring devices are fitted in Queensland Police Service watchhouses and monitored by Queensland Corrective Services (QCS) once fitted. Under s52AA(2)(a) YJA, if the court makes an order imposing a monitoring device condition, the court **must** consider making an order that the child be detained in custody until the monitoring device is fitted to the child. Where the court makes an order detaining the child in custody until the monitoring device has been fitted, the child may be detained in custody only for the purpose of fitting the monitoring device and for the least time that is justified in the circumstances.[212]

The court may also make any other conditions the court considers necessary to facilitate the operation of the monitoring device.[213]

If QCS identify an alert or notification from the monitoring device, they may contact the child directly on the child's mobile phone. QCS may also notify the Queensland Police Service or the chief executive about notifications and alerts from the monitoring device. If a child intentionally damages or removes their monitoring device, they may be subject to further charges such as wilful damage.

The Queensland Police Service are also responsible for the removal of monitoring devices and will do so when ordered by the court or bail otherwise lapses upon finalisation of the matter.

Section 405 YJA provides where a court makes a monitoring device condition pursuant to s52A(2) YJA for a stated period, such a condition is taken to be effective until the end of the stated period even if:

(a) the court stops being in a geographical area prescribed under s52AA(1)(d);

[209] s52AA(3) YJA.
[210] s52AA(4) YJA.
[211] s52AA(5) YJA.
[212] s52AA(2A) YJA.
[213] s52AA(2)(b) YJA.

(b) the child stops living in a geographical area prescribed under s52AA(1)(c);

(c) s52AA expires.

Section 52AA(10) YJA provides this section will expire four years after commencement. Therefore, the provisions of s52AA will cease to be in effect after 29 April 2025, subject to s405 YJA.

Note: The use of the word "tracking" device is not culturally appropriate for Aboriginal and Torres Strait Islander people, due to its associations with colonial era practices. The term "monitoring" device is the appropriate term and should be used when referring to these devices.

6.10.2.1 Prescribed Locations for Electronic Monitoring Devices

Pursuant to ss52AA(1)(d) and (c) YJA, a court may impose a monitoring device condition if the court is in a prescribed location and the young person lives in a prescribed location. Section 4A of the *Youth Justice Regulation 2016* sets out the prescribed Childrens Court locations as follows:

(a) Beenleigh;
(b) Brisbane City;
(c) Caboolture;
(d) Coolangatta;
(e) Pine Rivers;
(f) Redcliffe;
(g) Southport;
(h) Townsville;
(i) South Brisbane;
(j) Ipswich;
(k) Fraser Coast;
(l) Rockhampton; and
(m) Mackay.

If the court is not in one of the above prescribed locations, a monitoring condition cannot be made. For a full list of postcodes where the young person must reside for the purposes of s52AA(1)(c) YJA, see Schedule 1AA of the *Youth Justice Regulation 2016*. If the young person moves out of a prescribed postcode and into a location that is not prescribed, the monitoring condition may need to be reconsidered as to whether it is still appropriate, as the condition will continue to be in effect even after the child is no longer living in the prescribed postcode.[214]

[214] s405(1)(b)(ii) YJA.

6.10.3 Summary: Conditions of Release or Bail

Instead of granting bail, the court may release the child into the custody of a parent or permit the child to go at large without bail on a condition the child appears at the court when required (s55 YJA).

If granting bail, the court must release the child on the child's own undertaking, without sureties and without depositing money or other security, unless that would be inappropriate in all the circumstances (s52 YJA).

If the court is satisfied it would be inappropriate to release only on an undertaking, the court must consider a sequence of bail conditions:

(a) release on an undertaking with a deposit of money or other security of a stated value;
(b) release on an undertaking with a surety or sureties of a stated value;
(c) release on an undertaking with a deposit of money or other security and a security or sureties (s52 YJA).

The court can impose other conditions on bail, other than a condition under s52(3) or a condition about appearing before a court or surrendering into custody, only if satisfied:

(a) there is a risk of the child committing an offence that endangers the safety of the community or the safety or welfare of a person (s48AAA(2)(a) YJA) and the condition would adequately mitigate that risk or of not appearing as required or of committing an offence, other than an offence mentioned in s48AAA(2)(a) or of interfering with a witness or otherwise obstructing the course of justice, whether for the child or another person (s48AAA(3) YJA) ; and
(b) the condition is necessary to mitigate the risk; and
(c) the condition does not, having regard to the following, involve undue management and supervision of the child –
    (i) the child's age, maturity level, cognitive ability and developmental needs;
    (ii) the child's health, including the need for medical assessment or treatment;
    (iii) for any disability the child has and the child's need for service and supports;
    (iv) the child's home environment;
    (v) the child's ability to comply with the condition (s52A(2)(c) YJA).

In relation to any other conditions so imposed, the condition must state the period for which it has effect and that the condition ceases at the end of that period (s52A(3) YJA). The period may be no longer than is necessary to mitigate the risk (s52A(4) YJA).

The court may impose a condition that a child wear a GPS monitoring device (s52AA YJA).

If the child is not an Australian citizen or a permanent resident, a condition can be the surrender of the child's passport (s52A(6) YJA).

If a court imposes a further condition on bail, the order must state how the condition is intended to mitigate the risk (s52B YJA).

6.11 Provisions in Relation to Aboriginal and Torres Strait Islander Children

Section 48AA(4)(vii) YJA provides that if a court or police officer is making a decision about bail or releasing a child from custody, the court or police officer must have regard to, if the child is an Aboriginal person or Torres Strait Islander, a submission made by a representative of the community justice group in the child's community, including, for example, a submission about:

> *(i) the child's connection with the child's community, family, or kin; or*
>
> *(ii) cultural considerations; or*
>
> *(iii) considerations relating to programs and services established for offenders in which the community justice group participates;*
>
> *Note— See also s48AC.*

Community justice groups (CJG) are established pursuant to s18 *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*. Section 19(1)(a) of that Act gives those groups the function of taking part in court hearings, sentencing and bail processes under the YJA.

Under s48AC YJA, the representative of the CJG must, if requested by the court or police officer, advise whether a member of the CJG is related to the child or the victim of the offence or there are circumstances that give rise to a conflict of interest between a member of the CJG and the child or victim of the offence.

Section 48AA(4)(b) YJA provides, in relation to bail, that where the court is considering whether to release the child without bail or to grant bail to the child, the court or police officer may have regard to any of a number of matters specified in s48AA(4)(b) YJA. One of those is:

> *(viii) if the child is an Aboriginal person or Torres Strait Islander—the desirability of maintaining the child's connection with the child's community, family, and kin;*

See also Chapter 2.5: Provisions Concerning Aboriginal and Torres Strait Islander Children and Magistrates Court Bail Benchbook, Chapter 24

6.12 Terrorism Offences

Section 48(2) YJA requires that a court or police officer must decide to release a child from custody unless required by the YJA or another Act to keep the child in custody. Section 48A YJA applies to a child in custody in connection with a charge of an offence who has previously been found guilty of a terrorism offence or is or has been subject to a Commonwealth control order. The terms **"terrorism offence"** and **"Commonwealth control order**" are defined in Schedule 4 YJA. In those circumstances, the court **must not** release the child from custody **unless** the court is satisfied exceptional circumstances exist to justify releasing the child.

Section 48A YJA provides:

1. *This section applies in relation to a child in custody in connection with a charge of an offence if the child—*
    a. *has previously been found guilty of a terrorism offence; or*
    b. *is or has been the subject of a Commonwealth control order.*

2. *Despite any other provision of this Act or the Bail Act 1980, a court must not release the child from custody unless the court is satisfied exceptional circumstances exist to justify releasing the child.*

3. *In considering whether exceptional circumstances exist to justify releasing the child, the court may have regard to any relevant matter.*

4. *If the court releases the child, the order releasing the child must state the reasons for the decision.*

5. *This section does not affect the operation of section 48AAA(2) or (3)) or 48AE.*

Only a court may grant bail in relation to a person who has been convicted of a terrorism offence or is or has been subject to a Commonwealth control order.[215] If the court releases the child, the order must state the reasons for that decision.[216]

[215] s13(2) BA.
[216] s48A(4) YJA.

Section 48AA YJA provides:

1. *This section applies if a court or police officer is making any of the following decisions in relation to a child in custody in connection with a charge of an offence (the alleged offence)—*
    a. *whether there is an unacceptable risk of a matter mentioned in section 48AAA(2);*
    b. *whether there is an unacceptable risk of a matter mentioned in section 48AAA(3);*
    c. *whether to release the child despite being satisfied there is an unacceptable risk of a matter mentioned in section 48AAA(3);*
    d. *whether to release the child without bail or grant bail to the child.*
    e. *whether the child has shown cause under section 48AF(2) why the child's detention in custody is not justified.*

2. *The court or police officer must have regard to the following matters of which the court or police officer is aware—*
    a. *any promotion by the child of terrorism;*
    b. *any association the child has or has had with a terrorist organisation, or with a person who has promoted terrorism, that the court or police officer is satisfied was entered into by the child for the purpose of supporting the organisation or person—*
        i. *in the carrying out of a terrorist act; or*
        ii. *in promoting terrorism.*

Section 48AB YJA defines what is meant by **"promoting terrorism"** and **"terrorist act":**

1. *For section 48AA(2), a person or organisation promotes terrorism if the person or organisation—*
    a. *carries out an activity to support the carrying out of a terrorist act; or*
    b. *makes a statement in support of the carrying out of a terrorist act; or*
    c. *carries out an activity, or makes a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.*

2. *To remove any doubt, it is declared that a reference in section 48AA(2) or subsection (1) to a terrorist act—*
    a. *includes a terrorist act that has not happened; and*
    b. *is not limited to a specific terrorist act.*

6.13 Breaches of Bail

On 22 March 2023, s29 BA was amended to make it an offence for a child to breach a condition of bail.[217]

Certain actions are available for contraventions of bail conditions by a child. Section 59A YJA specifies the powers available to a police officer if the officer reasonably suspects the child has contravened, is contravening or is likely to contravene a condition of bail, and the contravention is not an offence, other than an offence against s29 BA and the grant of bail relates to a charge of an offence other than a prescribed indictable offence; or an offence against ss177(2) or 178(2) *Domestic and Family Violence Prevention Act 2012* (DFVPA), a police officer does have powers of arrest as specified in s367 PPRA.

However before arresting a child, the police officer must consider other alternatives as specified in s59A YJA:

1. *This section applies if—*
    a. *a police officer reasonably suspects a child has contravened or is contravening a condition imposed on a grant of bail to the child; and*
    b. *the contravention is not an offence, other than an offence against the Bail Act 1980, section 29; and*
    c. *the grant of bail relates to a charge of an offence other than –*

        (i) a prescribed indictable offence; or
        (ii) an offence against the Domestic and Family Violence Prevention Act 2012, section 177(2) or 178(2).

2. *This section also applies if a police officer reasonably suspects a child is likely to contravene a condition imposed on a grant of bail to the child and the grant of bail relates to a charge of an offence other than an offence mentioned in subsection (1)(c)(i) or (ii).*

3. *Before arresting the child under the Police Powers and Responsibilities Act 2000, section 367(3)(a)(i) in relation to the contravention or likely contravention, a police officer must first*

[217] The *Strengthening Community Safety Act 2023*, assented to on 22 March 2023, amended s29 *Bail Act 1980*. This applies to bail undertakings entered into after commencement: s50 *Bail Act 1980*.

consider whether, in all the circumstances, it would be more appropriate to do 1 of the following—

a. *to take no action;*
b. *to warn the child of the action a police officer may take under paragraph © or the Police Powers and Responsibilities Act 2000, section 367(3) in relation to a contravention of a condition imposed on the grant of bail;*
c. *if the contravention or likely contravention is in relation to a condition other than a condition for the child's appearance before a court—to make an application under the Bail Act 1980 to vary or revoke the bail.*

4. *For subsection (3), the circumstances the police officer must consider include the following—*
   a. *the seriousness of the contravention or likely contravention;*
   b. *whether the child has a reasonable excuse for the contravention or likely contravention;*
   c. *the child's particular circumstances of which the police officer is aware;*
   d. *other relevant circumstances of which the police officer is aware.*

5. *If a police officer considers that, in all the circumstances, it would be more appropriate to act as mentioned in subsection (3)(a), (b) or (c), then a police officer must do so.*

Section 59AA YJA provides that a police officer may consider alternatives to arrest where the child has contravened a condition of bail in relation to prescribed indictable offences and an offence against ss177(2) or 178(2) DFVPA. Before arresting a child, the police officer may consider other alternatives as specified in s59AA YJA:

1. *This section applies if—*
   a. *a police officer reasonably suspects a child has contravened or is contravening a condition imposed on a grant of bail to the child; and*
   b. *the contravention is not an offence, other than an offence against the Bail Act 1980, section 29; and*
   c. *the grant of bail relates to—*

      (i) a charge of a prescribed indictable offence; or

      (ii) a charge of an offence against the Domestic and Family Violence Protection Act 2012, section 177(2) or 178(2).

2. *This section also applies if a police officer reasonably suspects a child is likely to contravene a condition imposed on a grant of bail to the child and the grant of bail relates to a charge of an offence mentioned in subsection (1)©(i) or (ii).*

3. *Before arresting the child under the Police Powers and Responsibilities Act 2000, section 367(3)(a)(i) in relation to the contravention or likely contravention, a police officer may first consider whether, in all the circumstances, it would be more appropriate to do 1 of the actions mentioned in section 59A(3)(a) to (c).*

4. *For subsection (3), the circumstances the police officer may consider include the matters mentioned in section 59A(4)(a) to (d).*

An application under s30 BA can be made by a complainant or prosecutor to vary or revoke bail by the court that granted bail, the court before which an indictment was presented or the Supreme Court. If bail on an undertaking was granted by a police officer, the Childrens Court may vary or revoke bail on such an application.[218]

An application to vary or revoke bail may be made ex parte.[219]

If the police officer decides to arrest the child, the child must be brought before the Childrens Court[220] where the Magistrate may, if satisfied the child has broken or is likely to break a condition of bail, revoke or vary the bail.[221]

It is an offence for a child to fail to surrender into custody in accordance with an undertaking.[222] There are restrictions on the sentence that can be imposed if the failure to appear occurred when the defendant was a child (any jail sentence will not be mandatorily cumulative)[223] A court may issue a warrant for the arrest of a child who fails to surrender into custody as required.[224]

Section 57 YJA provides that the provisions of the BA relating to the issue of warrants for the arrest of defendants who fail to surrender into the custody of court as required when permitted to go at large

[218] s30(1A) BA.
[219] s30(2) BA.
[220] s29A(1)(c) BA.
[221] s29A BA.
[222] s33(1) BA.
[223] s33(5) BA.
[224] s28A(1)(b) and (ea) BA.

without bail, apply to a child who fails to appear after being released into the custody of a parent, or permitted to go at large, without bail.

If a child is arrested pursuant to a warrant, the child must be brought promptly before a court to be dealt with according to law.[225]

In considering an application to vary or revoke bail, or dealing with a further bail application where the child is arrested on a warrant, the court is bound by the provisions of ss48, 48AAA and 48AA YJA (above) and in making a decision, the court may have regard to the history of any previous grants of bail to the child.[226]

6.14 Confidentiality Issues

Court processes in relations to bail applications are bound by the restrictions on open courts and

See also restrictions on publication contained in s12 BA:

1. *Where the complainant or prosecutor or a person appearing on behalf of the Crown opposes a defendant's release under this part or the Youth Justice Act 1992, part 5, the court, at any time during the hearing of the application for bail, may make an order directing that the evidence taken, the information furnished, the representations made by or on behalf of either party or the reasons given by the court for the grant or refusal of bail or release under section 11A or any part thereof or any of them shall not be published by any means—*
    a. *if an examination of witnesses in relation to an indictable offence is held—before the defendant is discharged; or*
    b. *if the defendant is tried or committed for trial—before the trial is ended.*

2. *A person who fails without lawful excuse, the proof of which lies upon the person, to comply with an order made under subsection (1) commits an offence against this Act. Maximum penalty—10 penalty units or imprisonment for 6 months.*

See also Magistrates Court Bail Benchbook, Chapter 5

[225] s58 YJA.
[226] s48AA(4)(a)(iii) YJA.

Chapter 7 – Diversion

Principle Six of the Charter of Youth Justice Principles provides:

> *If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.*

7.1 Police Diversion

A police officer has a number of diversion options:

- Release without charge;
- Caution;
- Referral for a restorative justice process;
- Drug diversion; or
- Graffiti removal diversion.

Section 11(1) YJA sets out the alternatives to instituting proceedings against a child, other than for a serious offence, that a police officer must consider. It provides:

1. *Unless otherwise provided under this division, a police officer, before starting a proceeding against a child for an offence other than a serious offence, must first consider whether in all the circumstances it would be more appropriate to do 1 of the following—*
    a. *to take no action;*
    b. *to administer a caution to the child;*
    c. *to refer the offence to the chief executive for a restorative justice process;*
    d. *if the offence is a minor drugs offence within the meaning of the Police Powers and Responsibilities Act 2000 and the child may be offered an opportunity to attend a drug diversion assessment program under section 379 of that Act—to offer the child that opportunity in accordance with that section;*
    e. *if the offence is a graffiti offence and the child may be offered an opportunity to attend a graffiti removal program under the Police Powers and Responsibilities Act 2000, section 379A—to offer the child that opportunity in accordance with that section.*

Note – Because of section 134, a police officer must consider offering the same opportunities for diversion from the court system as apply to a child to a person who committed the offence as a child but is now an adult.

*"***Serious offence"** is defined in s8 YJA.

A police officer must consider the same alternatives in relation to a person who has committed such an offence as a child but has become an adult.[227]

Section 11(2) YJA specifies the circumstances which the police officer must consider in reaching a decision:

- The circumstances of the alleged offence; and
- The child's criminal history; and
- Any other dealings with the child, if the child has been dealt with in any other way under any Act.

The police officer may delay starting proceedings in order to comply with the requirements of s11(1) and (2) YJA.[228] After complying with those subsections, if the police officer considers it would be more appropriate to act pursuant to s11(1)(a) or (c) YJA, the police officer must do so.[229] If the police officer considers it would not be appropriate to so act, the police officer may start a proceeding against the child for the offence.[230] See s12 YJA for the preferred way for a police officer to start a proceeding.

The police officer may take the action mentioned in s11(1)(a)-(c) & (e) YJA even though action of the same kind has been taken in relation to the child on a previous occasion or a proceeding against the child for another offence has already been started or ended.[231]

A police officer may take no action, administer a caution, or refer the offence to the chief executive (youth justice) for a restorative justice process even for a serious offence.[232]

[227] s134 YJA.
[228] s11(3) YJA.
[229] s11(4) YJA.
[230] s11(5) YJA.
[231] s11(6) YJA.
[232] s11(7) YJA.

Section 379 PPRA provides for diversion for a minor drug offence to a drug diversion assessment program in certain circumstances. **"Minor drug offence"** and **"drug diversion assessment program"** are defined in Schedule 6 PPRA.

Section 379 PPRA provides:

1. *This section applies if—*
    a. *a person is arrested for, or is being questioned by a police officer about, a minor drugs offence; and*
    b. *the person has not committed another indictable offence in circumstances that are related to the minor drugs offence; and Examples of commission of an offence related to a minor drug offence— 1 Burglary of a home to obtain money to buy the drugs. 2 The drugs are obtained as a result of the robbery of another person.*
    c. *the person has not previously been sentenced to serve a term of imprisonment for an offence against the Drugs Misuse Act 1986, section 5, 6, 8 or 9D; and*
    d. *the person—*
        i. *has not previously been convicted of an offence involving violence against a person; or*
        ii. *has been convicted of an offence involving violence against a person for which the rehabilitation period under the Criminal Law (Rehabilitation of Offenders) Act 1986 has expired; and*
    e. *during an electronically recorded interview, the person admits having committed the offence; and*
    f. *the person has not been offered the opportunity to participate in a drug diversion assessment program.*

2. *If the person is—*
    a. *an adult; or*
    b. *a child who has previously been cautioned under the Youth Justice Act 1992 for a minor drugs offence;*

    a police officer must offer the person the opportunity to participate in a drug diversion assessment program.

3. *However, if the person is a child who has not been cautioned previously under the Youth Justice Act 1992 for a minor drugs offence, a police officer may offer the child the opportunity to participate in a drug diversion assessment program.*

4. *A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.*

5. *When making the offer, the police officer must give—*
    a. *the person; and*
    b. *if a support person is present when the offer is made, the support person; an oral or written explanation of the consequences of agreeing to participate in a drug diversion assessment program.*

6. *If the person agrees, the person must sign an agreement to participate in, and complete, a drug diversion assessment program.*

7. *The agreement must include a provision authorising the provider of the drug diversion assessment program to disclose to the commissioner information about—*
    a. *the person's participation in, and completion of, the program; or*
    b. *if the person failed to participate in, or complete, the program—the person's failure to participate in, or complete, the program.*

8. *The police officer must—*
    a. *give the person a written requirement to participate in, and complete, a drug diversion assessment program in accordance with the agreement; and*
    b. *inform the person that failure to comply with the requirement is an offence against section 791.*

9. *Also, the police officer must give the chief executive (health), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.*

10. *On the signing of the agreement, the drug, and anything that may be, or has been, used for smoking the drug, is forfeited to the State.*

11. *It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the police officer is satisfied subsections (6) and (8) have been complied with.*

Section 379A PPRA provides for diversion of a child over 12 years for a graffiti offence to a graffiti removal program. **"Graffiti offence"** is defined in Schedule 6 PPRA.

Section 379A provides:

1. *This section applies if—*
    a. *a child is arrested for, or is being questioned by a police officer about, a graffiti offence; and*
    b. *during an electronically recorded interview, the child admits having committed the offence; and*
    c. *the child had attained at least the age of 12 years at the time of the offence.*

2. *A police officer may, at any time before the child appears before a court to answer a charge of the graffiti offence, offer the child the opportunity to attend a graffiti removal program.*

3. *When making the offer, the police officer must give an oral or written explanation of the consequences of agreeing to attend a graffiti removal program to—*
    a. *the child; and*
    b. *if a support person is present when the offer is made— the support person.*

4. *If the child agrees, the child must sign an agreement to attend and complete a graffiti removal program.*

5. *The agreement must include a provision authorising the provider of the graffiti removal program to disclose to the commissioner and the chief executive (youth justice services) information about—*
    a. *the child's attendance at, and completion of, the program; or*
    b. *if the child failed to attend or complete the program— the child's failure to attend or complete the program.*

6. *The police officer must—*

a. *give the child a written requirement to attend and complete a graffiti removal program in accordance with the agreement; and*
b. *inform the child that failure to comply with the requirement is an offence against section 791.*

7. *Also, the police officer must give the chief executive (youth justice services), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.*

8. *On the signing of the agreement, any thing used in the commission of the graffiti offence is forfeited to the State.*

9. *It is the duty of a police officer to release an arrested child at the earliest reasonable opportunity if the police officer is satisfied subsections (4) and (6) have been complied with.*

10. *In this section—*

***chief executive (youth justice services)** means the chief executive of the department within which the Youth Justice Act 1992 is administered.*

***graffiti removal program** means a program for removing graffiti conducted with the approval of the chief executive (youth justice services).*

See Chapter 5.7 Queensland Police Service, Operational Procedures Manual.

Section 791 PPRA makes it an offence to contravene a direction or requirement of a police officer. A conviction for the offence carries a fine.[233] Thus if a child fails to meet the requirement under ss379(8) or 379A(6) PPRA, an offence is committed.

Section 380 PPRA provides for additional circumstances where a police officer may discontinue the arrest of a child. Again, options include taking no action, administering a caution, or referring for a restorative justice process.

Section 380 PPRA provides:

1. *This section applies to an arrested person who is a child.*

[233] s791(2)(c) PPRA.

2. *It is the duty of a police officer to release the child at the earliest reasonable opportunity if—*
    a. *the reason for arresting the child no longer exists or is unlikely to happen again if the child is released; and*
    b. *after considering the following, it is more appropriate to deal with the child in a way provided by subsection (3)—*
        i. *the circumstances of the alleged offence;*
        ii. *the child's previous history known to the police officer.*

3. *For subsection (2)(b), the police officer may decide it is more appropriate—*
    a. *to take no action; or*
    b. *to administer a caution to the child under the Youth Justice Act 1992; or*
    c. *to refer the offence to the chief executive (communities) for a restorative justice process under the Youth Justice Act 1992; or*
    d. *to take the child before a court by notice to appear or summons.*

4. *Subsection (2) does not apply to a child who is arrested if, because of the nature or seriousness of an offence for which the child is a suspect, it is inappropriate to release the child.*

7.2 Police Cautions

Division 2 YJA contains the provisions in relation to a police officer administering a caution to a child. The purpose is "*to set up a way of diverting a child who commits an offence from the court's criminal justice system by allowing a police officer to administer a caution to the child instead of bringing the child before a court for the offence.*" [234]

Section 15 YJA gives a police officer the power to administer a caution instead of bringing the child before a court. If a caution is administered, the child is not then liable to be prosecuted for the offence.[235]

Section 16 YJA specifies the conditions for the administration of a police caution. A police officer may only administer a caution if the child admits committing the offence to the police officer and consents

[234] s14 YJA.
[235] s15(2) YJA.

to being cautioned.[236] See Queensland Police Service, Operational Procedures Manual, Chapter 5.8 for the Protected Admissions Scheme which allows a system for an agreement to be reached about a child's eligibility for a diversionary option and the inadmissibility of any admission made pursuant to that agreement. If practicable, the police officer must arrange for the child's parent, or another adult chosen by the child to be present for the caution.[237]

Section 17 YJA provides that if, a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, a respected person of that community may administer the caution.

The police officer who administers the caution, or requests the administration of the caution by another, must take steps to ensure that the child and the parent or other person present understands the purpose, nature, and effect of the caution, including the effect on the child's criminal history.[238]

The cautioning procedure may involve the child apologising to the victim of the offence, if the child and the victim are willing to participate in the procedure.[239]

See Chapter 5.3-5.5 Queensland Police Service, Operational Procedures Manual in relation to cautions.

7.3 Childrens Court May Dismiss a Charge if Caution Should Have Been Administered

Section 21 YJA provides that, if a child pleads guilty before a Childrens Court, the court may dismiss the charge instead of accepting the plea of guilty if an application for dismissal is made by the child and the court is satisfied the child should have been cautioned instead of being charged or that no action should have been taken against the child. In deciding the application, the court may have regard to any other cautions administered to the child and whether any previous conference agreements in a restorative justice process have been made by the child.[240]

[236] s16(1) YJA.
[237] s16(2) YJA.
[238] s18 YJA.
[239] s19 YJA.
[240] s21(2) YJA.

If the court dismisses the charge under s21(1) YJA, the court may administer a caution to the child or direct a police officer to administer a caution as directed by the court.[241]

See also Chapter 8.4: Police Diversion

7.4 Police Referral for Restorative Justice Process

A police officer has the power to refer the offence to the chief executive (youth justice) for a restorative justice process.[242]

Restorative justice processes are established under Part 3 YJA. The restorative justice process is a conference, or, if a conference cannot be convened for any reason other than the chief executive has not been able to contact the child or the child has been unwilling to participate,[243] an alternative diversion program. Section 38 YJA establishes alternative diversion program options.

The purpose of a conference is to allow a child who has committed an offence and other concerned persons to consider or deal with the offence in a way that benefits all concerned.[244] The participation in, convening of a conference and any conference agreements are governed by ss33-37 and 39 YJA. A conference agreement can occur if the child admits committing the offence and undertakes to address the harm caused.[245]

See also Chapter 7.6: Court Ordered Diversion

Referral to the chief executive (youth justice) for a restorative justice process can be made by a police officer,[246] a court as a diversionary process,[247] a court as a pre-sentence referral,[248] or as a sentence.[249]

See also Chapter 7.7: Restorative Justice Process

[241] s21(3) YJA.
[242] s22(1) YJA.
[243] s31 YJA.
[244] s33 YJA.
[245] s36(1) YJA.
[246] s22 YJA.
[247] s164 YJA.
[248] s165 YJA.
[249] s175(1)(da) or (db) YJA.

A police officer may make a restorative justice referral only if the child indicates a willingness to comply and, having regard to the deciding factors, the officer considers that a caution is inappropriate, a proceeding for the offence would be appropriate if the referral was not made and the referral is a more appropriate way of dealing with the offence.[250]

The **"deciding factors"** are specified in s22(4) YJA as:

> *(a) the nature of the offence; and*
> *(b) the harm suffered by anyone because of the offence; and*
> *(c) whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.*

The police officer must inform the child generally of the restorative justice process, the potential consequences if the child fails to participate properly and that the making of a restorative justice agreement will form part of the child's criminal history.[251]

If a restorative justice agreement is made as a consequence of a restorative justice process, the child is not liable to be prosecuted for the offence unless otherwise provided for by the YJA.[252]

If the referral is unsuccessful or the child contravenes the restorative justice agreement, the police officer must consider what further action is appropriate.[253] Section 24 YJA specifies the powers available to a police officer in those circumstances:

1. *This section applies if a police officer refers an offence committed by a child to the chief executive for a restorative justice process and—*
    a. *the chief executive returns the referral to the officer under section 32(1); or*
    b. *the child fails to comply with a restorative justice agreement made as a consequence of the referral.*

2. *In considering what further action is appropriate, the police officer must consider—*
    a. *the matters mentioned in section 11(2); and*
    b. *any participation by the child in the restorative justice process; and*

[250] s22(3) YJA.
[251] s22(5) YJA.
[252] s23 YJA.
[253] s24 YJA.

c. *if a restorative justice agreement was made as a consequence of the referral—anything done by the child under the agreement.*

3. *The police officer may—*
   a. *take no action; or*
   b. *administer a caution to the child; or*
   c. *refer the offence to the chief executive for another restorative justice process; or*
   d. *start a proceeding against the child for the offence.*

See Chapter 5.6 Queensland Police Service, Operational Procedures Manual.

7.5 Childrens Court may dismiss a charge if offence should have been referred to restorative justice process

Section 24A YJA provides that if a child pleads guilty before the Childrens Court, the court may dismiss the charge instead of accepting the plea of guilty if an application for dismissal is made by the child and the court is satisfied the offence should have been referred to a restorative justice process, **regardless** of whether or not the child admitted committing the offence to the police officer. In deciding the application, the court may have regard to any other cautions administered to the child and whether any previous restorative justice agreements have been made by the child.[254]

If the court dismisses the charge under s24A(1) YJA, the court may refer the offence to the chief executive (youth justice) for a restorative justice process.[255] The police officer is taken to be the referring authority.[256]

The dismissal of the charge does not prevent a police officer restarting a proceeding against a child for the offence or a court sentencing a child for the offence if the chief executive returns the referral under s32(1) YJA (where no agreement has been reached) or the child fails to comply with any agreement made as a consequence of the referral.[257]

See also Chapter 7.6: Court Ordered Diversion

[254] s24A(1) YJA.
[255] s24A(2) YJA.
[256] s24A(4) YJA.
[257] s24A(3) YJA.

7.6 Court Ordered Diversion

As noted above, the court may hear an application to dismiss a charge and caution a child [258] or an application to dismiss a charge and refer for a restorative justice process.[259]

See also Chapter 7.1 Police Diversion

The court has a number of options to divert a child from the court process prior to sentence:

- Referral to drug assessment and education sessions;[260] and
- Referral to a restorative justice process unless the offence is a "significant offence" under s175A YJA which was committed or after 13 December 2024;[261]

7.6.1 Referral to a Drug Assessment and Education Session

Section 172 YJA provides that if a finding of guilt is made against an eligible child for an eligible drug offence, the court may refer the child to a drug assessment and education session if the child consents.

Section 172 YJA provides:

1. *This section applies if a finding of guilt for an eligible drug offence is made against an eligible child before a drug diversion court.*

2. *The court may refer the child to a drug assessment and education session if the child consents to attend the session.*

3. *On making the referral, the court must—*
    a. *direct the child attend a drug assessment and education session by a stated date; and*
    b. *adjourn the proceeding for the offence.*

A **"drug assessment and education session"** is defined in s167 YJA to mean "*a single one-on-one session provided by an approved provider involving assessment of the child's drug use, drug education*

[258] s21 YJA.
[259] s24 YJA.
[260] ss167-174 YJA.
[261] ss161-165, s175A(8) & 192A YJA.

and identification of any appropriate treatment options for the child." See s171 YJA for the meaning of *"***approved provider".**

Section 168 YJA specifies the meaning of "**eligible child":**

1. *An eligible child is a child charged with an eligible drug offence who has pleaded guilty to the offence.*

2. *The child is not an eligible child if—*
    a. *a charge against the child for a disqualifying offence is pending in a court; or*
    b. *the child has, at any time, been convicted of a disqualifying offence; or*
    c. *2 diversion alternatives have previously been given to the child.*

3. *For subsection (2)(b), a conviction of a disqualifying offence does not include a conviction in relation to which the rehabilitation period has expired, and not been revived, under the Criminal Law (Rehabilitation of Offenders) Act 1986.*

4. *For subsection (2)(c)—*
    a. *a diversion alternative has been given to the child if—*
        i. *a court has referred the child to a drug assessment and education session under section 172; or*
        ii. *the child has, at any time, agreed under the Police Powers and Responsibilities Act 2000, section 379 to attend a drug diversion assessment program; or*
        iii. *the child has been given a prescribed diversion alternative under a law of another State or the Commonwealth; and*
    b. *for counting the number of diversion alternatives given to the child, a diversion alternative—*
        i. *is counted even if it was given for an offence committed before the diversion alternative counted as the first diversion alternative was given; and*
        ii. *is not counted if it was given on the same day as the diversion alternative counted as the first diversion alternative was given.*

5. *In this section—*

    conviction *see the Criminal Law (Rehabilitation of Offenders) Act 1986, section 3.*

prescribed diversion alternative *means circumstances prescribed under a regulation for this definition that are similar to the circumstances mentioned in subsection (4)(a)(i) or (ii).*

rehabilitation period *see the Criminal Law (Rehabilitation of Offenders) Act 1986, section 3.*

revived *see the Criminal Law (Rehabilitation of Offenders) Act 1986, section 3.*

For **"drug diversion assessment program"** by the Queensland Police Service, see s379 PPRA and Chapter 2.22 Queensland Police Service, Operational Procedures Manual.

An **"eligible drug offence"** is defined in s169 YJA:

1. *An eligible drug offence is—*
    a. *an offence by a child against the Drugs Misuse Act 1986, section 9 of unlawfully having possession of a dangerous drug if—*
        i. *each dangerous drug mentioned in the charge for the offence is a prescribed dangerous drug; and*
        ii. *for each dangerous drug mentioned in the charge, the total quantity of the substances, preparations, solutions, and admixtures in the child's possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug; and*

Example— *Assume the charge mentioned prescribed drugs X and Y. The prescribed quantity in relation to X is 1.0g and the prescribed quantity in relation to Y is 0.2g. The child had—*

- *0.2g of a preparation containing X and Y; and*
- *0.7g of a preparation containing X; and*
- *0.1g of an admixture containing Y.*
- *The total quantity of the preparations in the child's possession containing X is 0.9g (0.2 + 0.7) which is not more than the prescribed quantity in relation to X (1.0g). The total quantity of the preparation and admixture in the child's possession containing Y is 0.3g (0.2 + 0.1) which is more than the prescribed quantity in relation to Y (0.2g). Subsection (1)(a)(ii) is not satisfied.*

(iii) the court considers each dangerous drug mentioned in the charge was for the child's personal use; or (b) an offence against the Drugs Misuse Act 1986, section 10(2), (4) or (4A).

2. *In this section—*

dangerous drug *see the Drugs Misuse Act 1986, section 4.*

prescribed dangerous drug *means a dangerous drug prescribed under a regulation for the Penalties and Sentences Act 1992, section 15D.*

prescribed quantity *means a quantity prescribed under a regulation for the Penalties and Sentences Act 1992, section 15D.*

A **"disqualifying offence"** is defined in s170 YJA:

1. *A disqualifying offence is—*
    a. *an offence of a sexual nature; or*
    b. *an offence against the Drugs Misuse Act 1986, section 5, 6, 8 or 9, other than an offence dealt with, or to be dealt with, summarily; or*
    c. *an indictable offence involving violence against another person, other than an offence charged under any of the following provisions of the Criminal Code—*
        - *section 335*
        - *section 340(1)(a), but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the child or of any other person*
        - *section 340(1)(b).*

2. *A reference to a provision in subsection (1) or (4) includes a reference to a law of another State or the Commonwealth that corresponds to the provision.*

3. *A reference in subsection (1)(c) to an indictable offence includes a reference to an indictable offence dealt with summarily.*

4. *In this section—*

offence of a sexual nature *means an offence defined in the Criminal Code, section 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 228, 229B, 323A, 323B, 363A or chapter 32.*

If the court directs a child to attend a drug assessment and education session, the court must adjourn the proceedings.[262]

If the child attends the drug assessment and education session, notice is given to the court by the approved provider and that brings the court proceedings to an end.[263] The child is not liable to be further prosecuted for the offence.[264] The child is taken to have been guilty of the offence without a conviction being recorded.[265] The notice brings proceedings to an end and the child is not required to attend any adjourned mention.

If the child fails to attend the session, the approved provider must give notice to the court.[266] The court's proper officer may take no action or bring the charge back on before the court for sentencing.[267] **"Proper officer"** is defined in Schedule 4 YJA. For the higher courts, it is the Registrar, Sheriff, or Deputy Sheriff. For a Childrens Court Magistrate, it is the clerk of the court.

If the charge is brought back before the court for sentencing, a notice must be given to the child and the chief executive (youth justice) that the proceeding is to be heard on a stated day. The notice must include a warning that, if the child fails to attend, the court may issue a warrant for the child's arrest.[268] If the child fails to attend, the court may issue a warrant for the child's arrest.[269] If the child is arrested, the child must be treated as if arrested on a charge for an offence.[270]

7.6.2 Restorative Justice Processes

Sections 161-165 YJA provide for restorative justice referrals before sentencing. Section 164 YJA allows the court to make a court diversion referral. Such a referral brings the proceedings to an end unless the referral is unsuccessful.[271] Section 165 YJA allows the court to make a pre-sentence referral. If a restorative justice process results in an agreement, the court must have regard to the agreement in sentencing the child.[272] Under s175(1)(da) YJA, the court can order on sentence that the child perform

[262] s172(3) YJA.
[263] s173 YJA.
[264] s173(3)(b) YJA.
[265] s173(4) YJA.
[266] s174 YJA.
[267] s174(3) YJA.
[268] s174(4)-(6) YJA.
[269] s174(7) YJA.
[270] s174(8) YJA.
[271] s164(2) YJA.
[272] s165(6) YJA.

the obligations under the restorative justice agreement. The court can also impose a restorative justice process as part of the sentence imposed.[273]

A restorative justice order cannot be imposed for a "significant offence" listed in s175A YJA which was committed on or after 13 December 2024. [274] "Significant offences" dealt with in the Magistrates Court are:

- Dangerous operation of a motor vehicle (s328A CC)
- Serious assault (s340 CC)
- Unlawful use of a motor vehicle (s408A)
- Burglary - all variations of enter/in dwelling (s419 CC)
- Enter premises – all variations of being in premises, by break, with intent, commit offence (s421 CC)
- Unlawful entry of a motor vehicle (s427 CC)[275]

7.7 The Restorative Justice Process

The restorative justice process is established under Part 3 YJA. It involves the referring authority (a police officer or a court) referring an offence committed by a child to the chief executive (youth justice) for a restorative justice process. The process is to be a conference[276] or an alternative diversion program, if a conference cannot be convened for any reason other than the child was unable to be contacted or the child was unwilling to participate in the conference.[277]

The object of the conference is to allow a child, who has committed an offence, and other concerned persons to consider or deal with the offence in a way that benefits all concerned.[278]

An **"alternative diversion program"** is defined in s38 YJA:

1. *An alternative diversion program is a program, agreed to by the chief executive and the child, that involves the child participating in any of the following to address the child's behaviour—*
    a. *remedial actions;*

[273] s175(1)(db) YJA.
[274] s175A(8) & s192A YJA
[275] s175A(1) YJA
[276] s31(2) YJA.
[277] s31(3) YJA.
[278] s33 YJA.

b. *activities intended to strengthen the child's relationship with the child's family and community;*
c. *educational programs.*

2. *The program must be designed to—*
   a. *help the child to understand the harm caused by his or her behaviour; and*
   b. *allow the child an opportunity to take responsibility for the offence committed by the child.*

3. *The program may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way that contravenes the sentencing principles in section 150.*

4. *The program must be in writing and be signed by the child.*

5. *The chief executive must give the referring authority a copy of the alternative diversion program.*

An appropriately qualified person is appointed by the chief executive (youth justice) to convene the conference.[279]

Section 34 YJA provides who may participate in the conference:

1. *The following persons are entitled to participate in the conference—*
   a. *the child;*
   b. *the victim;*
   c. *the convenor;*
   d. *a representative of the commissioner of the police service;*
   e. *a parent of the child;*
   f. *if requested by the child, 1 or more of the following—*
      i. *the child's legal representative;*
      ii. *a member of the child's family;*
      iii. *another adult;*
   g. *if requested by the victim, 1 or more of the following—*

[279] s38 YJA.

i. *the victim's legal representative;*
ii. *a member of the victim's family;*
iii. *another adult;*

h. *another person approved by the convenor.*

Examples for paragraph (h)—

- *a representative of the chief executive*
- *a person present for the purpose of training, research, or education.*
- *for an Aboriginal or Torres Strait Islander child who is from an Aboriginal or Torres Strait Islander community, a respected person of the community or a representative of a community justice group that may be in the community.*

2. *To ensure that a victim of the offence is informed of his or her entitlement to participate in the conference, the referring authority must give the chief executive contact information for the victims of the offence.*

3. *For subsection (1)(h), if the child is an Aboriginal or Torres Strait Islander person from an Aboriginal or Torres Strait Islander community, the convenor must consider inviting to attend the conference either or both of the following—*
    a. *a respected person of the community;*
    b. *if there is a community justice group in the community—a representative of the community justice group.*

Although a victim is entitled to attend the conference, the conference can proceed in the absence of the actual victim in the terms permitted under s35 YJA:

1. *The conference may be convened only if—*
    a. *the child and the convenor attend the conference; and*
    b. *there is a degree of victim participation in the conference through—*
        i. *the attendance of the victim or a representative of the victim; or*
        ii. *the use of pre-recorded communication recorded by the victim for use in the conference; or*
        iii. *a representative of an organisation that advocates on behalf of victims of crime.*

2. *The convenor is responsible for convening the conference and must be independent of the circumstances of the offence.*

3. *The conference must be directed towards making a conference agreement.*

4. *If the child is not legally represented at the conference, the convenor must ensure the child:*
    a. *is informed of the right to obtain legal advice; and*
    b. *has reasonable information about how to obtain legal advice and a reasonable opportunity to do so.*

5. *The conference ends when a conference agreement is made, or the convenor brings the conference to an end because—*

    a. *the child fails to attend the conference as required; or*
    b. *the child denies committing the offence at the conference; or*
    c. *the convenor concludes a participant's conduct or failure will result in a conference agreement being unlikely to be made; or*
    d. *the convenor concludes a conference agreement is unlikely to be made within a time the convenor considers appropriate.*

6. *If the conference ends without a conference agreement but the convenor considers it is worthwhile persisting with efforts to make a conference agreement, the convenor may convene another conference.*

The aim of the conference is to reach a restorative justice agreement. That is an agreement reached at the conference in which the child admits committing the offence and in which the child undertakes to address the harm caused by the child committing the offence.[280] The agreement may not provide for the child to be treated more severely for the offence than if the child was sentenced by a court.[281] The chief executive may amend the conference agreement in a number of circumstances.[282]

If the child completes the obligations under a restorative justice agreement, the chief executive (youth justice) must notify the referring authority.[283]

[280] s36(1) YJA.
[281] s36(3) YJA.
[282] s37 YJA.
[283] s41 YJA.

The chief executive (youth justice) has the power to return the referral to the referring authority under s32 YJA:

1. *The chief executive may, by written notice given to the referring authority, return the referral if—*
    a. *the chief executive is unable to contact the child after reasonable inquiries; or*
    b. *the chief executive has made reasonable requirements of the child to attend an interview about the process and the child has failed to attend as required; or*
    c. *the chief executive considers it necessary for a victim of the offence to participate and the victim does not wish to participate or cannot be located after reasonable inquiries; or*
    d. *during the restorative justice process the child denies committing the offence to the chief executive, a convenor or victim of the offence; or*
    e. *the chief executive is satisfied that an appropriate restorative justice agreement is unlikely to be made within a time the chief executive considers appropriate; or*
    f. *the chief executive considers that the referral is unsuitable for a restorative justice process; or*
    g. *a conference is convened for the referral and the convenor ends the conference without an agreement being made.*

2. *The notice must state the reasons for returning the referral, and the reasons may be considered by a court in any later proceeding for sentencing the child for the offence.*

3. *The referring authority must make reasonable efforts to inform the child that the referral has been returned.*

If a referral is returned it can have different consequences depending on what type of referral was made. If made by a police officer, s24 YJA applies. The police officer may take no action, administer a caution to the child, refer for another restorative justice process or start a proceeding against a child. In relation to a court diversion referral by a court, s164(2) and (3) YJA apply. The charge must be brought back on before the court for sentencing and the court must not have regard to the referral being returned. The court's options are contained in s164(4) YJA. The court may take no further action, allow the child a further opportunity to comply with the agreement or sentence the child for the offence. In relation a pre-sentence referral under s165 YJA, the court must proceed with sentencing

the child for the offence.[284] If the order was made as part of a sentence order under s175 YJA, and the obligation was not complied with, it would be a contravention of the order subject to the processes in Division 12 YJA.

See Chapter 7.7.1: Court diversion referrals to restorative justice process, Chapter 11.7: Pre-Sentence Restorative Justice Referrals, Chapter 11.11.3: Restorative Justice Referrals and Chapter 11.13.4: Restorative Justice Order

See Appendix 5: DYJ Core Interventions and Initiatives

7.7.1 Court Diversion Referrals to Restorative Justice Process

Section 162(1) YJA requires that if a child enters a plea of guilty to a charge, the court **must** consider referring the offence to the chief executive (youth justice) for a restorative justice process instead of sentencing the child. However, a restorative justice order cannot be imposed for a "significant offence" listed in s175A YJA which was committed on or after 13 December 2024. [285]

The court can also refer as a pre-sentence referral to assist in the sentence decision or as part of a sentence order.

See also Chapter 11.11.3: Restorative Justice Referrals

Section 163 YJA sets out the power of a court to make a restorative justice referral to the chief executive (youth justice):

1. *The court may, by notice given to the chief executive, refer an offence to the chief executive for a restorative justice process if—*
    a. *the court considers the child is informed of, and understands, the process; and*
    b. *the child indicates willingness to comply with the referral; and*
    c. *the court is satisfied that the child is a suitable person to participate in a restorative justice process; and*
    d. *having regard to the deciding factors for referring the offence, the court considers the referral would—*

[284] s165(3) YJA.
[285] s175A(8) & s192A YJA

i. *allow the offence to be appropriately dealt with without making a sentence order (a court diversion referral);*

…….

e. *having regard to a submission by the chief executive about the appropriateness of the offence for a referral, the court considers the referral is appropriate in the circumstances.*

2. *In this section— deciding factors, for referring an offence, means—*
   a. *the nature of the offence; and*
   b. *the harm suffered by anyone because of the offence; and*
   c. *whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.*

The court can make such a referral if:

- The court considers that the child has been informed of, and understands, the process;
- The child indicates willingness to comply with the referral;
- The court is satisfied the child is a suitable person to participate in the process;
- Having regard to the deciding factors of the nature of the offence, the harm suffered by anyone because of the offence and whether the interests of the community and the child would be served by having the offence dealt with under the process, the court considers the referral would allow the offence to be appropriately dealt with without making a sentence order; and
- The court considers the referral is appropriate in the circumstances, having considered a submission by the chief executive (youth justice) about the appropriateness of the offence for a referral.

If the court makes a referral order under s163 YJA, the making of the referral brings the court proceeding for the offence to an end and the child is not liable to be further prosecuted for the offence, unless the chief executive returns the referral under s32(1) YJA or the chief executive advises the child failed to comply with any agreement made.[286]

[286] s164(1) YJA.

If the chief executive returns the referral pursuant to s32(1) YJA, the proper officer of the court **must** bring the charge back on before the court for sentencing and, in sentencing the child, the court must not have regard to the referral being returned.[287]

If the chief executive advises the child has failed to comply with an agreement made as a consequence of the referral, the proper officer of the court **must** bring the charge for the offence back before the court for sentencing and the court must either:[288]

(a) take no further action; or
(b) allow the child a further opportunity to comply with the agreement; or
(c) sentence the child for the offence.

If the court decides to take no further action, the court proceeding is brought to an end and the child is not liable to be further prosecuted for the offence.[289]

If the charge is brought back on for sentence, the proper officer of the court must give the child and the chief executive (youth justice) notice that the proceeding is to be heard by the court on a stated day.[290] The notice must include a warning that if the child does not appear on that day, a warrant for arrest may be issued.[291] If the child fails to appear, the court may issue a warrant for the arrest of the child.[292]

If a child discharges the obligations under a restorative justice agreement, the chief executive must notify the referring authority.[293]

[287] s164(3) YJA.
[288] s164(4) YJA.
[289] s164(9) YJA.
[290] s164(5) YJA.
[291] s164(6) YJA.
[292] s164(8) YJA.
[293] s41 YJA.

Chapter 8 – Police Procedures

8.1 Arrest

Section 365(1) PPRA makes it lawful for a police officer to arrest an adult without warrant in specified circumstances. Section 365(3) PPRA provides that it is lawful to arrest a child without a warrant if the police officer reasonably suspects the child is committing or has committed an offence. That power is subject to s13 YJA.

Section 13 YJA provides:

1. *A police officer may use the police officer's power of arrest under the Police Powers and Responsibilities Act 2000, section 365(3), without a warrant, to arrest a child for an offence without regard to sections 11 and 12 only if the police officer believes on reasonable grounds:*
    a. *the arrest is necessary—*
        i. *to prevent a continuation or a repetition of the offence or the commission of another offence; or*
        ii. *to obtain or preserve, or prevent concealment, loss, or destruction of, evidence relating to the offence; or*
        iii. *to prevent the fabrication of evidence; or*
        iv. *to ensure the child's appearance before a court; or*
    b. *the child is an adult; or*
    c. *the child is contravening section 278 or is unlawfully at large.*

2. *In deciding for subsection (1)(b) whether the police officer had reasonable grounds, a court may have regard to the child's apparent age and the circumstances of the arrest.*

3. *Also, a police officer may use the police officer's power of arrest under the Police Powers and Responsibilities Act 2000, section 365(2), without a warrant, to arrest a child without regard to sections 11 and 12.*

4. *Also, a police officer may use the police officer's power of arrest under a warrant issued under the Bail Act 1980 without regard to sections 11 and 12.*

5. *To remove any doubt, it is declared that this section does not affect a police officer's power under the Police Powers and Responsibilities Act 2000, section 365(3), to arrest a child without warrant for a serious offence*.

Sections 11 and 12 YJA provide for alternatives to proceeding against a child and the preferred way of starting proceedings for other than a serious offence. Section 13(5) YJA specifies that a police officer may arrest a child without a warrant under s365(3) PPRA for a serious offence.

See also Chapter 7: Diversion

Section 365(2) PPRA makes it lawful to arrest a person without warrant if the police officer reasonably suspects the person has committed or is committing an indictable offence, for the purposes of questioning or investigating the offence. Bail Act warrants are issued in relation to various contraventions in relation to bail matters. In relation to these matters, the police officer can arrest without warrant without having regard to the requirements of ss11 and 12 YJA.

Section 367 PPRA makes it lawful for a police officer to arrest without a warrant a person in relation to specified breaches in relation to bail. Before arresting a child, the police officer must consider whether, in all the circumstances, it would be more appropriate to make an application under the *Bail Act 1980* (BA) for a variation or a revocation of bail.[294] Section 367(4) PPRA does not apply in relation to circumstances where a police officer reasonably suspects the child is likely to contravene the condition for the child's appearance or another condition of the undertaking or the child is likely to fail to appear or the child is harassing or interfering with a witness in relation to the offence.[295] Pursuant to s59A YJA, the police officer must consider alternatives to arrest for contravention of bail conditions.

Section 59A YJA provides:

1. *This section applies if—*
    a. *a police officer reasonably suspects a child has contravened or is contravening a condition imposed on a grant of bail to the child; and*
    b. *the contravention is not an offence.*

[294] s367(4) PPRA.
[295] s367(5) PPRA.

2. *This section also applies if a police officer reasonably suspects a child is likely to contravene a condition imposed on a grant of bail to the child.*

3. *Before arresting the child under the Police Powers and Responsibilities Act 2000, section 367(3)(a)(i) in relation to the contravention or likely contravention, a police officer must first consider whether, in all the circumstances, it would be more appropriate to do 1 of the following—*
    a. *to take no action;*
    b. *to warn the child of the action a police officer may take under paragraph (c) or the Police Powers and Responsibilities Act 2000, section 367(3) in relation to a contravention of a condition imposed on the grant of bail;*
    c. *if the contravention or likely contravention is in relation to a condition other than a condition for the child's appearance before a court—to make an application under the Bail Act 1980 to vary or revoke the bail.*

4. *For subsection (3), the circumstances the police officer must consider include the following—*
    a. *the seriousness of the contravention or likely contravention;*
    b. *whether the child has a reasonable excuse for the contravention or likely contravention;*
    c. *the child's particular circumstances of which the police officer is aware;*
    d. *other relevant circumstances of which the police officer is aware.*

5. *If a police officer considers that, in all the circumstances, it would be more appropriate to act as mentioned in subsection (3)(a), (b) or (c), then a police officer must do so.*

6. *In this section—*
    ***reasonably suspects** means suspects on grounds that are reasonable in the circumstances.*

Sections 369-372 PPRA contain provisions in relation arrest on a warrant.

Section 382 PPRA provides for a notice to appear as an alternative to arrest. For commencing a proceeding for an indictable or simple offence or a breach of duty, see ss42-53 *Justices Act 1886* (JA) and ss 42-46 YJA.

The preferred way for a police officer to start a proceeding against a child is by way of complaint and summons or notice to appear.[296] A notice to appear must be served discretely on a child.[297] Pursuant to s389 PPRA the court may issue a warrant to arrest a person who fails to answer a notice to appear. In relation to a child arrested on such a warrant, the bail and custody provisions of the YJA apply.[298]

Section 392 PPRA provides that a police officer who arrests a child or has served a notice to appear on a child, must promptly advise the parent of the child, the chief executive (communities) and the chief executive (child safety) if that chief executive has custody or guardianship of the child under the CPA.

See also Chapter 5.9.2-5.9.6 Queensland Police Service Operational Procedures Manual

8.2 Police Questioning of a Child

Sections 396-441 PPRA govern police procedure when interviewing a person about an indictable offence.

Section 421 PPRA relates to the questioning of children in relation to indictable offences. It provides:

1. *This section applies if—*
    a. *a police officer wants to question a relevant person; and*
    b. *the police officer reasonably suspects the person is a child.*

2. *Unless the police officer is aware the child has arranged for a lawyer to be present during questioning, or has spoken, under subsection (3)(a), to a lawyer acting for the child, the police officer must—*
    a. *inform the child that a representative of a legal aid organisation will be notified that the child is in custody for the offence; and*
    b. *as soon as reasonably practicable and before questioning starts, notify, or attempt to notify a representative of the legal aid organisation that the child is in custody for the offence.*

3. *The officer must not question the child unless—*

[296] s12 YJA.
[297] s383 PPRA.
[298] s389(7) PPRA.

a. *before questioning starts, the police officer has, if practicable, allowed the child to speak to a support person chosen by the child in circumstances in which the conversation will not be overheard; and*
b. *a support person is present while the child is being questioned.*

4. *However, the child may not choose as a support person a person against whom the offence is alleged to have been committed.*

5. *If the police officer considers the support person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during the questioning.*

Section 421(3)(b) PPRA requires a support person to be present while the child is being questioned.

See also Chapters 5.9.1, 6.3 and 6.3.1-5 Queensland Police Service Operational Procedures Manual

Section 29 YJA provides that a support person **must** be present at the time and place a statement was made by the defendant child in order for the statement to be admissible against the child in relation to an indictable offence. The court **must not** admit the statement into evidence unless the court is satisfied that a support person was present.

Section 29 YJA provides:

1. *In a proceeding for an indictable offence, a court must not admit into evidence against the defendant a statement made or given to a police officer by the defendant when a child, unless the court is satisfied a support person was present with the child at the time and place the statement was made or given.*

2. *Subsection (1) does not apply if—*
   a. *the prosecution satisfies the court there was a proper and sufficient reason for the absence of a support person at the time the statement was made or given; and*

Examples—

1 There was a reasonable suspicion that allowing a support person to be present would result in an accomplice or accessory of the relevant person taking steps to avoid apprehension.

2 A support person was excluded under the Police Powers and Responsibilities Act 2000.

b. *the court considers that, in the particular circumstances, the statement should be admitted into evidence.*

3. *This section does not require that a police officer permit or cause to be present when a child makes or gives the statement a person the police officer suspects on reasonable grounds—*
   a. *is an accomplice of the child; or*
   b. *is, or is likely to become, an accessory after the fact;*

   in relation to the offence or another offence under investigation.

4. *This section does not limit the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion."*

"Support person" for a child is defined in Schedule 4 YJA to mean the same as defined in Schedule 6 PPRA:

(b) for a child—

(i) a parent or guardian of the child; or

(ii) a lawyer acting for the child; or

(iii) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or

(iv) an adult relative or friend of the child who is acceptable to the child; or

(v) if the child is an Aboriginal person or a Torres Strait Islander and no-one mentioned in subparagraphs (i) to (iv) is available—a person whose name is included in the list of support persons and interpreters; or

(vi) if no-one mentioned in subparagraphs (i) to (v) is available—a justice of the peace, other than a justice of the peace who is a member of the Queensland Police Service or a justice of the peace (commissioner for declarations)"

See *R v C* [1997] 2 Qd R 465 for the exercise of the common law discretion referred to in s29(4) YJA and the exclusion of a confession because of the shortcomings of the support person. See also *R v T and M; ex parte AG* [1999] 2 Qd R 424, *R v R and T* [2009] QDC 425 and *R v L* [2009] QDC 426.

There is a discretion to admit such a statement if the prosecution satisfies the court there was a proper and sufficient reason for the absence of a support person and the court considers that, in the particular circumstances, the statement should be admitted.[299]

8.2.1 List of Inappropriate Support Persons under the PPRA

Pursuant to s428 PPRA, the following persons may be inappropriate support persons if:

- The person's ability is substantially impaired by something they have ingested (e.g., drugs or alcohol);
- The person has impaired capacity, and the impairment prevents the person from acting in the child's best interests;
- The person is, or appears to be, unwilling because of illness, injury, pain, tiredness or a similar cause;
- The person has an affiliation, association or other relationship with a police officer questioning the child;
- The person has a relationship of authority with the relevant person that may prevent the person from acting in the best interests of the relevant person;
    - Includes teachers who have previously disciplined the child or carers who have called the police on the child
- The person is a victim of the offence for which the relevant person is being questioned or a friend of the victim;
    - This includes being a carer at a residential facility where the victim is an employee of that facility, or in cases of property damage, the carer's employer is the victim
- The person witnessed the commission of the offence for which the relevant person is being questioned.

8.3 Police Removal Order

Section 399 PPRA provides that a police officer may apply to a Magistrate for a removal order for a child held in custody under the YJA (either on remand or serving a sentence) into the custody of the police officer for the questioning of the child or the investigation of an indictable offence the child is suspected of committing.

Section 399 PPRA provides:

1. *This section applies to a person who is suspected of having committed an indictable offence and is in custody under the Corrective Services Act 2006 or the Youth Justice Act 1992—*

[299] s29(2) YJA.

a. *for a charge of an offence that has not been decided; or*

b. *under a sentence for a term of imprisonment or, for a child, a detention order.*

2. *A police officer may apply to a magistrate for an order (**removal order**) for the removal of the person in custody in a prison or detention centre to the custody of a police officer (**police custody**) for—*

   a. *questioning the person about the offence; or*

   b. *the investigation of the offence.*

3. *The application may include an application for an extension of the detention period even though the detention period has not started.*

4. *The application must be—*

   a. *made in person; and*

   b. *sworn and state the grounds on which the order is sought.*

5. *The magistrate may refuse to consider the application until the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.*

   Example—

   The magistrate may require additional information supporting the application to be given by statutory declaration.

The Magistrate may refuse to consider the application until the police officer gives the Magistrate all information required.[300]

A Magistrate may make a removal order only if the Magistrate is satisfied that putting the person in the custody of the police officer is reasonably necessary:

- For questioning the person about the offence; or
- The investigation of the offence.[301]

[300] s399(5) PPRA.
[301] s401 PPRA.

Section 402 PPRA specifies what the removal order must state:

A removal order must state the following—

a) *the name of the person the subject of the order (the **relevant person**) and the prison or detention centre in which the person is in custody;*
b) *that the chief executive (corrective services) or, if the relevant person is in custody in a detention centre, the person in charge of the detention centre must release or make arrangements for the release of the relevant person into the custody of the police officer named in the order;*
c) *the name of the police officer who will have control of the relevant person while the person is absent from the prison or detention centre;*
d) *the reason for the relevant person's removal;*
e) *the place, if known, to which the relevant person is to be removed;*
f) *that the relevant person must be returned to the prison or detention centre as soon as reasonably practicable after the detention period ends;*
g) *any other conditions the magistrate considers appropriate.*

See also Chapter 2.5.6, Queensland Police Service Operational Procedures Manual

8.4 Police Diversion

A police officer has a number of diversion options: release without charge, caution, referral for a restorative justice process, drug diversion or a graffiti removal diversion.[302]

See also Chapter 7: Diversion and Chapter 5.3-5.8 Queensland Police Service Operational Procedures Manual

The Childrens Court may dismiss a charge against a child if satisfied that the child should have been cautioned instead of being charged or no action should have been taken against the child.[303] The court may dismiss a charge if:

- The child pleads guilty to the charge; and

[302] s11 YJA.
[303] s21 YJA.

- Application is made by or on behalf of the child; and
- The court is satisfied that the child should have been cautioned or no action should have been taken against the child.

If so satisfied, the court may dismiss the charge instead of accepting the plea of guilty. In deciding the issue, the court may have regard to any other cautions administered to the child and any previous conference agreements in restorative justice processes that have been made by the child.[304] If the charge is dismissed because the child should have been cautioned, the court may administer a caution or direct a police officer to administer the caution.[305]

See also Chapter 7: Diversion

The Childrens Court may dismiss a charge against a child if satisfied that the offence should have been referred to the Chief Executive for a Restorative Justice Process under s22 YJA.[306]

The Court may dismiss the charge:

- If the child pleads guilty to the charge; and
- If an application is made by or behalf of the child; and
- If the Court is satisfied the offence should have been referred under s22 YJA regardless of whether or not the child admitted to committing the offence to the police officer.

If so satisfied, the Court may dismiss the charge instead of accepting the plea of guilty. In deciding that issue, the Court may have regard to any other cautions administered to the child and any previous restorative justice agreements which have been made by the child.[307] If the charge is dismissed, the Court may refer the offence to the Chief Executive for a restorative justice process.[308] The police officer is taken to be the referring authority for the restorative justice process.[309]

The dismissal of the charge does not prevent a police officer restarting a proceeding against the child for the offence or a Court sentencing the child for the offence if the Chief Executive returns the referral

[304] s21(2) YJA.
[305] s21(3) YJA.
[306] s24A YJA.
[307] s24A(1A) YJA.
[308] s24A(2) YJA.
[309] s24A(4) YJA.

under s32(1) YJA (where no agreement has been reached) or the child fails to comply with any agreement made as a consequence of the referral.[310]

If the Court decides to make any order for dismissal under s149 JA and issue a certificate under that section (which would be a bar to any subsequent complaint about the same matter) or decides to give the child a certificate of dismissal under s700 CC (in relation to an offence punishable on summary conviction, whether indictable or not, and which would be a bar to any further prosecution on the same charge), the certificate cannot issue until the child discharges any obligations under the restorative justice agreement.[311]

See also Chapter 7.5: Court may dismiss a charge if offence should have been referred to restorative justice process

8.5 Bail

The powers of the police officer to grant bail are set out in s7 BA and Part 5, ss 47-59A YJA.

See also Chapter 6.6: Police Powers with Respect to Bail.

Section 19B BA provides that, if a decision has been made about the release of a person under Part 5 YJA, the defendant, complainant or prosecutor may apply to the reviewing court for a review of the decision. If the decision was made by a police officer, the reviewing court is a Magistrates Court.[312] The decision made by a Magistrate is subject to a review by a single Judge of the Supreme Court by leave.[313]

Section 19B BA provides:

1. *This section does not apply to the following decisions about release under this part—*
    a. *a decision by the Supreme Court;*
    b. *a decision under section 10(2);*
    c. *a decision by a magistrate acting as a reviewing court under this section.*

[310] s24A(3) YJA.
[311] s24A(5) YJA.
[312] s19B(3) BA.
[313] s19C BA.

2. *If a decision has been made about release under this part or the Youth Justice Act 1992, part 5, for a defendant, the defendant, complainant or prosecutor or a person appearing on behalf of the Crown may apply to the reviewing court for a review of the decision.*

3. *The reviewing court is—*
    a. *for a decision by a police officer or justice who is not a magistrate—a Magistrates Court constituted by a magistrate; or*
    b. *for any other decision—the Supreme Court constituted by a single judge.*

4. *A complainant, prosecutor or a person appearing on behalf of the Crown who makes an application under subsection (2) must take reasonable steps to inform the defendant of the time and place for the hearing of the application.*

5. *The hearing may proceed in the defendant's absence, if the reviewing court is satisfied the steps were taken.*

6. *On the review, additional or substitute evidence or information may be given, and the reviewing court may make any order it considers appropriate.*

7. *However, the orders that may be made under subsection (6) are limited by sections 13, 16, 16A and 17(1A) and, if the defendant is a child, the Youth Justice Act 1992, sections 48, 48AD, 48AE and 48A.*

8. *The person or court that made the decision under review must give the reviewing court any documents in the person's or court's possession that may be relevant to the review.*

9. *The reviewing court must decide an application under this section as soon as is reasonably practicable.*

On the review, additional or substitute evidence or information may be given, and the Court may make any order it considers appropriate.[314] The orders made in relation to a child are limited by ss48, 48AAA, 48AA, 48AE and 48A YJA.[315]

[314] s19B(6) BA.
[315] s19B(7) BA.

Section 19 BA provides for an application by defendant held in custody to the appropriate court for an order granting or varying bail. Section 29A BA sets out the procedures in respect to defendants arrested on a warrant issued pursuant to s21(7) BA or arrested under s367 PPRA. The procedures extend to children. Section 30 BA provides for an application by a complainant or prosecutor to vary or revoke bail granted to a defendant. Section 30(1A) BA provides for an application to the Childrens Court by a complainant or prosecutor, to vary or revoke bail granted to a child by a police officer under the YJA. The Court may vary or revoke bail if it is of the opinion, it is necessary or in the interests of justice to do so.

Section 30 BA provides:

1. *Bail granted to a defendant on an undertaking may be varied or revoked, on the application of a complainant, prosecutor or person appearing on behalf of the Crown, by—*
    a. *the court that granted the bail; or*
    b. *the court before which an indictment has been presented; or*
    c. *the Supreme Court;*

    if the court is of the opinion that it is necessary or desirable in the interests of justice to do so.

    1A. Also, bail granted to a defendant on an undertaking by a police officer authorised by this Act or the Youth Justice Act 1992 to grant bail may be varied or revoked, on the application of a complainant, prosecutor or person appearing on behalf of the Crown, by—

        a) *if the defendant is required to appear before the Childrens Court—the Childrens Court; or*
        b) *a Magistrates Court;*

    if the court is of the opinion that it is necessary or desirable in the interests of justice to do so.

2. *An application under this section may be made ex parte—*
    a. *after notice of intention to make the application has been given to the defendant and the defendant's surety or sureties; or*
    b. *without giving notice pursuant to paragraph (a) if the defendant—*
        i. *has absconded or if the court is satisfied that the defendant is likely to abscond; or*

ii. *has broken, or if the court is satisfied that the defendant is likely to break, a condition of the defendant's undertaking.*

3. *If an application under this section is made in the manner permitted by subsection (2)(b), the court may—*
    a. *order that notice of the application be given to the defendant and the defendant's surety or sureties notifying that if the defendant fails to surrender into custody in accordance with the notice a warrant may issue for the apprehension of the defendant; or*
    b. *forthwith issue a warrant to apprehend the defendant and bring the defendant before the court to show cause why the defendant's bail should not be varied or revoked.*

4. *If on the date and at the time and place specified in a notice given pursuant to subsection (2)(a) or (3)(a) the defendant—*
    a. *fails to surrender into custody, the court may issue a warrant for the defendant's apprehension; or*
    b. *surrenders into custody and fails to satisfy the court that it is not necessary or desirable in the interests of justice that the defendant's bail be varied or revoked the court may—*
        i. *vary the bail in such manner as it thinks fit; or*
        ii. *revoke the bail; or*

    c. *surrenders into custody and satisfies the court that it is not necessary or desirable in the interests of justice that the defendant's bail be varied or revoked the court may order that the defendant be released from custody on the defendant's original undertaking.*

5. *A surety or sureties to whom notice is given under subsection (2)(a) or (3)(a) shall be entitled to appear at the hearing of the application and give evidence and the court may if it thinks fit adjourn the hearing to enable the surety or sureties to do so.*

6. *If the only ground for making an application under this section is that the defendant has broken, or is likely to break, a condition of the defendant's undertaking imposed under section 11(9) or 11AB, the court may vary the defendant's bail, including by rescinding the condition imposed under section 11(9) or 11AB, but may not revoke the bail.*

7. *This section does not limit the powers of a police officer under the Police Powers and Responsibilities Act 2000, section 367(3) to arrest a defendant who is a child.*

Note that in relation to s30BA(6) conditions under ss11(9) and 11AB BA do not apply to children as the conditions of bail with respect to children are contained in ss52 and 52A YJA.

See also Chapter 6.6: Police Powers with Respect to Bail and Chapter 8.1: Arrest

8.6 Starting Proceedings

Section 12 YJA provides that a police officer, starting a proceeding against a child for other than a serious offence, must start it by way of complaint and summons or notice to appear, unless otherwise provided by the YJA. **"Starting a proceeding against a child"** includes obtaining a warrant for the arrest of the child and arresting without a warrant.[316]

Section 11 YJA provides that a police officer must consider alternative diversionary options before starting a proceeding against a child. The police officer may also take the diversionary options of taking no action, administering a caution, or referring for a restorative justice process for a serious offence.[317]

See Chapter 7: Diversion

Section 13 YJA permits a police officer to use the powers of arrest under the PPRA to arrest a child without a warrant in certain circumstances.

See Chapter 8.1: Arrest

As to police powers of arrest see Chapter 14 of the PPRA.

Sections 42 – 46 YJA provide for the complaint and summons procedure for proceedings other than those instituted by a police officer.

In relation to a police officer discontinuing an arrest, see Chapter 6: Release of Child from Custody and Bail and Chapter 7: Diversion

[316] s7 YJA.
[317] s11(7) YJA.

See also Chapter 5.9, Queensland Police Service Operational Procedures Manual

8.7 Other Court Applications

8.7.1 Order for Removal from Detention Centre for Purpose of Questioning or Investigation

Section 399 PPRA provides for an application to a Magistrate for the removal of a child from detention for questioning or investigation of an indictable offence.

See Chapter 8.3: Police Removal Order

8.7.2 Identifying Particulars

Section 25 YJA permits a police officer to apply to a Childrens Court Magistrate for an order to take identifying particulars of a child who has been charged without being arrested.

Section 25 YJA provides:

1. *This section applies if a child has been charged, without being arrested, with an indictable offence or an offence against any of the following Acts that is an arrest offence—*
    - *Criminal Code*
    - *Drugs Misuse Act 1986*
    - *Police Service Administration Act 1990*
    - *Regulatory Offences Act 1985*
    - *Summary Offences Act 2005*
    - *Weapons Act 1990.*

2. *A police officer (the **applicant**) may apply to a Childrens Court magistrate (the **court**) to have all or any of the identifying particulars of the child taken.*

3. *The applicant must give notice of the application to—*
    a. *the child; and*
    b. *a parent of the child, unless a parent cannot be found after reasonable inquiry; and*
    c. *the chief executive.*

4. *The court may decide the application in the absence of a person mentioned in subsection (3) if the court is satisfied that subsection (3) has been complied with.*

5. *On the application—*
    a. *the applicant and anyone mentioned in subsection (3) is entitled to be heard and to provide evidence; and*
    b. *the court may act on statements of information and belief.*

6. *The court may order the identifying particulars to be taken if it is satisfied, on the balance of probabilities, of all the following facts-*
    a. *someone has committed the charged offence;*
    b. *there is evidence of identifying particulars of the offender that are of the same type as the identifying particulars the applicant seeks to have taken from the child;*
    c. *the child is reasonably suspected of being the offender;*
    d. *the order is necessary for the proper conduct of the investigation of the offence.*

7. *The order must state the investigation for which the order is made.*

8. *If the child will not be in custody when the particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take the identifying particulars.*

9. *A child must not contravene the order. Maximum penalty (subject to part 7)—10 penalty units.*

10. *If the child will be in custody when the particulars are taken, the order must require the particulars to be taken at the place the child is held in custody.*

11. *This section is subject to section 26.*

12. *In this section—*

    ***charged offence** means the offence with which the child is charged or an offence arising out of the same, or the same set of, circumstances.*
    ***parent**, of a child, includes someone who is apparently a parent of the child."*

"Identifying particulars" are defined in Schedule 4 YJA to be those specified in Schedule 6 PPRA:

> *"**Identifying particulars**, of a person, means any of the following—*
>
> *a) palm prints;*
> *b) fingerprints;*
> *c) handwriting;*
> *d) voiceprints;*
> *e) footprints;*
> *f) a photograph of the person's identifying features;*
>
> *Examples for paragraph (f)—*
> *1 photographs of scars or tattoos*
> *2 photographs of the person*
>
> *g) a measurement of any part of the person's body, other than the person's genital or anal area, buttocks or, for a female, breasts.*

The application may be heard in the absence of the child if appropriate notices have been given.[318] The Court may act on evidence heard and statements of information and belief.[319]

The Court may order the identifying particulars to be taken if satisfied on the balance of probabilities that:

- Someone has committed the charged offence; and
- There is evidence of identifying particulars of the offender that are of the same type as the identifying particulars of the child that the applicant seeks; and
- The child is reasonably suspected of being the offender; and
- The order is necessary for the proper conduct of the investigation of the offence.

The order must:

- State the investigation for which the order is made;
- If the child is not in custody, require the child to report to a police officer at a certain time for the particulars to be taken; and

[318] s25(4) YJA.
[319] s25(5) YJA.

- If the child is in custody, require the particulars to be taken where the child is being held in custody.[320]

It is an offence to not comply with the order requiring reporting.[321]

Section 26 YJA requires a support person be present with the child when the identifying particulars are taken pursuant to s25 YJA [322] except in particular circumstances.

Section 26 YJA provides:

1. *In a proceeding for an offence, a court must not admit into evidence against a defendant identifying particulars taken from the defendant under section 25 unless the court is satisfied a support person chosen by the child was present when the identifying particulars were taken.*

2. *Subsection (1) does not apply if-*
    a. *the prosecution satisfies the court there was proper and sufficient reason for the absence of a support person when the particulars were taken; and*
    b. *the court considers that, in the particular circumstances, the particulars should be admitted into evidence.*

3. *This section does not require that a police officer permit or cause to be present when the identifying particulars are taken a person whom the police officer suspects on reasonable grounds—*
    a. *is an accomplice of the child; or*
    b. *is, or is likely to become, an accessory after the fact;*

    for the offence or another offence under investigation.

4. *Also, this section does not require that a police officer permit or cause to be present when the identifying particulars are taken a parent of the child whom the police officer suspects on reasonable grounds is a person against whom the offence under investigation is alleged to have been committed.*

[320] s25(7)-(10) YJA.
[321] s25(9) YJA.
[322] s25(11) YJA.

5. *This section does not limit the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.*

A Court **must not** admit into evidence the identifying particulars taken pursuant to s25 YJA unless satisfied a support person chosen by the child was present except:

- Where the prosecution satisfies the court there was proper and sufficient reason for the absence of a support person; and
- The Court considers that, in the particular circumstances, the particulars should be admitted.

Section 27 YJA provides for the destruction of the identifying particulars taken under court order if a sentence order is not made in relation to the investigation. See also s474(4A) PPRA in relation to when a restorative justice referral is made and the destruction of identifying particulars.

See also Chapter 5.11.1, Queensland Police Service Operational Procedures Manual

8.8 Police Powers under PPRA to take Identifying Particulars

Section 25 YJA provides that the provisions of s25-27 YJA do not limit the powers of a police officer under the PPRA authorising the taking of someone's identifying particulars to the extent to which those provisions apply to a child.

Section 467 PPRA provides the power of a police officer to take identifying particulars of a person in custody after arrest for an "identifying particulars offence".[323] That power is not limited to adults in custody as are ss468 – 471 PPRA.

See also Chapter 5.11, Queensland Police Service Operational Procedures Manual.

8.9 Court Orders if Child Found Guilty of Specified Offence

Section 255 YJA empowers the court to order that a child's identifying particulars be taken if the child has been found guilty of an indictable offence or an offence against specified Acts. The order may be

[323] Defined in Schedule 6 PRRA.

in addition to any sentence order.[324] "**Identifying particulars"** for the purpose of s255 YJA are confined to fingerprints and palm prints.[325]

Section 255 YJA provides:

1. *This section applies if a child is found guilty before a court of an indictable offence or an offence against any of the following Acts that is an arrest offence—*
    a. *the Criminal Code;*
    b. *the Drugs Misuse Act 1986;*
    c. *the Police Service Administration Act 1990;*
    d. *the Regulatory Offences Act 1985;*
    e. *the Summary Offences Act 2005;*
    f. *the Weapons Act 1990.*

2. *The court, in addition to making a sentence order against the child, may make an order that the child's identifying particulars be taken.*

3. *If the child will not be in custody when the particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take the identifying particulars.*

4. *A child must not contravene the order. Maximum penalty—10 penalty units.*

5. *If the child will be in custody when the particulars are to be taken, the order must require them to be taken at the place the child is held in custody.*

6. *In this section—*

    ***identifying particulars** means fingerprints and palm prints."*

See also Chapter 5.11.4, Queensland Police Service Operational Procedures Manual.

[324] s255(2) YJA.
[325] s255(6) YJA.

8.10 Forensic Orders

Section 447 PPRA provides that a forensic procedure may be performed on a person if the person gives informed consent[326] or it is performed under a forensic procedure order.

The forensic procedure may relate to a person who is suspected of committing an offence.[327]

Sections 448-456 PPRA relate to the obtaining of consent. Section 450 PPRA provides for special requirements for obtaining consent from a child who is at least 14 years of age. Section 451 PPRA provides for special requirements in relation to a child under 14 years of age.

Sections 457 – 466 PPRA provide for the making of forensic procedure orders if a police officer is satisfied that performing such a procedure on a person suspected of committing an indictable offence may provide evidence of commission of the offence.[328]

Under s458 PPRA, a police officer may apply to a Magistrate for a forensic procedure order authorising a qualified person to perform an intimate or non-intimate forensic procedure or both on the person named in the application.

"Intimate forensic procedure" and **"non-intimate forensic procedure"** are defined in Schedule 6 PPRA.

If the person is a child, the application must be made to a Childrens Court Magistrate.[329]

A police officer may not apply for a forensic procedure in relation to a child if:

(1)

- The only purpose is to obtain authority to take a sample for DNA analysis; and
- It is practicable to make an application under s488 PRRA for an order to take a DNA sample from the child; and
- It is likely that an order made under that section can be given immediate effect.[330]

[326] s453 PPRA.
[327] s448 PPRA.
[328] s457 PPRA.
[329] s458(2) PPRA.
[330] s457(3) PPRA.

OR

(2)

- The only purpose is to obtain authority to take an identifying particular of a child within the meaning of s25 YJA; and
- It is practicable to make an application under s25 YJA for an order to take the identifying particular from the child; and
- It is likely that an order made under that section can be given immediate effect.[331]

See also Chapter 8.8: Police Powers under PPRA to take Identifying Particulars for s25 YJA applications and Chapter 8.11: DNA Samples

Notice of the application must ordinarily be given.[332] If the person does not appear, the application may be heard in the person's absence.[333]

A Magistrate may refuse to consider the application until the police officer gives the Magistrate the information required.[334]

Section 461 PPRA provides for the making of the order:

1. *A magistrate may make a forensic procedure order in relation to a person only if satisfied on the balance of probabilities there are reasonable grounds for believing performing the forensic procedure concerned on the person may provide evidence of the commission of an indictable offence the person is suspected of having committed (a **suspected offence**) and carrying out the forensic procedure is justified in the circumstances.*

2. *In deciding whether performing the forensic procedure on the person is justified in the circumstances, the magistrate must balance the rights and liberties of the person and the public interest.*
3. *In balancing those interests the magistrate may have regard to any of the following matters*
    a. *the seriousness of the circumstances surrounding the commission of the suspected offence and the gravity of that offence;*

[331] s457(4) PRRA.
[332] s459 PPRA.
[333] s459(4) PPRA.
[334] s458(4) PPRA.

b. *the degree of the person's alleged participation in the commission of the suspected offence;*
c. *the age and physical and mental health of the person, to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);*
d. *if the person is a child or a person with impaired capacity—the welfare of the person;*
e. *whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the person committed the suspected offence;*
f. *if the person has been asked for and refused to give a forensic procedure consent in relation to the suspected offence—the reasons for the refusal to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);*
g. *if the person is in custody for the suspected offence—*
    i. *the period for which the person has already been detained; and*
    ii. *the reason for any delay in applying for the forensic procedure order;*
h. *any other matter the magistrate considers relevant to balancing those interests.*

Section 462 PPRA provides that the forensic procedure order must state:

1. *A magistrate may make a forensic procedure order in relation to a person only if satisfied on the balance of probabilities there are reasonable grounds for believing performing the forensic procedure concerned on the person may provide evidence of the commission of an indictable offence the person is suspected of having committed (a **suspected offence**) and carrying out the forensic procedure is justified in the circumstances.*

2. *In deciding whether performing the forensic procedure on the person is justified in the circumstances, the magistrate must balance the rights and liberties of the person and the public interest.*

3. *In balancing those interests the magistrate may have regard to any of the following matters*
    a. *the seriousness of the circumstances surrounding the commission of the suspected offence and the gravity of that offence;*
    b. *the degree of the person's alleged participation in the commission of the suspected offence;*

c. *the age and physical and mental health of the person, to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);*
d. *if the person is a child or a person with impaired capacity—the welfare of the person;*
e. *whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the person committed the suspected offence;*
f. *if the person has been asked for and refused to give a forensic procedure consent in relation to the suspected offence—the reasons for the refusal to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);*
g. *if the person is in custody for the suspected offence—*
    i. *the period for which the person has already been detained; and*
    ii. *the reason for any delay in applying for the forensic procedure order;*
h. *any other matter the magistrate considers relevant to balancing those interests.*

Section 464 PPRA empowers a police officer to detain the person or direct the person to attend at a stated place and time to enforce the forensic procedure order.

Section 514 PPRA provides that a police officer may apply to a Magistrate for an order to detain a person if the police officer reasonably believes that a person has failed to comply with a reporting notice for a forensic procedure. A Magistrate may make the order if satisfied on the balance of probabilities that the person failed to comply with the reporting notice and making the order is justified in the circumstances.[335]

8.11 DNA Samples

Sections 475-494 PPRA relates to forensic procedures involving DNA samples. Such samples may be taken with the consent of the person to the forensic process.[336] The consent of a child is covered in ss450 and 451 PPRA. If a consent authorises the taking a DNA sample from a child under 14 years of age, it may only be used for the purpose for which the consent was given.[337] Section 494 PPRA provides limitations on the use of the DNA sample if beyond the consent given.

[335] s514(3) PPRA.
[336] ss448-456 PPRA.
[337] s479 PPRA.

Section 488 PPRA empowers a police officer to apply to the Childrens Court for an order to take a DNA sample from a child if the police officer has started or is continuing a proceeding against the child for an indictable offence and the police officer considers it reasonably necessary to take the sample.

Section 488 PPRA provides:

1. *This section applies if a police officer-*
    a. *starts or continues a proceeding for an indictable offence against a child by arrest, notice to appear or complaint and summons; and*
    b. *considers it is reasonably necessary to take a DNA sample from the child for DNA analysis.*

2. *The police officer may apply to the Childrens Court for an order authorising a DNA sampler to take a DNA sample from the child for DNA analysis.*

3. *The police officer must give notice of the application to—*
    a. *the child; and*
    b. *a parent of the child, unless a parent cannot be found after reasonable inquiry; and*
    c. *the chief executive (communities) or a person, nominated by that chief executive for the purpose, who holds an office within the department for which that chief executive has responsibility.*

4. *The court may order the taking of a DNA sample if satisfied—*
    a. *an indictable offence has been committed; and*
    b. *the child is reasonably suspected of having committed the offence; and*
    c. *a DNA analysis may tend to prove or disprove the child's involvement in the offence.*

5. *If the child will not be in custody when the sample is proposed to be taken, the order—*
    a. *must require the child to report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and*
    b. *may authorise a police officer to detain the child and take the child to an appropriate place to enable a DNA sample to be taken from the child for DNA analysis if the child does not comply with paragraph (a).*

6. *A child named in an order made under subsection (4) that contains a requirement mentioned in subsection (5) must not contravene the order unless the child has a reasonable excuse.*

   Maximum penalty—10 penalty units.

7. *For subsection (6)—*
   a. *it is a reasonable excuse for the child to contravene the order that a copy of the order has not been given to the child; and*
   b. *it is not a reasonable excuse for the child to contravene the order that complying with it may tend to incriminate the child.*

8. *A DNA sampler may take a DNA sample from the child if the child is in custody, attends at a police station or police establishment as required under an order made under subsection (5) or is detained under an order made under that subsection.*

9. *To give effect to an order made under subsection (4) or (5)(b), a police officer may detain the child.*

10. *If the child is not already in custody, the time for which the child may be detained is—*
    a. *1 hour; or*
    b. *a longer reasonably necessary time, having regard to the particular circumstances.*

11. *In this section—*

    ***parent**, of a child, includes an approved carer of the child under the Child Protection Act 1999.*

The Childrens Court may make the order if satisfied:

- An indictable offence has been committed; and
- The child is reasonably suspected of having committed the offence; and
- A DNA analysis may tend to prove or disprove the child's involvement in the offence.[338]

[338] s488(4) PPRA.

If the child is not in custody, the order must require the child to report to a police officer at a stated place and time. The order may authorise a police officer to detain the child if the child contravenes that requirement.[339]

It is an offence to contravene that requirement without reasonable cause.[340]

Again, s514 PPRA provides for an application to a Magistrate for an order to detain a person who has not complied with a reporting notice.

See Chapter 8.10: Forensic Orders

8.12 Non-Medical Examinations

Sections 495-500 PPRA relate to non-medical examinations authorised to be made by a police officer. They only relate to examinations of adults.[341]

8.13 Disease Test Orders

Chapter 18 PPRA provides for blood and urine testing of persons suspected of committing sexual or other serious assault offences. The purpose is to ensure victims receive appropriate medical, physical, and psychological treatment.[342] The offences covered by the chapter are set out in s538 PPRA.

Section 540 PPRA empowers a police officer to apply to the Childrens Court for a disease test order authorising the taking of a sample of blood and urine from the child, if the police officer arrests a child reasonably suspected of committing a relevant offence.[343] Notice must be given of the application to the child, a parent (unless a parent cannot be found) and the Chief Executive (Communities).[344]

The Magistrate may refuse to consider the application unless the police officer gives the Magistrate all the information required.[345]

[339] s488(5) PRRA.
[340] s488(6) PPRA.
[341] s498-499 PPRA.
[342] s537 PPRA.
[343] s540(2) PPRA.
[344] s541 PPRA.
[345] s540(5) PPRA.

On the hearing of the application the Childrens Court:

- Must hear and decide it with as little delay as possible and in the absence of the public; and
- May, in extraordinary circumstances, adjourn the application for no more than 24 hours to allow for further evidence; and
- Must not hear the application unless satisfied the child has been informed of the right to be represented by a lawyer at the hearing.[346]

The Childrens Court may make a disease test order if:

- Satisfied there are reasonable grounds for suspecting a relevant offence has been committed; and
- Satisfied, in the circumstances of the offence, that a blood and urine sample should be taken.[347]

The disease test order must state:

- The name of the relevant person;
- That the relevant person may be held in custody for the time reasonably necessary to enable a sample of the person's blood and a sample of the person's urine to be taken;
- That a police officer may take the relevant person to a place the police officer considers has appropriate facilities for taking the sample;
- That a doctor or a prescribed nurse may take a blood sample and a urine sample from the relevant person.[348]

The child may appeal against a disease test order to the District Court.[349]

The making of the application for the disease test order or the results of an analysis of a blood or urine sample are not admissible in evidence in a proceeding.[350]

[346] s542(2) PPRA.
[347] s542(5) PPRA.
[348] s543 PPRA.
[349] s544 PPRA.
[350] s548 PPRA.

Chapter 9 – Childrens Court Constituted by a Magistrate

9.1 Jurisdiction

Pursuant to s14 CCA, Magistrates are appointed as Childrens Court Magistrates. The appointment as a Childrens Court Magistrate does not affect the person's appointment as a Magistrate.[351]

Section 60 YJA provides that the YJA does not affect the jurisdiction a court has in relation to a child charged with an offence, unless the YJA provides otherwise.

Section 66(1) YJA provides that, for the purposes of the powers and jurisdiction of the Childrens Court conferred by the YJA, the provisions of the CC, JA and other Acts apply to:

- The institution and conduct of a proceeding before a Childrens Court; and
- The exercise by a Childrens Court of its powers and jurisdiction; and
- The enforcement of an order made by a Childrens Court.

Provisions applied under that subsection apply, with all necessary modifications, in relation to a Childrens Court Magistrate in the way they apply to a Magistrates Court.[352]

To the extent that another provision of the YJA is inconsistent with a provision applicable under subsection (1), the provision of the YJA applies.[353]

Section 64 YJA relates to the jurisdiction of a Childrens Court Magistrate:

1. *All proceedings under the Justices Act 1886 for the hearing and determination of charges against children for offences, including committal proceedings, must be heard, and determined before a Childrens Court magistrate.*

2. *A Childrens Court magistrate has jurisdiction to hear and determine the proceedings.*

[351] s11(3) CCA.
[352] s66(2) YJA.
[353] s66(3) YJA.

3. *A Magistrates Court and justices conducting committal proceedings do not have that jurisdiction.*

Section 65(1) YJA provides that for the purpose of the jurisdiction in relation to persons and matters assigned to a Childrens Court Magistrate under the YJA, a Childrens Court Magistrate has the same powers and jurisdiction as a Magistrates Court has under the JA. The powers, authorities, and jurisdiction so conferred are in addition to those otherwise conferred under the YJA.[354] To the extent that another provision of the YJA is inconsistent with subsection (1), the provisions of the YJA prevail.[355]

Section 3 CC provides that offences are of two kinds, criminal and regulatory. Criminal offences comprise crimes, misdemeanours, and simple offences.[356] Crimes and misdemeanours are indictable offences.[357] A person guilty of a regulatory or simple offence may be summarily convicted by a Magistrates Court.[358] An offence not otherwise designated is a simple offence.[359]

Section 553 CC provides that the jurisdiction of courts of justice with respect to the trial of offenders is set forth in the laws relating to the constitution of those courts. Section 554 CC provides that the practice and procedure relating to the examination and committal for trial of persons charged with indictable offences are set forth in the laws relating to justices of the peace, their powers, and authorities. Thus, the JA, where it is not inconsistent with the YJA, regulates proceedings before the Childrens Court as constituted by a Magistrate.

The Childrens court as constituted by a Magistrate has jurisdiction to hear and determine:

- Regulatory offences under the *Regulatory Offences Act 1985* (Qld). Such offences are simple offences.
- Summary offences under the *Summary Offences Act 2005* (Qld) (SOA). Such offences are simple offences, and the proceeding is a summary proceeding under the JA. [360]
- All simple offences pursuant to a summary proceeding under ss139-178AA JA.

[354] s65(2) YJA.
[355] s65(3) YJA.
[356] s3(2) CC.
[357] s3(3) CC.
[358] s3(4) CC.
[359] s3(5) CC.
[360] s46 SOA.

- All indictable offences other than serious offences except where the matter may be resolved summarily with the consent of the child.[361]
- All committals.[362]

All regulatory, summary, and simple offences can be dealt with by a Childrens Court Magistrate as either a trial or a sentence. The penalties for regulatory offences (unauthorised dealing with shop goods, leaving hotel etc without payment and unauthorised damage to property) are fines.[363]

See Magistrates Criminal Law Benchbook for a list of statutes containing offences.

Section 308 YJA provides that offences against the YJA are simple offences to be taken in a summary way under the JA.

"**Serious offence**" is defined in s8 YJA as follows:

1. *Subject to subsection (2), in this Act serious offence means—*
    a. *a life offence; or*
    b. *an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more.*

2. *An offence is not a serious offence if—*
    a. *it is a relevant offence under the Criminal Code, section 552BA; or*
    b. *it is an offence that is the subject of a charge to which the Criminal Code, section 552A or 552B applies; or*
    c. *under the Drugs Misuse Act 1986, section 13, proceedings for a charge for the offence may be taken summarily; or*
    d. *under the Drugs Misuse Act 1986, section 14, proceedings for a charge for the offence may be taken summarily.*

Note— Proceedings for a charge for an offence may not be taken summarily under section 14 if the prosecution allegations include an allegation as to a commercial purpose.

[361] s81 YJA. See also ss99-134 JA; ss 552A-552D CC.
[362] See ss103B-130 JA.
[363] ss5-7 ROA.

2A. *If it is necessary for the purposes of subsection (2) to have reference to the table of excluded offences included in the Criminal Code, section 552BB, a reference in that table to the circumstance that the offender does not plead guilty to an offence is taken to be a reference to the child not admitting to committing the offence.*

3. *For the purpose of this section, the type of an offence includes the circumstances in which it is committed.*

Section 81 YJA provides that the hearing of the charge of a serious offence must be a committal proceeding:

1. *This section applies to a proceeding to be conducted before a Childrens Court magistrate (the court) in which a child is charged with a serious offence.*

2. *A hearing of the charge before the court must be conducted as a committal proceeding.*

3. *If the charge is changed to a charge of an offence other than a serious offence during the committal proceeding, subsection (1) is subject to divisions 3 and 4.*

4. *If, in the proceeding, the child is also charged with an offence other than a serious offence, the court may treat the charge as a charge of a serious offence for the purpose of this section.*

Divisions 3 and 4 YJA provide for the summary disposition of an indictable offence other than a serious offence if the child consents. Thus, the Childrens Court constituted by a Magistrate can hear and determine indictable offences which are not serious offences, with the consent of the child.[364] Sections 82-93 YJA contain procedures in relation to indictable offences other than serious offences.

See Chapter 9.4: Sentence Matters and Chapter 9.11: Summary Trials/Hearings

In relation to offences against Commonwealth statutes, the Childrens Court has jurisdiction pursuant to s68 *Judiciary Act 1903* (Cth). See also Magistrates Court Practice Direction 22 of 2011

[364] See ss84, 89 and 93 YJA.

9.2 Arrest, Bail, Remands, Callovers

The remand and adjournment of matters is governed by ss84-88B JA. Pursuant to s83A JA, a Magistrate may direct the parties to attend a direction hearing about the conduct of the proceedings.

In relation to these matters, the Magistrate should review the material on the file prior to court.
On the first appearance at the commencement of proceedings, the position as to the child's bail should be reviewed.

See also Chapter 6: Release of Child from Custody and Bail

Appearances on remand can be by way of audio-video or audio link. See s53 YJA (granting of bail); Magistrates Court Practice Direction No. 3 of 2019; Childrens Court Practice Direction No. 1 of 2019.

On the appearance, the presence of a parent of the child should be canvassed.[365] Pursuant to s70 YJA, the court may order a parent of the child to attend the proceedings as directed by the court.

"Parent", as defined in Schedule 4 YJA, includes the Chief Executive (Child Safety) where the child is in the custody or under the guardianship of that Chief Executive. If the child is in a residential facility, there may be a representative to report on the child's behaviour and whether the child is actually residing there.

See also Chapter 2.9: Role of Parents, Chapter 2.12: Role of the Public Guardian and Appendix 1: Role of OPG Child Advocate in Childrens Court (Criminal) Proceedings

The Magistrate should review the contents of the search for any outstanding indictable or simple offences within Queensland pursuant to Magistrates Court Practice Direction 5 of 2018 (registry to compile list of outstanding offences). This should be done with the view to consolidating the matters before the one Childrens Court and their timely disposition in keeping with Principle 8(c) of the Charter of Youth Justice Principles ("the proceeding should be finalised as soon as practicable") and Principle 13 ("a decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time").

[365] s69 YJA.

Note that Principle Nine of the Charter of Youth Justice Principles provides that "*The youth justice system should give priority to proceedings for children remanded in custody.*"

The Magistrate should canvas whether the matter is one that could benefit from a case conference pursuant to Magistrates Court Practice Direction No. 2 of 2017 which extended case conferencing to the Childrens Court. This can apply both to summary disposition and committal proceedings.

See also Queensland Police Service Operational Procedures Manual 3.16

If the matter is to be a sentence, the Magistrate should canvas whether a pre-sentence report pursuant to s151 YJA is required or advisable. If so, the child would need to be arraigned and enter a guilty plea so that the report can be ordered. Such a report should canvas educational issues and health and mental health issues if relevant. The parties should bring such matters to the attention of the Magistrate.

If the Magistrate is informed that the child is not attending school, the Magistrate may refer the child, under the Education Justice Initiative, to an Education Queensland Court Liaison Officer where available, who will provide a report to the court at a later date after interviewing the child and parents. As relevant to the Childrens Court, a child is of compulsory school age from ten until the child turns sixteen or completes year ten (whichever comes first).[366]

As of December 2024, a Court Liaison Officer is available in the following locations: Brisbane, Moreton, Richlands, Redlands, Beenleigh, Ipswich, Gold Coast, Toowoomba, Darling Downs, Sunshine Coast, Bundaberg, Hervey Bay, Rockhampton, Mackay, Townsville, Mount Isa, Cairns, Mareeba, Innisfail, and Aurukun.

Youth Transition Officers, who provide intensive casework support for complex, disengaged, and at-risk young people, are also situated in these locations.

Specialist Multi-Agency Support Teams in eight locations are available to support the Childrens Court by the provision of a multidisciplinary assessment of a child's needs including the identification of factors that contribute to offending. The teams are available in Brisbane, Caboolture, Logan, Ipswich, Gold Coast, Townsville, Mt Isa, and Cairns.

[366] s9 *Education (General Provisions) Act* 2006.

See Appendix 10: Education Justice Initiative

The Magistrate should canvas whether the legal representative or Youth Justice have referred the child for an assessment by the Mental Health: Child and Youth Court Liaison Service (Court Liaison Service) if appropriate.

The Court Liaison Service is part of Queensland Health, providing support to children aged 10 to 18 years. The Court Liaison Service is provided across Queensland, operational from three service hubs (Brisbane and South East Queensland (Rockhampton south), Cairns and Townsville. The Court Liaison Service attends court on scheduled youth justice call over days. The service is available in rural and remote areas as required (See Appendix as to the courts and days which the service attends).

Referrals may be made by legal representatives, Youth Justice, or a judicial officer. If the referral is made by the legal representative, any report may be subject to legal professional privilege. The court liaison officer will perform general mental health assessments and fitness for trial assessments or soundness of mind assessments within a four-week timeframe. Clinicians can attend court to provide oral evidence on their written assessments if requested by the court.

See Appendix 9: Mental Health: Child and Youth Liaison Service

If an assessment referral has been made, the Magistrate should endorse the file to that effect.

See also Magistrates Court Practice Direction No 7 of 2017

In Townsville, the Magistrate should canvas whether the matter is an appropriate one to refer to the Youth Court (Townsville). That Court is *"for defendants aged between ten and seventeen who are identified as repeat offenders, who have multiple factors associated with a high risk of future offending".*[367]

See Appendix 5: DYJ Core Interventions and Initiatives

[367] Magistrates Court of Queensland, Annual Report 2018-2019, page 30.

Murri Courts currently operates in 15 Magistrates Courts in Queensland, though most locations only facilitate Murri Court for adult defendants. Two locations, Rockhampton and Mackay also operate a Youth Murri Court. In these locations, a Magistrate can consider whether is appropriate to refer the matter to the Youth Murri Court pursuant to Magistrates Court Practice Direction 2 of 2016. The reference can only occur if:

- The defendant identifies as an Aboriginal and or Torres Strait Islander person or who has a kinship or appropriate connection to an Aboriginal or Torres Strait Islander community, whether in Queensland or elsewhere; and
- The offence falls within the jurisdiction of the Childrens Court so that it can be finally determined in that jurisdiction; and
- A guilty plea is entered, or the defendant intends to plead guilty; and
- The defendant is on bail or has been granted bail; and
- The defendant consents to participate fully in the Murri Court process.[368]

If appropriate, the matter is adjourned to the Murri Court.

Murri Courts sit in Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Ipswich, Mackay, Maroochydore, Mt Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville, and Wynnum.[369]

Murri Court provides an opportunity for members of the Aboriginal and Torres Strait Islander (including Elders, Respected Persons, families, and victims) to contribute to the court sentencing process and connects Aboriginal and Torres Strait Islander people who are participating in the Murri Court with relevant culturally appropriate service providers to address the underlying contributors to their offending. [370]

See also Magistrates Court Practice Direction 2 of 2016

9.3 Mental Health Matters

As noted above in some courts it is open to receive a report from the Mental Health: Child and Youth Court Liaison Service. Such a report may provide information about a child's ability to plead, the

[368] Magistrates Court Practice Direction No 2 of 2016, page 4
[369] Magistrates Court of Queensland, Annual Report 2022-2023, page 39
[370] Magistrates Court of Queensland, Annual Report 2022-2023, pages 38, and 39

availability of a mental health defence to the charge or identify mental or intellectual issues that might impact on the hearing or the child's communication issues and understanding.

See Chapter 9.2 above and Appendix 9: Mental Health: Child and Youth Court Liaison Service

Section 61 YJA provides that the MHA applies to a child charged with an offence as it applies to an adult.

Chapter 6 of the MHA relates to the powers of courts hearing criminal proceedings and related processes. The purpose of the chapter is:

> *"to provide for appropriate powers and processes for courts hearing criminal proceedings and for related matters, including-*
>
> *(a) powers for Magistrates Courts, the District Court, and the Supreme Court to deal with cases where there is a concern about the mental state of a person charged with an offence, including by making a reference to the Mental Health Court; and*
> *(b) the admission of persons subject to forensic orders (Criminal Code) to authorised mental health services; and*
> *(c) the detention of persons in authorised mental health services during trial."*[371]

Section 170 MHA provides that a reference to a Magistrates Court in Chapter 6 includes a Childrens Court dealing with a person under the YJA.

Section 172 MHA empowers a Magistrates Court, which is hearing a complaint for a simple offence, to dismiss the complaint, if reasonably satisfied, on the balance of probabilities that the Defendant was, or appears to have been, of unsound mind when the offence was allegedly committed or is unfit for trial.[372]

The defence of unsoundness of mind is contained in s27 CC and requires the deprivation of one of the three specified capacities by reason of a state of mental disease or natural mental infirmity:

- Capacity to understand what the person is doing; or

[371] s169 MHA.
[372] See also s22(1) MHA.

- Capacity to control the person's actions; or
- Capacity to know that the person ought not to do the act or make the omission.

See also s26 CC for the presumption of sanity, see also s109 MHA as to "*unsoundness of mind".*

The term *"unfit for trial"* is not defined in the MHA. In *R v Presser* [1958] VR 45 at 48, Smith J set out the minimum capacities of an accused to be tried without unfairness:

- Capacity to understand what the accused is charged with;
- Ability to plead to the charge;
- Ability to exercise the right to challenge;
- Ability to understand generally the nature of the proceedings, that is, an inquiry as to whether the defendant did what is charged;
- Ability to follow the course of the proceedings so as to understand in a general sense what is going on in court;
- Ability to understand the substantial effect of any evidence given by the prosecution; and
- Ability to make a defence or answer to the charge by giving instructions to his or her lawyers about his or her version of the facts and giving evidence about that.

See also *Ngatayi v R* (1980) 147 CLR 1 at paragraph 8; *Kesavarajah v R* (1994) 181 CLR 230 at 246; *R v M* [2002] QCA 464. See also *Eastman v R* (2000) 203 CLR 1 at 21 where Gaudron J stated:

> *"The question whether a person is fit to plead may arise for reasons other than mental illness. It may arise, for example, because a person is deaf and dumb or, more generally because language difficulties make it impossible for him or her to make a defence."*

Section 173 MHA allows the Magistrates Court to adjourn the hearing of a complaint of a simple offence for up to six months if the court is reasonably satisfied, on the balance of probabilities, that the defendant is unfit for trial but is likely to become fit for trial within six months. If the court is reasonably satisfied the person is still unfit for trial six months after that adjournment, the court may dismiss the complaint pursuant to s172(2) MHA.[373]

If a Magistrates Court has dismissed a complaint under s172 MHA or adjourned the hearing under s173 MHA or is reasonably satisfied that the defendant would benefit from an examination by an

[373] s173(3) MHA.

authorised doctor **and** the court is reasonably satisfied the defendant has a mental illness or is unable to decide if the defendant has a mental illness or another mental condition, the court may make an examination order which authorises a compulsory medical examination.[374]

Section 177 MHA provides:

1. *This section applies if—*
    a. *a Magistrates Court—*
        i. *has dismissed a complaint under section 172 or adjourned the hearing of a complaint under section 173; or*
        ii. *is reasonably satisfied that a person charged with a simple offence would benefit from an examination by an authorised doctor; and*

    b. *the court—*
        i. *is reasonably satisfied the person has a mental illness; or*
        ii. *is unable to decide whether the person has a mental illness or another mental condition.*

2. *The court may make an order (an **examination order**) in relation to the person.*

    Note— An examination order is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

3. *Also, if the complaint has not been dismissed under section 172 and the hearing of the complaint has not been adjourned under section 173, the court may adjourn the hearing of the complaint.*

4. *The examination order authorises an authorised doctor for the authorised mental health service or public sector health service facility stated in the order to examine the person, without the person's consent, to decide whether to—*
    a. *make a treatment authority for the person; or*
    b. *make a recommendation for the person's treatment and care; or*
    c. *if the person is already subject to a treatment authority, forensic order (mental health), forensic order (disability) or treatment support order—change the nature and*

[374] s177 MHA.

extent of the treatment and care to be provided to the person under the authority or order.

5. *Also, the examination order may—*
    a. *direct an authorised person to transport the person immediately to the authorised mental health service; or*

    Note— For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

    b. *direct the person to attend at the authorised mental health service or public sector health service facility within a stated time, of not more than 28 days, after the order is made.*

    Note— See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under paragraph (b).

6. *The registrar of the court must, as soon as practicable after the examination order is made, give written notice of the order to—*
    a. *if an authorised mental health service is stated in the order—the administrator of the service; or*
    b. *if a public sector health service facility is stated in the order—the person in charge of the facility."*

Section 178 MHA authorises detention for the purposes of the examination order. The examination can result in a treatment authority.[375] An examination report must be made by the authorised doctor.[376] That report is only admissible on the trial of the defendant for deciding whether to make another examination order under the MHA or whether to refer the matter to the Mental Health Court.[377]

See also s22(2) MHA for the power of a Magistrates Court to make an examination order.

Section 180A MHA restricts the admissibility of any statements made by the defendant during the examination under the examination order or a statement made by the defendant to a health

[375] s178(3) MHA.
[376] s179 MHA.
[377] s180 MHA.

practitioner for the purpose of the court making a decision under ss172 or 173 MHA. The report and statements may be used for the purposes of treatment and, if received in evidence by the court, may be released to another person only with the leave of the court.[378]

If a Magistrates Court has dismissed a complaint under s172 MHA or adjourned the hearing under s173 MHA and *"is reasonably satisfied the person charged with the offence does not appear to have a mental illness",* the court may refer the person to a relevant agency or health department for appropriate care.[379]

In a proceeding for an indictable offence (other than a Commonwealth offence), before a Magistrates Court, if the Court is reasonably satisfied, on the balance of probabilities, that –

a) the person—

i. was, or appears to have been, of unsound mind when the offence was allegedly committed; or

ii. is unfit for trial; and

b) both of the following apply—

i. the nature and circumstances of the offence create an exceptional circumstance in relation to the protection of the community;

ii. the making of a forensic order or treatment support order for the person may be justified.

The Court may refer the matter of the defendant's mental state relating to the indictable offence and any related offence to the Mental Health Court.[380] The mechanism for the reference is set out in s176 MHA.

See also Magistrates Court Practice Direction 7 of 2017. The purpose of this Practice Direction is "*to assist with the case management and timely disposition of matters under Chapter 6, Part 2 of the Mental Health Act 2016 by outlining timeframes and procedures applicable*". The Practice Direction provides for a mental health assessment of the defendant to be completed or a matter to be

[378] s180B MHA.
[379] s174 MHA.
[380] s175 MHA.

adjourned for the completion of a mental health assessment. **"Mental health assessment"** *is* defined in paragraph 4(c) of the Practice Direction to mean:

> *a report prepared by a Senior Mental Health Clinician with the support of a Consultant Psychiatrist and includes:*
>
> *i. A Mental Health Assessment Court Liaison Service Feedback; or*
> *ii. Mental Health and Fitness for Trial Assessment Court Liaison Service Feedback; or*
> *iii. Mental Health, Fitness and Soundness Assessment Court Liaison Service Feedback.*

Pursuant to s22(2) MHA, a Magistrates Court may order that a person appearing before the court be examined by an authorised doctor to decide whether to make a treatment authority for the person or to make recommendations about the person's treatment.

The Practice Direction also sets out the procedure for the determination of the issues if the defendant disputes the mental health assessment in relation to fitness for trial or unsoundness of mind. The matter proceeds to a hearing on the issue.

9.4 Sentence Matters

9.4.1 Jurisdiction

A Childrens Court constituted by a Magistrate may sentence a child in relation to:

- Regulatory offences under the *Regulatory Offences Act 1985*; and
- Summary offences under the *Summary Offences Act 2005;*[381] and
- All simple offences;[382] and
- All indictable offences that are not "serious offences" with the consent of the child. [383]

9.4.2 Regulatory, Summary and Simple Offences

Section 64 YJA provides that all proceedings under the JA for the hearing and determination of charges against children for offences must be heard and determined by a Childrens Court Magistrate.

---

[381] s46 SOA.
[382] s64 YJA.
[383] See s8 YJA for the definition of "serious offence."

The procedures in relation to simple offences and breaches of duty are set out in Part 6 JA.

Section 145 JA provides that the substance of the complaint shall be "*stated to the defendant*" and the defendant shall be asked to plead to it. This requires a plea in person by the defendant, not through a lawyer.

If the defendant is legally represented and there is more than one complaint, then, with the consent of the defendant, the plea to one complaint will be treated as a plea to any number of complaints if the court is satisfied:

- The defendant has obtained legal advice in relation to each of the complaints; and
- The defendant is aware of the substance of each complaint.[384]

If the plea is taken in that way, the court is not required to state the substance of any complaint to the defendant.[385]

With respect to a child, it is particularly important for the court to ensure the child understands the number and nature of the charges to be arraigned and understands the implications of entering a bulk plea. This may entail explaining those matters in terms the child understands, consistent with the court's obligations under s72 YJA and Principle Seven of the Charter of Youth Justice Principles. That obligation extends also to any parent of the child before the court.

The bulk arraignment would consist of a number of questions directed to the child:

- Has your lawyer taken you through all the charges?
- Do you understand that you are charged with X number of charges?
- Do you understand you are charged with (number and short title of charges)? Further detail of each charge may need to be given.
- Are you going to plead guilty to each of those charges?
- Do you want to do that by pleading guilty to one of those charges and so plead guilty to all of them?
- Do you understand by doing that you will be pleading guilty to all of the charges?

[384] s145(2) JA.
[385] s145(3) JA.

- What do you understand by all that?

Any parent present should then be asked if he or she understands the process and is happy for the child to be arraigned in that way.

If the child does not appear to understand, the safer course would be arraigned on each charge.

See also Chapters 2.9: Explanation of Proceedings and Chapter 5.7: Childrens as Defendants

If the child pleads guilty to the charge or charges, the court will sentence the child or make any other order authorised by law.[386]

See Chapter 11: Sentencing

Section 46 YJA provides that a Childrens Court Magistrate may hear and determine a proceeding against a child in relation to a complaint and summons for a simple offence in the absence of the child in the way set out in Part 6 JA. Section 146A JA establishes the procedure for the hearing in absentia in relation to a plea of guilty. The only sentence that can be imposed in those circumstances is a fine provided the child has indicated in writing the capacity to pay a fine.[387]

Pursuant to s45 YJA, a court must not order the child to pay the cost of lodging the complaint and summons.

9.4.3 Indictable Offences that are not Serious Offences

Section 78 YJA provides that the rules set out in Part 6 YJA relating to the exercise by a child of procedure in relation to an indictable offence, apply despite any other right of election in another Act. Sections 82-86 YJA set out procedures for the disposition of indictable offences that are not serious offences. The procedures set out the steps to be taken in various situations to allow the child to decide whether to consent to summary disposition.

[386] s145(4) JA.
[387] s46(2) YJA.

9.4.3.1 Where the Child is Legally Represented

Sections 82-84 YJA relate to the procedures when the child is legally represented. Section 83 provides that, before evidence is adduced, the court **must** explain to the child and any parent who is present, the child's right of election in s83(2) YJA. The child may elect to have the proceeding conducted as a committal hearing or as a hearing and deciding of the charge summarily. The court **must** also explain the same election is available after all the evidence is adduced.[388]

Section 83 YJA provides:

1. *Subject to section 77, before evidence is adduced at the proceeding, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).*

2. *The child may elect—*
    a. *to have the proceeding conducted as a committal proceeding; or*
    b. *to have the proceeding conducted as a hearing and deciding of the charge summarily by the court.*

3. *The court must also explain to the child and any parent of the child who is present that—*
    a. *after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and*
    b. *the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;*

    the child may elect—

    c. *to have the proceeding conducted as a committal proceeding; or*
    d. *to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.*

4. *The court must then ask the child whether the child consents to having the charge heard and decided summarily by the court.*

[388] s83(3) YJA.

5. *If the child consents, the court must proceed to hear and decide the charge summarily.*

6. *If the child does not give the consent mentioned in subsection (4), the proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4."*

See also ss87-89 YJA.

If the child consents to having the charge heard and decided summarily, the court must hear and decide the charge summarily.[389] On that proceeding the court **must** reduce the charge to writing and ask the child to plead to the charge.[390] There does not appear to be an ability for an arraignment in bulk except in relation to offences covered by s552B CC,[391] as is available for simple offences.[392] If the child pleads guilty, the court must proceed in the same way as is provided in s145(4) JA.

See Chapter 9.4.2: Regulatory, Summary and Simple Offences for arraignment in bulk.

Section 145(4) JA provides that where a plea of guilty is entered to a simple offence or a breach of duty, "*the Magistrates Court shall convict the defendant or make an order against the defendant or deal with the defendant in any other manner authorised by law*".

The orders and sentences available in relation to a child are only those provided under Part 7 YJA which is exclusive.[393]

9.4.3.2 Where the Child is not Legally Represented

Sections 85-86 YJA relate to procedures for the disposition of indictable offences other than serious offences where the child is not legally represented. The proceeding must start as a committal proceeding with an explanation that **must** be given to the child and any parent present before any evidence is adduced, that the child may elect to have the proceeding decided summarily at the end of the prosecution case.[394]

[389] s83(5) YJA.
[390] s84(1) YJA.
[391] s552I CC.
[392] s145(2) JA.
[393] s149 YJA.
[394] s86 YJA.

Section 86 YJA provides:

1. *The proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4.*

2. *Before evidence is adduced at the proceeding, the court must explain to the child and any parent of the child who is present that—*
    a. *after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and*
    b. *the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;*

    the child may elect—

    c. *to have the proceeding conducted as a committal proceeding; or*
    d. *to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court."*

See Chapters 9.4.4 and 9.4.5 below for discussion of sections 87-93 YJA.

As s86 YJA is subject to ss87-93 YJA, if the child elects to have the matter dealt with summarily, the committal is discontinued, and the court will hear and determine the charge summarily. The court **must** reduce the charge to writing and ask the child whether the child is guilty or not guilty.[395] If the child pleads guilty to the charge, the court **must** proceed in the same way as provided in "*section 145(2) JA*".[396] Presumably this should refer to s145(4) JA which provides that where a plea of guilty is entered to a simple offence or a breach of duty, "*the Magistrates court shall convict the defendant or make an order against the defendant or deal with the defendant in a manner authorised by law*".

The orders and sentences available in relation to a child are only those provided under Part 7 YJA which is exclusive.[397]

See Chapter 11: Sentencing

[395] s89(1) YJA.
[396] s89(2) YJA.
[397] s149 YJA.

9.4.4 Election After Prosecution Case Has Closed

Sections 87-89 YJA provide for procedures to inform a child of the right to elect summary disposition after the close of the prosecution case on a committal hearing. If the court is of the view that there is sufficient evidence to put the child on trial for the offence, the court **must** explain to the child and any parent present the right of election. The provisions apply whether or not the child is legally represented.[398]

Section 88 YJA provides:

1. *Subject to subsection (6) and section 77, the court must explain to the child, and any parent present in the court, the child's right of election mentioned in subsection (2).*

2. *The child may elect—*
    a. *to have the proceeding continue as a committal proceeding; or*
    b. *to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.*

3. *The court must then ask the child whether the child consents to having the charge heard and decided summarily by the court.*

4. *If the child consents, the court must discontinue the committal proceeding and proceed to hear and decide the charge summarily.*

5. *If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.*

6. *The court may, but need not, follow the process under subsections (1) to (5) if the child has already declined to give consent under section 83 for the charge to be heard and decided summarily."*

The court **must** ask the child whether the child consents to having the charge heard and determined summarily.[399] If the child consents to having the charge dealt with summarily, the committal is

[398] s87(2) YJA.
[399] s88(3) YJA.

discontinued and the court hears and determines the charge summarily.[400] The court **must** reduce the charge to writing and ask the child whether the child is guilty or not guilty.[401] Where the child is legally represented, there does not appear to be an ability for an arraignment in bulk, except in relation to offences covered by s552B CC,[402] as is available for simple offences.[403] If the child pleads guilty, the court **must** proceed in the same way as in "section 145(2) JA". Again, presumably, this should be s145(4) JA.

Section 145(4) JA provides that where a plea of guilty is entered to a simple offence or breach of duty, "*the Magistrates Court shall convict the defendant or make an order against the defendant or deal with the defendant in any other manner authorised by law*".

The orders and sentences available in relation to a child are only those provided under Part 7 YJA which is exclusive.[404]

See Chapter 11: Sentencing

9.4.5 Plea of Guilty When Called Upon Under s104 JA

Sections 90-93 YJA deal with circumstances where a child pleads guilty at a committal hearing.

If a child enters a plea of guilty at a committal proceeding when addressed pursuant to s104(2) JA (proceedings upon an examination of witnesses in relation to an indictable offence) on a charge of an indictable offence other than a serious offence, the court **must** explain to the child and any parent present the child's right of election in s93(2) YJA.

Section 93 YJA provides:

1. *Subject to section 77, if the offence to which the child pleads guilty is an indictable offence other than a serious offence, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).*

[400] s88(4) YJA.
[401] s89(1) YJA.
[402] s552I CC.
[403] s145(2) JA.
[404] s149 YJA.

2. *The child may elect—*
    a. *to be committed to be sentenced before a court of competent jurisdiction; or*
    b. *to be sentenced by the Childrens Court magistrate.*

3. *The court must then ask the child whether the child consents to being sentenced by the Childrens Court magistrate.*

4. *If the child consents, the Childrens Court magistrate must proceed in the same way as is provided under the Justices Act 1886, section 145(2).*

5. *If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed to be sentenced before a court of competent jurisdiction."*

Section 93(4) provides that if the child consents to being sentenced, the Childrens Court Magistrate **must** proceed in the same way as is provided under "section 145(2) JA". Again, this should be s145(4) JA.

Section 145(4) JA provides that where a plea of guilty is entered to a simple offence or breach of duty, "*the Magistrates Court shall convict the defendant or make an order against the defendant or deal with the defendant in any other manner authorised by law*".

The orders and sentences available in relation to a child are only those provided under Part 7 YJA which is exclusive.[405]

See Chapter 11: Sentencing

9.4.6 Serious Offences

Section 81 YJA provides that the hearing of a charge of a serious offence must be conducted as a committal hearing. If the charge is changed to a charge of an offence other than a serious offence during the committal proceeding, then the procedures contained in ss 87-93 (above) apply. These allow for the child to consent to having the charge dealt with summarily and the discontinuance of the committal. If the child consents to summary disposition, the procedure on the summary hearing is contained in s89 YJA. The court **must** reduce the charge to writing and ask the child to plea to the

[405] s149 YJA.

charge.[406] If the child pleads guilty the court proceeds to sentence in the same way as is provided in *"section 145(2) JA"* (presumably s145(4) JA).

See s80 YJA as to the use of evidence already adduced, if there is an election exercised or a change of election.

9.4.7 Limitations on Sentence for Indictable Offences

Section 77 YJA provides that if a Childrens Court has jurisdiction to hear and determine a charge against a child of an indictable offence (with the consent of the child), the court must refrain from exercising that jurisdiction unless it is satisfied that the charge can be adequately dealt with summarily.[407] Such a decision can be made at any stage of the proceeding and the proceeding then continues as a committal proceeding.[408]

Pursuant to s186 YJA, if a Childrens Court Magistrate, in a proceeding to sentence a child for an offence, considers the circumstances require the making of a sentence order beyond the jurisdiction of the Magistrate but within the jurisdiction of a Childrens Court Judge, the Magistrate may commit the child for sentence before a Childrens Court Judge.

Section 186 YJA provides:

1. *If, in a proceeding for the sentencing of a child for an offence, a Childrens Court magistrate considers that the circumstances require the making of a sentence order—*
    a. *beyond the jurisdiction of a Childrens Court magistrate; but*
    b. *within the jurisdiction of a Childrens Court judge; the magistrate may commit the child for sentence before a Childrens Court judge.*

2. *In relation to a committal under subsection (1), the Childrens Court magistrate may make all orders and directions as if it were a committal following a committal proceeding.*

3. *The Childrens Court judge may exercise sentencing powers to the extent mentioned in section 175.*

[406] s89(1) YJA.
[407] s77(2) YJA.
[408] s77(4) YJA.

9.5 Delegation of Sentencing Power

Section 185 YJA provides that where a child is before a Childrens Court magistrate for sentence for an offence and the magistrate considers that an appropriate sentence would be beyond the jurisdiction of the magistrate because of the limits on jurisdiction in s175(1)(d) or (g) YJA, the Magistrate may request a Childrens Court Judge to delegate to the Magistrate the power to impose a sentence which, under s175(1) YJA, may only be imposed by a Childrens Court Judge.

9.6 Costs in Relation to Indictable Offences

Pursuant to s704 CC, no fees can be taken from any person who is charged with an indictable offence for any proceeding had or taken in court in respect of the charge.

9.7 General Matters Concerning Sentence

9.7.1 Limitation on Sentence by Childrens Court Magistrate

Section 175(1)(d)(i) YJA provides that a Childrens Court Magistrate can order a period of probation of not longer than one year. If the offence is a significant offence under s175A YJA committed on or after 13 December 2024, a Childrens Court Magistrate can order a period of probation not longer than three years. [409]

Section 175(1)(g)(i) YJA provides that a Childrens Court Magistrate can sentence to a period of detention of not more than one year. If the offence is a significant offence under s175A YJA committed on or after 13 December 2024, a Childrens Court Magistrate can order a period of detention of not more than three years (the same as an adult may be sentenced under s552H CC). [410]

See Chapter 11: Sentencing

9.7.2 Audio-visual or Audio Link

Section 159 YJA provides that the court may allow the use of audio-visual or audio link in relation to the sentencing of a child who is legally represented if the prosecutor and the child agree to the use of the link.

[409] s175A(2)(a) YJA
[410] s175A(2)(b)(i) YJA

Section 159 YJA provides:

1. *The court may allow anything that must or may be done in relation to the sentencing of a child who is legally represented to be done over an audio-visual link or audio link if the prosecutor and the child agree to the use of the link.*

2. *The provisions of the Evidence Act 1977 relating to the use of an audio-visual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).”*

See Part 3A EA in relation to audio visual links and audio links. In particular, s39R EA provides:

1. *Subject to any rules of the court, the court may, on the application of a party to the proceeding before the court, direct that a person appear before, or give evidence or make a submission to, the court by audio visual link or audio link from a location inside or outside Queensland, including a location outside Australia.*

2. *The court may, at any time, vary or revoke a direction made under this section on its own initiative or on the application of a party to the proceeding.*

Note— See Division 3A in relation to expert witnesses giving evidence by audio visual link or audio link.

See Rules 52 and 53 *Criminal Practice Rules 1999* in relation to the ability of a court to receive evidence or submissions by telephone, video link or another form of communication in sentence proceedings.

See Magistrates Court Practice Direction No 3 of 2019 (Childrens Court Practice Direction No 1 of 2019) as to the use of video-link or audio-link appearances in the Childrens Court when constituted by a Magistrate.

9.7.3 Case Conferences

The case conference procedure is available in relation to sentences in the Childrens Court when constituted by a Magistrate when the child is legally represented. Any case conference is in accordance with the Queensland Police Service policy or the Director of Public Prosecution Guidelines.

See Magistrates Court Practice Direction No 2 of 2017, Chapter 3.16 of the Queensland Police Service Operational Procedures Manual and Guideline 17 of the Director’s Guidelines.

9.7.4 Outstanding Charges

Section 157 YJA provides that an outstanding charge may be taken into account in the sentencing of a child in the same way as for an adult.[411]

9.7.5 Dismissal of a Charge

If a child pleads guilty before a Childrens Court, on an application on behalf of the child, the court may dismiss the charge if satisfied the child should have been cautioned or no action should have been taken against the child. The court may administer a caution.[412]

If the child pleads guilty before a Childrens Court, on an application on behalf of the child, the court may dismiss the charge if the court is satisfied that the offence should have been referred for a restorative justice process. The court may refer the charge for such a process. The court's power is available whether or not the child admitted the offence to the police officer.[413]

See Chapter 7.3: Childrens Court may dismiss a charge if caution should have been administered; Chapter 7.5: Childrens Court may dismiss a charge if offence should have been referred to restorative justice process and Chapter 8.4: Police Diversion

9.7.6 Prior to the Sentence Hearing

Prior to the sentence hearing, the Magistrate should review the file for any schedule of agreed facts, the child's criminal history (if agreed), any pre-sentence report ordered,[414] or any other reports of relevance that have been supplied.

9.7.7 Submissions on Sentence

Submissions on sentence are heard in the usual way sentence submissions are heard in the Magistrates Court, that is by the prosecutor first, submissions on behalf of the child and the possible reply by the prosecutor on a matter of law. The Chief Executive of Youth Justice also has a role in making submissions on sentence.[415]

---

411 s189 *Penalties and Sentences Act 1992.*
412 s21 YJA.
413 s24A YJA.
414 s151 YJA.
415 s74(3)(c) YJA.

Section 150(9) YJA provides that, in sentencing a child for an offence, the court may receive any information, or a sentencing submission made by a party to the proceedings, that the court considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.

Whilst a matter for the individual Magistrate, over-formality is not appropriate in sentencing a child, particularly where there is an obligation on the court to ensure the child understands the proceedings and any sentence order.[416]

See Chapter 3.4.17, Queensland Police Service Operational Procedures Manual

In relation to any dispute as to the facts on a sentence proceeding, s132C EA applies.

Principle 11 of the Charter of Youth Justice Principles provides that *"a victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law".*

Section 256 YJA provides that the *Victims of Crime Assistance Act 2009* (VOCA) applies to an offence committed by a child. .

Section 256A YJA was added by the Making Queensland Safer Act 2024. This section applies regardless of when the offence was committed and provides that all of Part 10B PSA (Victim Impact Statements) applies when sentencing a child for an offence mentioned in s179J PSA. Victim impact statements may be read aloud, and special arrangements may be put in place for that to occur where the offence is an offence against the person, domestic violence offence or contravention of a domestic violence order.

Section 150(2) YJA provides that a court, in sentencing a child, **must** have primary regard to *"any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court"* under s179K PSA.

Section 255 YJA provides that if a child is found guilty of specified offences, the court, in addition to making any sentence order, may make an order that the child's identifying particulars be taken.

[416] s158 YJA.

See Chapter 8.9: Court Orders if Child Found Guilty of Specified Offence

9.9 Transfer of Persons Remanded in Detention

Part 8, Division 2A YJA outlines a process for the transfer of persons remanded in detention. This part was amended by the *Making Queensland Safter Act 2024* and, subject to ss426-428 YJA, applies in relation to a detainee whether the detainee started to be detained before or after the commencement (13 December 2024) or whether the detainee started to be remanded in custody before or after the commencement (13 December 2024). [417]

The amendments now require all detainees in youth detention centres to be moved to an adult facility within one month after they turn 18 years, regardless of whether they are on remand or sentenced. [418] This is subject only to an exclusive chief executive discretion to direct otherwise, with no appeal or review (other than judicial review). [419]

9.10 Restorative Justice Processes

Section 162 YJA provides that if a child enters a plea of guilty for an offence, or a finding of guilt is made, the court **must** consider referring the offence to the Chief Executive (Youth Justice) for a restorative justice process instead of sentencing the child.

A restorative justice order cannot be imposed for an offence that is a "significant offence" within s175A YJA that were committed on or after 13 December 2024. [420] "Significant offences" dealt with in the Magistrates Court are:

- Dangerous operation of a motor vehicle (s328A CC)
- Serious assault (s340 CC)
- Unlawful use of a motor vehicle (s408A)
- Burglary - all variations of enter/in dwelling (s419 CC)
- Enter premises – all variations of being in premises, by break, with intent, commit offence (s421 CC)

[417] s425 YJA
[418] s276A – s276C YJA
[419] s276D YJA
[420] ss175A(8) & 192A YJA

- Unlawful entry of a motor vehicle (s427 CC) [421]

See Chapter 7.6: Court Ordered Diversion

9.11 Sentencing Principles and Orders

See Chapter 11: Sentencing

9.12 Summary Trials/Hearings

A Childrens Court constituted by a Magistrate may conduct a trial in relation to a child charged with:

- A regulatory offence under the *Regulatory Offences Act 1985*;
- A summary offence under the *Summary Offences Act 2005*;[422]
- A simple offence;[423]
- An indictable offence that is not a "serious offence"[424] if the child consents.

9.12.1 An Indictable Offence which is not a Serious Offence

An indictable offence that is not a serious offence, as defined in s8 YJA, is:

- An offence that is not a life offence;
- An offence which, if committed by an adult, carries a penalty less than 14 years imprisonment; or
- An offence subject to summary disposition pursuant to ss552BA, 552A or 552B CC or ss13 and 14 *Drugs Misuse Act 1986*.

Note that s78 YJA provides that the rules set out in Part 6 YJA (ss60-148C) relating to election by a child of procedure in relation to an indictable offence apply despite any other right of election conferred by any other Act that requires an indictable offence to be heard and decided summarily.

Section 78 YJA provides:

[421] s175A(1) YJA
[422] s46 SOA.
[423] s64 YJA.
[424] s8 YJA.

"The rules set out in this part relating to election by a child of procedure in relation to an indictable offence apply despite any right of election that may be conferred on any person under any other Act or any provision of another Act that requires the indictable offence to be heard and decided summarily."

Such charges are not heard summarily under those sections of the *Criminal Code* but pursuant to the provisions of the YJA. A child has the right of election in relation to all indictable offences that are not serious offences.

See Chapter 9.11.3: Indictable offences that are not serious offences

However, the provisions of ss552A, 552B, and 552BA CC are still relevant for determining whether or not a specific offence is a "serious offence". Section 552A CC relates to charges of indictable offences that must be heard summarily on the prosecution election:

1. *This section applies to a charge before a Magistrates Court of any of the following indictable offences—*
    a. *an offence against any of the following provisions—*
        - *section 141*
        - *section 142*
        - *section 143*
        - *section 205A*
        - *section 340;*
    b. *any offence involving an assault, not being of a sexual nature or accompanied by an attempt to commit a crime, if the maximum term of imprisonment for which the defendant is liable is more than 3 years but not more than 5 years;*
    c. *the offence of counselling or procuring the commission of an offence mentioned in paragraph (a) or (b);*
    d. *the offence of attempting to commit an offence mentioned in paragraph (a);*
    e. *the offence of becoming an accessory after the fact to an offence mentioned in paragraph (a).*

2. *A charge to which this section applies must be heard and decided summarily if the prosecution elects to have the charge heard and decided summarily.*

3. *This section is subject to section 552D.*

The section is subject to s552D CC (below).

Section 552B CC relates to charges of indictable offences that must be heard summarily unless the defendant elects for a jury trial:

1. *This section applies to a charge before a Magistrates Court of any of the following indictable offences—*
    a. *an offence of a sexual nature without a circumstance of aggravation if—*
        i. *the complainant was 14 years of age or over at the time of the alleged offence; and*
        ii. *the defendant has pleaded guilty; and*
        iii. *the maximum term of imprisonment for which the defendant is liable is more than 3 years;*
    b. *an offence against section 339(1);*
    c. *an offence involving an assault, other than an offence against section 339(1), if—*
        i. *the assault is—*
            1. *without a circumstance of aggravation; and*
            2. *is not of a sexual nature; and*
        ii. *the maximum term of imprisonment for which the defendant is liable is more than 3 years but not more than 7 years; and*
        iii. *a charge of the offence is not a charge to which section 552A applies;*

    ca. *an offence against section 60A, 60B, 76 or 77B;*

    d. *an offence against section 316A;*
    e. *an offence against section 328A(2);*
    f. *an offence against section 359E if the maximum term of imprisonment for which the defendant is liable is not more than 5 years;*
    g. *an offence against chapter 14, chapter division 2, if the maximum term of imprisonment for which the defendant is liable is more than 3 years;*

h. *an offence against chapter 22A, if the maximum term of imprisonment for which the defendant is liable is more than 3 years;*

i. *an offence against chapter 42A;*

j. *the offence of counselling or procuring the commission of an offence mentioned in any of paragraphs (a) to (i);*

k. *the offence of attempting to commit an offence mentioned in any of paragraphs (a) to (i), unless the offence is a relevant offence under section 552BA(4), definition relevant offence, paragraph (a);*

l. *the offence of becoming an accessory after the fact to an offence mentioned in any of paragraphs (a) to (i), unless the offence is a relevant offence under section 552BA(4), definition relevant offence, paragraph (a).*

2. *A charge to which this section applies must be heard and decided summarily unless the defendant informs the Magistrates Court that he or she wants to be tried by jury.*

3. *This section is subject to section 552D."*

The section is subject to s552D CC (below).

Section 552BA CC relates to charges of indictable offences against the *Criminal Code* that must be heard summarily. The offence must be a **"relevant offence"** defined in s552BA(4) CC.

Section 552BA CC provides:

1. *This section applies to a charge before a Magistrates Court of any indictable offence against this Code if the offence is a relevant offence.*

2. *A charge to which this section applies must be heard and decided summarily.*

3. *This section is subject to section 552D.*

4. *In this section—*

   ***relevant offence** means—*

(a) an offence against this Code, if the maximum term of imprisonment for which the defendant is liable is not more than 3 years; or

(b) an offence against part 6, other than—

(i) an offence mentioned in paragraph (a); or

(ii) an offence against chapter 42A; or

(iii) an offence that, under section 552BB, is an excluded offence."

Part 6 CC relates to offences relating to property and contracts. Section 552BB CC contains a list of excluded offences in Part 6 with circumstances of aggravation that mean the offence cannot be dealt with summarily.

Section 552BA CC is subject to s552D CC.

Section 552D CC provides that a Magistrate must abstain from dealing summarily with an offence under ss552A, 552B, or 552BA if satisfied that because of the nature or seriousness of the offence or any other relevant consideration, the defendant, if convicted, may not be adequately punished on summary conviction.

Sections 13 and 14 DMA provide for summary determination of certain drug offences. Drug offences that are covered by those provisions are not "serious offences".

In relation to children, s77 YJA provides that if a Childrens Court Magistrate has jurisdiction to hear and determine summarily a charge against a child of an indictable offence (if the child consents), the court must refrain from exercising the jurisdiction unless it is satisfied that the charge can be adequately dealt with summarily.

Section 77 YJA provides:

1. *This section applies if a Childrens Court magistrate (**the court**) has jurisdiction to hear and determine summarily a charge against a child of an indictable offence (subject to the consent of the child).*

2. *The court must refrain from exercising the jurisdiction unless it is satisfied that the charge can be adequately dealt with summarily by the court.*

3. *The court may initially decide to exercise the jurisdiction on submissions made by the parties.*

4. *If at any stage of the proceeding the court decides that the charge cannot be adequately dealt with summarily by the court, any further proceeding before the court must be conducted as a committal proceeding.*

See Appendix 6: Jurisdiction Guide for Juvenile Matters 2019 by Legal Aid Queensland for a list of offences, their definition as serious or non-serious and the availability of any election in the child.

9.12.2 Regulatory, Summary and Simple Offences

Section 64 YJA provides that all proceedings under the JA for the hearing and determination of charges against children for offences must be heard and determined by a Childrens Court Magistrate.

The provisions in relation to simple offences and breaches of duty are set out in Part 6 JA (ss 139-178AA). Part 3 JA sets out the general provisions as to jurisdiction. Section 52 JA sets out time limits for the prosecution of simple offences.

Section 145 JA provides that the substance of the complaint "*shall be stated to the defendant*" and the defendant shall be asked to plead to it. Under s43A JA, the court may order that two or more complaints may be heard together if all the matters in the complaints are of a kind that could be joined in one complaint under s43 JA (matter of complaint). If there is more than one complaint and the defendant is legally represented, the defendant can be arraigned in bulk if the court is satisfied the defendant has obtained legal advice and the defendant is aware of the substance of each of the complaints.[425]

In relation to a child, the court should ensure that the child understands that process and the implications of entering a bulk plea. If the matter is to be a trial, it may be more appropriate to arraign in relation to each charge.

Section 146(1) JA provides that if the defendant pleads not guilty the court may:

> *(a) proceed to hear the complainant and the complainant's witnesses, and the defendant and the defendant's witnesses, and the complainant and such witnesses as the complainant may*

[425] s145(2) JA.

examine in reply if the defendant has given evidence other than as to the defendant's general character and, upon consideration of all the evidence adduced, determine the matter and shall convict the defendant or make an order against the defendant or dismiss the complaint as justice may require; or

(b) upon good reason appearing therefor, before any evidence is adduced, adjourn the hearing.

Section 46 YJA provides that a Childrens Court Magistrate may hear and determine a proceeding against a child in relation to a complaint and summons for a simple offence in the absence of the child in the way set out in Part 6 JA (ss130-178AA JA). Section 147 JA provides that if the defendant does not appear at the time or place to which a hearing or further hearing is adjourned, the court may proceed with the hearing as if the party was present. In those circumstances, the only sentence that can be imposed on the child is a fine, provided the child has indicated in writing that the child has the capacity to pay.[426]

Pursuant to s45 YJA, a court must not order the child to pay the cost of lodging the complaint and summons.

9.12.3 Indictable Offences that are not Serious Offences

Section 82-86 YJA set out the procedures for the disposition of indictable offences that are not serious offences. The procedures set out the steps to be taken in various situations to allow the child to decide whether to consent to summary disposition. Section 78 YJA provides that the rules set out in Part 6 YJA (ss60-148C), relating to the exercise by a child of procedure in relation to any indictable offence, apply despite any right of election in another Act. Thus, a child has the right of election in all indictable offences that are not serious offences.

See Chapter 9.11.1: An indictable offence which is not a serious offence

9.12.3.1 Where the Child is Legally Represented

Sections 82-84 YJA relate to the procedures when a child is legally represented. Section 83 YJA provides that, before evidence is adduced, the court **must** explain to the child and any parent who is present, the child's right of election in s83(2) YJA. The child may elect to have the proceeding

[426] s46(2) YJA.

conducted as a committal proceeding or as a hearing and deciding of the charge summarily. The court **must** also explain the same election is available after all the evidence is adduced.[427]

Section 83 YJA provides:

1. *Subject to section 77, before evidence is adduced at the proceeding, the court must explain to the child and any parent of the child who present the child's is right of election mentioned in subsection (2).*

2. *The child may elect—*
    a. *to have the proceeding conducted as a committal proceeding; or*
    b. *to have the proceeding conducted as a hearing and deciding of the charge summarily by the court.*

3. *The court must also explain to the child and any parent of the child who is present that—*
    a. *after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and*
    b. *the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;*

    the child may elect—

    c. *to have the proceeding conducted as a committal proceeding; or*
    d. *to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.*

4. *The court must then ask the child whether the child consents to having the charge heard and decided summarily by the court.*

5. *If the child consents, the court must proceed to hear and decide the charge summarily.*

6. *If the child does not give the consent mentioned in subsection (4), the proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4.*

[427] s83(3) YJA.

See also ss87-89 YJA.

If the child consents to having the charge heard and determined summarily, the court **must** hear and decide the charge summarily.[428] On that proceeding, the court **must** reduce the charge to writing and ask the child to plead to it.[429] If the child pleads not guilty, the court may proceed to hear the matter in the same way as provided in s146 JA.[430]

Section 146(1) JA provides that if the defendant pleads not guilty the court may:

> *(a) proceed to hear the complainant and the complainant's witnesses, and the defendant and the defendant's witnesses, and the complainant and such witnesses as the complainant may examine in reply if the defendant has given evidence other than as to the defendant's general character and, upon consideration of all the evidence adduced, determine the matter and shall convict the defendant or make an order against the defendant or dismiss the complaint as justice may require; or*
>
> *(b) upon good reason appearing therefor, before any evidence is adduced, adjourn the hearing.*

9.12.3.2 Where the Child is not Legally Represented

Section 85-86 YJA relate to the procedures when the child is not legally represented. The proceeding must start as a committal proceeding with an explanation that **must** be given to the child and any parent present before any evidence is adduced, that the child may elect to have the proceeding determined summarily at the end of the prosecution case.[431]

Section 86 YJA provides:

1. *The proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4.*

2. *Before evidence is adduced at the proceeding, the court must explain to the child and any parent of the child who is present that-*

[428] s83(5) YJA.
[429] s84(1) YJA.
[430] s84(3) YJA.
[431] s86 YJA.

a. *after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and*
b. *the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;*

the child may elect—

c. *to have the proceeding conducted as a committal proceeding; or*
d. *to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.*

See Chapter 9.11.4: Election after prosecution case has closed and Chapter 9.14.5: Indictable offences that are not serious offences

As s86 YJA is subject to ss87-93 YJA, if the child consents to having the charge heard and determined summarily,[432] the committal is discontinued, and the court will hear and determine the charge summarily. The court **must** reduce the charge to writing and ask the child whether the child is guilty or not guilty.[433]

If the child pleads not guilty, the court may proceed to hear the matter in the same way as is provided in s146 JA (above).

9.12.4 Election After Prosecution Case Has Closed

Sections 87-89 YJA provide for procedures to inform a child of the right to elect summary disposition after the close of the prosecution case on a committal hearing. If the court is of the view that there is sufficient evidence to put the child on trial for the offence, the court **must** explain to the child and any parent present the right of election. The provisions apply whether or not the child is legally represented.[434]

Section 88 YJA provides:

1. *Subject to subsection (6) and section 77, the court must explain to the child, and any parent present in the court, the child's right of election mentioned in subsection (2).*

[432] s88(4) YJA.
[433] s89(1) YJA
[434] s87(2) YJA.

2. *The child may elect—*
    a. *to have the proceeding continue as a committal proceeding; or*
    b. *to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.*

3. *The court must then ask the child whether the child consents to having the charge heard and decided summarily by the court.*

4. *If the child consents, the court must discontinue the committal proceeding and proceed to hear and decide the charge summarily.*

5. *If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.*

6. *The court may, but need not, follow the process under subsections (1) to (5) if the child has already declined to give consent under section 83 for the charge to be heard and decided summarily."*

The court **must** ask the child whether the child consents to having the charge heard and determined summarily.[435] If the child consents to having the charge determined summarily, the committal is discontinued and the court hears and determines the charge summarily.[436] The court **must** reduce the charge to writing and ask the child whether the child is guilty or not guilty.[437] If the child pleads not guilty the court may proceed to hear the matter in the same way as is provided in s146 JA (above).

9.12.5 Serious Offences

Section 81 YJA provides that the hearing of a charge of a serious offence must be conducted as a committal hearing. If the charge is changed to a charge other than a serious offence during the committal proceeding, then the procedures contained in ss87-93 YJA (above) apply. The court **must** explain to the child the right of election.[438] The court **must** ask the child whether the child consents to having the matter heard and determined summarily.[439] If the child consents, the committal is

[435] s88(3) YJA.
[436] s88(4) YJA.
[437] s89(1) YJA.
[438] s88(2) YJA.
[439] s88(3) YJA.

discontinued, and the court hears and determines the charge summarily. The court **must** reduce the charge to writing and ask the child to plead to the charge.[440] If the child pleads not guilty, the court may proceed in the same way as is provided in s146 JA (above), subject to s80 YJA.

See s80 YJA as to the use of evidence already adduced, if there is an election exercised or a change of an election.

9.12.6 Limitation on Summary Hearing of an Indictable Offence

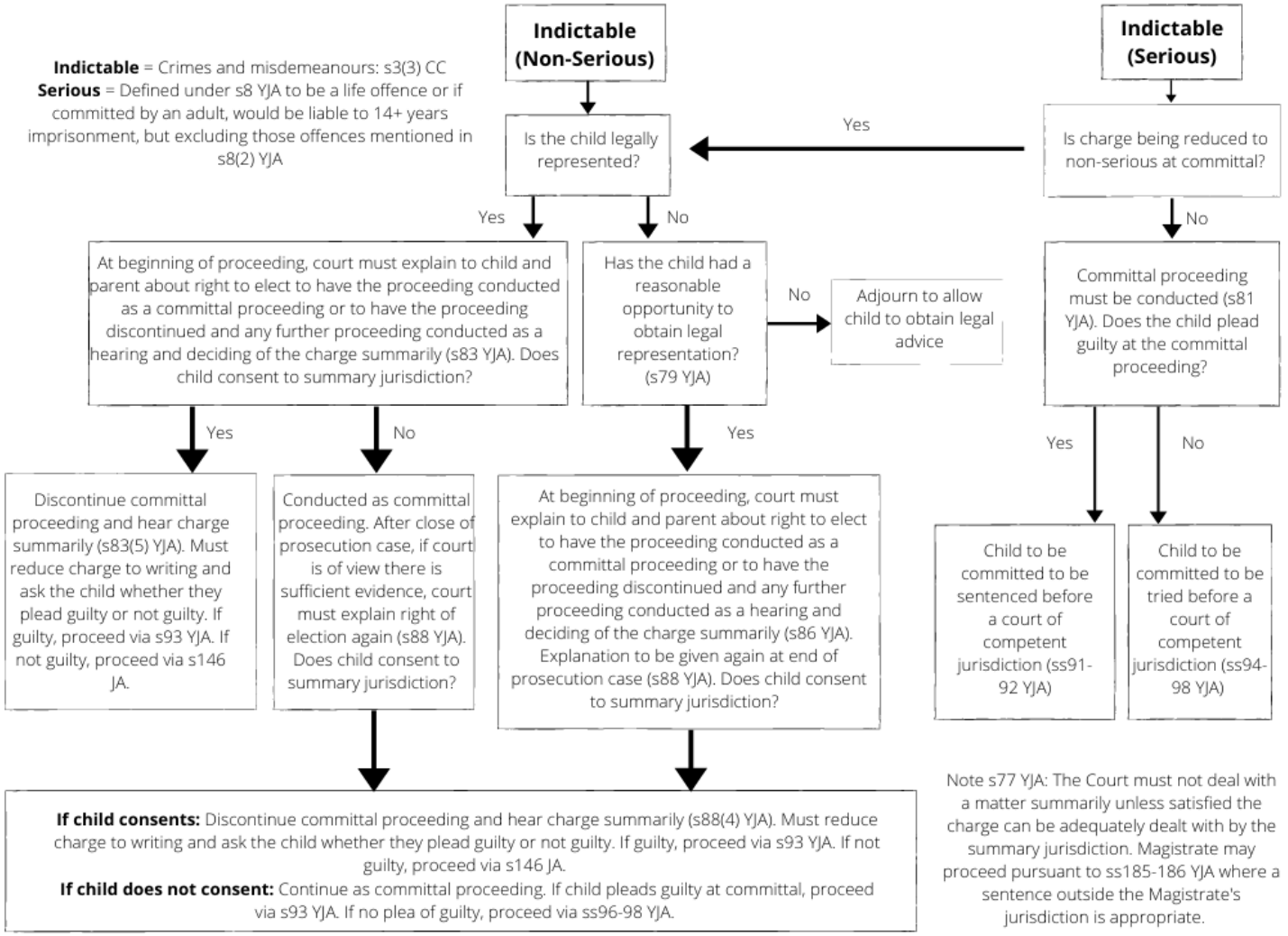
Section 77 YJA provides that if a Childrens Court Magistrate has jurisdiction to hear and determine a charge against a child of an indictable offence (with the consent of the child), the court **must** refrain from exercising that jurisdiction unless it is satisfied that the charge can be adequately dealt with summarily.[441] Such a decision can be made at any stage of the proceeding, and the proceeding then continues as a committal proceeding.[442]

9.12.7 Costs in Relation to Indictable Offences

Pursuant to s704 CC, no fees can be taken from any person who is charged with an indictable offence for any proceeding had or taken in court with respect to the charge.

[440] s89(1) YJA.
[441] s77(2) YJA.
[442] s77(4) YJA.

9.13 Summary Table: Elections Flowchart



9.14 General Matters Concerning Hearings/Trials

9.14.1 Joinder of Offences and Defendants

Section 574CC provides that the provisions of ss559A-574 CC about indictments (principally about joinder of charges and defendants) apply in relation to complaints for the summary hearing of indictable offences.

9.14.2 Limitation of Proceedings

Section 52 JA provides that, in relation to the case of a simple offence or a breach of duty, unless some other time is limited by law, the complaint must be made within one year from when the matter of the complaint arose.

Section 52 JA provides:

1. *In any case of a simple offence or breach of duty, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made within 1 year from the time when the matter of complaint arose.*

2. *However, if in relation to the matter of complaint—*
    a. *a proceeding was previously commenced for an indictable offence against the Criminal Code or the Drugs Misuse Act 1986; and*
    b. *the proceeding has been discontinued, or is to be discontinued by a Crown Law Officer as defined in the Criminal Code;*

    complaint must be made within 2 years from the time when the matter of the complaint arose.

3. *Also, subsection (1) does not apply to an offence if, under the Act providing for the offence, the Magistrates Court has jurisdiction for the offence regardless of when the matter of complaint arose.*

    Example for subsection (3)— The Criminal Code, section 552F gives jurisdiction to a Magistrates Court that hears and decides a charge summarily under section 552A, 552B or 552BA of that Code despite the time that has elapsed from the time when the matter of complaint of the charge arose.

Section 76 YJA provides that a Childrens Court Magistrate may exercise jurisdiction to summarily hear and decide an indictable offence, with the child's consent, even though more than one year has passed since the offence was committed.

Section 76 YJA provides:

1. *The purpose of this section is to ensure that a child may elect to have an indictable offence dealt with before a Childrens Court magistrate despite delay in prosecution.*

2. *A Childrens Court magistrate may exercise jurisdiction under this part in relation to an indictable offence even though more than 1 year has passed since the offence was committed.*

9.14.3 How Evidence is Taken

Section 73 JA provides that every witness shall be examined on oath or in such other manner as is prescribed or allowed by the Acts in force for the time being relating to giving evidence in courts of justice.

See s93A EA as to the evidence of children by statement.

In relation to the evidence of children, special witnesses, and affected child witnesses, see Chapter 5: Children in Court

Section 148 JA regulates the conduct of summary proceedings in relation to a simple offence or breach of duty.

Section 148 JA provides:

> *The practice before justices upon the hearing of a complaint of a simple offence or breach of duty shall, in respect of the examination and cross-examination of witnesses and the right of addressing the justices upon the case in reply or otherwise, be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon the trial of an issue of fact in an action at law.*

Section 148A JA, in relation to a simple offence, other than a simple offence that is an indictable offence punishable on summary conviction, or a breach of duty, permits the use of the admission of a fact by the defendant or the complainant, if the defendant consents.

Section 644 CC provides for the use of the admission of a fact on trial by the accused or the Crown if the accused agrees. **"Trial"** includes proceedings before Justices dealing summarily with an indictable offence.[443]

9.14.4 Audio-visual or Audio Link

Part 3A EA regulates the use of audio-visual or audio links to facilitate the taking of evidence and the making of submissions in Queensland court proceedings.[444]

Section 39R EA provides that, subject to any rules of court, the court, on the application of a party, may direct that a person appear before, or give evidence or make a submission to the court by audio-visual or audio link from inside or outside Queensland. That applies to criminal proceedings.[445]

See Rules 52 and 53 *Criminal Practice Rules 1999* in relation to the ability of a court to receive evidence or submissions by telephone, video-link or another form of communication in a proceeding for an offence. Rules 52 and 53 apply to the Magistrates Court.[446]

See Magistrates Court Practice Direction No 3 of 2019 (Childrens Court) Practice Direction No 1 of 2019 as to the use of video-link or audio-link appearances in the Childrens Court when constituted by a Magistrate.

9.14.5 Disclosure Obligations

Section 66 YJA provides that for the purposes of the powers and jurisdiction of a Childrens Court conferred by the YJA, the provisions of the CC and JA apply.

See Chapter 3: Jurisdiction

[443] s644(3) CC.
[444] s39A(b) EA.
[445] s39Q(1) EA.
[446] Rule 5 *Criminal Practice Rules 1999*

Section 41 JA provides that the laws relating to prosecution disclosure for a relevant proceeding as defined in s590AD CC are set out in Chapter 62, Division 3 CC (ss590AB-590AX). **"Relevant proceeding"** includes a prescribed summary trial.[447]

"Prescribed summary trial" is defined as:

> *"a summary trial of—*
>
> *a) a charge for an indictable offence that must be heard and decided summarily under section 552BA; or*
> *b) a charge for an indictable offence if, under section 552A, the prosecution has elected that the charge be heard and decided summarily; or*
> *c) a charge for an indictable offence to which section 552B applies unless the defendant has informed the Magistrates Court that he or she wants to be tried by jury; or*
> *d) a charge for an indictable offence against a provision of the Drugs Misuse Act 1986, if—*
>
> *i. under that Act, proceedings for the charge may be taken summarily; and*
> *ii. the prosecution has elected that proceedings for the charge be taken summarily; or*
>
> *e) a charge for an offence prescribed under a regulation for this definition."*

See ss83C-83F JA for disclosure obligation directions. See also Chapter 9A of the *Criminal Practice Rules 1999* which applies to Magistrates Court proceedings (Rule 5) and Chapter 3.14 of the Queensland Police Service Operational Procedures Manual.

9.14.6 Case Conferences

The case conference procedure is available in relation to hearings in the Childrens Court when constituted by a Magistrate when the child is legally represented. Any case conference is in accordance with Queensland Police Service policy or the Director of Public Prosecutions Guidelines.

[447] s590AD CC.

See Magistrates Court Practice Direction No 2 of 2017, Chapter 3.16 of the Queensland Police Service Operational Procedures Manual and Guideline 17 of the Director's Guidelines.

9.14.7 Direction Hearing

Pursuant to s83A JA, a Childrens Court Magistrate, in relation to a proceeding for an offence, may direct the parties to attend at a direction hearing where directions may be given about the conduct of the proceeding, including such issues as:

- disclosure under the Criminal Code, Chapter 62, Division 3
- a party providing a copy of—
  (i) a medical, psychiatric, or other expert report; or
  (ii) a statement, report, or other stated information relevant to the proceeding;
- psychiatric or other medical examination of the defendant;
- joining complaints;
- hearing complaints that have been ordered to be heard together under s43A JA;
- receiving evidence or submissions by telephone, video link or other form of communication;
- issuing a summons or warrant;
- changing the usual practice of the court in a way that helps an alleged victim of the offence to give evidence in the proceeding;
- matters relating to protected counselling communications under the *Evidence Act 1977*, Part 2, Division 2A.

9.15 Committal Hearings

Under the YJA, the following matters are subject to a committal hearing:

- all Supreme Court offences
- all serious offences (defined in s8 YJA)
- all indictable offences other than serious offences

See Chapter 3: Jurisdiction

9.15.1 Conduct of Committals Pursuant to *Justices Act 1886*

Section 66 YJA provides that for the purposes of the powers and jurisdiction of a Childrens Court conferred by the YJA, the provisions of the CC, JA and other Acts apply to the institution and conduct of a proceeding and the exercise of the court's powers and jurisdiction.[448] Provisions applied under s66(1) YJA apply with all necessary modifications and prescribed modifications in relation to a Childrens Court Magistrate in the way they apply to a Magistrates Court. [449]

Section 64 YJA provides that all proceedings under the JA for the hearing and determination of charges against children for offences, including committal proceedings, must be heard, and determined before a Childrens Court Magistrate.[450] **"Committal proceeding"** is defined in Schedule 4 YJA to mean "*a proceeding before a Justice taking examination of witnesses in relation to a charge of an indictable offence*".

See:

- Sections 103B-111 JA for the provisions in relation to a committal proceeding.
- Sections 73-83 JA in relation to how evidence is taken and witnesses.
- Section 110A JA as to the use of tendered statements in lieu of oral testimony in committal proceedings.
- Sections 110B and 110C JA as to the considerations in relation to an order that the witness who has given a written statement give oral testimony.

See Chapter 5: Children in Court for considerations applicable to the admissibility of a statement in evidence of a child (s93A EA), the evidence of a special witness (s21A EA), and the evidence of an affected child witness (Division 4A, Subdivision 2) in relation to a committal proceeding). See also Magistrates Court Practice Direction No 3A of 2004 as to the evidence of affected children.

9.15.2 Committals under the *Youth Justice Act*

Sections 81-98 YJA regulate the conduct of committals in the Childrens Court.

[448] s66(1) YJA.
[449] s66(2) YJA.
[450] s64(1) YJA.

9.15.3 Supreme Court Offences

A Supreme Court offence (defined in Schedule 4 YJA) means an offence for which the District Court does not have jurisdiction to try an adult because of s61 *District Court of Queensland Act 1967*.

Section 95 YJA provides that if, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for a Supreme Court offence, the court **must** order the child to be committed for trial before the Supreme Court.

Section 91 YJA provides that if the child pleads guilty to a Supreme Court offence when addressed under s104(2) JA, the court **must** order the child to be committed to be sentenced before the Supreme Court.

Section 106 YJA entitles a child who has entered a plea of guilty and been committed for sentence to enter a plea of not guilty when called upon to plead to the indictment.

9.15.4 Serious Offences

"Serious offence" is defined in s8 YJA.

Section 81 YJA provides that the hearing of a serious offence before a Childrens Court Magistrate **must** be conducted as a committal proceeding.[451] If the child in the proceeding is also charged with an offence other than a serious offence, the court may treat that charge as a charge of a serious offence for the purpose of the committal for trial.[452]

Section 81(3) provides that if the charge of the serious offence is changed during the committal to an offence other than a serious offence, the procedures under ss87-93 apply, where the child can elect for summary disposition.

See Chapter 9.11.3: Indictable offences that are not serious offences and Chapter 9.11.4: Election after prosecution case has closed

[451] s81(2) YJA.
[452] s81(4) YJA.

Section 96 YJA provides that if, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for an offence that is not a Supreme Court offence, the court **must** order the child to be committed to be tired before a court of competent jurisdiction. If the court to which the child is ordered to be committed is a Childrens Court Judge, the court **must** comply with ss97-98 YJA.

Section 98 YJA requires that the court explain to the child and any parent present, if the child is represented by a lawyer, the election to be tried with or without a jury. After the explanation, the court **must** ask the child whether the child consents to be tried without a jury. If the child consents, the court **must** commit the child to be tried before a Childrens Court Judge without a jury.[453] If the child does not consent or if the child is not represented by a lawyer, the court **must** order the child to be committed to be tried before the Childrens Court Judge sitting with a jury.[454] The child can change the election at a later time.[455]

Section 98 provides:

1. *If the child is represented by a lawyer, then, before ordering the child to be committed to be tried under the Justices Act 1886, section 108, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).*

2. *The child may elect—*
    a. *to be committed to be tried before the Childrens Court judge sitting without a jury; or*
    b. *to be committed to be tried before the Childrens Court judge sitting with a jury.*

3. *After the explanation, the court must then ask the child whether the child consents to being tried before the Childrens Court judge sitting without a jury.*

4. *If the child consents, the court must order the child to be committed to be tried by the Childrens Court judge without a jury.*

5. *If the child—*
    a. *is not represented by a lawyer; or*

[453] s98(4) YJA.
[454] s98(5) YJA.
[455] ss102-105 YJA.

b. if represented by a lawyer—does not give the consent mentioned in subsection (4);

the court must order the child to be committed to be tried before the Childrens Court judge sitting with a jury.

Section 92 YJA provides that if the child pleads guilty to a serious offence that is not a Supreme Court offence, the court **must** order the child to be committed to be sentenced before a court of competent jurisdiction.

Section 106 YJA entitles a child who has entered a plea of guilty and been committed for sentence to enter a plea of not guilty when called upon to plead to the indictment.

9.15.5 Indictable Offences that are not Serious Offences

Sections 82-83 YJA set out procedures if the child is legally represented, for the explanation of the child's right to elect to be dealt with summarily. If the child does not consent to have the charge heard and determined summarily, the proceeding **must** be conducted as a committal proceeding.[456]

Sections 85-86 YJA set out procedures if the child is not legally represented. The proceedings must be conducted as a committal proceeding but subject to ss87-93 YJA.[457] Before evidence is adduced, the court **must** explain to the child and any parent present that the child, after all the prosecution evidence has been adduced, has a right to elect summary determination of the matter.

In all cases of a committal proceeding in cases of an indictable offence that is not a serious offence, whether or not the child is legally represented, after all the prosecution evidence has been adduced and if the evidence is sufficient to commit the child, the court **must** explain to the child and any parent present the right to have the charge summarily determined.[458] The court **must** then ask the child whether the child consents to having the charge heard and determined summarily.[459] If the child does not consent, the proceeding **must** continue as a committal.[460]

Section 96 YJA provides that if, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for an

[456] s83(6) YJA.
[457] s86(1) YJA.
[458] s88(2) YJA.
[459] s88(3) YJA.
[460] s88(5) YJA.

offence other than a Supreme Court offence, the court must order the child to be committed to be tried before a court of competent jurisdiction. If the court to which the child is ordered to be committed is a Childrens Court Judge, the court **must** comply with ss97-98 YJA.

Section 93 YJA provides that if the child pleads guilty to an indictable offence that is not a serious offence when addressed under s104(2) JA, the court **must** explain to the child and any parent present, the child's right of election to be sentenced by the Childrens Court Magistrate. The court **must** then ask the child whether the child consents to being sentenced by the Childrens Court Magistrate. If the child does not consent, the court **must** order the child to be committed to be sentenced before a court of competent jurisdiction.[461]

If the child elects to be dealt with summarily, see also Chapter 9.4.3: Indictable offences that are not serious offences, Chapter 9.4.4: Election after prosecution case has closed, Chapter 9.11.3: Indictable offences that are not serious offences and Chapter 9.11.4: Election after prosecution case has closed

Section 106 YJA entitles a child who has entered a plea of guilty and been committed for sentence to enter a plea of not guilty when called upon to plead to the indictment.

9.15.6 Joint Committal Proceedings

Section 107 YJA provides that a Magistrate may at the same time conduct a committal proceeding in relation to an indictable offence as a Childrens Court Magistrate in relation to a child and as a justice in relation to an adult if, were the child an adult, a committal proceeding would have been conducted at the same time against each.

Section 108(1) YJA provides that before a Childrens Court Magistrate begins to hear and determine a charge summarily against a child for an indictable offence other than a serious offence, the prosecution may apply for the proceeding to be conducted as a committal proceeding so that the child can be tried on indictment with another person.

Section 108(2) YJA provides that before a child is committed for trial before a Childrens Court judge, the prosecution may apply for the child to be instead committed for trial to another court of competent jurisdiction on an indictment with another person.

[461] s93(5) YJA.

In relation to each application under s108 YJA, the Magistrate may allow the application if satisfied of the matters in s108(3) YJA.

Section 108 YJA provides:

1. *Before a Childrens Court magistrate starts to hear and decide summarily a charge against a child for an indictable offence other than a serious offence, the prosecution may apply to the court for the proceeding to be conducted or continued as a committal proceeding for the purpose of having the child tried on indictment with another person.*

2. *Before a Childrens Court magistrate commits a child for trial before a Childrens Court judge on a charge of a serious offence, the prosecution may apply to the court for the child to be instead committed for trial to another court of competent jurisdiction for the purpose of having the child tried on indictment with another person.*

3. *On application under subsection (1) or (2), if the magistrate is satisfied that—*
    a. *the child may lawfully be charged in an indictment in which the other person will also be charged; and*
    b. *if the child were so charged it is unlikely an application would be granted resulting in the child's trial being had separately from the other person; and*
    c. *in all the circumstances, including the relevant principles of this Act, the application should be granted;*

    the magistrate may grant the application and deal with the proceedings as requested.

9.16 General Matters Concerning Committals

9.16.1 How Evidence is Taken

Section 73 JA provides that every witness "*shall be examined upon oath or in such other manner as is prescribed or allowed by the Acts in force for the time being relating to giving evidence in courts of justice*".

Section 110A JA provides for the use of statements in lieu of oral testimony in committal proceedings. Sections 110A(3)-(6), 110B and 110C JA place restrictions on a witness being required to give oral evidence when the witness' statement has been admitted.

See s93A EA for the admissibility of a statement made before a proceeding by a child. See s21A EA in relation to the evidence of a special witness. See Division 4A Subdivision 2 in relation to the evidence of an affected witness in a committal proceeding. See s148C YJA for admissibility of evidence obtained whilst the child is participating in particular youth justice programs (conference, alternative diversion program or a program or service established by the chief executive under s302 YJA.

See also Magistrates Court Practice Direction 3A of 2004 as to the evidence of affected children and Chapter 5: Children in Court

9.16.2 Audio-visual or Audio Link

See Chapter 9.7.2: Audio-visual or audio link and Chapter 9.13.4: Audio-visual or audio link

9.16.3 Disclosure Obligations

See Chapter 9.13.5: Disclosure obligations

A **"relevant proceeding"** includes a committal proceeding.[462]

9.16.4 Case Conferences

The case conference procedure is available in committal proceedings.

See Magistrates Court Practice Direction No 2 of 2017, Chapter 9.7.3: Case Conferences and Chapter 9.13.6: Case Conferences

9.16.5 Direction Hearing

Section 103B JA provides that a Magistrate has an overall supervisory responsibility for any committal proceeding which includes setting timetables for the committal proceeding to the extent not otherwise provided by an Act or Practice Direction. Section 83A JA empowers a Magistrate, in relation to a proceeding for an offence, to direct the parties to attend at a directions hearing and the Magistrate may give a direction about any aspect of the conduct of the proceeding.[463] Section 83A(5)(g) JA relates specifically to committal proceedings.

[462] s590AD CC.
[463] s83A(5) JA.

See Chapter 9.13.7: Direction Hearing

9.17 Other Applications

9.17.1 Application to Dismiss Charge if Caution Should Have Been Administered

Section 21 YJA permits an application by the child to dismiss a charge if a caution should have been administered or no action should have been taken against the child.

See Chapter 7.3: Childrens Court may dismiss a charge if caution should have been administered and Chapter 8.4: Police Diversion

9.17.2 Application to Dismiss Charge if Offence Should Have Been Referred to Restorative Justice Process

Section 24A YJA permits an application by a child to dismiss charge if the charge should have been referred to the Chief Executive (Youth Justice) for a restorative justice process.

See Chapter 7.4: Childrens Court may dismiss a charge if offence should have been referred to restorative justice process and Chapter 8.4: Police Diversion

9.17.3 Application by Police Officer to Take Child's Identifying Particulars

Section 25 YJA permits an application by a police officer to take a child's identifying particulars. Note that the court may order the identifying particulars of a sentenced child to be taken.[464] That order can be in addition to any sentence order.

See Chapter 8.7-8.9: Other Court Applications .

9.17.4. Application to Set Aside Finding or Order by a Parent

Section 71 YJA permits a parent of a child against whom a finding or order has been made, when the child was dealt with when no parent was present, for the finding or order to be set aside.

[464] s255 YJA.

See Chapter 2.9: Role of Parents

9.17.5 Application for Variation of Detention Order in the Interests of Justice

Section 216 YJA provides for an application to the original sentencing court in relation to a child who is unlawfully at large from detention and is being held in custody in another State, for an order to change the original sentence order in the interests of justice. The application may be made by the child or the chief executive (youth justice). The court may take no action or order that part or all of the period of interstate custody be a period of detention taken to have been served under the original order.

See Chapter 9.8: Application for a temporary delay in transfer to Corrective Services Facility

9.17.7 Application for Review of a Bail Decision by a Police Officer

Section 19B(2) BA permits an application by a defendant, complainant, or prosecutor to review a decision by a police officer about the release of or the granting of bail to a child.

See also Chapter 6.8: Court's Power with Respect to Bail and Chapter 8.5: Bail

9.17.8 Other Bail Matters

Section 19 BA provides that a defendant held in custody may make application to a court with jurisdiction to grant bail for an order granting or varying bail.

Section 29A BA sets out procedures in relation to bringing a child, who has been apprehended on a warrant issued under s21(7) BA or s367 PPRA in relation to bail issues, before the Childrens Court for a review of bail.

Section 30 BA permits an application by a complainant or prosecutor to vary or revoke the bail of a child.

See Chapter 8.5: Bail

9.17.9 Application to Remove a Child from Lawful Custody

Section 399 PPRA permits an application by a police officer to a magistrate for an order to remove a child from a prison or detention centre for the questioning of the child in relation to or the investigation of an indictable offence.

See Chapter 8.3: Police Removal Order

9.17.10 Application for Forensic Procedures Order

Sections 457-466 PPRA set out procedures in relation to forensic procedures orders. Section 458 PPRA permits an application by a police officer to a Childrens Court magistrate for an order authorising a forensic procedure on a child.[465]

See Chapter 8.10: Forensic Orders

9.17.11 Application for Taking a DNA Sample

Sections 475-494 PPRA set out procedures in relation to DNA samples. Section 488 PPRA permits an application by a police officer to the Childrens Court for an order to take a DNA sample from a child.

See Chapter 8.11: DNA Sample

9.17.12 Application in Respect of Failure to Comply with a Reporting Notice in Relation to a Forensic Procedure

Section 514 PPRA permits a police officer to apply to a Magistrate for an order authorising the detention of a person who has failed to answer a reporting notice for the purpose of performing a forensic procedure.

See Chapter 8.10: Forensic Orders

[465] s458(2) PPRA.

9.17.13 Application for Disease Test Order

Chapter 18 PPRA sets out procedures for blood and urine testing of persons suspected of committing sexual or other serious assault offences. Section 540 permits a police officer to apply to the Childrens Court for a disease test order.

See Chapter 8.13: Disease Test Orders

9.17.14 Provisions in Relation to Taking the Evidence of an Affected Child Witness

Sections 21AE-21AH EA set out procedures in relation to the taking of the evidence of an affected child witness for a committal proceeding.

See Chapter 5.6: Evidence of Affected Children

Chapter 10 – Childrens Court Constituted by a Judge

10.1 Jurisdiction

Pursuant to s11 CCA, District Court Judges are appointed as Childrens Court Judges. The appointment as a Childrens Court Judge does not affect the person's appointment as a District Court Judge or the person's powers as a District Court Judge.[466]

Section 60 YJA provides that the YJA does not affect the jurisdiction a court has in relation to a child charged with an offence unless the YJA provides otherwise.

Section 66(1) YJA provides that for the purposes of the powers and jurisdictions of the Childrens Court conferred by the YJA, the provisions of the CC, JA and other Acts apply to:

- The institution and conduct of a proceeding before a Childrens Court; and
- The exercise of the Childrens Court of its powers and jurisdictions; and
- The enforcement of an order made by a Childrens Court.

Provisions applied under that subsection apply, with all necessary modifications, in relation to a Childrens Court Judge in the way they apply to the District Court.[467] To the extent that another provision of the YJA is inconsistent with the provision applicable under subsection (1), the provision of the YJA applies.[468]

Section 62 YJA relates to the jurisdiction of a Childrens Court Judge:

> *A Childrens Court judge has jurisdiction—*
>
> *a) to hear and determine under division 7 a charge against a child for an offence; and*
> *b) to delegate sentencing power to a Childrens Court magistrate under section 185; and*
> *c) to hear bail applications under section 59; and*
> *d) to perform other functions and exercise other powers conferred on the judge under this Act; and*

[466] s11(3) CCA.
[467] s66(2)(a) YJA.
[468] s66(3) YJA.

e) *to review under section 118 a sentence order* [469] *made by a Childrens Court magistrate.*

Division 7 YJA is "Jurisdiction of Childrens Court judge".

Section 63(1) YJA provides that for the purpose of the jurisdiction in relation to persons and matters assigned to a Childrens Court Judge under the YJA, a Childrens Court Judge has the same powers and jurisdiction as the District Court has in its criminal jurisdiction in relation to persons and matters assigned to the District Court. The powers and jurisdiction conferred under subsection (1) are in addition to those otherwise conferred under the YJA.[470] To the extent that another provision in the YJA is inconsistent with (1), the provisions of the YJA prevail.[471]

Section 3 CC provides that offences are of two kinds, criminal and regulatory. Criminal offences comprise crimes, misdemeanours, and simple offences.[472] Crimes and misdemeanours are indictable offences. In relation to indictable offences, the offenders cannot, unless expressly stated, be prosecuted, or convicted except upon indictment.[473] **"Indictment"** means "*a written charge preferred against an accused person in order to the person's trial be set before some court other than Justices exercising summary jurisdiction*".[474]

Section 101 YJA provides that, subject to Division 7 YJA, the provisions of the CC or any other Act relating to the hearing and deciding on indictment of an indictable offence apply to a proceeding for an indictable offence brought before a Childrens Court Judge under Division 7. See ss559A-574 CC as to the presentation and contents of indictments.

Section 553 CC provides that the jurisdiction of courts of justice with respect to the trial of offenders is set forth in the laws relating to the constitution and jurisdiction of those courts respectively.

Section 62(a) YJA provides that a Childrens Court Judge has jurisdiction to hear and determine under Division 7 YJA, a charge against a child for an offence. Section 99 YJA provides that a Childrens Court Judge has jurisdiction to inquire of and hear and decide all indictable offences, wherever committed,

[469] s117A YJA provides that a sentence order includes a declaration under s150A(2) YJA that a child is a serious repeat offender.
[470] s63(2) YJA.
[471] s63(3) YJA.
[472] s3(2) CC.
[473] s3(3) CC.
[474] s1 CC.

charged against a child other than Supreme Court offences. For that jurisdiction, it does not matter where an offence is committed or whether or not the child has been committed to be tried or sentenced before the Childrens Court Judge.[475]

"Supreme Court offence" means an offence for which the District Court does not have jurisdiction to try an adult because of s61 *District Court of Queensland Act 1967*.[476] This section basically restricts the District Court jurisdiction in criminal matters to offences that carry less than 20 years imprisonment as a maximum penalty, except in relation to a large number of specified offences.

Section 61 of the *District Court of Queensland Act 1967* provides:

1. *The District Court does not generally have jurisdiction to try a person charged with an indictable offence if the maximum penalty for the offence is more than 20 years.*

2. *However, the District Court has jurisdiction to try a person charged with committing or counselling or procuring the commission of any of the following offences even if the maximum penalty for the offence is more than 20 years—*
    a. *an offence against the Corrective Services Act 2006, section 122 in which a prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, property that is part of a corrective services facility during a riot or mutiny and the security of the facility is endangered by the act;*
    b. *an offence under the Criminal Code, section 61, 213, 215, 216, 219, 222, 229B, 315, 316, 317, 318, 319, 349, 352, 411, 412, 415, 419, 421, 461, 469 or 469A;*
    c. *an offence under the Drugs Misuse Act 1986, section 5 if the dangerous drug the subject of the charge is a thing specified in the Drugs Misuse Regulation 1987, schedule 2.*

3. *Subsection (2) applies to an offence mentioned in subsection (2)(b) even if 1 or more circumstances of aggravation under the Criminal Code are alleged to exist in relation to the offence.*

[475] s99(2) YJA.
[476] Schedule 4 YJA.

4. *Also, subsection (5) applies in relation to a person charged with a prescribed offence if the circumstance of aggravation stated in the Penalties and Sentences Act 1992, section 161Q is alleged to exist in relation to the offence.*

5. *For applying subsection (1) to the person, the mandatory component of the sentence that must be imposed for the prescribed offence under the Penalties and Sentences Act 1992, section 161R(2) must be disregarded.*

6. *In this section— prescribed offence see the Penalties and Sentences Act 1992, section 161N.*

Section 100 YJA provides that a Childrens Court Judge may sentence a child on any charge for a summary offence on which the child consents to being sentenced by the Judge under s651 CC.[477]

The Childrens Court constituted by a Judge thus has jurisdiction to:

- Hear and determine all indictable offences, except Supreme Court offences, as trials or sentences;
- Hear and determine sentences for summary offences transmitted to the Childrens Court pursuant to s651 CC.
- Hear and determine bail applications under s59 YJA whether an indictment has been presented or not;
- Hear and determine sentence reviews under s118 YJA of orders made by a Childrens Court Magistrate;
- Hear and determine appeals from the Childrens Court Magistrate pursuant to s222 JA;
- To delegate sentencing power to a Childrens Court Magistrate pursuant to s185 YJA;
- To hear other applications or appeals as specified to a Childrens Court Judge.

See Chapter 12: Appeals and Sentence Reviews

In relation to offences against Commonwealth statues, the Childrens Court has jurisdiction pursuant to s68 *Judiciary Act 1903* (Cth). The jurisdiction of a Childrens Court Judge in relation to Commonwealth matters, is again constrained by s61 *District Court of Queensland Act* and whether the offence is a Supreme Court offence.

[477] Court may decide summary offences if the person is charged on indictment.

10.2 Trial

Trials for indictable offences before a Childrens Court Judge can be either with or without a jury. Pursuant to s98 YJA, on a committal, if a child is represented by a lawyer, the child may consent to being committed to be tried before a Childrens Court Judge sitting without a jury. If the child is not legally represented or does not so consent, the child must be committed for trial before a Childrens Court Judge sitting with a jury.[478]

Section 98 YJA provides:

1. *If the child is represented by a lawyer, then, before ordering the child to be committed to be tried under the Justices Act 1886, section 108, the court must explain to the child and any parent of the child who is present, the child's right of election mentioned in subsection (2).*

2. *The child may elect—*
    a. *to be committed to be tried before the Childrens Court judge sitting without a jury; or*
    b. *to be committed to be tried before the Childrens Court judge sitting with a jury.*

3. *After the explanation, the court must then ask the child whether the child consents to being tried before the Childrens Court judge sitting without a jury.*

4. *If the child consents, the court must order the child to be committed to be tried by the Childrens Court judge without a jury.*

5. *If the child—*
    a. *is not represented by a lawyer; or*
    b. *if represented by a lawyer—does not give the consent mentioned in subsection (4); the court must order the child to be committed to be tried before the Childrens Court judge sitting with a jury.*

Pursuant to s103 YJA, the child may change the election at a time before the child enters a plea to the charge. If the child is not legally represented before the Childrens Court Judge, the child must be tried by the Judge sitting with a jury.

[478] s98(5) YJA.

Section 103 YJA provides:

1. *This section applies to a child who has been committed to be tried before a Childrens Court judge.*

2. *If the child was committed under section 98(2)(a), but is not legally represented before the judge, the child must be tried by the judge sitting with a jury.*

3. *Also, if the child was committed under section 98(2)(a), the child may withdraw the child's election under the section to be tried before a Childrens Court judge sitting without a jury and elect instead to be tried before the judge sitting with a jury.*

4. *If the child was committed under section 98(2)(b) to be tried before the judge sitting with a jury and the child is legally represented, the child may withdraw the child's election under the section and elect instead to be tried before the judge sitting without a jury.*

5. *If the child was committed to be tried before the judge sitting with a jury under section 98(5) and the child is legally represented before the judge, the child may elect to be tried before the judge sitting without a jury.*

6. *An election or withdrawal of election must happen before the child enters a plea to the charge.*

Pursuant to s104 YJA, if the child is before a Childrens Court Judge in relation to a charge of an indictable offence that is not a committal charge, and the child is represented by a lawyer, the child may elect to be tried before the Judge sitting with or without a jury. Again, the election must happen before the child enters a plea to the charge.[479]

Section 105 YJA provides for when a jury trial is necessary:

If a child who is before a Childrens Court judge—

a) is not represented by a lawyer; or
b) if represented by a lawyer, has not elected, or withdraws an election, to be tried without a jury under another provision of this division; or

[479] s104(3) YJA.

c) *if the judge decides that in the particular circumstances it is more appropriate for the child to be tried by the judge sitting with a jury; the child must be tried before the judge sitting with a jury.*

The Judge has a residual discretion pursuant to s105© YJA to decide it is more appropriate for the child to be tried before the Judge sitting with a jury.

At a mention of the indictment before a Judge, the Judge should enquire of the legal representatives for the child as to whether the matter is to be a jury trial or a Judge alone trial. The indictment should be suitably endorsed. The child can change that election up until the child enters a plea to the charge. In relation to jury trials, the procedure is exactly the same as for jury trials conducted in the District Court. The procedures in relation to juries are contained in the *Jury Act 1995* (Qld).

See Supreme and District Court Benchbook for procedures and jury directions, particularly Chapter Four.

Where a child is not legally represented for a jury trial, see Chapter Five of the Supreme and District Court Benchbook for the matters to be canvassed with the child. It is most important that the child understands the procedures and obligations in those circumstances. Section 79 YJA provides that if a child appears before a Childrens Court charged with an indictable offence, but is not legally represented, the court **may only** proceed with a hearing and determination if it is satisfied the child has had reasonable opportunity to obtain representation by a lawyer and has decided not to be represented by a lawyer. In relation to children, LAQ policy is that legal aid is automatically available to a child charged with an indictable offence. Pursuant to s22 *Legal Aid Queensland Act 1997*, a court may recommend that a person be given legal assistance by LAQ in relation to a "specified legal proceeding" which includes a proceeding under the YJA for an indictable offence.

See Chapter 2.13: Legal Representation

In relation to a trial by Judge alone, again the procedure is exactly the same as a trial conducted in the District Court. Again see the Supreme and District Court Benchbook for procedures and the elements of the particular offence that need to be proved. In relation to children under 14 years, one of the elements that must be proved is the capacity required under s29 CC.

See Chapter 4: Capacity

In a Judge alone trial, whilst a matter for the individual Judge, it is not advisable to read any depositions and witness statements before the trial. Any decision must be based on the evidence led on the trial. The danger is that the evidence given may not be what is contained in the depositions or statements and the decision may be influenced by what is not in evidence.

It is also important that a decision given in a Judge alone trial should address all relevant issues including basic matters, such as the onus and standard of proof and any specific matters which would ordinarily mandate a warning to the jury. See *R v FAX* [2020] QCA 139 where the Court of Appeal held that it was an error for the Trial Judge not to include in his reasons that *" the failure* (of the defendant) *to give evidence does not strengthen the prosecution case or supply additional proof against a defendant".* The Trial Judge should have specified that, in those circumstances, no adverse inference could be drawn against the defendant. Boddice J said at [104] – [110]:

> *Section 23 of the Childrens Court Act 1992 provides that issues of law and fact are to be decided by a judge as if the trial were a trial on indictment in the Supreme Court. No further guidance is given in that Act as to the method by which a judge of the Childrens Court is to decide those issues.*
>
> *To that extent, section 23 may be contrasted with the provisions of section 615C of the Criminal Code, which contains a specific requirement for a judge in a trial without a jury to identify in reasons the principles of law applied by that judge and the findings of fact relied upon in determining whether the defendant is guilty or not guilty.*
>
> *Whilst that provision of the Code specifically does not apply to a trial on indictment in the Childrens Court, the contents of that section are consistent with the common law obligation on any judicial officer to give reasons. That requirement includes obligations to state the relevant principles of law being applied, and the factual findings adopted in the application of those principles.*
>
> *The duty to give reasons operates as a safeguard to the interests of the accused and the public interest generally. As a matter of general principle, the giving of reasons should include an identification of the principles of law and the findings of fact, together with a statement of*

"the reasoning process linking them and justifying the [findings of fact] and, ultimately, the verdict that it reached".

Whilst no particular formula is necessary, reasons given in a judge only trial should contain details of the evidence admitted at trial, an explanation as to the use made of that evidence, the inferences drawn from that evidence and the judge's approach to the evidence, with an appropriate identification of the relevant principles of law to be applied in assessing the evidence and in determining whether the prosecution had established the defendant's guilt of each offence beyond reasonable doubt.

The form and content of reasons will depend upon the issues in dispute at trial. (…)
It is incumbent upon a judge presiding over a trial by judge alone to not only direct himself or herself as to the relevant principles, but to record those relevant principles in the reasons for judgment. The recording of those principles does not require that the judge set out the principles in the form of a Benchbook direction to a jury. Benchbook directions, by necessity, are framed on the basis they are given to an audience of lay people. A level of detail is required which it is not necessary to enunciate in the reasons of a judge alone trial.

In that regard, it is advisable to give a written judgement, bearing in mind the principles of youth justice that the matter should be resolved in a timely way.

See also Principles 8(a) and (c) and 13 of the Charter of Youth Justice Principles.

10.3 Joint Trials with an Adult Co-Accused or when also Charged with an Adult Offence

Sections 107 and 108 YJA provide for joint committal hearings in relation to where an indictable offence is charged against both a child and an adult. The prosecution may apply for the proceeding to be conducted as a committal for the purpose of having the child tried on indictment with another person,[480] or for the child to be instead committed for trial to another court of competent jurisdiction, rather than a Childrens Court judge, for the purpose of having the child tried on indictment with another person.[481] If satisfied of various things, the Magistrate may grant the application and commit the child in that way.

[480] s108(1) YJA.
[481] s108(2) YJA.

See Chapter 9.13.1: Joinder of Offences and Defendants

Section 110 YJA permits the prosecution to apply to a Childrens Court Judge for the removal of the committed charge to a court of competent jurisdiction other than the Childrens Court Judge for the purpose of having the child tried on indictment with another person. If allowed, the joint trial would proceed in the other jurisdiction (i.e., District or Supreme Court).

Section 110 YJA provides:

1. *The prosecution may apply to a Childrens Court judge for the removal of a committed proceeding to a court of competent jurisdiction other than a Childrens Court judge for the purpose of having the child tried on indictment with another person.*

2. *If the judge is satisfied that—*
    a. *the child may lawfully be charged in an indictment in which the other person will also be charged; and*
    b. *if the child were so charged it is unlikely an application would be granted resulting in the child's trial being had separately from the other person; and*
    c. *in all the circumstances, including the relevant principles of this Act, the proceedings should be removed as requested; the judge may grant the request and remove the proceeding as requested.*

3. *In removing the proceeding, the judge may exercise power as if the proceeding had been brought before the wrong court.*

In that regard, the court may exercise power as if the proceeding was brought before the wrong court.[482] See s129 YJA.

Section 111 YJA provides a procedure to remove a charge from the Childrens Court to another court of competent jurisdiction where the child faces another charge of an indictable offence as an adult. The prosecution may apply to the Childrens Court Judge for an order to that effect.

Section 111 provides:

[482] s110(3) YJA.

1. *The prosecution may apply to a Childrens Court judge for the removal of a committed proceeding to a court of competent jurisdiction other than a Childrens Court judge for the purpose of having the child tried on an indictment charging the child with the committed charge and another charge on which the child will be dealt with as an adult.*

2. *The judge may grant the request and remove the proceeding as requested.*

3. *In removing the proceeding, the judge may exercise power as if the proceeding had been brought before the wrong court.*

4. *This section does not limit the jurisdiction of any court of competent jurisdiction to try or sentence the child on the charge.*

The court may exercise power as if the proceeding was brought before the wrong court.[483] See s129 YJA.

Section 112 YJA provides that nothing in Division 7 excludes a Childrens Court Judge from presiding over the trial of a child in the Judge's concurrent jurisdiction as a District Court Judge to which a proceeding has been removed under ss109-111 YJA.

If the proceeding is removed to another court under ss110 or 111 YJA, the provisions authorising a trial before a Judge sitting without a jury do not apply.[484]

Section 614-615E CC provides for an application by the prosecutor or the accused for a Judge alone trial. Section 615D(a) CC provides that such an application is not available for a trial on indictment before a Childrens Court Judge.

Any sentence of a child convicted in that other court must be pursuant to Part 7 YJA.[485]

[483] s111(3) YJA.
[484] s113 YJA.
[485] s149 YJA.

10.4 Sentence

A Childrens Court Judge may sentence in relation to any indictable offence, except a Supreme Court offence[486] and any summary offence which has been transmitted pursuant to s651 CC with the child's consent.[487] Section 157 YJA provides that an outstanding charge against the child may be taken into account on sentence in the same way as for an adult pursuant to s189 PSA.

10.5 Arraignment

Arraignment of a child charged on indictment occurs in the same way as in the District Court. The charge is read directly to the child and the child is asked to personally plead to the charge.[488] Section 597C(2) CC provides that if the indictment contains more than one court, a plea to any number of counts may, with the consent of the accused person, be taken at one and the same time on the basis that the plea to one count will be treated as a plea to any number of similar counts on the same indictment. The questions to be asked of the accused are contained in the Supreme and District Court Associates Handbook:

- [Name] in respect of indictment number [xx], have you read each of the counts/charges contained in the indictment/bench charge sheet?
- Have you understood fully the contents of each of the counts/charges contained in the indictment/bench charge sheet?
- Have you sought and received advice from your counsel in respect of each of the counts/charges?
- Are you prepared to plead to the counts/charges contained in the indictment/bench charge sheet without each separate count/charge being read to you?
- [Name] in respect of each count/charge on the indictment/bench charge sheet number [xx], how do you plead, guilty or not guilty?

The wording may need to be adapted to ensure the child understands and agrees to the procedure.

See Chapter 9.4.2: Regulatory, Summary and Simple Offences

[486] s99 YJA.
[487] s100 YJA.
[488] ss597C, 598 and 600 CC (accused person to be called on to plead to indictment).

Consistent with the obligation to ensure the child understands the proceedings,[489] it is particularly important for the court to ensure the child understands the procedure and appreciates the number and type of offences to which it is proposed to take a guilty plea.

After a guilty plea has been entered, the child is called upon as to whether the child has anything to say why sentence should not be passed upon the child (the allocutus).[490]

Note also Rule 51 Criminal Practice Rules 1999.

Section 106 YJA provides that if a child has been committed for sentence on an indictable offence, the child is, in all cases, entitled to enter a plea of not guilty. That section prevails where it is inconsistent with s600 CC (persons committed for sentence). Evidence that the child previously entered a plea of guilty at the committal proceeding is not admissible on the trial after the change of plea.

Section 106 YJA provides:

1. *A child who appears before a Childrens Court judge after being committed to be sentenced on an indictable offence is in all cases entitled to enter a plea of not guilty when called on to enter a plea under the Criminal Code, section 600.*

2. *To the extent that this section is inconsistent with the Criminal Code, section 600, this section prevails.*

3. *Evidence that the child previously entered a plea of guilty at the committal proceeding is not admissible in the trial following the change of plea.*

On a mention of an indictment, if it is indicated that the child will plead guilty, the court should canvas the issue of whether a pre-sentence report under s151 YJA is required. If it is to be ordered, the child will need to be arraigned and a guilty plea entered before that order can be made. Consistent with the principles of speedy resolution, the arraignment should occur as speedily as possible.

Note Principle Nine of the Charter of Youth Justice Principles: "*The youth justice system should give priority to proceedings for children remanded in custody.*"

[489] Principle Seven, Charter of Youth Justice Principles and s72 YJA.
[490] s648 CC.

See Childrens Court Practice Direction 1 of 2017 and Chapter 11.6: Pre-Sentence Reports

On the arraignment, if the child pleads guilty, consideration needs to be given as to whether a pre-sentence referral to a restorative justice process should be made.[491] The Childrens Court **must** consider referring the offence to the Chief Executive (Youth Justice) instead of sentencing the child[492] or to help the court make an appropriate sentence.[493] To progress the matter as speedily as possible, it may be necessary to adjourn for a short period so the parties can canvas whether a restorative justice process is appropriate and available and, if so, the most appropriate order.

See Chapter 7.7: Restorative Justice Process

10.6 Sentence Hearing

Prior to the sentence hearing, the Childrens Court Judge should review any material which has been filed. That should include any agreed schedule of facts, any criminal history of the child, and any reports including a pre-sentence report or a report on a pre-sentence referral to a restorative justice process.[494] Such reports should be made exhibits on the sentence hearing. See ss151-153A YJA for pre-sentence reports.

See Chapter 11.11: The Sentence Hearing

Section 150(9) YJA provides that, in sentencing a child for an offence, a court may receive any information, or a sentencing submission made by a party to the proceedings, it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence. Section 74(3)(c) YJA provides that the Chief Executive (Youth Justice) is entitled to be heard by the court in relation to any sentence orders that may be made against the child. Pursuant to s152 YJA, the court may request the author of a pre-sentence report to attend before the court for the purpose of giving more information.

See Chapter 11.6: Pre-Sentence Reports

[491] s161-165 YJA.
[492] s162(1) YJA.
[493] s162(2) YJA.
[494] s165 YJA.

Section 159 YJA provides that the court may allow audio-visual or audio link to be used in the sentencing of the child if the prosecutor and the child agree.

See Childrens Court Practice Direction 1 of 2019

In relation to any dispute as to the facts on the sentence proceeding, s132C EA applies.

Section 256 YJA provides that the VOCA applies to an offence committed by a child. Principle 11 of the Charter of Youth Justice Principles provides that *"a victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by law"*..

Sections 179I-179N PSA provide for victim impact statements. Section 150(2)) YJA provides that a court, in sentencing a child**, must** have primary regard to "*any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court"* under s179K PSA.

Section 255 YJA provides that if a child is found guilty of specified offences, the court, in addition to making any sentence order, may make an order that the child's identifying particulars be taken.

See Chapter 8.7-8.9: Other Court Applications

Sections 257-260 YJA provide for orders for compensation to be made against parents in relation to offences by a child.

See Chapter 11.14.2: Compensation Orders Against Parents

10.7 Sentencing Options

See Chapter 11: Sentencing

10.8 Mental Health Issues

Section 61 YJA provides that the MHA applies to a child charged with an offence as it applies to an adult. Sections 181-188 MHA establish a procedure for a court, before whom a person has pleaded guilty to an indictable offence, to set aside the plea of guilty and refer the matter of the person's

mental state to the Mental Health Court if the court is reasonably satisfied, on the balance of probabilities, that the person was, or appears to have been, of unsound mind when the offence was committed or is unfit for trial. The power only applies to where a guilty plea has been entered.

10.9 Delegation of Sentencing Power

Section 185 YJA provides that where a child is before a Childrens Court Magistrate for sentence for an offence and the Magistrate considers that an appropriate sentence would be beyond the jurisdiction of the Magistrate because of the limits on jurisdiction in s175(1)(d) or (g) YJA (12 months in relation to a probation order or detention order unless the offence is a "significant offence" under s175A YJA which was committed on or after 13 December 2024), the Magistrate may request a Childrens Court Judge to delegate to the Magistrate the power to impose a sentence which, under s175(1) YJA, may only be made by a Childrens Court Judge.

Section 185 YJA provides:

1. *This section applies if—*
    a. *a proceeding in which a child may be sentenced for an offence is before a Childrens Court magistrate; and*
    b. *the Childrens Court magistrate considers that an appropriate sentence would be beyond the jurisdiction of the Childrens Court magistrate because of the limit to the jurisdiction set out in section 175(1)(d) or (g).*

2. *The magistrate may request a Childrens Court judge to delegate to the magistrate the power to impose a sentence that, under section 175(1), may only be made if a judge constitutes the sentencing court.*

3. *The Childrens Court judge has jurisdiction to delegate the power.*

4. *The delegation must be made before any evidence is heard, plea entered, or election made, unless the child—*
    a. *is represented by a lawyer; and*
    b. *consents to a delegation happening at a later time.*

5. *The request and delegation may be made informally, including by any form of distance communication.*

6. *The magistrate must inform the child of the delegation.*

See s186 YJA for the power of a Childrens Court Magistrate to commit a child for sentence to a Childrens Court Judge, if the Magistrate considers the circumstances require the making of a sentence order beyond the jurisdiction of the Magistrate.

See Chapter 9.4: Sentence Matters and Chapter 11: Sentencing

10.10 Bail

Section 47 YJA provides that subject to the YJA, the *Bail Act 1980* (BA) applies to a child charged with an offence. Some provisions of the BA do not apply to a child e.g., ss7, 11, 16 and 16A.

Section 48(2) YJA provides that if a court is deciding whether to release a child in custody in connection with a charge of an offence, the court must release the child unless certain exceptions apply.

See Chapter 6: Release of Child from Custody and Bail

Section 59 YJA provides that a Childrens Court Judge may grant bail to a child held in custody, or enlarge, vary, or revoke the child's bail whether or not the child has appeared before the Childrens Court in or in connection with the offence or criminal proceeding. The power to grant bail applies even if the child has been refused bail by the Childrens Court.[495] A Childrens Court Judge may grant bail to a child in relation to charges to which s13(1) BA applies.

A Childrens Court Judge thus has power to consider a bail application by a child for any criminal offence, including a Supreme Court offence, even if an indictment has not been presented in relation to an indictable offence. The jurisdiction is not bound by the restrictions under the BA that, in a subsequent application after a court's refusal of bail, additional facts or changed circumstances need to be shown.[496]

[495] s59(2) YJA.
[496] *Ex parte Edwards* [1989] 1 Qd R 139 at 142.

In relation to a bail application to be heard by a Childrens Court Judge after the refusal of bail by a Childrens Court Magistrate, the Childrens Court Judge should have access to a record of the proceedings before the Childrens Court Magistrate in determining the bail afresh. The reasons for refusal of bail by the Childrens Court Magistrate need to be considered.

A bail application may be heard by audio-visual or audio link.[497]

See Childrens Court Practice Direction 1 of 2019 and Chapter 6.9: Power of Childrens Court Judge as to Bail

10.11 Appeals and Sentence Reviews

See Chapter 12: Appeals and Sentence Reviews

10.12 Other applications or appeals

10.12.1 Application to Set Aside Finding or Order by a Parent

Section 71 YJA permits an application by a parent of a child against whom a finding or order has been made, when the child was dealt with when no parent was present, to set aside the finding or order.

See also Chapter 2.9: Role of Parents

10.12.2 Application for Removal to Another Jurisdiction for Joint Trial

Section 110 YJA permits the prosecution to apply to a Childrens Court Judge for the removal of a committed charge to another court of competent jurisdiction for the purpose of having the child tried on indictment with another person (usually an adult).

Section 111 YJA permits the prosecution to apply to a Childrens Court Judge for the removal of a committed charge to another court of competent jurisdiction for the purpose of having the child tried on an indictment charging the child with that offence and another offence on which the child will be dealt with as an adult.

[497] s53 YJA.

See also Chapter 10.3: Joint trials with an adult co-accused or when also charged with an adult offence

10.12.3 Application for Variation of Detention Order in Interests of Justice

Section 216 YJA provides for an application to the original sentencing court in relation to a child who is unlawfully at large from detention and is being held in custody in another State, for an order to change the original sentence order in the interests of justice. The application may be made by the child or the chief executive (youth justice). The court may take no action or order that part or all of the period of interstate custody be a period of detention taken to have been served under the original order.

10.12.4 Appeal Against Disease Test Order

Section 540(2) PPRA allows for an application by a police officer to a Childrens Court Magistrate for a disease test order in relation to a child. Pursuant to s542 PPRA, the Childrens Court can make such an order. Pursuant to s544 PPRA, the person against whom an order is made can appeal against it to the District Court (presumably a Childrens Court constituted by a Judge).

Section 544 PPRA provides:

1. *A relevant person may appeal against a disease test order to the District Court.*

2. *The appeal—*
    a. *must be filed without delay; and*
    b. *does not stay the operation of the disease test order unless the court otherwise orders.*

3. *The court may not order a stay of a disease test order of more than 48 hours from the time the order appealed against is made.*

4. *The court must hear and decide the appeal—*
    a. *within 48 hours after the order appealed against is made; and*
    b. *in the absence of the public; and*
    c. *without adjourning the appeal.*

5. *If the relevant person, or the relevant person's lawyer, is present when the appeal is being heard, the relevant person or the lawyer may make submissions to the court, but not submissions that will unduly delay the consideration of the appeal.*

6. *The court may allow or refuse to allow the appeal.*

See Chapter 8.13: Disease Test Orders

Chapter 11 – Sentence

11.1 General Principles

Section 149 YJA provides that the jurisdiction for a court that sentences a child is under Part 7 YJA. That jurisdiction is exclusive despite any other Act or law.[498] Section 2(a) YJA states that one of the objectives of the Act is "*to establish a code for dealing with children who have, or are alleged to have, committed offences".* Section 6 PSA provides that that Act does not apply to a child or the Childrens Court except to the extent allowed by the YJA.

In *R v F and P* [1997] QCA 98, White J (with whom Davies JA agreed) noted that different sentencing considerations apply in the case of a child as opposed to an adult offender and said, at pages 12-13:

> *The principles to be applied in respect of these young offenders are to be found in the Juvenile Justice Act 1992* [now the Youth Justice Act 1992]. *Section 3* (now section 2) *provides inter alia that the Act provides a code for dealing with children who have committed offences and recognises the importance of families and communities in the provision of services designed to rehabilitate children who commit offences and to reintegrate them into the community. Section 4* [now Schedule 1] *sets out the general principles underlying the operation of the Act. Section 4©(i) and (ii)* [now Principle Eight] *provide that a child who commits an offence should be held accountable and encouraged to accept responsibility for the offending behaviour and punished in a way that will give the child the opportunity to develop in responsible, beneficial, and socially acceptable ways. The age and maturity of a child are relevant considerations in a decision made with respect to the child, section 4(g)* [now Principle 13].
>
> *Part 5* [now Part 7] *of the Act deals with sentencing generally. Section 108(1)* [now s149] *makes it clear that a child must be sentenced in accordance with the provisions of the Act and nothing else. The sentencing principles as are relevantly applicable to these applications are set out in section 109(1)* [now s150] *and include the nature and seriousness of the offence, the child's previous offending history, any impact of the offence on a victim, and a fitting proportion between the sentence and the offence. Subsection (2) provides for special considerations on sentencing including that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community, and that the rehabilitation of a*

[498] s149(2) YJA.

child found guilty of an offence "is greatly assisted by" the child's family and opportunities to engage in educational programs and employment.

The YJA differs in important respects from the PSA. It is *"a quite separate scheme for sentencing juvenile offenders"*[499] Section 150 YJA sets out the sentencing principles to which a court **must** and **must not** have regard to in sentencing a child.

Section 150 YJA provides:

1. *In sentencing a child for an offence, a court must not have regard to –*
    a. *any principle that a detention order should only be imposed as a last resort; or*
    b. *any principle that a sentence that allows the child to stay in the community is preferable.*

2. *In sentencing a child for an offence, a court must have primary regard to any impact of the offence on the victim, including harm mentioned in information relating to the victim given to the court under the Penalties and Sentences Act 1992, section 179K.*

3. *In sentencing a child for an offence, a court must have regard to—*

    (a) subject to this Act, the general principles applying to the sentencing of all persons; and
    (b) the youth justice principles; and
    (ba) the matter to which the court must have primary regard under subsection (2)
    (c) the special considerations stated in subsection (4); and
    (d) the nature and seriousness of the offence; and
    (e) the child's criminal history; and
    (ea) the hardship that any sentence imposed would have on the child, having regard to the child's characteristics, including disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality, and
    (eb) regardless of whether there are exceptional circumstances, the probable effect that any sentence would have on –

[499] *R v A and S; ex parte Attorney-General* [2001] 2 Qd R 62 at [24] and [25].

(i) a person with whom the child is in a family relationship[500] and for whom the child is the primary caregiver; and

(ii) a person with whom the child is in an informal care relationship;[501] and

(iii) if the child is pregnant – the child of the pregnancy; and

(f) the presence of any aggravating or mitigating factor concerning the child; and

(g) without limiting paragraph (f), whether the child committed the offence—

(i) while released into the custody of a parent, or at large with or without bail, for another offence; or

(ii) after being committed for trial, or awaiting trial or sentencing, for another offence; and

(ga) also without limiting paragraph (f), the following matters –

(i) whether the child is a victim of, or has been exposed to domestic violence;

(ii) whether the commission of the offence is wholly or partly attributable to the effect of domestic violence or exposure to domestic violence on the child;

(iii) the child's history of being abused or victimised; and

(h) any information about the child, including a pre-sentence report, provided to assist the court in making a determination; and

(ha) if the child is an Aboriginal or Torres Strait Islander person – any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child; and

(i) if the child is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the child's community that are relevant to sentencing the child, including, for example—

(i) the child's connection with the child's community, family, or kin; or

(ii) any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child; or

(iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and

(k) a sentence imposed on the child that has not been completed; and

(l) a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and

---

[501] 'Informal care relationship' is defined in Schedule 4 YJA to have "the meaning given by the Domestic and Family Violence Protection Act 2012, s20."

(m) the fitting proportion between the sentence and the offence.

4. *Special considerations are that—*

(a) a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and

(c) the rehabilitation of a child found guilty of an offence is greatly assisted by—

(i) the child's family; and

(ii) opportunities to engage in educational programs and employment; and

(d) a child who has no apparent family support, or opportunities to engage in educational programs and employment, should not receive a more severe sentence because of the lack of support or opportunity.

5. *In determining the appropriate sentence for a child convicted of the manslaughter of a child under 12 years, a court must treat the victim's defencelessness and vulnerability, having regard to the victim's age, as an aggravating factor.*

6. *In determining the appropriate sentence for a child who is a victim of, or has been exposed to, domestic violence, the court must treat as a mitigating factor –*

   a. *the effect of the domestic violence or exposure to domestic violence on the child; and*
   b. *if the commission of the offence is wholly or partly attributable to the effect of the domestic violence, or exposure to domestic violence, on the child – the extent to which the commission of the offence is attributable to the effect of the violence or exposure.*

7. *In determining the appropriate sentence for a child convicted of a relevant serious offence committed in relation to a pregnant person that resulted in the destroying the life of the person's unborn child, the court must treat the destruction of the unborn child's life as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.*

8. *If required by the court for subsection(3)(i), the representative must advise the court whether—*

(a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the child or victim.

9. *In sentencing a child for an offence, a court may receive any information, or a sentencing submission made by a party to the proceedings, it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.*

10. *For the purposes of the Human Rights Act 2019, section 43(1), it is declared that subsection (1) has effect:*
    a. *despite being incompatible with human rights; and*
    b. *despite anything else in the Human Rights Act 2019*

    Note – Under the Human Rights Act 2019, section 45(2), this subsection expires 5 years after commencement.

11. *In this section—*

domestic violence *see the Domestic and Family Violence Protection Act 2012, section 8.*

exposed *for a child in relation to domestic violence, see the Domestic and Family Violence Protection Act 2012, section 10.*

relevant serious offence *means an offence against*

(a) the following provisions of the Criminal Code –

(i) sections 302 and 305

(ii) sections 303 and 310

(iii) section 320

(iv) section 323

(v) section 328A

(vi) section 339; and

(b) the Transport Operations (Road Use Management) At 1998, section 83

sentencing submission*, made by a party, means a submission stating the sentence, or range of sentences, the party considers appropriate for the court to impose.*

The reference to the "*general principles applying to the sentencing of all persons"* in s150(3)(a) YJA refer to "*such principles as had, prior to the PSA, been worked out by the Judges and, not to any principles stated in the (PSA)."*[502]

The Charter of Youth Justice Principles are listed in Schedule 1 YJA:

1. *The community should be protected from offences and, in particular, recidivist high-risk offenders.*
2. *A child who commits an offence should be held accountable in a way that recognises the impact of the child's offending on any victim of that offending.*
3. *The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.*
4. *A child being dealt with under this Act should be—*
    a. *treated with respect and dignity, including while the child is in custody; and*
    b. *encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.*
5. *Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.*
6. *If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.*
7. *A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.*
8. *If a proceeding is started against a child for an offence—*
    a. *the proceeding should be conducted in a fair, just, and timely way; and*
    b. *the child should be given the opportunity to participate in and understand the proceeding; and*
    c. *the proceeding should be finalised as soon as practicable.*
9. *The youth justice system should give priority to proceedings for children remanded in custody.*
10. *A child who commits an offence should be—*
    a. *held accountable and encouraged to accept responsibility for the offending behaviour; and*

[502] *R v W; ex parte Attorney-General* [2000] 1 Qd R 460 at [7].

b. *dealt with in a way that will give the child the opportunity to develop in responsible, beneficial, and socially acceptable ways; and*

c. *dealt with in a way that strengthens the child's family; and*

d. *dealt with in a way that recognises the child's need for guidance and assistance because children tend to be dependent and immature.*

11. *A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.*
12. *A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child and supported in the parent's efforts to fulfil this responsibility.*
13. *A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.*
14. *A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural, and religious beliefs and practices.*
15. *If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.*
16. *Programs and services established under this Act for children should—*

    a. *be culturally appropriate; and*

    b. *promote their health and self-respect; and*

    c. *foster their sense of responsibility; and*

    d. *encourage attitudes and the development of skills that will help the children to develop their potential as members of society.*

17. *A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.*
18. *A child should be dealt with under this Act in a way that allows the child—*

    a. *to be reintegrated into the community; and*

    b. *to continue the child's education, training or employment without interruption or disturbance, if practicable; and*

    c. *to continue to reside in the child's home, if practicable.*

19. *A child detained in custody should only be held in a facility suitable for children.*
20. *While a child is in detention, contacts should be fostered between the child and the community.*
21. *A child who is detained in a detention centre under this Act—*

    a. *should be provided with a safe and stable living environment; and*

    b. *should be helped to maintain relationships with the child's family and community; and*

c. *should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about—*
    i. *the child's participation in programs at the detention centre; and*
    ii. *contact with the child's family; and*
    iii. *the child's health; and*
    iv. *the child's schooling; and*
d. *should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons, and property); and*
e. *should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and*
f. *should have access to dental, medical, and therapeutic and disability services necessary to meet the child's needs; and*
g. *should have access to education appropriate to the child's age and development; and*
h. *should receive appropriate help in making the transition from being in detention to independence.*

See Chapter 2: Youth Justice Act 1992

In *R v EI* [2011] 2 Qd R 237, the majority of the Court of Appeal held that neither Schedule 1 nor any other provision of the Act provides, expressly or impliedly, that any one of the Principles of juvenile justice has precedence over any of the others.

In *R v SCU* [2017] QCA 198 at [53], Sofronoff P said:

> *The effect of the provisions of the Youth Justice Act that I have referred to is that the Act is emphatic about the requirement that a court give consideration to all statutory factors relevant to a particular case, as well as the facts of the case itself in the ordinary way, before deciding upon an appropriate sentence to be imposed upon a child. At the forefront of the strictures imposed by the Act is the obligation of a court to consider all other options that are reasonably available before imposing a sentence of detention. Even at that point, a court must consider whether a conditional release order can properly be put to one side in favour of actual immediate detention of a child.*

11.2 The Relevance of General Deterrence

Principle One of the Charter of Youth Justice Principles provides "*The community should be protected from offences and, in particular, recidivist high-risk offenders.*" See *R v EI* (above).

Considerations of general deterrence may not be as important in the sentencing of a child offender as they are in the case of an adult. It is still, however, of some relevance. See *R v AS; ex parte Attorney-General* [2004] QCA 259 per de Jersey CJ at [17].

In *R v E; ex parte Attorney-General* [2002] QCA 417, Jerrard JA referred to the New South Wales case of *GDP* (1991) 53 A Crim R 112 at 116 and the Western Australian cases of *C (a child)* (1995) 83 A Crim R 561 and *B (a child)* (1995) 82 A Crim R 234, and said at [37]:

> *What I think those citations demonstrate is that courts sentencing juvenile offenders are instructed by both the statutory commands in the Juvenile Justice Act, and the shared wisdom of other experienced judges, to have as a principal object the rehabilitation, if possible, of the juvenile offender while the offender is still a juvenile. Nevertheless, courts are not to overlook the fact that the protection of members of the community from the infliction of harm can be achieved not only by the means of rehabilitation of the individual causing that harm in the past, but also by sentences having a generally deterrent effect in the community.*

See also *R v KU & Ors; ex parte Attorney-General (No. 2)* [2011] 1 Qd R 439 at [125]-[127] and *R v LAO* [2019] QCA 222 at page 3.

11.3 Parity with Adult Offenders

In *R v LY* [2008] QCA 76 at [31], the Court of Appeal considered a disparity argument in relation to sentences imposed on an adult and a child co-offender and noted that, because different legislative schemes apply, there will often be considerable disparity.

11.4 No Mandatory Sentences

Section 155 YJA provides that a court that sentences a child must disregard a requirement under any other Act that an amount of money or term of imprisonment must be the minimum penalty for the offence and must take a requirement under any other Act that an amount of money or term of

imprisonment must be the only penalty for an offence as providing that the amount or the term is the maximum penalty for the offence.

Mandatory penalties that attach to "significant offences" in s175A YJA will apply to child offenders, but detention can be served by CRO. [503]

11.5 Diversion from Sentence

Principle Six of the Charter of Youth Justice Principles provides:

> *If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.*

See Chapter 7: Diversion

Diversion options are available if the child pleads guilty to an offence:

- Section 21 YJA permits the dismissal of a charge if a caution should have been administered or no action should have been taken against the child;

See Chapter 7.3: Childrens Court may dismiss a charge if caution should have been administered

- Section 24A YJA permits the dismissal of a charge if the offence should have been referred for a restorative justice process;

See Chapter 7.5: Childrens Court may dismiss a charge if offence should have been referred to restorative justice process

- Sections 161-165 YJA provide for the referral of the offence for a restorative justice process instead of sentencing the child, except where the offence is a "significant offence" under s175A YJA that was committed on or after 13 December 2024 (see s162(1) YJA, Chapter 7 for the restorative justice process and orders under s162(1) YJA and below);

[503] s175A(3) YJA

- Sections 167-174 YJA provide for the reference of the child who pleads guilty to an eligible drug offence to a drug assessment and education session.

See Chapter 7.6: Court Ordered Diversion

11.6 Pre-Sentence Reports

Section 150(3)(h) YJA requires a court, in sentencing a child, to have regard to any information about the child, including a pre-sentence report and bail history, provided to assist the court in making a determination.

Pursuant to s151 YJA, a court, before it sentences a child found guilty of an offence, may order the chief executive (youth justice) to give to the court a pre-sentence report concerning the child.

Section 151 YJA provides:

1. *A court, before it sentences a child found guilty of an offence, may order the chief executive to give to the court a pre-sentence report concerning the child.*

2. *Before making the order, the court must consider whether a pre-sentence report is the most efficient and effective way to obtain information relevant to the sentencing of the child.*

3. *However, subsection (2) does not apply if the court considers it may be required, under section 203 or 207, to make the order.*

4. *Subject to subsection (10), the report must be made for the purpose of the sentencing of the child for the offence.*

5. *The court may request that the report contain specified information, assessments and reports relating to the child or the child's family or other matters.*

6. *Also, the court may ask that the pre-sentence report be given to the court within a stated period that is reasonable, having regard to the likely complexity of the report.*

7. *The pre-sentence report may not contain the chief executive's opinion on what impact an order under section 234 may have on the child.*

8. *Pending the giving of a pre-sentence report, the court may adjourn the proceeding and remand the child in custody or exercise the powers conferred by part 5 to grant bail to and release the child from custody.*

9. *In releasing the child from custody, the court may impose conditions that it considers necessary to facilitate the preparation of the pre-sentence report, other than a condition that the child must wear a monitoring device while on release.*

10. *If an order is made under subsection (1), the chief executive must—*
    a. *give the court a written pre-sentence report in relation to the child; or*
    b. *give the court further written material to be considered with another pre-sentence report given to the court for another sentencing of the child.*

11. *However, subsection (10)(b) applies only if the other sentencing of the child happens or happened not more than 6 months before the sentencing to which the order relates.*

12. *The pre-sentence report or further material must be given to the court—*
    a. *within the period stated by the court under subsection (6); or*
    b. *if no period has been stated by the court—as soon as practicable after the order is made.*

13. *If the chief executive gives the court further material under this section—*
    a. *the chief executive is taken to have complied with the order; and*
    b. *the further material together with the other pre-sentence report are taken to be a pre-sentence report for this part.*

Sections 203 and 207 YJA mandate that a court can only make an intensive supervision order or a detention order if the court has ordered and considered a pre-sentence report.

See Chapter 11.13.8: Intensive Supervision Order and Chapter 11.13.9.1: Pre-Sentence Report Required

Section 234 YJA empowers the court to allow publication of a child's identifying particulars in certain circumstances.

See Chapter 11.13.9.3: "Particularly Heinous Offence"

Pursuant to s151(5) YJA, the court may order the pre-sentence report to contain other information, assessments and reports it considered relevant. The court should order psychiatric, psychological and/or medical assessments as considered appropriate. In some courts constituted by a magistrate, the Mental Health: Child and Youth Court Liaison Service may perform assessments as requested.

See Chapters 5.7: Childrens as Defendants; Chapter 9.3 Mental Health Matters and Appendix 9: Mental Health: Child and Youth Court Liaison Service

In relation to an offence of a sexual nature, the court may be assisted by a report from the Griffith Youth Forensic Service or a similar provider.

Such reports require an extended period of time to compile so the period set pursuant to s151(6) YJA needs to encompass that. The court may also need to impose special conditions on bail pursuant to s151(9) YJA.

A pre-sentence report should contain details concerning the child's position with respect to education. In some courts constituted by a magistrate, under the Education Justice Initiative, a liaison officer of Education Queensland may provide information.

See Appendix 10: Education Justice Initiative

Section 151(10) YJA allows the chief executive (youth justice) to give the court further written material to be considered with the pre-sentence report in relation to other offences committed by the child in order to allow all offences to be dealt with.

Section 151A YJA permits the chief executive (youth justice) to disclose information that has been obtained under the YJA or another Act to assist in the preparation of the pre-sentence report. This permits information obtained under the CPA, which is normally subject to confidentiality provisions

under that Act,[504] to be included in pre-sentence reports. See s153A(3) YJA for restrictions on the publication on that sort of information.

See Chapter 2.12: Role of the Public Guardian for the role of the Public Guardian in criminal matters in the Childrens Court and Appendix 1: Role of OPG Child Advocate in Childrens Court (Criminal) Proceedings

Section 152(1) YJA provides that the court may request the author of a pre-sentence report to attend before the court for the purpose of giving more information. Section 153 YJA provides for the disclosure of a pre-sentence report to appropriate parties once the report is given to the court.

Section 153 provides:

1. *If a pre-sentence report is given to a court under section 151, the court must give a copy of the report as soon as practicable—*
    a. *to the prosecution; and*
    b. *if the child is represented by a lawyer—the lawyer.*

2. *If the child is not represented by a lawyer, the court may give the report to the child or a parent of the child present in the court.*

3. *The court may give directions it considers appropriate about a report given to anyone under subsection (1) or (2), including, for example, a direction limiting disclosure and a direction requiring the report's return.*

See s153A YJA for permitted use and disclosure of information in a pre-sentence report. See also Rules 5 and 6 *Youth Justice Regulation 2016* for the contents of a pre-sentence report.

Pursuant to s152(3) YJA, a court may give as much weight as it considers appropriate to a pre-sentence report. A court is not bound to accept the sentence recommended in a pre-sentence report: *R v S* [1995] QCA 559 and *R v J* [1995] QCA 526.

[504] s189A CPA.

11.7 Pre-Sentence Restorative Justice Referrals

Pursuant to s162(2) YJA, if a finding of guilt is made against a child, the court **must** consider referring the offence to the chief executive (youth justice) for a restorative justice process to help the court make an appropriate sentence order.

It is an error in the sentencing discretion if the court does not so consider a reference: *R v PBD* [2019] QCA 59 at [32]; *R v PBE* [2019] QCA 185 at [29].

A restorative justice order **cannot** be imposed for a "significant offence" under s175A YJA which was committed on or after 13 December 2024. [505] "Significant offences" dealt with in the Magistrates Court are:

- Dangerous operation of a motor vehicle (s328A CC)
- Serious assault (s340 CC)
- Unlawful use of a motor vehicle (s408A)
- Burglary - all variations of enter/in dwelling (s419 CC)
- Enter premises – all variations of being in premises, by break, with intent, commit offence (s421 CC)
- Unlawful entry of a motor vehicle (s427 CC) [506]

See Chapter 7.7: The Restorative Justice Process

Section 163 YJA sets out the power of a court to make a restorative justice referral to the chief executive (youth justice):

1. *The court may, by notice given to the chief executive, refer an offence to the chief executive for a restorative justice process if—*
    a. *the court considers the child is informed of, and understands, the process; and*
    b. *the child indicates willingness to comply with the referral; and*
    c. *the court is satisfied that the child is a suitable person to participate in a restorative justice process; and*

[505] s175A(8) YJA
[506] s175A(1) YJA

d. *having regard to the deciding factors for referring the offence, the court considers the referral would—*

(…)

(ii) help the court make an appropriate community-based order or detention order (a presentence referral); and

e. *having regard to a submission by the chief executive about the appropriateness of the offence for a referral, the court considers the referral is appropriate in the circumstances.*

2. *In this section— deciding factors, for referring an offence, means—*
   a. *the nature of the offence; and*
   b. *the harm suffered by anyone because of the offence; and*
   c. *whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.*

Section 165 YJA sets out the procedures in relation to a pre-sentence referral:

1. *This section applies if the court makes a presentence referral.*

2. *On making the referral, the court may—*
   a. *give the directions it considers appropriate to the child or the chief executive; and*
   b. *adjourn the proceeding for the offence.*

3. *If the chief executive returns the referral under section 32(1), the court must proceed with sentencing the child for the offence.*

4. *If a restorative justice agreement is made as a consequence of the referral, the chief executive must—*
   a. *give the court a copy of the agreement; and*
   b. *inform the court of any obligations of the child under the agreement that have already been performed.*

5. *If a restorative justice agreement is given to the court under subsection (4), the court must give a copy of the agreement as soon as practicable to—*

a. *the prosecution; and*

b. *if the child is represented by a lawyer—the lawyer.*

6. *In sentencing the child for the offence, the court must have regard to—*

   a. *the child's participation in the relevant restorative justice process; and*

   b. *the child's obligations under the restorative justice agreement; and*

   c. *anything done by the child under the restorative justice agreement; and*

   d. *any information provided by the chief executive about sentencing the child.*

The chief executive (youth justice) may return a referral under s32(1) YJA:

1. *The chief executive may, by written notice given to the referring authority, return the referral if—*

   a. *the chief executive is unable to contact the child after reasonable inquiries; or*

   b. *the chief executive has made reasonable requirements of the child to attend an interview about the process and the child has failed to attend as required; or*

   c. *the chief executive considers it necessary for a victim of the offence to participate and the victim does not wish to participate or cannot be located after reasonable inquiries; or*

   d. *during the restorative justice process the child denies committing the offence to the chief executive, a convenor or victim of the offence; or*

   e. *the chief executive is satisfied that an appropriate restorative justice agreement is unlikely to be made within a time the chief executive considers appropriate; or*

   f. *the chief executive considers that the referral is unsuitable for a restorative justice process; or*

   g. *a conference is convened for the referral and the convenor ends the conference without an agreement being made.*

2. *The notice must state the reasons for returning the referral, and the reasons may be considered by a court in any later proceeding for sentencing the child for the offence.*

3. *The referring authority must make reasonable efforts to inform the child that the referral has been returned.*

If the chief executive (youth justice) returns the referral, the court must proceed with the sentencing of the child.[507]

Pursuant to s32(2) YJA, the court, in any later sentencing proceeding for the offence, may consider the reasons for the return of the referral.

In sentencing the child, the court **must** have regard to the matters in s165(6) YJA.

Pursuant to s175(1)(da) YJA, the court, on sentence, may order the child to perform the obligations under any restorative justice agreement made as a consequence of a pre-sentence referral.

See Chapter 11.13.4: Restorative Justice Order regarding a restorative justice order as a sentence order.

11.8 Aboriginal and Torres Strait Islander Children – Sentence Considerations

Principles 14, 15 and 16 of the Charter of Youth Justice Principles provide:

> *14. A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural, and religious beliefs and practices.*
>
> *15. If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.*
>
> *16. Programs and services established under this Act for children should—*
>
> *(a) be culturally appropriate; and*
>
> *(b) promote their health and self-respect; and*
>
> *(c) foster their sense of responsibility; and*
>
> *(d) encourage attitudes and the development of skills that will help the children to develop their potential as members of society.*

Section 150(3)(i) YJA provides that in sentencing a child who is an Aboriginal or Torres Strait Islander person, the court must have regard to any submissions made by the representative of the community

[507] s32(3) YJA.

justice group (CJG) of the child's community. That submission can include information concerning the child's connection with the child's community, family or kin, any cultural considerations or any considerations relating to programs or services for offenders in which the CJG participates. See also s150(8) YJA.

Section 19(1)(a) *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* gives CJGs the functions of taking part in court hearings, sentencing and bail processes under the YJA.

In *R v SCU* [2017] QCA 198, Sofronoff P considered the role of CJGs in the sentencing process under the YJA.[508] At [56], His Honour stated that s150(1)(i) YJA (previously s150(1)(g)) "*compels a judge to have regard to any submissions made on behalf of such a body. In this context, "have regard to" means to read, understand, and consider in combination with all other factors*".

In relation to deprived background and its relevance in sentencing Aboriginal and Torres Strait Islander offenders, see *Bugmy v R* [2013] 249 CLR 571 at [36]-[44]; *Munta v R* [2013] 249 CLR 600 at [53] and *R v MBY* [2014] QCA 17.

11.9 Compensation and Restitution

Section 156 YJA provides that if a court, sentencing a child for an offence, considers that it is appropriate for the child to pay both a fine or compensation or restitution and the child has insufficient resources to pay both amounts, the court must give preference to ordering the child to pay only the compensation or restitution amount.

See ss190 and 235(5) YJA in relation to imposing a fine or ordering restitution or compensation only if the court is satisfied that the child has the capacity to pay.

See Chapter 11.13.3: Fine and Chapter 11.14.2: Compensation Orders Against Parents

11.10 Recording of Conviction

Section 183 YJA provides for circumstances where a conviction against a child is not to be recorded or, in the court's discretion, it may be recorded.

[508] At [25]-[26], [47]-[48], [56] and [113]-[114].

Section 183 YJA provides:

1. *Other than under this section, a conviction is not to be recorded against a child who is found guilty of an offence.*

2. *If a court makes an order under section 175(1)(a) or (b), a conviction must not be recorded.*

3. *If a court makes an order under section 175(1)(c) to (g), 175A or 176, the court may order that a conviction be recorded or decide that a conviction not be recorded.*

Section 175(1)(a) and (b) YJA are orders for a reprimand or a good behaviour order.

In all other cases of sentence orders under ss175(1)(c)-(g), 176 or 176A, the court has a discretion whether to record a conviction or not. As the YJA is a Code, the discretion in relation to recording a conviction also applies to findings of guilt in relation to offences under the *Transport Operations (Road Use Management) Act 1995* (TORUM Act).

See *SAW v Crown* [2007] QChC 4 and *R v MCK* [2012] QChC 33. See also s254 YJA in relation to licence disqualification orders, some of which are mandatory if the circumstances of the TORUM Act apply.

See Chapter 11.14.3: Driver's Licence Disqualification

Whether or not a conviction is recorded against a child is a separate matter that has to be considered. The starting premise is that no conviction should be recorded. In *R v SCU* [2017] QCA 198 at [94], Sofronoff P said:

> *"Like the principles that constrain the exercise of the sentencing discretion, the discretion to record a conviction emphasises the special considerations that inherently apply to the situation of a child but that are usually immaterial to the position of adults. Predominantly, apart from the nature of the offence and the other circumstances of the case, which are objective past matters that must be given due weight, the other factors look to the child's possible future. Sections 184(1)(b) and 184(c) direct a court's attention to the question of the child's future chances to be a beneficial member of the community and requires a court to balance the possible deleterious effects of a recorded conviction while paying due regard to the circumstances of the offence. It has been emphasised repeatedly by authorities of this Court*

that the starting premise is that no conviction should be recorded. That being the position, a sentencing judge must be satisfied positively after considering the matters that the statute mandates should be considered that the proper exercise of discretion is in favour of recording a conviction." (Footnote omitted)

See also *R v B* [1995] QCA 231; *R v T* [1998] QCA 456; *R v L* [2000] QCA 448; *R v M & C* [2001] QCA 5; *R v JO* [2008] QCA 260 and *R v TX* [2011] 2 Qd R 247 at [33].

Section 184 YJA sets out the matters the court **must** consider in the exercise of the discretion.

Section 184 YJA provides:

1. *In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including—*
    a. *the nature of the offence; and*
    b. *the child's age and any previous convictions; and*
    c. *the impact the recording of a conviction will have on the child's chances of—*
        i. *rehabilitation generally; or*
        ii. *finding or retaining employment.*

2. *Except as otherwise provided by this or another Act, a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose.*

3. *A finding of guilt against a child for an offence without the recording of a conviction stops a subsequent proceeding against the child for the same offence as if a conviction had been recorded.*

The matters listed in s184(1)(a)-(c) YJA are matters the court "*must have regard to"* and they are listed inclusively so that other matters may also be relevant: *R v SBP* [2009] QCA 408 at [21].

It is an error not to consider the matters in s184(1)(a)-(c) YJA in the exercise of the discretion: *R v SBP* [2009] QCA 408. In relation to the consideration of the impact of "rehabilitation generally" see *R v TAO* [2020] QCA 4 at [20]-[22] where regard should have been given to recent positive changes in the child's life and attitudes.

It is an error not to invite submissions on recording a conviction if that is being contemplated: *R v JAB* [2020] QCA 124.

In relation to sentences of detention and recording of a conviction, there is still a discretion not to record a conviction: *R v SCU* [2017] QCA 198 at [98], [159]-[163] and *R v PBE* [2019] QCA 185

In *R v BCO* [2016] 1 Qd R 290, the Court of Appeal commented that one of the factors against recording a conviction in relation to sexual offences was that it would make a child reportable offender under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld), which was contrary to the child's risk assessment as a low to moderate risk of sexual recidivism. See also *R v SBP* [2009] QCA 408 and *R v SBR* [2010] QCA 94.

The Court of Appeal also notes another consideration in recording a conviction is whether there has been a substantial delay in bringing charges against the young person. In *R v HCC* [2020] QCA 178, Henry J found:

> *"While the gross delay is more obviously relevant to determining the primary component of the sentence, it also has some relevance to whether a conviction should be recorded. A consequence of recording a conviction here is that, if it is not revived, it will be five years from the date the conviction was recorded before it becomes non-disclosable pursuant to s 6 Criminal Law Rehabilitation of Offenders Act 1986 (Qld). The reach of that period into the applicant's early adulthood will be more prolonged than it would have been because of the gross delay. Early adulthood is a very influential era in shaping a person's future career and employment prospects. (…) While by no means a determinative consideration in its own right, the gross delay was nonetheless one of the collection of circumstances of the case which should have compelled the conclusion that a conviction should not be recorded."*

It is important to give detailed reasons in the sentencing remarks as to the exercise of the discretion: *R v Cunningham* [2014] 2 Qd R 285.

11.11 The Sentence Hearing

11.11.1 Prior to the Hearing

The judicial officer should consider any material filed in the matter including any agreed schedule of facts, any criminal history of the child and any reports concerning the child.

11.11.2 Arraignment

The child needs to personally plead to the charge or charges. In relation to simple offences, this is required by s145 JA. See *XIY v Commissioner of Police* [2024] QCHC 15. Subsection (3) allows a bulk plea to simple offences.

Section 46 YJA permits a Childrens Court Magistrate to hear and determine a complaint and summons for a simple offence in the absence of the child in the way permitted in s139-140 JA in relation to a plea of guilty in writing.

In relation to indictable offences where the child elects summary jurisdiction, ss84(1) and 89(1) YJA require the child to personally enter a plea. There does not appear to be an ability for an arraignment in bulk except in relation to offences covered by s552B CC and its relevance for the definition of what is an "**indictable offence that is not a serious offence"** (s8 YJA).

See s552I(4) CC for the bulk arraignment procedure in relation to s552B CC offences if the defendant is legally represented.

See Chapter 9: Childrens Court Constituted by a Magistrate

For offences prosecuted on indictment, the child must personally enter a plea.[509] Section 597C(2) CC permits an arraignment in bulk with the consent of the accused person.

See Chapter 10.5 Arraignment

[509] ss597C, 598 and 600 CC (accused person to be called upon to plead to the indictment).

Consistent with the obligation in the court to ensure that a child understands the proceedings,[510] if a bulk arraignment is to occur, it is particularly important for the court to ensure the child understands the procedure and appreciates the number and type of offences to which it is proposed to take a guilty plea.

After a guilty plea has been taken on an indictment, the child is called upon as to whether the child has anything to say why sentence should not be passed upon the child (the allocutus).[511]

See also Rule 51 *Criminal Practice Rules 1999*

Section 157 YJA provides that an outstanding charge against a child may be taken into account in the same way as for an adult pursuant to s189 PSA.

Section 100 YJA permits a Childrens Court Judge to sentence a child on any charge for a summary offence on which the child consents to being sentenced under s651 CC.

Section 106 YJA provides that if a child has been committed for sentence on an indictable offence, the child is, in all cases, entitled to enter a plea of not guilty. Section 106 YJA prevails over any inconsistency with s600 CC.

See Chapter 10.5 Arraignment

11.11.3 Restorative Justice Referrals

Section 162 YJA provides that if a child enters a plea of guilty for an offence, the court **must** consider making a restorative justice referral either as a diversion from sentence or as a pre-sentence referral.[512]

A restorative justice order cannot be imposed for a "significant offence" under s175A YJA which was committed on or after 13 December 2024. [513] "Significant offences" dealt with in the Magistrates Court are:

[510] Principle Seven, Charter of Youth Justice Principles (Schedule 1 YJA) and s72 YJA.
[511] s648 CC.
[512] ss164-165 YJA.
[513] s175A(8) YJA

- Dangerous operation of a motor vehicle (s328A CC)
- Serious assault (s340 CC)
- Unlawful use of a motor vehicle (s408A)
- Burglary - all variations of enter/in dwelling (s419 CC)
- Enter premises – all variations of being in premises, by break, with intent, commit offence (s421 CC)
- Unlawful entry of a motor vehicle (s427 CC) [514]

See Chapter 7.6 Court Ordered Diversion

11.11.4 Criminal History

For the purposes of the YJA, the criminal history of a child is defined in s6 YJA as:

a) each caution administered to the child for an offence where caution was administered **after** 28 February 2025; [515]
b) each finding of guilt against the child for an offence, other than a finding of guilt that is set aside or quashed, including a finding of guilt that occurred before 28 February 2025; [516]
c) each restorative justice agreement made by the child for an offence, however not including a an agreement made before 28 February 2025 or as a consequence of a referral that was made before 28 February 2025; and [517]
d) all decisions, findings and orders made, and actions taken, by a court, Childrens Court judge, Childrens Court magistrate or other judicial officer--
    i. under section 245, 246 or 246A in relation to the child's contravention of a community-based order; or
    ii. under section 247 on an application made by the child or the chief executive in relation to a community-based order made against the child; or
    iii. under section 252D, 252E or 252F in relation to the child's contravention of a supervised release order

not including a decision, finding or order made, or action taken, before 28 February 2025 unless an order was made for the resentencing of the child for an offence and the court

[514] s175(1) YJA
[515] s439(1)(a) YJA
[516] s439(1)(b) YJA
[517] s439(1)(c) YJA

ordered that a conviction be recorded in relation to the offence for which the child was resentenced. [518]

If the child fails to comply with a restorative justice agreement that forms part of the child's criminal history, the child's criminal history also includes any action taken by a police officer under section 24(3) YJA.

Section 6 YJA applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986.*

Section 6 YJA applies in relation to a person whether the person is a child or adult on 28 February 2025, whether an offence committed by the person as a child was committed before or after 28 February 2025 or whether a proceeding for an offence against the person as a child was started before or after 28 February 2025. [519]

Section 150(3)(e) YJA requires a court, in sentencing a child, to have regard to the child's criminal history. [520]

Section 150(8A) YJA allows a court to have regard to any relevant matter on the child's traffic history under the *Transport Operations (Road Use Management) Act 1995.*

In relation to bail decisions, a police officer or a court can have regard to the child's criminal history and any previous grants of bail.[521]

See Chapter 6: Release of Child from Custody and Bail

A court considering an issue of criminal responsibility under s29 CC in relation to a child may have regard to any previous cautions administered to the child or any previous restorative justice agreements made by the child.[522]

See Chapter 4: Capacity

[518] s439(1)(d) YJA
[519] s439(2) YJA
[520] See s6 YJA for definition of child's criminal history
[521] ss48AA(4)(a)(ii) and (iii) YJA.
[522] s147 YJA.

Section 148 YJA provides that, subject to ss148A and 148B, in a proceeding against an adult for an offence, there must not be admitted against the adult evidence of a childhood finding of guilt if a conviction was not recorded.

Section 148 YJA provides:

1. *Subject to sections 148A and 148B, in a proceeding against a person who is an adult for an offence, there must not be admitted against the person evidence that the person was found guilty as a child of an offence if a conviction was not recorded.*

2. *Subsection (1) applies even though the evidence would otherwise be admissible under the Evidence Act 1977, section 15 and the Criminal Law (Rehabilitation of Offenders) Act 1986, section 5(3)(b).*

3. *For subsection (1), if a person is found guilty as a child of an offence, the person is not taken to have been found guilty as an adult of the offence merely because of the making of a declaration under section 143(4).*

In *R v Duncombe* [2005] QCA 142, the Court of Appeal held that this restriction only applied to offences committed in Queensland and did not apply to offences committed interstate.

A finding of guilt does not become a finding of guilt for an adult offence, if a court declares an order made on a child is a corresponding adult order pursuant to s143 YJA in relation to a breach of the order.[523]

11.11.5 Sentence Submissions

Section 150(9) YJA provides that, in sentencing a child for an offence, a court may receive any information, or a sentencing submission made by a party to the proceedings, it considers appropriate to enable it to impose a proper sentence or make a proper order in connection with the sentence. "**Sentencing submission"** made by a party, means a submission stating the sentence, or range of sentences the party considers appropriate for the court to impose.[524]

[523] s148(3) YJA.
[524] s150(11) YJA.

If the child is an Aboriginal or Torres Strait Islander person, the court **must** have regard to any submissions made by a representative of the community justice group in the child's community that are relevant to sentence.[525]

See Chapter 11.8: Aboriginal and Torres Strait Islander Children – Sentence Considerations

The court **must** have regard to any information about the child, including a pre-sentence report (and a pre-sentence restorative justice referral and the matters in s165(6) YJA) and bail history provided to assist the court in making a determination.[526]

Section 159 YJA provides that the court may allow audio-visual or audio link to be used in the sentencing of the child if the prosecutor and the child agree.

See Childrens Court Practice Direction 1 of 2019; Chapter 9.7.2 Audio-Visual or Audio Link and Chapter 10: Childrens Court Constituted by a Judge

Section 74(3)(c) YJA provides that the chief executive (youth justice) is entitled to be heard by the court on sentence orders that may be made against a child, even though the chief executive is not a party to the proceeding.

See Chapter 2.11: Chief Executive's Right of Audience

Section 152 YJA provides that the court may request the author of a pre-sentence report, or a person who gave a statement included in the report, to attend court for the purpose of giving more information. The court may allow parties to the proceeding to ask questions of that person.[527]

See Chapter 11.6: Pre-Sentence Reports

In relation to any dispute as to the facts on the sentence proceeding, s132C *Evidence Act 1977* (Qld) (fact finding on sentence) applies.

[525] s150(3)(i) YJA.
[526] s150(3)(h) YJA.
[527] s152(2) YJA.

Section 256 YJA provides that the *Victims of Crime Assistance Act 2009* (Qld) (VOCA) applies to an offence committed by a child. Principle 11 of the Charter of Youth Justice Principles provides that *"a victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by law".*

Sections 179I-179N PSA provide for victim impact statements. Section 150(2) YJA provides that a court, in sentencing a child, **must** have primary regard to *"any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under s179K PSA".*

Section 255 YJA provides that if a child is found guilty of specified offences, the court, in addition to making any sentence order, may make an order that the child's identifying particulars be taken.

See Chapter 11.14.5: Order for Identifying Particulars to be Taken

Pursuant to s158 YJA, a child is entitled to an explanation of the purpose and effect of any sentence order and the consequences, if any, that may follow if the child fails to comply with the order.

Section 158 YJA provides:

1. *When making an order sentencing a child for an offence a court must take steps to ensure that the child understands—*
    a. *the purpose and effect of the order; and*
    b. *the consequences (if any) that may follow if the child fails to comply with the order.*

2. *Examples of the steps a court may take are—*
    a. *directly explaining these matters in court to the child; or*
    b. *having some appropriate person give the explanation; or*
    c. *having an interpreter or other person able to communicate effectively with the child give the explanation; or*
    d. *causing an explanatory note in English or another language to be supplied to the child.*

3. *Subsection (1) does not apply where the child's presence is not required at sentence.*

See Principle Seven of the Charter of Youth Justice Principles and ss72-73 YJA.

See Chapter 2.10: Explanation of Proceedings

Section 158(3) YJA applies to sentence hearings in the absence of the child in relation to simple offences.[528]

See Chapter 9.4.2: Regulatory, Summary and Simple Offences

Section 160 YJA provides that a court that makes a sentence order on a child, must cause the order or decision to promptly be reduced to writing in the proper form and a copy given to the child, a parent of the child and the chief executive (youth justice). If such a person is not present in court, the proper officer of the court may serve a copy of the order on the person and the requirement does not apply if the proper officer is unable to ascertain the whereabouts of that person.[529] Failure to comply with that requirement does not affect the validity of the sentence order or decision.[530]

11.12 Sentence Orders

Section 175 YJA sets out the general sentence orders in relation to a child found guilty of an offence. Section 176 YJA sets out the sentence orders in relation to offences carrying a maximum of life imprisonment and "other significant offences". Section 176A YJA sets out particular orders available in relation to graffiti offences. Section 181 YJA allows for restitution and compensation orders, disqualification from holding or obtaining a driver's licence[531] and an order to take a child's identifying particulars.[532]

In relation to identifying particulars, see Chapter 8.7.2: Identifying Particulars

11.12.1 Sentence Orders – General

Section 175 YJA provides:

1. *When a child is found guilty of an offence before a court, the court may—*
    a. *reprimand the child; or*
    b. *order the child to be of good behaviour for a period not longer than 1 year; or*

[528] s46 YJA.
[529] s160(3) YJA.
[530] s160(4) YJA.
[531] ss253-254 YJA.
[532] s255 YJA.

c. order the child to pay a fine of an amount prescribed under an Act in relation to the offence; or

d. subject to subsection (2), order the child to be placed on probation for a period not longer than—

i. if the court is not constituted by a judge and section 175A does not apply—1 year; or

ii. if the court is constituted by a judge and neither section 175A nor 176 does not apply—2 years; or

da. If a restorative justice agreement is made as a consequence of a presentence referral relating to the child—order the child to perform his or her obligations under the agreement; or

db. Order that the child participate in a restorative justice process as directed by the chief executive; or

e. subject to subsection (2), if the child has attained the age of 13 years at the time of sentence—order the child to perform unpaid community service for a period not longer than—

i. if the child has not attained the age of 15 years at the time of sentence—100 hours; or

ii. if the child has attained the age of 15 years at the time of sentence—200 hours; or

f. if the child has not attained the age of 13 years at the time of sentence, make an intensive supervision order for the child for a period of not more than 6 months; or

g. order that the child be detained for a period not more than—

i. if the court is not constituted by a judge and section 175A does not apply—1 year; or

ii. if the court is constituted by a judge and neither section 175A nor 176 does not apply—the shorter period of the following—

1. half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve;

2. 5 years.

2. An order of the following type may only be made against a child found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment—

a. a probation order under subsection (1)(d);

b. a community service order;

c. an intensive supervision order.

2A. For subsection (1)(db), the offence the child is found guilty of is taken to be referred by the court to the chief executive for a restorative justice process.

3. 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.

4. This section has effect subject to the Childrens Court Act 1992.

See Chapter 11.13 below in relation to specific orders.

Section 175 YJA sets out constraints on the length of particular orders:

- One year probation order if the court is not constituted by a Judge and the offence **is not** a "significant offence" under s175A YJA;[533]
- Two years' probation order if the court is constituted by a Judge and neither ss175A nor 176 YJA does not apply;[534]
- Three years' probation if the court is not constituted by a Judge and the offence **is** a "significant offence" under s175A YJA committed on or after 13 December 2024.
- 100 hours community service if the child has attained the age of 13 years at the time of sentence and has not attained the age of 15 years at the time of sentence;[535]
- 200 hours community service if the child has attained the age of 15 years at the time of sentence;[536]
- An intensive supervision order of not more than six months if the child has not attained the age of 13 years at the time of sentence;[537]
- A detention order of not more than one year if the court is not constituted by a Judge and the offence **is not** a "significant offence" under s175A YJA;[538]

[533] s175(1)(d)(i) YJA.
[534] s175(1)(d)(ii) YJA.
[535] s175(1)(e)(i) YJA.
[536] s175(1)(e)(ii) YJA.
[537] s175(1)(f) YJA.
[538] s175(1)(g)(i) YJA.

- A detention order of not more than three years if the court is not constituted by a Judge and the offence **is** a "significant offence" under s175A YJA committed on or after 13 December 2024;
- If the court is constituted by a Judge and neither ss 175A nor 176 YJA does not apply, a detention order of not more than the shorter period of either: [539]
    - half the maximum term of imprisonment that would apply to an adult; or
    - five years.

Section 175(2) provides that a probation order under s175(1)(d), a community service order or an intensive supervision order can only be made against a child for an offence that, if committed by an adult, would make the adult liable to imprisonment.

A court may make a detention order under s175(1)(g) YJA either with or without a conditional release order under s220 YJA.[540]

On 22 March 2023, s150A YJA was inserted to allow for the court, on application by the prosecution, to declare a child to be a serious repeat offender when sentencing the child for a prescribed indictable offence.[541]

Section 150A YJA was amended on 28 February 2025 by the Making Queensland Safer Act 2024. The amended s150A applies in relation to the sentencing of a child for a prescribed indictable offence whether the offence was committed before or after 28 February 2025 or whether the finding of guilt against the child for the offence occurred before or after 28 February 2025. [542]

Where an order is made the court must state, in its sentencing remarks, reasons for making the declaration.[543] A declaration made under this section is taken to be a sentence imposed on a conviction for the purposes of Chapter 67 CC. [544]

Section 150A(2) provides the following:

[539] s175(1)(g)(ii) YJA.
[540] s175(4) YJA.
[541] s150A(1) YJA. Section 409 YJA provides that s150A YJA applies to a court sentencing a child for a prescribed indictable offence, whether the offence was committed before or after the commencement.
[542] s438C YJA
[543] s150A(4) YJA.
[544] s150A(5) YJA.

2. *The court may, on application by the prosecution, declare the child to be a serious repeat offender if—*
    a. *at least 1 detention order has previously been made against the child in relation to a prescribed indictable offence; and*
    b. *the court has—*
        (i) ordered the chief executive to prepare a pre-sentence report; and
        (ii) received and considered the report; and
    c. *the court has had regard to—*
        (i) the child's criminal history and bail history; and
        (ii) any efforts of rehabilitation by the child, including rehabilitation carried out under a court order; and
        (iii) any other matter the court considers relevant; and
    d. *the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence.*

Where the court makes a declaration, s150A(3) YJA requires the court to have primary regard to:

(a) the need to protect members of the community; and

(b) the nature and extent of violence, if any, used in the commission of the offence; and

(c) the extent of any disregard by the child in the commission of the offence for the interests of public safety; and

(d) the impact of the offence on public safety; and

(e) the child's criminal history and bail history; and

(f) the matter to which the court must have primary regard under section 150(2).

Section 150B YJA, also inserted on 22 March 2023, applies to matters where a sentencing court sentences a child for a prescribed indictable offence in circumstances where a court of like or higher jurisdiction has previously made a declaration that the child is a serious repeat offender and the offence for which the child is being sentenced was committed during the relevant period.[545]

In sentencing the child, the sentencing court is required to have primary regard to the matters mentioned in s150A(3)(a) – (f) set out above.[546]

For the purposes of this section, 'relevant period', for a child, is defined at s150B(4) to mean:

[545] s150B(1) YJA. Section 409 YJA provides that s150B YJA applies to a court sentencing a child for a prescribed indictable offence, whether the offence was committed before or after the commencement.
[546] s150B(2) YJA.

(a) if the child was ordered by the original court to be detained—the period starting on the day the declaration under section 150A was made by the original court and ending on the day that is 12 months after the day the child is released from detention; or

(b) otherwise—the period starting on the day the declaration under section 150A was made by the original court and ending on the day that is 12 months later.

Sections 150A(6) and 150B(3) both provide:

For the purposes of the Human Rights Act 2019, section 43(1), it is declared that this section has effect—[547]

(a) despite being incompatible with human rights; and

(b) despite anything else in the Human Rights Act 2019.

11.12.2 Sentence Orders – Life and Other Significant Offences

Section 175A YJA was inserted by the *Making Queensland Safter Act* 2024 and applies to offences committed on or after 13 December 2024. This section provides:

1. *This section applies if a court is sentencing a child for an offence against any of the following provisions of the Criminal Code:*
    a. *sections 302 and 305;*
    b. *sections 303 and 310;*
    c. section 314A;
    d. section 317;
    e. section 320;
    f. section 323;
    g. section 328A;
    h. *section 340;*
    i. *section 408A;*
    j. *sections 409 and 411;*
    k. *section 419;*
    l. *section 421;*
    m. *section 427*

2. *The court may –*

[547] Note: under the *Human Rights Act 2019*, s45(2), this subsection expires five years after the commencement.

a. *order that the child be placed on probation for a period of not longer than 3 years; or*

b. *order that the child be detained for a period not more than –*

i. *if the court is not constituted by a judge – 3 years; or*

ii. *if the court is constituted by a judge – the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve.*

3. *Section 155 does not apply to the court.*

4. *A requirement under the Criminal Code that a term of imprisonment must be a penalty, or part of the penalty, for the offence is taken to be a requirement that a period of detention must be the penalty, or a part of the penalty, for the offence.*

5. *A requirement under the Criminal Code that a minimum term of imprisonment must be served for the offence is taken to be a requirement that a minimum period of detention must be served for the offence.*

6. *The court may make a detention order –*

a. *with or without a conditional release order under section 220;*

b. if section 234 applies – with or without an order under that section.

7. If the court is sentencing a child to detention for life on a conviction of murder –

a. the Criminal Code, section 305(2), (3) and (4) applies; and

b. for that purpose, a reference in the Criminal Code, section 305 to imprisonment is taken to be a reference to detention.

Note – For the child's parole eligibility, see section 233 of this Act and the Corrective Services Act 2006, section 181.

8. Section 175(1)(da) and (db) does not apply to the court.

9. If the offence is a prescribed offence under the Penalties and Sentences Act 1992, section 108A, then part 5, division 2, subdivision 2 of that Act applies –

a. as if a reference in that subdivision to a community service order were a reference to a community service order under this Act; and

b. *as if a reference in that subdivision to a graffiti removal order were a reference to a graffiti removal order under this Act; and*
c. *as if a reference in that subdivision to the period mentioned in section 103(2)(b) of that Act were a reference to the period within which the number of hours stated in the community service order must be performed under this Act; and*
d. *as if a reference in that subdivision to serving a term of imprisonment in a correct services facility were a reference to serving a period of detention.*

10. *Section 195(a) does not apply to the making of a community service order under subsection (9), but subsection (9) applies to subject to section 195(b) and (c).*

11. *This section –*
    a. *applies despite anything else in this Act; and*
    b. *subject to subsection (8), does not limit a court's power to make an order under section 175.*

12. *For the purposes of the Human Rights Act 2019, section 43(1), it is declared that this section has effect –*
    a. *despite being incompatible with human rights; and*
    b. *despite anything else in the Human Rights Act 2019.*

    Note – Under the Human Rights Act 2019, section 45(2), this subsection expires 5 years after the commencement.

A Childrens Court Magistrate cannot impose a period of detention greater than three years when sentencing a child for a "significant offence" committed on or after 13 December 2024. [548]

Where the court is making an order for a child to serve a period of detention for a "significant offence" under s175 YJA which was committed on or after 13 December 2024, the court **must** set a release date at any point during the period of the detention, subject to the requirement to serve a minimum sentence. The default requirement to serve 70% of the sentence in s227(1) YJA and the other requirements under subsections (2) and (3) do not apply to a court making an order that a child serve a period of detention under s175A YJA. [549]

[548] s175A(2)(b)(i) YJA
[549] s227(4) YJA

Where the court is sentencing a child for an offence of grievous bodily harm, serious assault (in certain circumstances) or wounding committed in a public place whilst adversely affected by an intoxicating substance committed on or after 13 December 2024, they must be sentenced to a community service order unless the court is satisfied that the child has a physical, intellectual or psychiatric disability which means they are not capable of complying with the order, the child is not a suitable person to perform community service or community service of a suitable nature cannot be provided for the child. [550]

Section 176 YJA provides:

1. *If a child is found guilty of a relevant offence before a court presided over by a judge (the court), the court, may—*
    a. *order the child to be placed on probation for a period not longer than 3 years; or*
    b. *make a detention order against the child under subsection (2) or (3).*

2. *For a relevant offence other than a life offence, the court may order the child to be detained for a period not more than 7 years.*

3. *For a relevant offence that is a life offence, the court may order that the child be detained for—*
    a. *a period not more than 10 years; or*
    b. *a period up to and including the maximum of life, if—*
        i. *the offence involves the commission of violence against a person; and*
        ii. *the court considers the offence to be a particularly heinous offence having regard to all the circumstances.*

4. *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.*

5. *A court may make an order for a child's detention under subsection (3), with or without an order under division 10, subdivision 5.*

6. *This section does not limit a court's power to make an order under section 175.*

[550] s175A(9) & (10) YJA

7. *In this section—*

   ***relevant offence** means a life offence, or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, but does not include any of the following offences—*

   a. *an offence mentioned in section 175A(1);*
   b. *an offence of receiving if the value of the property, benefit or detriment is not more than $5,000;*
   c. *an offence that, if committed by an adult, may be dealt with summarily under the Drugs Misuse Act 1986, section 13.*

The offences subject to s176 YJA can only be dealt with by a Childrens Court constituted by a judge. Note that a "Supreme Court offence"[551] can only be dealt with in the Supreme Court. Section 176 YJA provides for a higher penalty in relation to a "relevant offence".

A **"relevant offence"** means:

- A life offence;[552] or
- An offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more; but does not include:[553]
  - An offence mentioned in section 175A(1);
  - An offence of receiving if the value of the property, benefit, or detriment, is not more than $5,000; and
  - An offence that, if committed by an adult, might be dealt with under s13 *Drugs Misuse Act 1986* (Qld).

Section 176(1)(a) YJA increases the available probation period to not longer than three years for a relevant offence.

In relation to a detention order, the maximum period for a relevant offence, other than a life offence, is a period not more than seven years.[554]

[551] Defined in Schedule 4 YJA.
[552] An offence for which a person sentenced as an adult would be liable to life imprisonment (Schedule 4 YJA).
[553] s176(10) YJA.
[554] s176(2) YJA.

For a life offence, the court may order detention for:

- A period not more than 10 years; or
- A period up to and including the maximum of life if:
    - The offence involves the commission of violence against a person; and
    - The court considers the offence to be a particularly heinous offence having regard to all the circumstances.[555]

See Chapter 11.13.9: Detention

A court may make a detention order with or without a conditional release order under s220 YJA.[556] A court may make a detention order under s176(3) YJA with or without an order under s234 YJA allowing publication of identifying information about a child.[557]

If a court is sentencing a child to detention for life for an offence of murder, s305(2), (3) and (4) CC apply. [558] A reference in s305 CC to imprisonment is taken to be a reference to detention.[559] Section 176(6) YJA applies despite mandatory sentence provisions being inapplicable under s155 YJA.[560]

See s150(5) YJA in relation to the sentence for an offence of manslaughter where the victim was a child under 12 years.

The provisions of s176 YJA do not limit a court's power to make an order under s175 YJA in relation to a relevant offence.[561]

See Chapter 11.13.9: Detention

11.12.3 Sentence Orders – Graffiti Offences

See Chapter 11.13.7 below regarding s176A YJA (sentence orders – graffiti offences)

[555] s176(3) YJA.
[556] s176(4) YJA.
[557] s176(5) YJA.
[558] s176(6) YJA.
[559] s176(8) YJA.
[560] s176(7) YJA.
[561] s176(9) YJA.

11.12.4 Restitution, Compensation and Licence Disqualification

In relation to s181 YJA, restitution and compensation orders and licence disqualifications, see Chapter 11.14: Other Orders.

11.13 Specific Sentence Orders

11.13.1 Reprimand

Section 175(1)(a) YJA provides that the court may reprimand a child if found guilty of an offence.

"Reprimand" is not defined in the YJA. Its ordinary meaning is *"a severe reproof, especially a formal one by a person in authority".*[562]

See Chapter 11.11.4: Criminal History

In relation to a reprimand, a conviction **must not** be recorded.[563]

Note that a Childrens Court has the option of dismissing a charge and cautioning the child,[564] or referring the charge for a restorative justice process,[565] if satisfied that one of those processes should have occurred.

See Chapter 7.3: Childrens Court ay dismiss a charge if a caution should have been administered and Chapter 7.5: Childrens Court may dismiss a charge if offence should have been referred to restorative justice process

11.13.2 Good Behaviour Order

Section 175(1)(b) YJA provides that the court may order a child to be of good behaviour for a period not longer than one year.

[562] Macquarie Dictionary
[563] s183(2) YJA.
[564] s21 YJA.
[565] s24A YJA.

Section 188 YJA provides that a court that makes a good behaviour order against a child must impose a condition that the child abstains from violation of the law for the period of the order. That condition should be explained to the child in terms the child understands.[566]

A good behaviour order is not a supervised order.

A conviction **must not** be recorded.[567]

Section 189 YJA provides that if the person against whom a good behaviour order has been made commits an offence during the period of the order, a court that subsequently deals with the person for that offence, may have regard to the breach of the good behaviour order when determining the appropriate sentence. Otherwise, a court must not take any action in relation to a breach of the order.[568] That is, there are no breach proceedings in relation to the breaching of the order.

Section 189 YJA provides:

1. *If a person against whom a good behaviour order has been made commits an offence during the period of the order, a court that deals with the person on a charge for the offence may have regard to the breach of the good behaviour order when determining its sentence for the offence.*

2. *Otherwise, a court must not take any action in relation to a breach of a good behaviour order.*

11.13.3 Fine

Section 175(1)(c) YJA provides that the court may order a child to pay a fine of an amount prescribed under an Act in relation to the offence.

If an Act creates an offence and does not provide a sentence, s46 PSA provides limitations on the amount of a fine. For the value of a penalty unit, see ss5 and 5A PSA.

The court has a discretion to record a conviction if a fine is imposed.[569]

[566] s158 YJA.
[567] s183(2) YJA.
[568] s189(2) YJA.
[569] s183(3) YJA.

The court may only impose a fine if satisfied that the child has the capacity to pay the amount.[570]

An order imposing a fine **must** direct that the fine be paid by a specified time or by specified instalments and the fine must be paid in the first instance to the proper officer of the court.[571]

The **"proper officer"** is defined as the Registrar or a Sherriff or Deputy Sheriff of the court for the Supreme Court, District Court or a Childrens Court Judge or the clerk of the court for a Magistrates Court or a Childrens Court Magistrate.[572]

There is no power to order a default period of detention for the non-payment of the fine.

If the child fails to pay all of the fine within the time allowed, the proper officer of the court may apply to the court to cancel the fine order and make a community service order against the child.[573] The court may take no action, extend the time for paying the fine or cancel the fine and resentence the child by making a community service order against the child.[574] The hours of community service are calculated pursuant to a formula in s192(5)-(8) YJA.

Section 192 YJA provides:

1. *This section applies if a child who is ordered to pay a fine for an offence fails to pay all the fine within the time allowed for payment.*

2. *The proper officer may apply to the court to cancel the fine order and make a community service order against the child.*

3. *The proper officer must give notice of the application to—*
    a. *the child; and*
    b. *a parent of the child, unless a parent cannot be found after reasonable inquiry; and*
    c. *the chief executive.*

[570] s190 YJA.
[571] s191 YJA.
[572] Schedule 4 YJA.
[573] s192 YJA.
[574] s192(4) YJA.

4. *If the court is satisfied that the child has not paid an amount of the fine within the time allowed, the court may—*
    a. *take no action; or*
    b. *extend the time for paying the amount; or*
    c. *cancel the fine order and resentence the child by making a community service order against the child.*

5. *The community service hours under the community service order must be calculated using the following formula—*

    unpaid amount of fine x 8
    1 penalty unit

6. *However, the community service hours calculated using the formula must not be more than that permitted under section 175(1)(c) or 200.*

7. *If the hours calculated under the formula are less than that permitted by section 200, the court may not make an order under subsection (4)(c).*

8. *If the hours calculated under the formula are more than that permitted by section 175(1)(c) or 200, the court may only make an order for the maximum hours permitted.*

9. *The community service order is a community service order under section 175(1)(c).*

10. *In this section—*
    ***parent,** of a child, includes someone who is apparently a parent of the child.*

The hours calculated must not be more than 100 or 200 hours, depending on the age of the child [575] or 200 hours in any event.[576]

[575] s175(1)(e) YJA.
[576] s192(6) YJA.

If the hours calculated exceed the maximum permitted, the court may only make an order for the maximum.[577] If the community service hours are fewer than 20 hours, the court cannot convert the fine.[578]

The community service order is pursuant to s175(1)(c) YJA[579] and must follow the procedures in ss195-202 YJA and requires the child's consent to the order, that the court is satisfied that the child is a suitable person to perform community service and is satisfied, on consideration of a report by the chief executive (youth justice) that community service of a suitable nature can be provided for the child.[580]

A child or another party to the proceeding, can apply in writing to the proper officer of the court to extend the period in which the person is required to pay the amount of the fine subject to any conditions that the proper officer considers just.[581] A proper officer may delegate that power pursuant to s313 YJA.

Any unpaid fine constitutes a debt owing to the State and the order may be filed in the registry of a Magistrates Court and may be enforced as an order properly made by the Magistrates Court.[582]

Section 156 YJA provides that if a court, sentencing a child for an offence, considers that it is appropriate for the child to pay both a fine or compensation or restitution and the court considers that the child has insufficient resources to pay both amounts, the court must give preference to ordering the child to pay only the compensation or restitution amount.

See Chapter 11.14.1: Restitution and Compensation

11.13.4 Restorative Justice Order

Section 175(1)(db) YJA provides that as a sentence, the court can order that the child participate in a restorative justice process as directed by the chief executive (youth justice). After a finding of guilt, the court **must** consider either referring the offence to a restorative justice process as a diversion or

[577] s192(8) YJA.
[578] s192(7) YJA.
[579] s192(9) YJA.
[580] s195 YJA.
[581] s309 YJA.
[582] s310 YJA.

referring the offence for a restorative justice process *"to help the court make an appropriate sentence order".*[583]

See Chapter 7.7: The Restorative Justice Process and Chapter 11.7: Pre-Sentence Restorative Justice Referrals

Section 192A YJA sets out the pre-conditions for making a restorative justice order:

1. *A court may make a restorative justice order against a child only if—*
    a. *the court considers the child is informed of, and understands, the process; and*
    b. *the child indicates willingness to comply with the order; and*
    c. *the court is satisfied that the child is a suitable person to participate in a restorative justice process; and*
    d. *having regard to the following, the court considers the order is appropriate in the circumstances—*
        i. *a submission by the chief executive about the appropriateness of the order;*
        ii. *the deciding factors for referring the offence.*

    Note – For a court sentencing a child for an offence under section 175A, see section 175A(8).

2. *In this section— deciding factors, for referring an offence, means—*
    a. *the nature of the offence; and*
    b. *the harm suffered by anyone because of the offence; and*
    c. *whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.*

The child **must** be informed of and understand the process. The child **must** agree to comply with the order. The court **must** be satisfied that the child is a suitable person to participate in the process. The court **must** consider the order is appropriate in the circumstances of a submission by the chief executive (youth justice) about the appropriateness of the order **and** in the circumstances of the deciding factors for referring the offence –

- The nature of the offence; and
- The harm suffered by anyone because of the offence; and

[583] s162 YJA.

- Whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.

Section 192B YJA sets out the requirements of a restorative justice order:

> *A restorative justice order made against a child must require—*
>
> *a) that the child must report in person to the chief executive within 1 business day after the order is made or any longer period that may be specified in the order; and*
> *b) that, during the order—*
> *i. the child abstain from violation of the law; and*
> *ii. the child comply with every reasonable direction of the chief executive; and*
> *iii. the child report and receive visits as directed by the chief executive; and*
> *iv. the child or a parent of the child must notify the chief executive within 2 business days of any change of the child's address, employment, or school; and*
> *v. the child must not leave, or stay out of, Queensland while the order is in force, without the prior approval of the chief executive; and*
> *vi. the child participate in a restorative justice process as directed by the chief executive; and*
> *vii. the child perform his or her obligations under a restorative justice agreement made as a consequence of the child's participation in the restorative justice process.*

If the court makes a restorative justice order under s175(1)(db) YJA, the offence for which the child is found guilty is taken to be referred to the chief executive (youth justice) for the restorative justice process.[584]

Section 192C YJA sets out considerations where the court makes both a restorative justice order combined with a community service order or a graffiti removal order. The court is to have regard to the child's obligations under any restorative justice agreement in deciding the numbers of hours required under either order. Note that the consideration only applies if there is a restorative justice **agreement** in place at the time of making the community service order or graffiti removal order.[585] If

[584] s175(2A) YJA.
[585] s192C(4) YJA.

a restorative justice order is made in the same proceeding as the community service order or graffiti removal order, there would be no current restorative justice agreement.

Section 192C YJA provides:

1. *This section applies if, for the same offence, a court makes a restorative justice order and—*
    a. *a community service order; or*
    b. *a graffiti removal order.*

2. *In making the community service order, the court must, when deciding the number of hours of unpaid community service, have regard to the child's obligations under the restorative justice agreement related to the restorative justice order.*

3. *In making the graffiti removal order, the court must, when deciding the number of hours of graffiti removal service, have regard to the child's obligations under the restorative justice agreement related to the restorative justice order.*

4. *Subsections (2) and (3) only apply to a restorative justice agreement that is in force at the time of making the community service order or graffiti removal order.*

See Chapter 11.13.6: Community Service Order and Chapter 11.13.7: Graffiti Removal Order below.
See also Chapter 11.15: Combination of Orders for which orders may be combined.

Section 192D YJA provides for when a restorative justice order ends:

1. *A restorative justice order remains in force until the earlier of the following—*
    a. *the chief executive is satisfied the child has discharged the child's obligations under the related restorative justice agreement;*
    b. *the order is discharged under section 245 or 247;*
    c. *12 months from the date the order is made.*

2. *The period that a restorative justice order remains in force under subsection (1) is subject to sections 245, 247 and 252.*

Sections 245(ab), 247(1)(ba) and 252 YJA relate to procedures on a breach or variation of a community-based order. A restorative justice order is a "community-based order".[586]

See Chapter 11.19.2: Community-Based Order below for breach or variation of a community-based order.

The court has a discretion to record a conviction if a restorative justice order is made.[587]

The court can make a sentence order that the child perform any outstanding obligations from a restorative justice agreement made as a consequence of a pre-sentence referral under s165 YJA.[588] Again, the court has a discretion to record a conviction in relation to such an order[589]

See Chapter 11.7: Pre-Sentence Restorative Justice Referrals

11.13.5 Probation

Pursuant to s175(1)(d) YJA a court may order a child who is found guilty of an offence to be placed on probation for a specified period.

If the court is constituted by a Magistrate and s175A YJA does not apply, the maximum period is one year.[590] If the Magistrate considers that a probation period of greater than one year is required, the Magistrate may request that a Childrens Court Judge delegate to the Magistrate the power to impose a sentence that only a Childrens Court Judge could impose[591] or refer the case to a Childrens Court Judge for sentence.[592]

See Chapter 9.4: Sentence Matters

If the court is constituted by a Judge and neither ss175A nor 176 applies, the maximum period is two years[593]

[586] Schedule 4 YJA.
[587] s183(3) YJA.
[588] s175(1)(da) YJA.
[589] s183(3) YJA.
[590] s175(1)(d)(i) YJA.
[591] s185 YJA.
[592] s186 YJA.
[593] s175(1)(d)(ii) YJA.

See Chapter 11.12: Sentence Orders

A probation order can only be made if the offence is one which would make an adult convicted of it liable to a term of imprisonment.[594] If the maximum penalty that can be imposed for an offence is non-custodial, a probation order may not be made in relation to a child.

A court may make a probation order **only** if the child is willing to comply with the order.[595]
The court has a discretion to record a conviction if a probation order is made.[596]

Section 193 YJA sets out the requirements of a probation order:

1. *A probation order made against a child must require—*
    a. *that the child must report in person to the chief executive within 1 business day after the order is made or any longer period that may be specified in the order; and*
    b. *that, during the probation order—*
        i. *the child must abstain from violation of the law; and*
        ii. *the child must satisfactorily attend programs as directed by the chief executive; and*
        iii. *the child must comply with every reasonable direction of the chief executive; and*
        iv. *the child must report and receive visits as directed by the chief executive; and*
        v. *the child or a parent of the child must notify the chief executive within 2 business days of any change of address, employment, or school; and*
        vi. *the child must not leave, or stay out of, Queensland during the probation period, without the prior approval of the chief executive.*

2. *A probation order made against a child may contain requirements that the child must comply during the whole or a part of the probation period with conditions that the court considers necessary or desirable for preventing—*
    a. *a repetition by the child of the offence in relation to which the order was made; or*
    b. *the commission by the child of other offences. Example of a condition— a condition imposing a curfew on the child*

[594] s175(2)(a) YJA.
[595] s194 YJA.
[596] s183(3) YJA.

3. *An order may contain a requirement that the child must comply with outside the State. Example— An order may require the child to attend a particular educational establishment that is located outside the State.*

4. *A requirement imposed by a court under subsection (2)—*
    a. *must relate to the offence for which the probation is made; and*
    b. *must be supported by the court's written reasons; and*
    c. *must not require the child to wear a monitoring device.*

See regulation 7 of the Youth Justice Regulation 2016 in relation to a child's reporting obligations under a community-based order

Section 193(2) YJA permits the court to require that the child comply with conditions that the court considers necessary or desirable for preventing a repetition of the offence or the commission of other offences. Section 193(4) YJA provides that any such requirement –

- **Must** relate to the offence for which the order was made; and
- **Must** be supported by the court's written reasons; and
- **Must not** require the child to wear a *monitoring* device.

The curfew condition given as an example in s193(2) YJA would need to be supported by the court's reasons as to why that would prevent a repetition of the charged offence or the commission of other offences. "**Curfew"** means a requirement to remain at a stated place for stated periods.[597] Logically, it should only relate to an offence committed during certain hours or the risk of other offences being committed during those hours. It should not be imposed as an additional punishment. See *R v L* [1995] QCA 207 where the court commented that a curfew condition in a probation order was plainly within the sentencing Judge's discretion for offences 295committed at night.

Any condition imposed must have sufficient nexus to the purpose of the condition required by s193(2) YJA.

See Appendix 5: DYJ Core Interventions and Initiatives as to YJ programs that might be made a condition of the order.

[597] Schedule 4 YJA.

A probation order may contain a requirement that the child must comply with outside the state.[598]

If the court makes a probation order and a community service order for a single offence, the court **must** make separate orders and **must not** impose one of the orders as a condition of the other.[599]

If the court makes a detention order and a probation order for a single offence, the court may make the detention order only for a maximum period of six months and may not make a conditional release order. The probation order may only start when the child is released from detention and be for a maximum period ending one year after the release.[600] A detention order and a probation order may be made for separate offences.

See also Chapter 11.15: Combination of Orders for which orders may be combined.

See Chapter 11.19.2: Community-Based Order below for breach or variation of a community-based order.

A probation order is a community-based order.[601]

11.13.6 Community Service Order

Pursuant to s175(1)(c) YJA, a court may order a child of 13 years or older at the time of sentence, to perform unpaid community service for a specified number of hours. If the child is under 15 years at the time of sentence, the maximum period is 100 hours. If the child has attained the age of 15 years at the time of sentence, the maximum period is 200 hours.

A community service order can only be made if the offence is one which would make an adult convicted of it liable to a term of imprisonment.[602] If the maximum penalty that can be imposed for an offence is non-custodial, a community service order may not be made in relation to a child.

[598] s193(3) YJA.
[599] s178 YJA.
[600] s180 YJA.
[601] Schedule 4 YJA.
[602] s175(2) YJA.

Where the court is sentencing a child for an offence of grievous bodily harm, serious assault (in certain circumstances) or wounding committed in a public place whilst adversely affected by an intoxicating substance which was committed on or after 13 December 2024, they must be sentenced to a community service order In that case, the court must make a community service order unless the court is satisfied that the child has a physical, intellectual or psychiatric disability which means they are not capable of complying with the order, the child is not a suitable person to perform community service or community service of a suitable nature cannot be provided for the child. [603]

A court can only make a community service order if the child is willing to comply with the order.[604] This does not apply where a child is being sentenced for grievous bodily harm, serious assault (in certain circumstances) or wounding whilst adversely affected by an intoxicating substance which was committed on or after 13 December 2024.

The court has a discretion to record a conviction if a community service order is made.[605]

Section 195 YJA sets out the pre-conditions to making a community service order:

> *A court may make a community service order against a child only if—*
>
> *a) the child indicates willingness to comply with the order; and*
> *b) the court is satisfied that the child is a suitable person to perform community service; and*
> *c) the court is satisfied on consideration of a report by the chief executive that community service of a suitable nature can be provided for the child.*

The court **must** be satisfied that the child is a suitable person to perform community service. The court **must** be satisfied on a consideration of a report by the chief executive (youth justice) that community service of a suitable nature can be provided for the child.

Section 196 YJA sets out the requirements of a community service order:

1. *A community service order must contain requirements—*
    a. *that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and*

[603] s175A(9) & (10) YJA
[604] s195 YJA.
[605] s183(3) YJA.

b. *that the child perform in a satisfactory way for the number of hours specified in the order the community service that the chief executive directs the child to perform; and*

c. *that the child, while performing community service, comply with every reasonable direction of the chief executive; and*

d. *that the child or a parent of the child inform the chief executive of every change in the child's place of residence within 2 business days of the change; and*

e. *that the child abstain from violation of the law during the period of the order; and (f) that the child not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.*

2. *An order may contain a requirement that the child must comply with outside the State.*
Example— An order may require the child to perform a community service at a place outside the State.

3. *If the order is for less than 50 hours of community service, the order may contain a requirement that the child must perform the community service within a period starting on the date of the order that is less than 1 year. Note— If a requirement is not imposed under this subsection, the period of 1 year mentioned in section 198(a)(i) will apply.*

4. *Before imposing a requirement under subsection (3), a court must consider what is a reasonable period for the child to perform the community service in all the circumstances of the case.*

See Regulation 7 of the *Youth Justice Regulations 2016* in relation to a child's reporting obligations under a community-based order

The order may contain a requirement that the child must comply with outside the state.[606]

Section 198 YJA provides the timeframes for the performance of the community service order:

- If the order is for less than 50 hours, a period of one year from the date of the order or a lesser period stated in the order pursuant to s196(3) YJA;
- If the order is for 50 hours or more, a period of one year from the date of the order; or

[606] s196(2) YJA.

- Within any extended period that the court orders under ss245 or 247 YJA or by an order of the proper officer of the court under s252 YJA.

Pursuant to s199 YJA, a court may impose two or more community service orders in respect of two or more offences and may make a community service order against a child who is already subject to an existing community service order. There are, however, limitations on the number of hours to which a child can be subject at any one time.

Section 200 YJA provides:

1. *Subject to subsections (2) and (3), the community service hours specified in a community service order must not be less than 20.*

2. *If—*
    a. *a court makes 2 or more community service orders against a child found guilty of 2 or more offences; and*
    b. *the child is not subject to an existing community service order;*

    the total of the community service hours specified in the orders must not be less than 20 or more than the maximum appropriate to the child allowed by section 175(1)© for 1 offence.

3. *If—*
    a. *a court makes 1 or more community service orders against a child; and*
    b. *the child is subject to 1 or more existing community service orders;*

    the total of the community service hours specified in all the orders, less the number of hours for which the child has performed community service under the existing order or orders, must not be less than 20 or more than the maximum appropriate to the child allowed by section 175(1)(c) for 1 offence.

4. *To the extent that the total exceeds the maximum allowed, the order or orders made by the court is or are of no effect.*

5. *The community service hours in each community service order made against a child are cumulative on the hours in each other community service order made against the child, unless the court that makes a community service order directs otherwise.*

The combined effect of ss175(1)(c) and 200 YJA is:

- If the child is 13 or 14 years, the total maximum number of hours (including any outstanding hours for other orders) is 100 hours;
- If the child is 15 years or over, the total maximum number of hours (including any outstanding hours from other orders) is 200 hours;
- In all cases, the minimum number of total hours must not be less than 20 hours.

Any hours ordered in excess of the maximum are of no effect.[607] The community service hours in each community service order are cumulative on the hours in each other community service order made against the child unless the court direct otherwise.[608]

If the making of the order has the consequence that the person is subject to both a child community service order and an adult community service order, then the maximum number of hours is 240 hours.[609] Any hours ordered in excess of the maximum are of no effect.[610]

Section 245(1)(b)(ii) YJA allows the court, on a breach of a community service order, to extend the period for the hours to be performed by not more than one year. Section 247(1)(a) YJA allows the court to vary the requirements of a community-based order.

When resentencing a child for the offence for which a mandatory community service order was made under s175A(9) YJA, the court need not make another community service order. [611] This applies where the court discharges the order and resentences the child when dealing with a contravention of a community-based order under s245 YA or when dealing with an application to vary an order under s247 YJA.

See Chapter 11.18: Variation of a Community-Based Order and Chapter 11.19: Breaches of Orders

Section 252 YJA allows the proper officer of the court to amend the requirements of the community-based order with the consent of the child and the chief executive (youth justice). For a community

[607] s200(4) YJA.
[608] s200(5) YJA.
[609] s201 YJA and 103(2) PSA.
[610] s201(2) YJA.
[611] s249(2A) YJA

service order, such an amendment cannot increase the number of hours or lessen the period in which the community service is to be performed.[612]

Section 197 YJA sets out certain obligations on the chief executive (youth justice) in relation to community service orders:

> *The chief executive, in giving directions to a child in relation to the child's performance of community service, is—*
>
> *(a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child's parent; and*
> *(b) to avoid, if practicable, interference with the child's attendance at a place of employment or a school or other educational or training establishment; and*
> *(c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.*

Further requirements are placed on the chief executive (youth justice) by Regulation 8 of the *Youth Justice Regulation 2016*.

Section 202 YJA provides for when a community service order ends:

> *A community service order made against a child remains in effect until—*
>
> *(a) the child has performed community service in accordance with the requirements specified under section 196(1)(b) and (c) for the number of hours specified in the order; or*
> *(b) the order is discharged under section 245 or 247; or*
> *(c) the expiry of the period within which the community service is required to be performed under section 198; whichever first happens.*

See Chapter 11.19.2: Community-Based Order below for breach or variation of a community-based order.

A community service order is a community-based order.[613]

[612] s252(5)(c) YJA.
[613] Schedule 4 YJA.

If the court makes a community service order and a probation order for a single offence, the court **must** make separate orders and **must not** impose one of the orders as a condition of the other.[614]

See also Chapter 11.15: Combination of Orders for which orders may be combined.

11.13.7 Graffiti Removal Order

Pursuant to s176A YJA if a child, of at least the age of 12, is found guilty of a graffiti offence, the court **must** make a graffiti removal order for the child.

A **"graffiti offence"** means an offence against s469 CC that is punishable under s469, Item 9.[615]

Section 469 CC provides:

1. *Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanour, and the person is liable, if no other punishment is provided, to imprisonment for 5 years.*

Item 9 (punishment in special cases) provides:

1. *If the property in question is in a public place, or is visible from a public place, and the destruction or damage is caused by—*
    a. *spraying, writing, drawing, marking or otherwise applying paint or another marking substance; or*
    b. *scratching or etching; the offender commits a crime and is liable to imprisonment for 7 years.*

2. *The court may—*
    a. *whether or not it imposes any other penalty for the offence, order the offender to perform community service under the Penalties and Sentences Act 1992, part 5, division 2, including for example, removing graffiti from property; and*

[614] s178 YJA.
[615] Schedule 4 YJA.

b. *whether or not it imposes any penalty for the offence, order the offender to pay compensation to any person under the Penalties and Sentences Act 1992, part 3, division 4.*

Section 176A YJA provides:

1. *This section applies if—*
    a. *a child is found guilty of a graffiti offence before a court; and*
    b. *the child had attained at least the age of 12 years at the time of the offence.*

2. *Without limiting section 175, the court must make a graffiti removal order for the child.*

3. *Subject to sections 194A and 249(3), the graffiti removal order must order the child to perform graffiti removal service for a period no longer than—*
    a. *if the child has not attained the age of 13 years at the time of sentence—5 hours; or*
    b. *if the child has attained the age of 13 years, but not the age of 15 years, at the time of sentence—10 hours; or*
    c. *if the child has attained the age of 15 years at the time of sentence—20 hours.*

The order may be in addition to any other sentence order under s175 YJA.[616] The court has a discretion to record a conviction if a graffiti removal order is made.[617]

Section 194A YJA sets out the pre-conditions to making a graffiti removal order:

1. *A court must make a graffiti removal order against a child found guilty by a court of a graffiti offence unless the court is satisfied that, because of the child's physical or mental capacity, the child is not capable of complying with the order.*

2. *A court must, when deciding the number of hours of graffiti removal service to order under a graffiti removal order, take into account the age, maturity, and abilities of the child against whom the order will be made.*

[616] s176A(2) YJA.
[617] s183(3) YJA.

The court **must** make the order unless satisfied that the child is not capable of complying with the order because of the child's physical or mental capacity.[618]

The number of hours of the graffiti removal order is limited by s176A(3) (which is subject to ss194A and 249(3) YJA):

- Five hours if the child is 12 years old at the time of sentence;
- Ten hours if the child is 13 or 14 years old at the time of sentence;
- 20 hours if the child is 15 years or older at the time of sentence.

Section 194A(2) YJA provides that a court, when deciding the number of hours, **must** take into account the age, maturity, and abilities of the child.

If a court discharges a graffiti removal order and resentences the child on a breach action or variation, the court need not make a further graffiti removal order.[619]

There is no requirement that the child must consent to the making of the order, as it is mandatory.

Section 194B YJA sets out the requirements of a graffiti removal order:

1. *A graffiti removal order must contain requirements—*
    a. *that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and*
    b. *that the child perform in a satisfactory way graffiti removal service, directed by the chief executive, for the number of hours specified in the order; and*
    c. *that the child, while performing graffiti removal service, comply with every reasonable direction of the chief executive; and*
    d. *that the child or a parent of the child inform the chief executive of every change in the child's place of residence within 2 business days of the change; and*
    e. *that the child abstain from violation of the law during the period of the order; and*
    f. *that the child not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.*

[618] s194A(1) YJA.
[619] s249(3) YJA.

2. *An order may contain a requirement that the child must comply with outside the State.*

   Example— An order may require the child to perform graffiti removal service at a place outside the State.

3. *The order may contain a requirement that the child must perform the graffiti removal service within a period starting on the date of the order that is less than 1 year.*

   Note— If a requirement is not imposed under this subsection, the period of 1 year mentioned in section 194D(a) will apply.

4. *Before imposing a requirement under subsection (3), a court must consider what is a reasonable period for the child to perform the graffiti removal in all the circumstances of the case.*

"Graffiti removal service" means –

(a) The removal of graffiti; or
(b) Work related or incidental to the removal of graffiti; or
(c) Other work related to or incidental to the clean-up of public places, whether or not it relates to the removal of graffiti.[620]

An order may contain a requirement that the child must comply with outside the state.[621]

See Regulation 7 of the *Youth Justice Regulation 2016* in relation to a child's reporting obligations under a graffiti removal order

The order may contain a requirement that the child perform the graffiti removal order within a period starting on the date of the order that is less than one year.[622] Before imposing that requirement, the court **must** consider what is a reasonable period for the child to perform the graffiti removal in all the circumstances of the case.[623] This would require a consideration of all outstanding obligations of the child under other orders.

Section 194D provides that the child must perform the number of hours specified in the order within the period of one year starting on the date of the order or the lesser period stated in the order. The

[620] Schedule 4 YJA.
[621] s194B(2) YJA.
[622] s194B(3) YJA.
[623] s194B(4) YJA.

period can be extended under ss245(1) or 247 YJA (breach or variation of the order) or by order of the proper officer of the court under s252 YJA.

See Chapter 11.19.2: Community-Based Order below for breach or variation of a community-based order.

If a child is found guilty of two or more graffiti offences in the same proceeding, the court **must** make at least one graffiti removal order or make more than one order.[624]

The total number of hours of graffiti removal service specified in the order or orders must not be more than the maximum appropriate to the child under s176A(3) YJA for one graffiti offence.[625]

If the court makes a combination of graffiti removal orders and community service orders, the total number of hours must not be more than the maximum number of hours of community service appropriate to the child under s175(1)(c) YJA for one offence.[626]

Where a graffiti removal order is made at a time when the child is subject to one or more existing graffiti removal orders, the number of hours of unperformed graffiti removal service and the number for the new order or orders must not, in total, exceed the maximum number of hours appropriate to the child under s176A(3) YJA for one offence.[627] A similar limitation applies to any outstanding community service hours. The total number of hours must not total more than the maximum number of hours appropriate to the child under s175(1)(c) YJA for one offence.[628]

Any hours above the maximum, as a result of the mandatory graffiti removal order, is performed concurrently.[629]

Subject to the limitations in ss 194F, 194G, 194H and 194I YJA, all unpaid service is to be performed cumulatively, unless the court orders otherwise.[630]

[624] s194E YJA.
[625] s194F YJA.
[626] s194G YJA.
[627] s194H YJA.
[628] s194I YJA.
[629] s194I(3) YJA.
[630] s194J YJA and Parts 5 and 5A PSA.

Where a person is subject to both adult orders of community service or graffiti removal and orders under the YJA, to the extent that the total number of hours is more than the maximum number of hours permitted under ss194A-202 YJA or under Parts 5 or 5A PSA, the order or orders made by the court are of no effect.[631] Subject to that, the hours under each order are cumulative unless the court orders otherwise.[632]

A court may make more than one type of order for a single offence.[633] The court **must** make separate probation, community service and/or graffiti removal orders and **must not** impose one order as a requirement of another.[634]

A court may order both a detention order and a graffiti removal order for a single graffiti offence or multiple offences of which one is a graffiti offence.[635] The graffiti removal order commences when the child is released from detention.[636] If a child subject to a graffiti removal order is subsequently sentenced to detention, the graffiti removal order is suspended until the child is released from detention.[637]

See also Chapter 11.15: Combination of Orders for which orders may be combined.

Section 194C YJA sets out the obligations of the chief executive (youth justice) in relation to graffiti removal orders:

> *The chief executive, in giving directions to a child in relation to the child's performance of graffiti removal service, is—*
>
> *(a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child's parent; and*
> *(b) to avoid, if practicable, interference with the child's attendance at a place of employment or a school or other educational or training establishment; and*
> *(c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.*

631 s194K YJA.
632 s194K(3) YJA.
633 s177 YJA.
634 s178A YJA.
635 s180A YJA.
636 s180A(2)(a) YJA.
637 s180A(2)(b) YJA.

Further requirements are placed on the chief executive (youth justice) by Regulation 8 of the *Youth Justice Regulation 2016.*

Section 194L YJA provides for when a graffiti removal order ends:

A graffiti removal order made against a child remains in effect until—

> *(a) the child has performed graffiti removal service in accordance with the requirements specified under section 194B(1)(b) and (c) for the number of hours specified in the order; or*
> *(b) the order is discharged under section 245 or 247; or*
> *(c) the expiry of the period within which the graffiti removal service is required to be performed under section 194D;*
>
> *whichever first happens.*

See Chapter 11.19.2: Community-Based Order below for breach or variation of a community-based order.

A graffiti removal order is a community-based order.[638]

11.13.8 Intensive Supervision Order

Pursuant to s175(1)(f) YJA a court may make an intensive supervision order in relation to a child under 13 years at the time of sentence. The maximum period for the order is six months.

The order may only be made if the offence is one which would make an adult convicted of it liable to imprisonment.[639] If the maximum penalty that can be imposed for an offence is non-custodial, an intensive supervision order may not be made.

A court can only make an intensive supervision order if the child is willing to comply with the order.[640] The court has a discretion to record a conviction if an intensive supervision order is made.[641]

[638] Schedule 4 YJA.
[639] s175(2)(c) YJA.
[640] s203(1) YJA.
[641] s183(3) YJA.

Section 203 YJA sets out the pre-conditions to making an intensive supervision order:

1. *A court may make an intensive supervision order for a child only if—*
    a. *the child expresses willingness to comply with the order; and*
    b. *the court has ordered a pre-sentence report and considered the report; and*
    c. *the court considers the child, unless subject to an intensive period of supervision and support in the community, is likely to commit further offences having regard to the following—*
        i. *the number of offences committed by the child, including the child's criminal history;*
        ii. *the circumstances of the offences;*
        iii. *the circumstances of the child;*
        iv. *whether other sentence orders have not or are unlikely to stop the child from committing further offences.*

2. *The pre-sentence report mentioned in subsection (1)(b) must include comments—*
    a. *outlining the potential suitability of the child for an intensive supervision order; and*
    b. *advising whether an appropriate intensive supervision program is available for the child.*

A court may only make an intensive supervision order if the court has ordered and considered a pre-sentence report which **must** include comments outlining the potential suitability of the child for the order and advising whether an appropriate intensive supervision program is available for the child.[642] See s151 YJA for the power to order a pre-sentence report.

The order may only be made if the court considers that the child is likely to commit further offences having regard to the matters in s203(1)(c) YJA. The order establishes an early intervention in relation to children under 13 years. It was introduced by the *Juvenile Justice Amendment Act 2002* (Qld) which described the order as targeting *"high risk children too young to do community service work".*[643]
Section 204 sets out the requirements of an intensive supervision order:

1. *An intensive supervision order must require—*

[642] s203(1)(b) and (2) YJA.
[643] Explanatory Notes, *Juvenile Justice Amendment Bill 2002*.

a. *that the child participate as directed by the chief executive in a program (the intensive supervision program) for the period decided under section 175(1)(f) (the program period); and*
b. *that, during the period of the order—*
    i. *the child abstain from violation of the law; and*
    ii. *the child comply with every reasonable direction of the chief executive; and*
    iii. *the child report and receive visits as directed by the chief executive; and*
    iv. *the child or a parent of the child notify the chief executive within 2 business days of any change of address or school; and*
    v. *the child not leave, or stay out of, Queensland without the prior approval of the chief executive.*

2. *An intensive supervision order made for the child may contain requirements that the child comply, during the whole or a part of the period of the order, with conditions that the court considers necessary for preventing a repetition by the child of the offence for which the order was made or the commission by the child of other offences.*
   Example of a condition— a condition imposing a curfew on the child

3. *An order may contain a requirement that the child must comply with outside the State.*
   Example— An order may require the child to attend a particular educational establishment that is located outside the State.

4. *A requirement imposed by a court under subsection (2)—*
    a. *must relate to the offence for which the order was made; and*
    b. *must be supported by the court's written reasons; and*
    c. *must not require the child to wear a monitoring device.*

The order may contain a requirement that the child must comply with outside the state.[644]

See Regulation 7 of the *Youth Justice Regulations 2016* in relation to a child's reporting obligations under a community-based order

See also Regulation 8 of the *Youth Justice Regulations 201*6 in relation to the limits on chief executive's directions relating to a community-based order

[644] s204(3) YJA.

Section 204(2) YJA permits the court to require the child to comply with the conditions that the court considers necessary for preventing a repetition by the child of the offence for which the order was made or the commission of other offences. Section 204(4) YJA provides that any such requirement –

- **Must** relate to the offence for which the order was made; and
- **Must** be supported by the court's written reasons; and
- **Must not** require the child to wear a monitoring device.

Such conditions must have sufficient nexus to the purposes of a condition required by s204(2) YJA and should not be imposed as additional punishment.

Section 205 YJA provides for when an intensive supervision program begins and ends:

1. *The program period of a child's intensive supervision program starts when the intensive supervision order is made and ends at the later of the following times—*
    a. *the end of the last day of the period of the intensive supervision order;*
    b. *if the intensive supervision program was suspended for part or all of any days (the suspended days)—the end of the last day that is the last day of the period of the order and, additionally, the number of suspended days.*

2. *If, at the time a court makes an intensive supervision order for a child—*
    a. *another intensive supervision order has already been made against the child; and*
    b. *the intensive supervision program under the other order has not ended;*

    the period when the child is subject to both intensive supervision programs is counted concurrently.

Pursuant to s205(2) YJA, if a child is already subject to an intensive supervision order at the time another such order is made, the period in which the child is subject to both orders is counted concurrently.

Section 206 YJA provides for the suspension of an intensive supervision program if the child is unable to participate for good reason.

See Chapter 11.19.2: Community-Based Order below for breach or variation of a community-based order.

An intensive supervision order is a community-based order.[645]

For a single offence, a court cannot make an intensive supervision order and a probation order or a detention order.[646]

See also Chapter 11.15: Combination of Orders for which orders may be combined.

11.13.9 Detention

Pursuant to s175(1)(g) YJA, a court may order a child to be detained for a period of time. Pursuant to s176(2) and (3) YJA, a court may order a period of detention in relation to more serious offences.

Section 150 (1) YJA requires that a court must **not** have regard to any principle that a detention order should only be imposed as a last resort or to any principle that a sentence that allows a child to stay in the community is preferable.

Note also Principle 18 of the Charter of Youth Justice Principles which provides:

A child should be dealt with under this Act in a way that allows the child—

> *(a) to be reintegrated into the community; and*
> *(b) to continue the child's education, training or employment without interruption or disturbance, if practicable; and*
> *(c) to continue to reside in the child's home, if practicable.*

In *R v M* [1996] 1 Qd R 650, the Court of Appeal commented that the clear legislative policy of the (YJA) was that a juvenile offender should not be in custody for any longer than necessary.

The court has a discretion to record a conviction if a detention order is made.[647]

---

[645] Schedule 4 YJA.
[646] s179 YJA.
[647] s183(3) YJA.

Sections 175(3) and 176(4) YJA provide that the detention order under s175(1)(g) YJA may be made with or without a conditional release order under s220 YJA.

Section 209 YJA provides that the court's reasons for imposing detention **must** be stated and recorded:

1. *A court that makes a detention order against a child must—*
    a. *state its reasons in court; and*
    b. *cause the reasons to be reduced to writing and kept by the proper officer of the court with the documents relating to the proceeding.*
2. *However, a court need not comply with subsection (1)(b) if the reasons are recorded under the Recording of Evidence Act 1962.*
3. *Subject to subsection (4), a court's failure to comply with subsection (1) does not affect the sentence order.*
4. *A court considering the sentence order on appeal or review must take into account a failure to comply with subsection (1)(a) and give the failure the weight it considers appropriate.*

See Chapter 11.13.10: Conditional Release Order

In *R v C & M* [2001] 1 Qd R 636 the Court of Appeal held that the expression "detention order" included an order that the offender be detained accompanied by an immediate conditional release order. See also *R v L* [1995] QCA 207.

A court **must** consider whether a conditional release order is an alternative to an actual period of detention.

In *R v SCU* [2017] QCA 198 at [81], Sofronoff P said of the considerations a sentencing Judge must give to a conditional release order before imposing a sentence of detention:

> *It is incumbent upon a judge, who is considering imposing a sentence of detention, to give consideration, based on the materials before the court, as to whether a conditional release order would be adequate to serve all of the purposes of punishment. This would have to involve a consideration of the facts and opinions contained in relevant reports of the nature and content of the "structured program" in which the child would be released and the nature and possible effectiveness of the conditions that could be imposed to prevent reoffending.*

See also *R v RBB* [2019] QCA 277.

11.13.9.1 Pre-Sentence Report Required

Section 207 YJA provides that a court may make a detention order **only** if it has ordered a pre-sentence report by the chief executive (youth justice) and has received and considered the report.

See s151 YJA for the power to order a pre-sentence report.

See Chapter 11.6: Pre-Sentence Reports

In *R v T* [1995] 2 Qd R 192, the Court of Appeal held that a report pursuant to s207 was to be written rather than oral.

In *R v Gage* [1998] QCA 243, the Court of Appeal held that in resentencing a child for a breach of a community-based order, the court must seek a fresh pre-sentence report before sentencing to detention.

In *R v S* [2000] 2 Qd R 663, the Court of Appeal held that the justificatory effect of a pre-sentence report ordered under s207 YJA covered only a sentence imposed in the course of the sentencing process in which the order for the report was made. For this purpose, the sentencing process did not exclude sentencing for an offence committed after the report was ordered and considered with those which prompted the requested report. A court could impose detention for such an offence without ordering a further pre-sentence report.

11.13.9.2 Limitations on Period of Detention

The YJA sets various limits on the period of detention that may be ordered. For a Childrens Court constituted by a Magistrate:

- If the offence is not covered by s175A YJA, the maximum period of detention is one-year. [648]
- If the offence is a "significant offence" under s175A YJA which was committed on or after 13 December 2024, the maximum period of detention is three years. [649]

[648] s175(1)(g)(i) YJA
[649] s175A(2)(b)(i) YJA

If the court is constituted by two justices, a detention order or a conditional release order cannot be made.[650]

Pursuant to s186 YJA, a Magistrate can request a delegation of a greater sentencing limit from a Childrens Court Judge or pursuant to s186, commit the child for sentence to a Childrens Court Judge.

See Chapter 9.4: Sentence Matters and Chapter 10.9: Delegation of Sentencing Power

For a Childrens Court constituted by a Judge:

- If the offence is not one covered by ss175A or 176 YJA, the maximum period of detention is half the maximum term of imprisonment to which an adult convicted of the offence would be liable or five years, whichever is the shorter.
- If the offence is a "significant offence" pursuant to s175A YJA which was committed on or after 13 December 2024, the maximum term of detention is the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve. [651]
- If the offence is a "relevant offence" other than a life offence pursuant to s176(2) YJA, the maximum period of detention is seven years. [652]
- If the offence is a "relevant offence" that is a life offence pursuant to s176(3) YJA, the maximum period of detention is ten years or, where the offence involves the commission of violence against a person and the court considers the offence to be a particular heinous offence, up to life detention. [653]

"Significant offence" for this section means any of the following provisions of the CC:

- Murder (ss302 & 305)
- Manslaughter (ss303 & 310)
- Unlawful striking causing death (s314A)
- Acts intended to cause grievous bodily harm and other malicious acts (s317)
- Grievous bodily harm (s320)
- Wounding (s323)
- Dangerous operation of a vehicle (s328A)

[650] s67(2) YJA.
[651] s175A(2)(b)(ii) YJA
[652] s176(2) YJA
[653] s176(3) YJA

- Serious assault (s340)
- Unlawful use or possession of a motor vehicle (s408A)
- Robbery (ss409 & 411)
- Burglary (s419)
- Entering or being in premise and committing indictable offences (s421)
- Unlawful entry of a vehicle for committing indictable offence (s427) [654]

"Relevant offence" for this section means a life offence, or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, but does not include any of the following offences –

a) an offence mentioned in section 175A(1);
b) an offence of receiving if the value of the property, benefit or detriment is not more than $5,000;
c) an offence that, if committed by an adult, may be dealt with summarily under the *Drugs Misuse Act, section 13.* [655]

"Life offence" means an offence for which a person sentenced as an adult would be liable to life imprisonment.[656]

A Childrens Court constituted by a Judge may sentence in relation to life offences except for a "Supreme Court offence".[657] A "Supreme Court offence" (defined in Schedule 4 YJA) may only be dealt with in the Supreme Court.

Section 150(5) YJA provides that, in determining the appropriate sentence for a child convicted of manslaughter of a child under 12 years, a court must treat the victim's defencelessness and vulnerability and have regard to the victim's age as an aggravating factor.

Section 233 YJA provides that a child sentenced to life imprisonment is subject to the parole-based release provisions contained in Part 1 of Chapter 5 of the *Corrective Services Act 2006* (Qld).

[654] s175A(1) YJA
[655] s176(7) YJA
[656] Schedule 4 YJA.
[657] s99(1) YJA.

11.13.9.3 "Particularly heinous offence"

Section 176(3)(b) YJA provides that a sentence of life imprisonment for a relevant offence may only be imposed on a child for an offence of violence against a person and the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

In *R v D* [2000] 2 Qd R 659, the Court of Appeal held that a "*particularly heinous offence"* was one that was particularly odious or reprehensible with relevant circumstances in that case being "the circumstances of the killing itself and not the offender's subsequent conduct in dealing with the body". See also *R v Gwilliams* [1997] QCA 389 where the court referred to the dictionary meaning of heinous as "*odious, highly criminal, infamous".*

In *R v WT; ex parte Attorney-General* [2000] QCA 310, the Court of Appeal dismissed an Attorney-General appeal against sentence based on the argument that the sentencing Judge had erred in not finding the offence to be "*particularly heinous".* Keane JA (with whom Williams JA and Mullins J agreed) said at [78]:

> *The question is whether all the circumstances of the murder show that the child's offence was particularly heinous, not whether the child is criminally responsible with others for an offence which is particularly heinous. In this case, those circumstances included the fact that he was acting under compulsion, that he had good reason to fear for his life and to seek to mollify (others), and the fact that his conduct was not perceived as threatening by the other hostages.*

See also *R v William (a pseudonym)* [2020] QCA 174 where Sofronoff P said at [25] – [26]:

> *The word "heinous" is defined in the Oxford English Dictionary (2nd ed.) to mean, "Hateful, odious; highly criminal or wicked; infamous, atrocious: chiefly characterising offences, crimes, sins, and those who commit them". One might think that any act of attempted murder would be a heinous offence. That is why the word "heinous" is qualified by two things. First, it is not enough for the offence to be heinous. It must be, in the court's opinion, particularly heinous. Second, the heinousness of the offence is not to be judged by the objective facts involved in the commission of the offence only. It is to be evaluated "having regard to all the circumstances".*

All the circumstances include subjective factors. In cases involving child offenders the subjective circumstances of the offence necessarily loom large. The Charter of Youth Justice Principles set out in Schedule 1 of the Act include the requirement that a child who commits an offence should be "held accountable and encouraged to accept responsibility for the offending behaviour" and should be "dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways". These requirements cannot possibly be satisfied if the relevant subjective factors affecting the child are ignored.

Section 234 YJA allows a court where it has made an order under s176(3)(b) YJA to order that identifying information about the child may be published:

1. *This section applies if a court makes an order against a child under section 176(3)(b).*

2. *This section also applies if –*
    a. *a court sentences a child for an offence under section 175A; and*
    b. *the offence involves the commission of violence against a person; and*
    c. *the court considers the offence to be a particularly heinous offence having regard to all the circumstances.*

3. *The court may order that identifying information about the child may be published if the court considers it would be in the interests of justice to allow the publication, having regard to—*
    a. *the need to protect the community; and*
    b. *the safety or wellbeing of a person other than the child; and*
    c. *the impact of publication on the child's rehabilitation; and*
    d. *any other relevant matter.*

4. *The order does not authorise publication of identifying information before the end of any appeal period or, if the child gives notice of appeal or of application for leave to appeal before any appeal proceeding has ended.*

5. *To remove any doubt, it is declared this section does not apply to a Childrens Court constituted by a Childrens Court magistrate.*

6. *In this section -*

appeal period *means the 1 calendar month from the date of conviction or sentence mentioned in the Criminal Code, section 671.*

That power is subject to the findings required in s176(3)(b) YJA. See *R v Rowlingson* [2008] QCA 395; *R v SBU* [2011] QCA 203.

11.13.9.4 Detention Periods

Section 211 YJA provides that a period of detention under a detention order starts on the day the court made the order.

In relation to an appeal or a sentence review, any detention order unserved that must be served, takes effect from the start of the child's custody on sentence for the offence in question after the appeal or review.[658]

Section 212 YJA provides that a child must serve a sentence of detention concurrently with any other sentence unless the court orders otherwise under s213 YJA or that is required by another Act.

Section 213 YJA provides that the court may impose a cumulative sentence of detention on a child who is serving or has been sentenced to serve, a period of detention for another offence.

Section 214 YJA places limits on making a sentence cumulative if the sentence would exceed a specified limit:

1. *A court making more than 1 detention order under section 175 against a child on the same day or in the same proceedings is not to direct that a detention order be served cumulatively with another of the detention orders if the total period of the detention orders would exceed—*
    a. *when made by a Childrens Court magistrate—1 year; or*
    b. *when made by another court—7 years.*

1A. *Subsection (1B) applies if a court constituted by a Childrens Court magistrate:*

(a) makes 1 or more detention orders under section 175 and 1 or more detention orders under section 175A against a child on the same day or in the same proceedings; or

[658] s211(3) YJA.

(b) makes 1 or more detention orders under section 175A against a child on the same day or in the same proceedings.

1B. The court is not to direct that a detention order be served cumulatively with another of the detention orders if the total period of the detention orders would exceed 3 years.

2. To the extent that the total exceeds the maximum allowed the orders are of no effect.

Cumulative sentences may also be imposed in the case of a detention order made against a person as a child where the person is already serving a term of imprisonment as an adult (or vice versa).[659]

Section 33(5) BA provides that if a child fails to appear when required as a condition of bail and so commits an offence, any sentence of detention for that offence is not automatically cumulative.

When a child is unlawfully at large while subject to a detention order and is held in custody in another state for an offence committed or allegedly committed in that state, an application may at any time be made (by the child or the chief executive (youth justice)) to the original sentencing court to change the original sentence order in the interests of justice. The court may either take no action or order that part or all of the period of interstate custody be a period of detention taken to have been served under the original order.[660]

11.13.9.5 Release from Detention

Unless a court orders otherwise, a child sentenced to detention must be released after serving 70% of the period of detention.[661]

Section 227(2) YJA provides that the court may order a child to be released from detention after serving 50% or more, and less than 70% of the detention period, if it considers there are special circumstances, such as to ensure parity of sentence with a co-offender.

If the court makes an order for a child's detention for a "significant offence" pursuant to s175A YJA, the court **must** order the child to be released from detention after serving the proportion of the period

[659] s271 YJA.
[660] s216 YJA.
[661] s227(1) YJA.

of detention that the court considers appropriate subject to any requirement under the Criminal Code mentioned in s175A(5) that relates to the offence. [662]

If the child, on turning 18 years of age, is transferred to a corrective service facility, the release date becomes a parole release date rather than an eligibility date.[663] See *Coolwell v Chief Executive, Department of Justice and Attorney-General* [2015] QSC 213.

Apart from the example of parity in s227(2) YJA, the Act contains no definition of "*special circumstances".* In *R v J* [1995] QCA 516 the Court of Appeal referred to the applicant's early guilty pleas and other cooperation as well as the desirability of appropriate supervision and control for a substantial period in the community as factors justifying the early release. In *R v P* [1996] QCA 317, the child's educational ambitions and opportunity, his lack of previous criminal convictions, his family support, his better than average evidence of remorse and the isolated nature of the criminal activity were factors of relevance. In *R v A; ex parte Attorney-General* [2001] QCA 542, the plea of guilty and the fact that the respondent had completed one month of the immediate release order program was seen arguably to amount to special circumstances. In *R v E; ex parte Attorney-General* (2002) 134 A Crim R 486, the age of the child (16 years), the length of detention and the desirability of his being under supervision for a significant period after release from detention was seen as special circumstances for the purpose of the section. In *R v AAL* [2010] QCA 146, the court considered that the degree of criminality involved in the applicant's conduct (criminally negligent, as distinct from deliberate arson of a warehouse) as well as his significant cooperation with police investigators justified release after 50% of the detention period. In *R v BCI* [2012] QCA 253, the court considered an order for release after 60% sufficiently recognised the circumstances when the head sentence was at the bottom of the range.

Section 227(3) YJA provides that a court may not make an earlier release order if the child has, at any time being found guilty of a terrorism offence or is the subject of a Commonwealth control order or the court is satisfied the child has promoted terrorism. See s226A YJA for what is meant by "**promoting terrorism".** "**Terrorism offence"** and **"Commonwealth control order"** are defined in Schedule 4 YJA. Section 395 YJA provides that ss226A and 227 in relation to terrorism offences apply whether the offence or conviction happened before or after the commencement of the Amendment Act (11 April 2019).

[662] s227(4) YJA
[663] s138(6) and (7) YJA.

Section 228A YJA provides for the chief executive (youth justice) to make special conditions of a supervised release order for a child who has at any time, been found guilty of a terrorism offence or who is subject to a Commonwealth control order, or the chief executive (youth justice) is satisfied that the child has promoted terrorism.

See Chapter 6.12 Terrorism Offences as to terrorism offences and bail.

Section 227(5) YJA provides that if the child is entitled under s218 YJA to have a period of custody pending a proceeding treated as detention on sentence, the period before the child is released pursuant to s227 YJA must be reduced by that period.

Section 218 YJA requires that if a child is sentenced to a period of detention, any period of time for which the child was held in custody pending the sentence proceeding must be counted as part of the period of detention that is served. Any period of that time for which a child was also serving a sentence is not to be so counted.[664] Any period of less than one day is not to be so counted.[665] It is the responsibility of the chief executive (youth justice) to calculate the period of time held in pre-sentence custody[666] and it is unnecessary for the court to declare it.

In *R v CDR (No. 2)* [1996] 1 Qd R 69, the Court of Appeal held that where an offender is to be sentenced for multiple offences and has undergone pre-sentence detention of one or more of them, then the child is entitled to credit for the detention in respect of all the offences.

In *R v GT* [1997] 2 Qd R 183, the majority of the Court of Appeal held that on any resentence following a discharge of a community-based order, the offender was being resentenced in the same proceeding and was entitled to credit for any time held in custody pending the proceeding, prior to being originally sentenced. However, if the resentence was as a result of committing new offences after the earlier period of custody had ended, there was no such entitlement.

Section 233 YJA provides that a child sentenced to life imprisonment is subject to the parole release provisions contained in Part 1 of Chapter 5 of the *Corrective Services Act 2006*.

[664] s218(2) YJA.
[665] s218(3) YJA.
[666] Note to s218(1) YJA.

After being released from detention the child is subject to a supervised release order made by the chief executive (youth justice).[667]

Section 228 YJA provides:

1. *At the end of the period after which a child is required to be released under section 227, the chief executive must make an order (a supervised release order) releasing the child from detention.*
2. *However, the chief executive is not required to make a supervised release order if the custody period mentioned in section 227(5) is equal to or more than the period of detention the child was sentenced to serve.*

   Examples—
   1 C is sentenced to 10 weeks detention. C spent 10 weeks on remand before sentence. The chief executive is not required to make a supervised release order.
   2 C is sentenced to 10 weeks detention. C spent 8 weeks on remand before sentence. The chief executive must make a supervised release order for the remaining 2 weeks.

3. *The chief executive may—*
   a. *impose conditions that the chief executive considers appropriate on the supervised release order; and*
   b. *amend a condition of the supervised release order at any time by written notice served on the child.*

4. *The supervised release order must require that, during the period of the order—*
   a. *the child abstain from violation of the law; and*
   b. *the child satisfactorily attend programs as directed by the chief executive; and*
   c. *the child comply with every reasonable direction of the chief executive; and*
   d. *the child report and receive visits as directed by the chief executive; and*
   e. *the child or a parent of the child notify the chief executive within 2 business days of any change of address, employment, or school; and*
   f. *the child not leave, or stay out of, Queensland without the prior approval of the chief executive.*

[667] s228 YJA.

5. *A supervised release order may contain a requirement that the child must comply with outside the State.*

   Example— An order may require the child to attend a particular educational establishment that is located outside the State.

6. *A supervised release order must not require, or be subject to a condition, that the child must wear a monitoring device.*

See ss252A-252J YJA for contravention of a supervised release order.

See also Chapter 11.19: Breaches of Orders below for breach or variation of a community-based order.

11.13.9.6 Combination of Detention with Other Orders

A court may make more than one type of order for a single offence with certain exceptions.[668] An order for detention may be made with or without a conditional release order.[669] An order for detention may be made with a restorative justice order, but the court must make separate orders.[670] An order for detention **cannot** be made with an intensive supervision order.[671]

An order for detention can be made with a probation order for a single offence.[672] The period of detention may not exceed six months and the court must not make a conditional release order.[673] The maximum period of probation is 12 months, commencing on the day of release from detention.[674]

An order for detention may be made with a graffiti removal order.[675] The graffiti removal order commences when the child is released from detention.

In relation to multiple offences, it is permissible to impose probation for one offence and make an order for detention with a conditional release order in respect of another offence: *R v A & S; ex parte Attorney-General* [2001] 2 Qd R 62.

[668] s177 YJA.
[669] ss175(3) and 176(4) YJA.
[670] s178C YJA.
[671] s179 YJA.
[672] s180 YJA.
[673] s180(2) YJA.
[674] s180(3) YJA.
[675] s180A YJA.

See also Chapter 11.15: Combination of Orders for which orders may be combined.

11.13.10 Conditional Release Order

Sections 175(3) and 176(4) YJA provide that a court may make a detention order with or without a conditional release order under s220 YJA.

Section 219 YJA provides that the purpose of a conditional release order is to provide an option instead of the detention of a child on allowing the court to immediately release a child into a structured program with strict conditions.

Section 220 YJA provides:

1. *A court that makes a detention order against a child may immediately suspend the order and make an order (conditional release order) that the child be immediately released from detention.*

2. *The child must be released from detention in accordance with the conditional release order.*

The detention period is immediately suspended, and an order is made for the release of the child on condition of participation in a conditional release program for not more than six months. The actual period of detention is not limited to three months and may be to the maximum permitted for the offence and the jurisdiction of the court.

A conditional release order is a detention order within the meaning of s150(2)(d) YJA and s208 YJA: *R v C & M* [2000] 1 Qd R 636. Thus, the court must be satisfied that detention is the only appropriate option.

In *R v RBB* [2019] QCA 277 at [19]-[24], the Court of Appeal held that a sentencing Judge must give reasons why the imposition of a conditional release order would not serve all the purposes of punishment under the YJA before imposing a detention order. See also *R v SCU* [2017] QCA 198 at [81].

The child must express a willingness to comply with the conditional release order.[676] The child must fully understand the obligations under the order and the consequences of contravention in order to express that willingness.

A pre-sentence report considered by the court before making the detention order **must** include comments outlining the potential suitability of the child for release under a conditional release order and advising whether an appropriate conditional release program is available for the child's release under the order.[677]

As to the content of the comments in the pre-sentence report, in *R v F & P* [1997] QCA 98 , McPherson JA noted that a consequence of failure to comply with a condition of a (CRO) may be that the child is ordered to serve the period of detention and that *"therefore, essential that the conditions of the program be clearly spelled out in advance so that the child, and those in charge of her, may know what it is that she must do or refrain from doing in order to ensure compliance with them. Specification of the conditions proposed is also necessary in order to enable the court to exercise the discretion it has under (s221(2) YJA) of imposing conditions which it considers necessary to prevent a repetition of the offence in relation to which the detention order was made".*

The court has a discretion to record a conviction if a detention order is made with a conditional release order.[678]

Requirements of a conditional release order are set out in s221 YJA:

1. *A conditional release order must require—*
    a. *that the child participate as directed by the chief executive in a program (the conditional release program) for the period, of not more than 6 months, stated in the order (the program period); and*
    b. *that, during the period of the order—*
        i. *the child abstain from violation of the law; and*
        ii. *the child comply with every reasonable direction of the chief executive; and*
        iii. *the child report and receive visits as directed by the chief executive; and*
        iv. *the child or a parent of the child notify the chief executive within 2 business days of any change of address, employment, or school; and*

[676] s222 YJA.
[677] s223 YJA.
[678] s183(3) YJA.

v. *the child not leave, or stay out of, Queensland without the prior approval of the chief executive.*

2. *A conditional release order made in relation to a child may contain requirements that the child comply, during the whole or a part of the period of the order, with conditions that the court considers necessary for preventing a repetition by the child of the offence for which the detention order was made or the commission by the child of other offences.*

   Example of a condition— a condition imposing a curfew on the child

3. *An order may contain a requirement that the child must comply with outside the State.*

   Example— An order may require the child to attend a particular educational establishment that is located outside the State.

4. *A requirement imposed by a court under subsection (2)—*
   a. *must relate to the offence for which the detention order was made; and*
   b. *must be supported by the court's written reasons; and*
   c. *must not require the child to wear a monitoring device.*

The order may contain requirements that the child comply with such conditions as the court considers necessary to prevent a repetition of the offence for which the detention order was made or the commission of other offences.[679] Any such requirement **must** relate to the offence for which the detention order was made and **must** be supported by written reasons and **must not** require the child to wear a monitoring device.[680]

The order contains a requirement that the child must comply with outside the state.[681]

See Regulations 7 and 8 of the *Youth Justice Regulations 2016* for the child's reporting obligations under a community-based order and the limits on the chief executive's directions in relation to a community-based order.

A conditional release order is a community-based order.[682]

[679] s222(2) YJA.
[680] s222(4) YJA.
[681] s222(3) YJA.
[682] Schedule 4 YJA.

The program period begins on the day the order is made and ends on the last day of the period of the order, extended by any days for which the program was suspended.[683] Pursuant to s226 YJA, the chief executive (youth justice) may suspend the program if the child, for good reason, is unable to participate.

If more than one conditional release order exists in relation to the child, the orders are to operate concurrently in relation to any overlap.[684]

At the end of the program, the child is no longer liable to serve a period of detention under the detention order.[685]

Any contravention of a conditional release order is treated as a breach of a community-based order. The contravention may be by the child contravening a condition or committing a further offence. See ss238, 241-244 YJA. Specifically, in relation to a breach of a conditional release order where the order was made in relation to an offence other than a prescribed indictable offence, s246 YJA provides:

1. *This section applies if the conditional release order was made in relation to an offence other than a prescribed indictable offence.*

2. *A court that acts under this section may revoke the conditional release order and order the child to serve the sentence of detention for which the conditional release order was made.*

3. *However, instead of revoking the conditional release order, the court may permit the child a further opportunity to satisfy the requirements of the order and, for that purpose, may—*
    a. *vary the requirements in a way it considers just; or*
    b. *extend the program period for the order, but not so that the last day of the period is more than 6 months after the court acts under this section.*

4. *The onus is on the child to satisfy the court it should permit the child this further opportunity.*

5. *If the court decides to extend the program period for the conditional release order, the court must have regard to the period for which the child has complied with the order.*

[683] s225(1) YJA.
[684] s225(2) YJA.
[685] s224 YJA.

6. *An order may be made under this section even though, at the time it is made, the conditional release order in relation to which the order is made is no longer in force because the period of the conditional release order has ended.*

7. *For part 6, division 9, subdivision 4, an order mentioned in this section and made by a Childrens Court magistrate is a sentence order.*

The court may revoke the order and order the child to serve the sentence of detention or permit the child a further opportunity to complete the order. The onus is on the child to satisfy the court that a further opportunity should be permitted.

In relation to a breach of a conditional release order where the order was made in relation to an indictable offence, s246A YJA provides:

1. *This section applies if the conditional release order was made in relation to a prescribed indictable offence.*

2. *The court must revoke the conditional release order and order the child to serve the sentence of detention for which the conditional release order was made, unless the court considers there are special circumstances.*

3. *If the court considers there are special circumstances –*
    a. *the court may act under section 246(3); and*
    b. *section 246(5) applies to the court; and*
    c. *section 246(6) and (7) apply in relation to the order.*

3A. *For part 6, division 9, subdivision 4, an order mentioned in subsection (2) and made by a Childrens Court magistrate is a sentence order.*

4. *For the purposes of the Human Rights Act 2019, section 43(1), it is declared that this section has effect –*
    a. *despite being incompatible with human rights; and*
    b. *despite anything else in the Human Right Act 2019.*

Note –

Under the Human Rights Act 2019, section 45(2), this subsection expires 5 years after the commencement.

The court must revoke the order and order the child to serve the sentence of detention, unless the court is satisfied there are special circumstances. If satisfied there are special circumstances the court may permit the child a further opportunity to comply with the by varying the order or extending the order having regard to the period the child has complied with the order. Section 410(a) provides that "*section 246A applies to a breach of a conditional release order made in relation to a prescribed indictable offence if the breach occurs after the commencement, whether the conditional release order was made before or after the commencement*."

A community-based order may be varied by a court order in the interests of justice.[686] The proper officer of the court does not have the power to make amendments to a conditional release order.[687] A detention order together with a conditional release order cannot be combined with a probation order for a single offence.[688] If a court combines a probation order with a detention order for a single offence, the detention period is limited to six months and the probation period for a maximum period of one year after the release from detention.[689] Sentences of probation and detention with a conditional release order can be imposed for separate offences: *R v A & S; ex parte Attorney-General* [2001] 2 Qd R 62 at para [36].

See also Chapter 11.15: Combination of Orders for which orders may be combined

See also Appendix 8: Sentence Options: Youth Justice Act 1992, Department of Youth Justice

11.14 Other Orders

11.14.1 Restitution and Compensation

Section 181(a) YJA provides that a court that makes a sentence order against a child for an offence under ss175, 175A or 176 YJA, in addition to the order, may make an order to make restitution of property or to pay compensation for lost property or for injuries suffered by another person. Section 181(a) YJA provides:

[686] s247 YJA.
[687] s252(1) YJA.
[688] s180 YJA.
[689] s180(2) and (3) YJA.

A court that makes a sentence order against a child for an offence under section 175, 175A or 176, in addition to the order, may make 1 or more of the following orders—

(a) an order allowed by division 11 requiring the child—

(i) to make restitution of property; or

(ii) to pay compensation of not more than an amount equal to 20 penalty units for loss to property; or

(iii) to pay compensation for injury suffered by another person;

Division 11 YJA is s235 YJA (restitution, compensation).

Section 235 YJA provides:

1. *In this section— offence affected property includes—*
    a. *property in relation to which the offence was committed; or*
    b. *property affected in the course of, or in connection with, the commission of the offence, for example, property of a victim of an offence committed against the victim's person.*

2. *If a child is found guilty before a court of an offence relating to property or against the person of another, the court may in addition to making a sentence order against the child, make 1 or more of the following orders—*
    a. *an order that the child make restitution of offence affected property;*
    b. *an order that the child pay compensation (not more than an amount equal to 20 penalty units) for loss caused to offence affected property;*
    c. *an order that the child pay compensation for injury suffered by another person (whether the victim against whose person the offence was committed or another) because of the commission of the offence.*

3. *An order under this section requiring a child to pay an amount by way of compensation or making restitution must direct—*
    a. *that the amount must be paid by a time specified in the order or by instalments specified in the order; and*
    b. *that the amount must be paid in the first instance to the proper officer of the court.*

4. *An order under this section may include a direction the court considers necessary or convenient for the order, for example the way in which restitution of property is to be carried out.*

5. *A court may make an order requiring a child to pay an amount under this section only if the court is satisfied that the child has the capacity to pay the amount.*

See ss5 and 5A PSA for the value of a penalty unit.

A restitution or compensation order is not itself a sentence order and is not subject to the recording of a conviction under s183 YJA.

The court may only make a restitution or compensation order if satisfied that the child has the capacity to pay the amount.[690]

The amount of compensation that can be ordered is limited to not more than 20 penalty units.[691] The amount for restitution of property is not so limited but a restitution order is for the return of the actual property.[692] In relation to the assessment of compensation for injury, the award is usually governed by the ordinary legal principles of civil liability and assessment for loss or damage of that kind.[693] The quantum is of course limited by the child's ability to pay.[694]

An order for restitution or compensation **must** direct that the amount must be paid by a specified time or by instalments and the amount must be paid in the first instance to the proper officer of the court.[695]

The **"proper officer"** is defined as the Registrar or a Sheriff or Deputy Sheriff of the court for the Supreme Court, District Court or a Childrens Court Judge or the clerk of the court for a Magistrates Court or Childrens Court Magistrate.[696]

In making a restitution or compensation order, the court should ensure the prosecution provide the proper officer of the contact details of the person to whom the payment should be directed.

---

[690] s235(5) YJA
[691] s181(a)(ii) YJA.
[692] See s35 PSA.
[693] See *R v Stieler* [1983] 2 Qd R 573; *R v Ferrari* [1997] 2 Qd R 472.
[694] s235(5) YJA.
[695] s235(3) YJA.
[696] Schedule 4 YJA.

There is no power to order a default period of detention for the non-payment of restitution or compensation.

A child or another party to the proceeding, can apply in writing to the proper officer of the court to extend the period in which the person is required to pay the amount, subject to any conditions that the proper officer considers just.[697]

A proper officer may delegate that power pursuant to s313 YJA.

Any unpaid restitution or compensation constitutes a debt owing to the recipient by the child. The order may be filed in the registry of the Magistrates Court and may be enforced as an order properly made by the Magistrates Court.[698]

Section 156 YJA provides that if a court, sentencing a child for an offence, considers that it is appropriate for the child to pay both a fine and a restitution or compensation order and the court considers the child has insufficient resources to pay both amounts, the court must give preference to ordering the child to pay only the compensation or restitution order.

There is no ability under the YJA to make the payment of compensation a condition of another sentence order. It is a stand-alone order pursuant to ss181 and 235 YJA.

11.14.2 Compensation Orders Against Parents

Sections 257-260 YJA provide a procedure for the making of a compensation order for the offence on the parent of the child found guilty of a personal or property offence in certain circumstances.

"Parent" means a guardian of the child other than the chief executive (child safety).[699] "**Compensation for the offence"** means compensation for –

- Loss caused to a person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or

[697] s309 YJA.
[698] s310 YJA.
[699] s257 YJA (see also s259(12) YJA).

- Injury suffered by a person, whether as the victim of the offence or otherwise, because of the commission of the offence.[700]

"**Personal offence"** means an offence relating to the person of another.

"Property offence" means an offence relating to property.[701]

Pursuant to s259(5) YJA, the court may make an order requiring a parent to pay compensation. If it appears to the court, on the evidence or submissions in the case against a child found guilty of the personal or property offence, that –

- Compensation for the offence should be paid to anyone; and
- A parent of the child may have contributed to the fact the offence happened by not adequately supervising the child; and
- It is reasonable that the parent should be ordered to pay compensation for the offence,

the court may decide to call on a parent of the child to show cause why the parent should not pay compensation.[702]

The court may act on its own initiative or on the prosecution's application.[703]

Section 258 YJA provides:

1. *This section applies if it appears to a court, on the evidence or submissions in a case against a child found guilty of a personal or property offence, that—*
    a. *compensation for the offence should be paid to anyone; and*
    b. *a parent of the child may have contributed to the fact the offence happened by not adequately supervising the child; and*
    c. *it is reasonable that the parent should be ordered to pay compensation for the offence.*

2. *The court may decide to call on a parent of the child to show cause, as directed by the court, why the parent should not pay the compensation.*

[700] s258(9) YJA.
[701] Schedule 4 YJA.
[702] s258(1) and (2) YJA.
[703] s258(3) YJA.

3. *The court may act under subsection (2) on its own initiative or on the prosecution's application.*

4. *If the parent is present in court when the court decides to call on the parent to show cause, the court may call on the parent to show cause by announcing its decision in court.*

5. *If a court calls on a parent under subsection (2), the court must—*
    a. *reduce its grounds to writing; and*
    b. *give a copy to the parent.*

6. *The court in all cases, instead of acting under subsection (2), may cause the proper officer of the court to give written notice to the parent calling on the parent to show cause as directed by the notice why the parent should not pay the compensation.*

7. *If a parent is called on under subsection (4)—*
    a. *the court must reduce its grounds to writing; and*
    b. *a copy of the grounds must be given, in accordance with the court's directions (if any), to the parent a reasonable time before the show cause hearing.*

8. *A proceeding under this section or section 259 is a civil proceeding and a court may make an order for the costs of the proceeding.*

9. *In this section— compensation for the offence means compensation for—*
    a. *loss caused to a person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or*
    b. *injury suffered by a person, whether as the victim of the offence or otherwise, because of the commission of the offence.*

See ss69 and 70 YJA for the requirement on a parent to attend court proceedings involving a child.

Section 259 YJA sets out the proceedings on the show cause hearing. Section 259 provides:

1. *At the show cause hearing—*
    a. *evidence and submissions in the case against the child are to be treated as evidence and submissions in the show cause hearing; and*

b. *further evidence may be given, and submissions made; and*
c. *the parent may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and*
d. *the parent may require any fact stated in submissions mentioned in paragraph (a) to be proved.*

2. *Subject to subsection (1)—*
    a. *the determination of the issues on the show cause hearing must be by way of a fresh hearing on the merits; and*
    b. *the court is not bound by a determination made by it under section 258.*

3. *If the parent was called on to show cause on the prosecution's application, the prosecution is a party to the show cause hearing.*

4. *If the parent was called on to show cause by the court's own initiative the prosecution, which in this case always includes the director of public prosecutions, may at the show cause hearing—*
    a. *appear and give the court the assistance it may require; or*
    b. *intervene as a party with the court's permission.*

5. *If, on consideration of the evidence and submissions mentioned in subsection (1)(a) and (b), a court is satisfied of the matters mentioned in section 258(1)(a), (b) and (c), the court may make an order requiring the parent to pay compensation.*

6. *The court is to make its decision on the basis of proof beyond a reasonable doubt.*

7. *The maximum amount of compensation payable under an order is 67 penalty units.*

8. *The order must direct that—*
    a. *the amount must be paid by a time specified in the order or by instalments specified in the order; and*
    b. *the amount must be paid in the first instance to the proper officer of the court.*

9. *In determining the amount to be paid by a parent by way of compensation, the court must have regard to the parent's capacity to pay the amount, which must include an assessment of the effect any order would have on the parent's capacity to provide for dependants.*

10. *A court may proceed under this section in the absence of the parent if the court is satisfied that the parent has been given notice of the show cause hearing under section 258.*

11. *A show cause hearing may be heard before the court as constituted when calling on the parent to show cause, or as otherwise constituted.*

12. *To remove doubt, it is declared that the chief executive (child safety) can not be ordered to pay compensation under subsection (5).*

If the court is satisfied beyond reasonable doubt of the matters in s258(1) YJA, the court may make an order requiring the parent to pay compensation.[704] The maximum amount of compensation payable is 67 penalty units.[705]

A court may proceed in the absence of the parent if the court is satisfied the parent has been given notice of the show cause hearing under s258 YJA[706] and may be differently constituted to the court which called on the parent to show cause.[707]

In determining the amount to be paid by a parent as compensation, the court **must** have regard to the parent's capacity to pay the amount, which must include an assessment of the affect any order would have on the parent's capacity to provide for dependants.[708]

Section 260 YJA provides that any amount ordered to be paid as compensation by the parent and any costs ordered[709] is a debt owed by the parent to the person in whose favour the order was made. If the order is filed in a Magistrates Court registry, it may be enforced as an order of the court.[710]

[704] s259(5) and (6) YJA.
[705] s259(7) YJA.
[706] s259(10) YJA.
[707] s259(11) YJA.
[708] s259(9) YJA.
[709] s258(8) YJA.
[710] s260(3) YJA.

For an example of such an order being made, see *R v CB & KE* [2005] QDC 227 where there was evidence that inadequate parental supervision of the child offenders contributed to the commission of the offence of torture against the complainant.

For an example of such an order being made under the Western Australian equivalent provision, see *State of Western Australia v JJS* (2004) 145 A Crim R 403.

11.14.3 Driver's Licence Disqualification

Section 181(b) YJA provides that a court that makes a sentence order against a child under ss175, 175A or 176 YJA, in addition to that order, may make an order under ss253 and 254 YJA in relation to licence disqualification.

Section 253 YJA provides that, subject to the YJA, the provisions of the *Transport Operations (Road Use Management) Act 1995* (Qld) (TORUM) and the Heavy Vehicle National Law (Qld) apply in relation to a child as they apply to an adult.

Section 254 YJA provides:

1. *In this section— disqualified means disqualified from holding or obtaining a driver licence.*

2. *If—*
    a. *a child is found guilty of an offence under the Criminal Code, Transport Operations (Road Use Management) Act 1995 or another Act; and*
    b. *were the child convicted of the offence as an adult the child would be liable to be disqualified on the conviction whether under the Criminal Code, Transport Operations (Road Use Management) Act 1995 or another Act; the child is also liable to be disqualified to the same extent.*

3. *If—*
    a. *a child aged less than 17 years is found guilty of an offence under the Criminal Code, Transport Operations (Road Use Management) Act 1995 or another Act; and*
    b. *a conviction is recorded; and*
    c. *were the child convicted of the offence as an adult, the child would be disqualified by the conviction by operation of law; the child is also disqualified to the same extent.*

4. *If—*
    a. *a child aged at least 17 years is found guilty of an offence under the Criminal Code, Transport Operations (Road Use Management) Act 1995 or another Act; and*
    b. *were the child convicted of the offence as an adult, the child would be disqualified by the conviction by operation of law; the child is also disqualified to the same extent.*

5. *Subject to subsection (7), the Transport Operations (Road Use Management) Act 1995, section 82 applies in relation to a child found guilty of an offence under section 79 of that Act and, for this purpose, a mention in the section of a conviction includes a finding of guilt.*

6. *Subject to subsection (7), the Transport Operations (Road Use Management) Act 1995, sections 89 and 90 apply in relation to a child acquitted of a charge of an offence.*

7. *Subsections (5) and (6) apply only if the child is of an age when persons generally are eligible to obtain a driver licence.*

Section 254(2) YJA provides that if a child is found guilty of an offence against the Criminal Code, TORUM or another Act and if the child had been convicted as an adult of the offence, would be liable to be disqualified from holding or obtaining a driver's licence under those Acts, the child is also liable to be disqualified to the same extent.

Section 254(3) YJA provides that if a child under 17 years is found guilty of an offence against those Acts and a conviction is recorded and, were the child convicted of the offence as an adult the child would be disqualified by the conviction by operation of law, the child is also disqualified to the same extent.

Section 254(4) YJA provides that if a child of at least 17 years is found guilty of an offence under those Acts and, were the child convicted of the offence as an adult the child would be disqualified by operation of law, the child is also disqualified to the same extent.

Section 254(3) and (4) YJA specify that the child must be disqualified to the same extent as an adult. Note that s155 YJA (mandatory sentence provisions inapplicable) only applies to monetary penalties and imprisonment. A court has no power to vary the automatic disqualification posed pursuant to provisions on TORUM: *R v Catchpole* [1995] QCA 217.

Section 254 YJA leads to an anomaly with the process of a pre-sentence restorative justice referral if the court process is brought to an end. Section 254(2), (3) and (4) require that a child is "found guilty" of a relevant offence before the liability of disqualification arises. Schedule 4 YJA defines **"finding of guilt"** to mean a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded. A child for whom a pre-sentence restorative justice referral is made, must either plead guilty or be found guilty of the offence.[711] A child so referred would be liable to the disqualification under s254(2), and if under 17 years, subject to disqualification by law if a conviction was recorded[712] and if over 17 years, subject to the disqualification by law.[713]

Section 254(5) YJA provides that s82 TORUM (offenders may be ordered to attend training programs) applies to a child found guilty of an offence under s79 TORUM (vehicle offences involving liquor or other drugs) and, for that purpose, the word conviction includes a finding of guilt. That subsection only applies if the child is of an age when persons generally are eligible to obtain a driver's licence.[714]

Section 254(6) YJA provides that a child who is acquitted of a charge either on indictment or on a complaint may still be disqualified, if the court is satisfied on the evidence that it is in the interests of the public. That subsection only applies if the child is of an age when persons generally are eligible to obtain a driver's licence.[715]

See also s187 PSA where the test is in the interests of justice.

As to deciding the appropriate period of any discretionary disqualification period, see *R v Osborne* [2014] QCA 291 at [57]-[58].

11.14.4 Protection Order (Domestic Violence)

Pursuant to s42 *Domestic and Family Violence Protection Act 2012* (DFVPA), a court may make a protection order against a person convicted of a domestic violence offence. See Schedule Dictionary DFVPA for the meaning of **"domestic violence offence".** See s37 DFVPA for when a court may make a protection order. See s22 DFVPA for "child as aggrieved or respondent".

[711] s162 YJA.
[712] s254(3) YJA.
[713] s254(4) YJA.
[714] s254(7) YJA.
[715] s254(7) YJA.

11.14.5 Order for Identifying Particulars to be Taken

Section 181(c) YJA provides that a court that makes a sentence order against a child under ss175, 175A or 176 YJA, in addition to that order, may make an order under s255 YJA that the child's identifying particulars be taken. **"Identifying particulars"** for the purpose of s255 YJA are confined to fingerprints and palm prints.[716]

Section 255 YJA provides:

1. *This section applies if a child is found guilty before a court of an indictable offence or an offence against any of the following Acts that is an arrest offence—*
    a. *the Criminal Code;*
    b. *the Drugs Misuse Act 1986;*
    c. *the Police Service Administration Act 1990;*
    d. *the Regulatory Offences Act 1985;*
    e. *the Summary Offences Act 2005;*
    f. *the Weapons Act 1990.*

2. *The court, in addition to making a sentence order against the child, may make an order that the child's identifying particulars be taken.*

3. *If the child will not be in custody when the particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take the identifying particulars.*

4. *A child must not contravene the order. Maximum penalty—10 penalty units.*

5. *If the child will be in custody when the particulars are to be taken, the order must require them to be taken at the place the child is held in custody.*

6. *In this section—*
   ***identifying particulars** means fingerprints and palm prints.*

[716] s255(6) YJA.

See also Chapter 5.11.4 of the Queensland Police Service Operational Procedures Manual

11.15 Combination of Orders

Pursuant to s177 YJA, a court may make more than one type of sentence order for a single offence subject to s178-180A YJA.

Section 178 YJA permits the combination of a probation order and a community service order for a single offence. The court must make separate orders and must not impose one as a requirement of the other. If the child is resentenced on breach of one of the orders, the other order is discharged.[717] Section 178A YJA permits the combination of a graffiti removal order with one or both of a probation order and a community service order for a single offence. The court must make separate orders and must not impose one as a requirement of the other. If the child contravenes one of the orders and is resentenced, the other orders may be or are discharged.[718]

Section 178C YJA permits the combination of a restorative justice order and any other sentence order for a single offence. The court must make separate orders and must not impose one as a requirement of the other. If the child contravenes one of the orders and is resentenced, the court may discharge the other orders.[719]

Section 179 YJA prohibits the combination of an intensive supervision order and probation or detention orders for a single offence.

Section 180 YJA permits the combination of a detention order and a probation order for a single offence. In relation to the detention order, the court cannot make a conditional release order.[720] The detention order may only be for a maximum period of six months. The probation order, which commences on release from detention, may only be for a maximum period of one year.

Section 180A YJA permits the combination of a detention order and a graffiti removal order for a single graffiti offence. The section also provides for the circumstances where a detention order is made on

[717] s178(3) YJA.
[718] s178A(3) and (4) YJA.
[719] s178C(3) and (4) YJA.
[720] s180(2) YJA.

a child already subject to a graffiti removal order. The graffiti removal order starts when the child is released from detention or is suspended while the child is in detention.[721]

Section 181 YJA permits the making of a restitution or compensation order, a licence disqualification order, or an order for the taking of identifying particulars in addition to any sentence order under ss175, 175A or 176 YJA.

A court can make any combination of sentence orders on separate offences dealt with at the same proceeding. For instance, a reprimand can be given for one offence and a detention order on another. Sentences of probation and detention with a conditional release order can be imposed for separate offences: *R v A & S; ex parte Attorney-General* [2001] 2 Qd R 62 at [36].

11.15.1 Summary Table: Combination Sentence Orders Under the YJA

Section	Combinations	Conditions
178	Community service **and** Probation	Permitted if: • Court must make separate orders. • Court must not impose one as a requirement of the other. • If child breaches one and is resentenced, the other order **is** discharged.
178A	Graffiti removal order **and** Community service **and/or** Probation	Permitted if: • Court must make separate orders. • Court must not impose one as a requirement of the other. • If child breaches one and is resentenced, the other orders **may be** discharged.
178C	Restorative justice order **and** Any other sentence orders	
179	Intensive supervision order **and** Probation **and/or** Detention	**Not** permitted
180	Detention **and** Probation	Permitted if: • Detention order is for a maximum period of six months. • Court cannot make conditional release order in relation to detention order, unless for separate offences.

[721] s180A(2) YJA.

		• Probation order commences on release from detention and is for a maximum period of 12 months.
180A	Detention **and** Graffiti removal order	Permitted if: • In relation to a graffiti offence • Graffiti removal order commences on release from detention. Order is suspended if child enters detention during duration of order, to recommence when child is released.
181(a)	Restitution or compensation order **and** Any other sentence orders	Permitted
181(b), 254	Driver's licence disqualification **and** Any other sentence orders	
181(c), 255	Order for taking identifying particulars **and** Any other sentence orders	

11.16 Reopening of Proceedings

In relation to a sentence that is not according to law, the court has the power to reopen the proceedings under s128 YJA.

See Chapter 2.14: Reopening and Removal of Proceedings

11.17 Child Offenders Who Become Adults

Sections 140-146 YJA deal with various situations affecting whether an offender is treated as a child or an adult.

See Chapter 2.7: Child Offenders who Become Adults

Section 140 YJA provides that for when a person must be sentenced as either an adult or a child:

1. *If 1 year has passed after an offender has become an adult—*

a. *a proceeding afterwards started against the offender for a child offence must be taken as if the offender were an adult at the time of the commission of the child offence; and*
b. *if found guilty in the proceeding—the offender must be sentenced as an adult.*

2. *If—*
   a. *a proceeding has started against an offender for a child offence in the way provided in this Act for a child; but*
   b. *the proceeding has not been completed to a finding of guilty or not guilty by the time 1 year has passed after the offender becomes an adult; then—*
   c. *the proceeding must be finished in the way provided in this Act for a child; but*
   d. *if found guilty—the offender must be sentenced as an adult.*

3. *If, after a finding of guilt in a proceeding started against an offender as a child—*
   a. *the court has been unable to sentence the offender because the offender has—*
      i. *escaped from detention; or*
      ii. *failed, without reasonable excuse, to appear as required under the conditions of bail; or*
      iii. *failed, without reasonable excuse, to return to the detention centre at the end of a period of leave granted under section 269; and*
   b. *1 year has passed after the offender has become an adult; the offender must be sentenced as an adult.*

4. *An offender must not be treated as an adult under this section if the court is satisfied that there was undue delay on the part of the prosecution in starting or completing the proceeding.*

See *R v Knight* [1997] QCA 55 as to the meaning of "undue delay".

Section 141 YJA specifies when an offender may be treated as a child:

1. *This section applies if—*
   a. *a proceeding has started against an offender for a child offence in the way provided in this Act for a child (the childhood proceeding); and*
   b. *by the time 1 year has passed after the offender becomes an adult—*
      i. *the childhood proceeding has not been completed to a finding of guilty or not guilty; and*

ii. *the offender, for another offence—*

1. *is proceeded against as an adult; or*
2. *has been sentenced as an adult.*

2. *The court hearing the childhood proceeding may decide to continue the proceeding as if the offender were an adult when the child offence was committed.*

3. *For subsection (2), the Childrens Court may continue the proceeding in its concurrent jurisdiction.*

4. *If the offender is found guilty, the offender must be sentenced as an adult.*

5. *This section applies despite section 140(2).*

Section 142 YJA provides that an order that may be made under the YJA against a child may be made even though the child will become an adult before the order's affect will have ceased. Any subsequent proceedings and orders arising out of that order after the person becomes an adult must be taken and made as if the person was a child.[722]

Section 142 YJA provides:

1. *An order that may be made under this Act against a child (the order) may be made even though the person concerned will have ceased to be a child before the order's effect will have ceased under its terms.*

2. *If a person against whom the order is made ceases to be a child before the order's effect ceases under its terms—*
   a. *the order continues to apply as if the person continued to be a child; and*
   b. *other proceedings and orders arising out of the order that could have been taken or made in relation to the person had the person remained a child must be taken or made as if the person were a child.*

[722] s142(2) and (3) YJA.

3. *For subsection (2), a reference in this Act to a child subject to an order who commits an offence or contravenes the order is declared to include a reference to the child committing the offence or contravening the order while subject to the order after becoming an adult.*

4. *Subsection (3) does not limit subsection (2).*

5. *If—*
    a. *a proceeding or order mentioned in subsection (2)(b) may be taken before, or made by, a court if a person is found guilty of an offence before the court; and*
    b. *the person is found guilty before a Magistrates Court of an adult offence; the court has concurrent jurisdiction to hear the proceeding or make the order.*

6. *For subsection (5), any judicial officer constituting the Magistrates Court may constitute the Childrens Court.*

Section 143 YJA provides for when a sentence order made in relation to a child may be dealt with as an adult order in a proceeding arising out of the childhood order after the child becomes an adult:

1. *This section applies if—*
    a. *a sentence order is made against a person as a child (the childhood sentence order); and*
    b. *a proceeding arising out of the order is taken before a court after the person becomes an adult.*

2. *If the circumstances mentioned in subsection (3) apply, the court may decide to deal with the person as if—*
    a. *the childhood sentence order were a corresponding adult order made for the offence; and*
    b. *the offence were committed as an adult.*

3. *The circumstances are—*
    a. *the person, for another offence committed as an adult—*
        i. *is being proceeded against; or*
        ii. *has been sentenced; or*
    b. *more than 1 year has passed after the offender becomes an adult.*

4. *The court may declare the childhood sentence order to be a corresponding adult order and make all necessary changes to the childhood sentence order to change it to a corresponding adult order.*

5. *The person is then subject to the corresponding adult order for the proceeding before the court and any further proceedings and orders.*

6. *For the application of the Penalties and Sentences Act 1992—*
    a. *section 123 of that Act does not apply to a contravention of the childhood sentence order that happens before the order is declared under this section to be a community-based order under that Act; and*
    b. *if the corresponding adult order is a probation order or community service order under that Act, section 12(6) of that Act does not apply to the court for the proceeding before the court.*

7. *For subsection (2), the Childrens Court may continue the proceeding in its concurrent jurisdiction.*

8. *In this section—*
    ***corresponding adult order to a childhood sentence order**, means a type of sentence to which an adult is liable that is similar to the type of the childhood sentence order, for example—*
    a. *a probation order made under the Penalties and Sentences Act 1992 is a corresponding adult order to a probation order made under this Act; and*
    b. *a community service order made under the Penalties and Sentences Act 1992 is a corresponding adult order to a community service order made under this Act.*

The court may decide to treat the childhood sentence order as a corresponding adult order so that the person is then subject to the adult order in the proceeding before the court if:

- The person is being proceeded against or has been sentenced for another offence committed as an adult; or
- More than one year has passed since the person became an adult.

Section 144 YJA applies when a court is sentencing an offender as an adult under ss140, 141 or 143 YJA:

1. *Subject to subsections (2) and (3), a court sentencing an offender as an adult under section 140, 141 or 143 has jurisdiction to sentence the offender in any way that an adult may be sentenced.*

2. *The court must have regard to—*
    a. *the fact that the offender was a child when the child offence was committed; and*
    b. *the sentence that might have been imposed on the offender if sentenced as a child.*

3. *The court cannot order the offender—*
    a. *to serve a term of imprisonment longer than the period of detention that the court could have imposed on the offender if sentenced as a child; or*
    b. *to pay an amount by way of fine, restitution or compensation greater than that which the court could have ordered the offender to pay if sentenced as a child.*

4. *Subsection (3) applies even though an adult would otherwise be liable to a heavier penalty which by operation of law could not be reduced.*

See *R v LAL* [2018] QCA 179 at [116]-[126] for the principles to be applied when sentencing an adult for a child offence. See also *R v PGW* (2002) 131 A Crim R 593; *R v SBQ* [2010] QCA 89; *R v F; ex parte Attorney-General* [2003] QCA 297.

In *R v PGW* (above), the Court of Appeal held that the provision does not limit the sentencing court to the sentence that might have been imposed on the child. Intervening circumstances, such as later offences, may warrant a higher sentence. See also *R v JJ; ex parte Attorney-General* [2005] QCA 153.
Section 146 YJA extends the operation of the YJA to a person serving a period of detention in relation to a proceeding for an offence committed within one year of the person becoming an adult and started within one year of the commission of the offence.

Section 146 YJA provides:

1. *In this section— detainee means a person serving a period of detention under a sentence order.*

2. *If—*
    a. *a proceeding is started against a detainee for an offence committed within the period of 1 year after the detainee ceased to be a child; and*
    b. *the proceeding is started within 1 year of the commission of the offence; the detainee may be treated as a child for the purpose of the proceeding.*

3. *A court may treat the detainee as a child if it considers this appropriate, for example because—*
    a. *treatment of the detainee as an adult would disrupt the application of an existing sentence order; or*
    b. *the offence was committed in a detention centre in circumstances suggesting that the detainee should be treated as a child in relation to the offence; or*
    c. *a recommendation made by the chief executive or in a pre-sentence report supports the treatment of the detainee as a child.*

4. *A court may act under this section on application by a party to the proceeding or on its own initiative.*

11.18 Variation of a Community-Based Order

Section 247 YJA provides that the child or the chief executive (youth justice) may apply to the court that made the order for the variation or discharge of a community-based order that is in force. A *"***community-based order"** is a probation order, graffiti removal order, community service order, intensive supervision order, conditional release order or a restorative justice order.[723] A supervised release order is not a community-based order. The "court that made the order" is defined in s9 YJA.

Section 247 YJA provides:

1. *If a community-based order is in force for a child, the child or the chief executive may apply to the court that made the order to—*
    a. *vary the requirements of the order, other than the requirement that the child abstain from violation of the law; or*
    b. *for an order other than a conditional release order—*
        i. *discharge the order; or*

[723] Schedule 4 YJA.

ii. discharge the order and resentence the child for the offence in respect of which the order was made as if the child had just been found guilty before the court of the offence; or

ba. for a restorative justice order—extend the period within which the child's obligations under the order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or

c. for a conditional release order—revoke the order and order the child to serve the sentence of detention for which the conditional release order was made.

2. The applicant must give written notice of the making of the application—

a. if the application is made by the child—to the chief executive; or

b. if the application is made by the chief executive—to the child.

3. The court may grant the application if the court considers it would be in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

4. The application cannot be made on the grounds that the child has contravened the order.

5. On an application mentioned in subsection (1)(b)(ii), the child cannot be resentenced to a greater penalty than would be the case if the balance of the order were served.

Example of a greater penalty— a penalty that would impose a greater degree of restriction on the child's liberty.

The court may vary or discharge the order if the court considers it would be in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

The application cannot be made on the grounds that the child has contravened the order.[724] The requirement that the child abstain from violation of the law cannot be varied.[725]

[724] s247(4) YJA.
[725] s247(1)(a) YJA.

In relation to all community-based orders, other than a conditional release order, the application can also be made to discharge the order or discharge the order and resentence the child.[726] On a resentence, the child cannot be resentenced to a greater penalty than would be the case if the balance of the order was served.[727] On a resentence the court **must** have regard to –

- The reasons for making the (original) order; and
- Anything done by the child in compliance with the order.[728]

If the community-based order is a graffiti removal order, the court need not, when resentencing the child for the graffiti offence, make another graffiti removal order.[729]

In relation to the variation of a restorative justice order, the court may extend the period within which the child's obligations must be performed, but for not more than one year after the variation.[730]

In relation to a conditional release order, the application may be to revoke the order and order the child to serve the sentence of detention for which the order was made.[731] In making that order, the court must reduce the period of detention by the period the court considers just, having regard to everything done by the child to confirm with the order.[732] A child is entitled under s218 YJA to credit for any time in custody prior to the original sentencing: *R v GT* [1997] 2 Qd R 183. Note that this is a different procedure than for a breach of a conditional release order under ss237-244 and 246 YJA.

See also Chapter 11.19: Breaches of Orders below for breach or variation of a community-based order.

Section 250 YJA provides for the use of affidavits in the application proceeding:

1. *In a proceeding before a court under this division, evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.*

[726] s247(1)(b) YJA.
[727] s247(5) YJA.
[728] s249(2) YJA.
[729] s249(3) YJA.
[730] s247(1)(ba) YJA.
[731] s247(1)(c) YJA.
[732] s248(2) YJA.

2. *The proceeding may be decided on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.*

3. *The court may make an order under subsection (2) of its own initiative or on the application of a party to the proceeding.*

4. *This section does not limit another way in which the proceeding may be conducted.*

Section 251 YJA provides that if a court affects the terms of a community-based order on the application, it must cause written notice of the change to be given to the child, the chief executive (youth justice) and, if the court was not the one that made the original order, the court that made that order.

Section 252 YJA provides a procedure whereby a community-based order, other than a conditional release order may be varied by the proper officer of the court with consent of the chief executive (youth justice) and the child.

11.19 Breaches of Orders

There is no separate offence for a breach of an order applicable to a child.

11.19.1 Good Behaviour Order

If a child against whom a good behaviour order is made commits an offence during the period of the order, the court that deals with that offence may have regard to the breach of the good behaviour order when determining the sentence for the new offence.[733] A court **must not** take any other action in relation to the breach.[734]

11.19.2 Community-Based Order

The term "**community-based order"** means a probation order, graffiti removal order, community service order, intensive supervision order, conditional release order or a restorative justice order.[735] A supervised release order is not a community-based order.

[733] s189(1) YJA.
[734] s189(2) YJA.
[735] Schedule 4 YJA.

A breach proceeding may relate to a breach of one of the requirements of the order or by the commission of another offence during the period of the order.

11.19.3 Breach by Non-Compliance

Section 187 YJA provides that contravening a sentence order in Part 7 YJA includes contravening a requirement applying to the order under a regulation.

See Regulation 7 of the *Youth Justice Regulation 2016* as to the reporting requirements under a community-based order.

Section 237 YJA provides that the chief executive (youth justice) must warn the child of the consequences of further contravention of a community-based order if the chief executive (youth justice) reasonably believes the child has contravened the order.

Section 238 YJA sets out the procedure for the chief executive (youth justice) to bring a breach of a community-based order before the court if the child has not been charged with an offence for the act or omission constituting the breach. The chief executive (youth justice) may apply to a Childrens Court Magistrate for a finding that the child has contravened the order. The application may only be made during the period of the order.
Section 238 YJA provides:

1. *This section applies if—*
    a. *a community-based order is made against a child; and*
    b. *the chief executive reasonably believes the child has contravened the order; and*
    c. *either—*
        i. *the contravention is believed to have happened after the child has been given a warning, under section 237, relating to a previous believed contravention of the order; or*
        ii. *the chief executive is not required to warn the child under section 237; and*
    d. *the child has not been charged with an offence for the act or omission comprising the contravention.*

2. *The chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that the child has contravened the order.*

3. *The application may only be made during the period of the order.*

4. *A copy of the complaint must be served on a parent of the child unless a parent cannot be found after reasonable inquiry.*

5. *A Childrens Court magistrate may issue a warrant for the child's arrest if the child fails to appear before the court in answer to the summons.*

6. *A justice may issue a warrant for the child's arrest if the chief executive—*
    a. *makes a complaint before the justice that the child has contravened a community-based order; and*
    b. *gives information before the justice, on oath, substantiating—*
        i. *the matter of the complaint; and*
        ii. *that the chief executive—*
            1. *does not know the child's whereabouts and cannot reasonably find out; or*
            2. *reasonably believes the child would not comply with a summons.*

7. *A warrant issued under subsection (5) or (6) must state which part of the community-based order has been contravened.*

8. *For part 5, a child arrested under the warrant must be treated as if arrested on a charge of an offence.*

9. *In this section—*
    ***parent,** of a child, includes someone who is apparently a parent of the child.*

Section 239 YJA allows the Childrens Court Magistrate to cancel any warrant that may have been issued pursuant to s238 YJA if the child appears before the court other than through the execution of the warrant.

Section 240 YJA provides the general options available to the court in relation to a child appearing before a Childrens Court Magistrate as a result of the s238 YJA procedure. If the court is satisfied beyond reasonable doubt that the contravention has happened, the court may deal with the matter under ss245, 246 or 246A YJA (depending on the order breached) or commit the matter to a higher court if that court made the community-based order.

Section 240 YJA provides:

1. *This section applies if—*
    a. *a complaint is made under section 238 that a child has breached a community-based order; and*
    b. *the child appears before a Childrens Court magistrate; and*
    c. *the magistrate is satisfied beyond reasonable doubt the contravention has happened.*

2. *If the order was made by a Childrens Court magistrate, the magistrate may take the following action—*
    a. *for an order other than a conditional release order—any action allowed under section 245;*
    b. *for a conditional release order—any action allowed under section 246 or 246A.*

3. *If the order was made by a higher court, the magistrate may take the following action—*
    a. *if the magistrate considers that, having regard to the circumstances of the contravention, the order should be discharged, and the child dealt with for the offence in respect of which the order was made—order the child to appear before the higher court;*
    b. *otherwise—*
        i. *for an order other than a conditional release order—any action under section 245 other than section 245(1)(d)(ii); or*
        ii. *for a conditional release order—deal with the child under section 246(3) or 246A(3).*

4. *If the magistrate orders the child to appear before the higher court, the magistrate may commit the child to custody or release the child under part 5 to be brought or to appear before the higher court.*

5. *In this section—*

   ***higher court** means the Supreme Court or a Childrens Court judge.*

The Childrens Court Magistrate may deal with the contravention in all cases, notwithstanding that the order was made a higher court, unless the Magistrate considers having regards to the circumstances of the contravention, that the order should be discharged, and the child should appear before the higher court to be dealt with for the original offence.[736]

In relation to community-based orders, other than a conditional release order, the Childrens Court Magistrate's powers on the breach are provided by s245 YJA:

1. *A court that acts under this section may—*
   - *a. For a probation order—extend the period of the order, but not so that the period by which the order is extended is longer than the period for which the order could be made under sections 175(1)(d), 175A (2)(a), 176(1)(a) and 180(3); or*
   - *aa. for a graffiti removal order—*
     - *i. increase the number of graffiti removal service hours but not so that the total number of hours is more than the number allowed under section 176A(3) or sections 194F to 194I; or*
     - *ii. extend the period within which the graffiti removal service must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or*
   - *ab. for a restorative justice order—extend the period within which the child's obligations under the order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or*
   - *b. for a community service order—*
     - *i. increase the number of community service hours, but not so that the total number of hours is more than the number allowed under section 175(1)(e); or*
     - *ii. extend the period within which the community service must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or*
   - *c. for an intensive supervision order—extend the period of the order, but not so that the last day of the order is more than 6 months after the court acts under this section; or*
   - *d. for any community-based order—*

[736] s240(3) YJA.

i. *vary another requirement of the order other than the requirement that the child abstain from violation of the law; or*

ii. *discharge the order and resentence the child for the offence for which the order was made as if the child had just been found guilty before the court of that offence; or*

iii. *on the undertaking of the child to comply in all respects with the order, take no further action.*

2. *The court may vary the community-based order only if the child expresses a willingness to comply with the order as varied.*

3. *An order under subsection (1)(a), (aa), (ab), (b) or (c) may be made in conjunction with an order under subsection (1)(d)(i).*

4. *If the court decides to extend the period of the community-based order, the court must have regard to the period for which the child has complied with the order.*

5. *An order may be made under this section even though, at the time it is made, the community-based order in relation to which the order is made is no longer in force because the period of the community-based order has ended.*

6. *For part 6, division 9, subdivision 4, an order or decision mentioned in this section and made by a Childrens Court magistrate is a sentence order.*

7. *In this section—*
***community-based order** means a community-based order other than a conditional release order.*

Any variation of the order requires the child's consent.[737] The court may decide to take no further action on the undertaking of the child to comply in all respects with the order.[738] The court may decide to discharge the order and resentence the child for the original offence.[739] Consideration of any resentence must have regard to the sentencing principles in s150 YJA and, in particular, s150(3)(l) YJA

[737] s245(2) YJA.
[738] s245(1)(d)(iii) YJA.
[739] s245(1)(d)(ii) YJA.

which requires consideration of *"a sentence the child is liable to have imposed because of the revocation of any order under this Act for the breach of a condition by the child."* In deciding on the appropriate sentence in the resentence proceeding, the court **must** also have regard to the matters in s249 YJA:

1. *This section applies to a court if, under this division, it discharges a community-based order, other than a conditional release order, and resentences the child for the offence in respect of which the order was made.*

2. *The court must have regard to—*
    a. *the reasons for making the order; and*
    b. *anything done by the child in compliance with the order.*

2A. *If the community-based order is a community service order made under section 175A(9), the court need not, when resentencing the child for the offence for which the order was made, make another community service order.*

3. *If the community-based order is a graffiti removal order, the court need not, when resentencing the child for the graffiti offence for which the order was made, make another graffiti removal order.*

An order under s245 YJA may be made notwithstanding that the original community-based order has ended.[740]

In relation to a contravention of a conditional release order, the Childrens Court Magistrate's powers on the breach are provided by s246 YJA:

1. *This section applies if the conditional release order was made in relation to an offence other than a prescribed indictable offence.*

2. *A court that acts under this section may revoke the conditional release order and order the child to serve the sentence of detention for which the conditional release order was made.*

[740] s245(5) YJA.

3. *However, instead of revoking the conditional release order, the court may permit the child a further opportunity to satisfy the requirements of the order and, for that purpose, may—*
    a. *vary the requirements in a way it considers just; or*
    b. *extend the program period for the order, but not so that the last day of the period is more than 6 months after the court acts under this section.*

4. *The onus is on the child to satisfy the court it should permit the child this further opportunity.*

5. *If the court decides to extend the program period for the conditional release order, the court must have regard to the period for which the child has complied with the order.*

6. *An order may be made under this section even though, at the time it is made, the conditional release order in relation to which the order is made is no longer in force because the period of the conditional release order has ended.*

7. *For part 6, division 9, subdivision 4, an order mentioned in this section and made by a Childrens Court magistrate is a sentence order.*

The court may allow the child a further opportunity to complete the order.[741] The onus is on the child to satisfy the court it should permit that.[742] If the court decides to revoke the order and order the child to serve the period of detention, the court **must** reduce the period of detention by the period considers just, having regard to everything done by the child to conform with the conditional release order.[743]

An order under s246 YJA may be made notwithstanding that the original conditional release order has ended.[744]

If the child is committed to a higher court under s240(3)(a) YJA, the powers of that court are set out in s241 YJA:

1. *This section applies if—*

[741] s246(2) YJA.
[742] s246(3) YJA.
[743] s248 YJA.
[744] s248(5) YJA.

a. *the chief executive applies to a Childrens Court magistrate under section 238 for a finding that a child has breached a community-based order; and*
b. *under section 240(3)(a), the magistrate orders the child to appear before the Supreme Court or a Childrens Court judge (the higher court); and*
c. *the higher court is satisfied beyond reasonable doubt of the matter alleged against the child in the chief executive's application.*

2. *The higher court may take the following action—*
    a. *for an order other than a conditional release order—any action allowed by section 245;*
    b. *for a conditional release order—any action allowed by section 246 or 246A.*

3. *The proceeding before the higher court must be heard and decided by a judge sitting without a jury.*

The court may make orders if satisfied beyond reasonable doubt of the contravention.[745] The proceeding before the higher court is determined by a Judge sitting without a jury.[746]

In relation to a combination of orders when one or more is contravened and the child is resentenced, see s178(3) YJA (probation and community service orders); s178A(3) and (4) YJA (graffiti removal order and probation and community service orders); s178C(3) and (4) YJA (restorative justice order and other sentence orders).

11.19.4 Breach by Re-Offending

Section 242 YJA provides the general options available to a court before which a child is found guilty of an **indictable offence** while subject to a community-based order:

1. *This section applies if—*
    a. *a child commits an indictable offence while the child is subject to a community-based order; and*
    b. *a court finds the child guilty of the offence.*

2. *If the order was made by the court, it may take the following action—*

[745] s241(1) YJA.
[746] s241(3) YJA.

a. *for an order other than a conditional release order—any action allowed by section 245;*
b. *for a conditional release order—any action allowed by section 246 or 246A.*

3. *If the order was not made by the court, it may take the following action—*
   a. *if it considers that, having regard to the circumstances of the offence, the order should be discharged and the child resentenced for the offence in respect of which the order was made—order the child to appear before the court that made the order or, if it may act under section 243, act under that section;*
   b. *otherwise—*
      i. *for an order other than a conditional release order—any action under section 245 other than section 245(1)(d)(ii); or*
      ii. *for a conditional release order—deal with the child under section 246(3) or 246A(3).*

4. *If the court orders the child to appear before another court under subsection (3)(a), it may commit the child to custody or release the child under part 5 to be brought or to appear before the other court.*

Note this only relates to a new offence which is an indictable offence.

If the community-based order was made by that court, the court may take action under ss245 or 246 YJA if the community-based order was a conditional release order.[747] If the community-based order was not made by that court, the court may –

- Order the child to appear before the court that made the order if it considers that, having regard to the circumstances of the offence, the order should be discharged, and the child resentenced for the original offence; or
- If the court is a court of higher jurisdiction to the court that made the community-based order, action under s243 YJA (below); or
- For a community-based order other than a conditional release order, any action under s245 YJA other than discharging the order and resentencing the child for the original offence; or

[747] s242(2) YJA.

- For a conditional release order, action under s246(2) YJA to permit the child a further opportunity to comply with the order.

If the court orders the child to appear before another court, it may order the child to be released under Part 5 YJA (bail and custody of children) or to be held in custody.[748]

A court of lower jurisdiction does not have the power to resentence the child for the original offence made in a superior court.

Section 244 YJA provides the options available to a court to which a child has been committed for a breach by the commission of an indictable offence:

1. *This section applies if a court orders a child to appear before another court under section 242(3)(a).*

2. *The other court may take the following action—*
    a. *for an order other than a conditional release order—any action allowed by section 245;*
    b. *for a conditional release order—any action allowed by section 246 or 246A.*

3. *If the other court is the Supreme Court or Childrens Court judge, the proceeding must be heard and decided by a judge sitting without a jury.*

See Chapter 11.19.3: Breach by Non-Compliance for the actions available under ss 245-246 YJA.

Section 243 YJA gives the power to a superior court to resentence a child originally sentenced by a lower court:

1. *This section applies to a court acting under section 242(3)(a) in relation to a community-based order that it did not make.*

2. *If the court is the Supreme Court or a Childrens Court judge and the court that made the order is a Childrens Court magistrate, it may make a sentence order under the following provisions that a Childrens Court magistrate could make in the same circumstances—*

[748] s242(4) YJA.

a. *for an order other than a conditional release order— section 245(1)(d)(ii);*
b. *for a conditional release order—section 246(2) or 246A(2).*

3. *A sentence order made under subsection (2)—*
   a. *for the purposes of an appeal, is taken to be a sentence order made on indictment; but*
   b. *for all other purposes, is taken to be a sentence order made by a Childrens Court magistrate.*

4. *If the court is the Supreme Court and the court that made the order is a Childrens Court judge, it may make a sentence order under the following provisions that a Childrens Court judge could make in the same circumstances—*
   a. *for an order other than a conditional release order— section 245(1)(d)(ii);*
   b. *for a conditional release order—section 246(1).*

5. *A sentence order made under subsection (4) is taken to be a sentence order made by the Childrens Court judge.*

See Chapter 11.19.3: Breach by Non-Compliance for the actions available under ss245-246 YJA.

In relation to a combination of orders when one or more is contravened and the child is resentenced, see s178(3) YJA (probation and community service orders); s178A(3) and (4) YJA (graffiti removal order and probation and community service orders); s178C(3) and (4) YJA (restorative justice order and other sentence orders).

11.19.5 Breach of Supervised Release Order

Section 252B YJA provides that the chief executive (youth justice) must warn the child of the consequences of further contravention of a supervised release order if the chief executive reasonably believes the child has contravened the order. Section 252C YJA sets out the procedure for the chief executive to bring a breach of a supervised release order before the court if the child **has not** been charged with an offence for the act or omission comprising the contravention. The chief executive may apply to a Childrens Court Magistrate for a finding that the child has contravened the order. The child must be on release from detention on the supervised release order at the time of the application.[749]

[749] s252C(1)(a) YJA.

Section 252C provides:

1. *This section applies if—*
    a. *a child is on release from detention under a supervised release order; and*
    b. *the chief executive reasonably believes the child has contravened the order; and*
    c. *either—*
        i. *the contravention is believed to have happened after the child has been given a warning, under section 252B, relating to a previous believed contravention of the order; or*
        ii. *the chief executive is not required to warn the child under section 252B(3); and*
    d. *the child has not been charged with an offence for the act or omission comprising the contravention.*

2. *The chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that the child has contravened the order.*

3. *A copy of the complaint must be served on a parent of the child unless a parent cannot be found after reasonable inquiry.*

4. *In this section—*
   ***parent,** of a child, includes someone who is apparently a parent of the child.*

Section 252D YJA provides the general options available to the court on the child appearing before the Childrens Court Magistrate as a result of the s252C procedure:

1. *This section applies if—*
    a. *a complaint is made under section 252C(2) that a child has contravened a supervised release order; and*
    b. *the child appears before a Childrens Court magistrate; and*
    c. *the magistrate is satisfied beyond reasonable doubt that the contravention has happened.*

2. *If the magistrate considers the child should be given a further opportunity to satisfy the conditions of the order, the magistrate may order that no further action be taken.*

3. *If subsection (2) does not apply, the magistrate may act under subsection (4) or (5).*

4. *If the unexpired part of the child's sentence is the prescribed period or less, the magistrate may—*
    a. *order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or*
    b. *order the child to be returned to the detention centre for the unexpired part of the child's sentence.*

5. *If the unexpired part of the child's sentence is more than the prescribed period, the magistrate may order the child to appear before the original sentencing court.*

6. *In this section -*
    ***prescribed period** means -*
    (a) for a sentence imposed under section 175A – 3 years; or
    (b) otherwise – 1 year

If the Magistrate is satisfied beyond reasonable doubt that the contravention has happened, the court may –

- Order that no further action be taken if the Magistrate considers the child should be given a further opportunity to complete the order; or
- If the unexpired part of the child's sentence is one year or less, order the child to be returned to the detention centre and set a day on which the chief executive (youth justice) must make another supervised release order for the child; or
- If the unexpired portion of the child's sentence is one year or less, order the child to be returned to the detention centre for the unexpired part of the child's sentence; or
- If the unexpired part of the child's sentence is more than one year, order the child to appear before the original sentencing court.

The Childrens Court Magistrate has the power to deal with the breach of a supervised release order made by a superior court unless the unexpired part of the child's sentence is greater than one year. Section 252F YJA provides the general options available to a court before which a child is ordered to appear pursuant to ss252D or 252E YJA (where the child is found guilty of an indictable offence):

1. *This section applies if—*
    a. *the chief executive applies to a Childrens Court magistrate under section 252C for a finding that a child has contravened a supervised release order; and*
    b. *under section 252D, the magistrate orders the child to appear before another court; and*
    c. *the child appears before the other court; and*
    d. *the other court is satisfied beyond reasonable doubt of the matter alleged against the child in the chief executive's application.*

2. *This section* also *applies if —*
    a. *a child has been ordered by a court to appear before another court under section 252E; and*
    b. *the child appears before the other court.*

3. *The other court may—*
    a. *if the court considers the child should be given a further opportunity to satisfy the conditions of the order—order that no further action be taken; or*
    b. *order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or*
    c. *order the child to be returned to the detention centre for the unexpired part of the child's sentence.*

4. *For subsection (1)(d), the proceeding before the other court must be heard and decided by a judge sitting without a jury.*

The court may make orders if satisfied beyond reasonable doubt of the matter alleged against the child in the chief executive's application under s252C YJA or if the child appears pursuant to s252E YJA. The proceeding before the higher court under s252F(1)(d) YJA is determined by a Judge sitting without a jury.[750] The court may act under s252F(3) YJA.

Section 252E YJA provides the general options available to a court if the child is found guilty of an **indictable** offence before it:

[750] s252F(4) YJA.

1. *This section applies if—*
    a. *a child on release from detention under a supervised release order commits an indictable offence; and*
    b. *a court finds the child guilty of the offence.*

    Note— The commission of an indictable offence is a contravention of the supervised release order—see section 228(4)(a).

2. *If the court (including in its concurrent jurisdiction) was the original sentencing court, or is a higher court, the court may—*
    a. *if the court considers the child should be given a further opportunity to satisfy the conditions of the order—order that no further action be taken; or*
    b. *order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or*
    c. *order the child to be returned to the detention centre for the unexpired part of the child's sentence.*

3. *If subsection (2) does not apply and the court is a Childrens Court magistrate or a Magistrates Court, the court may—*
    a. *if the court considers the child should be given a further opportunity to satisfy the conditions of the order—order that no further action be taken; or*
    b. *if the unexpired part of the child's sentence is the prescribed period or less—*
        i. *order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or*
        ii. *order the child to be returned to the detention centre for the unexpired part of the child's sentence; or*
    c. *if the unexpired part of the child's sentence is more than the prescribed period—order the child to appear before the original sentencing court.*

4. *If subsections (2) and (3) do not apply, the court may order the child to appear before the original sentencing court.*

5. *If the court is a Magistrates Court or the District Court, the order under subsection (2), (3) or (4) must be made in its concurrent jurisdiction.*

6. *In this section—*

higher court *means -*

a. *for a Magistrates Court or a Childrens Court magistrate—the District Court or a Childrens Court judge; or*

b. *for the District Court or a Childrens Court judge—the Supreme Court.*

prescribed period *means-*

a. *for a sentence imposed under section 175A – 3 years; or*

b. *otherwise – 1 year.*

Note this only relates to a conviction for an indictable offence.

If the court (including in its concurrent jurisdiction) was the original sentencing court or is a higher court, the court may act under s252E(2) YJA. If the original sentence was imposed by a higher court and the court is a Childrens Court Magistrate or a Magistrate, the court may act under s252E(3) YJA. If subsections (2) and (3) do not apply (for example, a Childrens Court constituted by a Judge when the child is subject to a Supreme Court sentence), the court may order the child to appear before the original sentencing court.[751]

If the court orders a child to appear before another court pursuant to ss252D or 252E YJA, it may commit the child to custody or release the child under Part 5 YJA (bail and custody of children) to so appear. Any period of custody so spent is to be counted as part of the time served in detention.[752]
In making an order under ss252D, 252E or 252F YJA the court **must** have regard to anything done by the child in compliance with the supervised release order.[753]

Section 230 YJA provides that the period of time for which a child is released from detention under a supervised release order must be counted as part of the period that the child spent in detention for the purpose of calculating the end of the child's period of detention. Section 218 YJA provides that the period of time spent in pre-sentence detention must be counted as part of the period of detention. Section 252J YJA provides that if a supervised release order expires before a child is finally dealt with on an application under Division 12A, the application expires.

[751] s252E(4) YJA.
[752] s252H(1) YJA.
[753] s252G(1) YJA.

For the purpose of Division 12A and the breach of a supervised release order, a child is defined to include a person who was an adult when the order was made or has become an adult since the order was made.[754]

11.19.6 General Matters

Section 250 YJA provides for the use of affidavits in breach proceedings (other than breach of supervised release orders).

Section 143(3)(b) YJA provides that where a sentence order is made against a person as a child, and a proceeding arising out of that order is taken after the person turns 18, the court may deal with the person as if the original offence was committed as an adult and as if the original order was an adult order.

See Chapter 2.7: Child Offenders who Become Adults

[754] s252A YJA.

Chapter 12 – Appeals and Sentence Reviews

12.1 Appeals

Section 114 YJA provides that, subject to the express provisions of Part 7 of the YJA, Part 7 does not affect the right of any person to appeal, or apply for leave to appeal, under the Criminal Code or otherwise against the order of a court or judicial officer.

12.2 Appeal to the Childrens Court Constituted by a Magistrate

Pursuant to s19B BA, the defendant, complainant, or prosecutor can apply to a Childrens Court Magistrate for a review of a decision about release or bail under Part 5 YJA (bail and custody of children) by a police officer or a justice.[755] A Magistrate's decision on that review is subject to review by a single Supreme Court Judge on the application of the defendant, complainant, or prosecutor.[756]

Other provisions of the *Bail Act* provide for applications to a court to vary or revoke bail granted.[757]

See Chapter 6: Release of Child from Custody and Bail and Chapter 8.5: Bail

12.3 Appeal to a Childrens Court Constituted by Judge

12.3.1 Appeal Pursuant to Justices Act 1886 (Qld) (JA)

An appeal against a conviction or sentence from the summary determination of an offence to a single Childrens Court Judge is pursuant to s222 JA. Other orders may also be appealed. See for example, s172 MHA (power to dismiss complaint – unsound mind or unfitness for trial) or s540 PPRA (application for order for blood and urine sample of person).

Section 117 YJA provides:

1. *The Justices Act 1886, part 9, division 1, applies in relation to an order made by justices dealing summarily with a child charged with an offence subject to subsections (2) to (4).*

2. *To appeal under the division, an aggrieved person must appeal to the Childrens Court judge.*

[755] s19B(2) BA
[756] s19C BA.
[757] ss19 and 30(1A) BA.

3. *All relevant references to a District Court judge are taken for the purpose to be references to the Childrens Court judge.*

4. *A District Court judge does not have jurisdiction to hear and decide the appeal.*

Part 9, Division 1 (ss221-232A) JA provides for appeals to a District Court Judge. Pursuant to s117(3) YJA, all references to a District Court Judge are taken to be references to the Childrens Court Judge. A District Court Judge does not have jurisdiction to hear and decide an appeal pursuant to that division of the JA.[758]

Section 222 JA provides for an appeal to a single District Court Judge if "*a person feels aggrieved as complainant, defendant or otherwise by an order made by a Justices or a Justice in a summary way on a complaint for an offence or breach of duty.*"

The appeal must be made within one month after the date of the order.

Section 222 JA provides:

1. *If a person feels aggrieved as complainant, defendant or otherwise by an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty, the person may appeal within 1 month after the date of the order to a District Court judge.*

   Notes— 1 Under the Criminal Code, section 669A(6), an appeal against a decision by a person under this section to a District Court judge is removed directly to the Court of Appeal if the Attorney-General also appeals against the decision under section 669A. 2 This division applies in relation to an order made by justices dealing summarily with a child charged with an offence, but appeals must be made to a Childrens Court judge—see the Youth Justice Act 1992, section 117.

2. *However, the following exceptions apply—*
   a. *a person may not appeal under this section against a conviction or order made in a summary way under the Criminal Code, section 651;*
   b. *if the order the subject of the proposed appeal is an order of justices dealing summarily with an indictable offence, a complainant aggrieved by the decision may appeal under this section only against sentence or an order for costs;*

[758] s117(4) YJA.

c. *if a defendant pleads guilty or admits the truth of a complaint, a person may only appeal under this section on the sole ground that a fine, penalty, forfeiture or punishment was excessive or inadequate.*

3. *To start the* appeal*, the appellant must file a notice of appeal in the District Court registry.*

4. *For this section, an appellant is taken to have filed the notice of appeal in the District Court registry—*
   a. *if the District Court registry is more than 50km from the place where the order was made; and*
   b. *the appellant gives the notice of appeal to the relevant clerk of the court.*

5. *Also, for this section, an appellant is taken to have filed the notice of appeal in the District Court registry if the appellant is in custody in prison and gives the notice of appeal to the prison's general manager.*

6. *A clerk of the court or general manager of a prison who receives a notice of appeal under subsection (4)(b) or (5) must immediately give the appellant a receipt of the notice of appeal in the approved form stating the date of receipt.*

7. *If—*
   a. *an issue arises in a proceeding about whether the appellant gave a notice of appeal under subsection (4)(b) or (5); and*
   b. *the receipt under subsection (6) is not produced in evidence; the onus of proof is on the appellant to prove the giving of the notice of appeal under subsection (4)(b) or (5).*

8. *The notice of appeal must be in the approved form and state—*
   a. *the appeal grounds; and*
   b. *the details required under section 222C; and*
   c. *the name and address of the respondent.*

9. *If the appellant is in custody, the notice of appeal must be filed in the District Court district where the appellant is in custody.*

No appeal lies pursuant to s222 JA against a conviction or order in relation to a summary offence dealt with pursuant to s651 CC where it is dealt with at the same time as a proceeding on indictment. Such an appeal is to the Court of Appeal.[759]

See Chapter 12.4: Appeals to the Court of Appeal

No appeal is available to a complainant in relation to an order dealing summarily with an indictable offence except against sentence or an order for costs. No appeal is available to a defendant against conviction if the defendant pleaded guilty or admitted the truth of the complaint. However, an appeal against sentence is open. The Attorney-General also has a right of appeal.[760]

Where a defendant enters an unequivocal plea of guilty, there is no right of appeal against conviction under s222 JA: *Long v Spivey* [2004] QCA 118, *Dore & Ors v Penny* [2005] QCA 150 and *Ajax v Bird* [2010] QCA 2. In cases where the plea was equivocal or, in reality, amounted to a plea of not guilty, an appeal may lie: *Shaw v Yule* [1995] QCA 611 and *Hall v Bobbermen* [2009] QDC 188.

The right of appeal pursuant to s222 JA is from an order made on a complaint for an offence or breach of duty which is from an order disposing of the complaint, not an interim order: *Schneider v Curtis* [1967] Qd R 300 and *United Petroleum Pty Ltd v Sargent* [2019] QCA 295.

In relation to the time limit for filing an appeal, the court retains a jurisdiction to extend the time: *Double Time Pty Ltd v Ryan* [2002] 1 Qd R 371 and *Owen v Edwards* [2006] QCA 526. See also s224(1) JA.

An order made for the payment of restitution or compensation may be appealed pursuant to s222 JA and the order is stayed until the end of the appeal.[761]

If the appellant is in custody, a Magistrates Court may grant bail pending the appeal being heard in the District Court.[762] A Childrens Court Judge has the power to also grant bail pursuant to s59 YJA.

See Chapter 6.9: Powers of Childrens Court Judge as to Bail

[759] s668D CC.
[760] s222(2) JA.
[761] s222A JA.
[762] s8 BA.

Section 223 JA provides that an appeal pursuant to s222 JA, is by way of rehearing on the evidence given in the proceeding in the lower court. The District Court may give leave to adduce further evidence.

Section 223 provides:

1. *An appeal under section 222 is by way of rehearing on the evidence (original evidence) given in the proceeding before the justices.*

2. *However, the District Court may give leave to adduce fresh, additional, or substituted evidence (new evidence) if the court is satisfied there are special grounds for giving leave.*

3. *If the court gives leave under subsection (2), the appeal is—*
    a. *by way of rehearing on the original evidence; and*
    b. *on the new evidence adduced.*

An appeal by way of rehearing requires an appellate court to decide the case for itself by making a real review of the evidence, drawing inferences and conclusions, giving due deference and weight to the Magistrate's view. The appellate court must bear in mind the advantage the trial Judge had in seeing and evaluating the witnesses. The decision is not solely to consider whether the tribunal at first instance made an error of fact or law: *Fox v Percy* (2003) 214 CLR 118, *Warren v Coombes* (1979) 142 CLR 531, *Rowe v Kemper* [2008] QCA 175 and *Forrest v Commissioner of Police* [2017] QCA 132.

As to the approach to the admission of fresh evidence see: *Pavlovic v Commissioner of Police* [2006] QCA 134 and *Gallagher v R* (1986) 160 CLR 392.

An appeal against sentence is an appeal against the sentencing discretion and an appellate court may not interfere unless an error of the kind identified in *House v R* (1936) 55 CLR 499 has occurred: *R v Lawley* [2007] QCA 243 at [18] and *Norbis v Norbis* [1986] 161 CLR 513 at 517-519.

The powers of the Judge hearing the appeal are set out in s225 JA:

1. *On the hearing of an appeal, the judge may confirm, set aside, or vary the appealed order or make any other order in the matter the judge considers just.*

2. *If the judge sets aside an order, the judge may send the proceeding back to whoever made the order or to any Magistrates Court with directions of any kind for the further conduct of the proceedings including, for example, directions for rehearing or reconsideration.*

3. *For subsection (1), the judge may exercise any power that could have been exercised by whoever made the order appealed against.*

4. *An order made under subsection (1) has effect, and may be enforced in the same way, as if it had been made by whoever made the appealed order.*

An appeal from the decision of the District Court Judge lies to the Court of Appeal by leave pursuant to s118 *District Court of Queensland Act 1967* (Qld). See *Pickering v McArthur* [2005] QCA 294 at [3] where Keane JA said:

> *"Leave (under section 118(3)) will usually be granted only where an appeal is necessary to correct a substantial injustice to the applicant and there is a reasonable argument that there is an error to be corrected"* (footnotes omitted).

That appeal is not limited to errors of law: *McDonald v Queensland Police Service* [2017] QCA 255.

Section 112 *District Court of Queensland Act 1967* provides that an appeal may not be made from a Magistrates Court to the Supreme Court.

12.4 Appeals to the Court of Appeal

Section 116 YJA provides for appeals to the Court of Appeal pursuant to Chapter 67 CC.[763] Section 116 YJA provides:

> *The Criminal Code, chapter 67, relating to appeals or applications for leave to appeal applies, with necessary modifications and any prescribed modifications—*
>
> *a) in relation to a finding of guilt or order made in a proceeding against a child for an offence as it applies in relation to a conviction or order made in a proceeding against an adult for an offence; and*

[763] ss668-677 CC

b) *in relation to a proceeding before a Childrens Court magistrate as it applies to a proceeding before a Magistrates Court; and*

c) *in relation to a proceeding before a Childrens Court judge, sitting with or without a jury, as it applies in relation to a proceeding before the District Court.*

Section 668A CC permits the Attorney-General to refer any point of law arising from a pre-trial direction or ruling under s590AA CC to the Court of Appeal.

Section 668B CC permits the trial Judge, in relation to an indictment, to reserve any question of law for consideration for the Court of Appeal.

Section 668D CC provides for appeals to the Court of Appeal by a person convicted on indictment or of a summary offence pursuant to s651 CC:

1. *A person convicted on indictment, or a person convicted of a summary offence by a court under section 651, may appeal to the Court—*
    a. *against the person's conviction on any ground which involves a question of law alone; and*
    b. *with the leave of the Court, or upon the certificate of the judge of the court of trial that it is a fit case for appeal, against the person's conviction on any ground of appeal which involves a question of fact alone, or question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal; and*
    c. *with the leave of the Court, against the sentence passed on the person's conviction.*

2. *A person summarily convicted under section 651 may appeal to the court, with the leave of the court, against the sentence passed on conviction, including any order made under that section.*

A child convicted summarily of an indictable offence has a right of appeal to a single Childrens Court Judge pursuant to s222 JA. There is no direct appeal to the Court of Appeal.

See Chapter 12.3.1: Appeals Pursuant to Justices Act 1886

Section 668E CC provides for the determination of the appeal in ordinary cases:

1. *The Court on any such appeal against conviction shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be*

supported having regard to the evidence, or that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that on any ground whatsoever there was a miscarriage of justice, and in any other case shall dismiss the appeal.

1A. However, the Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

2. Subject to the special provisions of this chapter, the Court shall, if it allows an appeal against conviction, quash the conviction, and direct a judgment and verdict of acquittal to be entered.

3. On an appeal against a sentence, the Court, if it is of opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, shall quash the sentence, and pass such other sentence in substitution therefor, and in any other case shall dismiss the appeal.

Pursuant to s669 CC, the Court of Appeal may order a new trial if it overturns a conviction on indictment, if it considers a miscarriage of justice has occurred. The Court of Appeal has other powers in particular circumstances.[764]

Section 669A permits appeals or references on points of law to the Court of Appeal by the Attorney-General.

Section 670 CC provides that any order for restitution of property or for the payment of compensation shall be suspended until the determination of an appeal.

12.5 Sentence Reviews

Section 118 YJA provides that a Childrens Court Judge may review a sentence order made by a Childrens Court Magistrate on application. An application may be made by the child against whom the sentence order was made, the chief executive (youth justice) acting in the child's interest or the complainant or arresting officer for the charge for which the sentence order was made.[765]

[764] See s668F CC.
[765] s119(1) YJA.

If, on a breach proceeding of a community-based order or a conditional release order, an order is made pursuant to ss245 or 246 YJA, that order is a sentence order amenable to sentence review.[766] Section 117A YJA provides that a sentence order in a sentence review includes a declaration under s150A(2) YJA that a child is a serious repeat offender.

The application must be made within 28 days after the sentence order was made or within a later period that may, at any time, be allowed by the Childrens Court Judge.[767]

Section 120 YJA provides for notice of the hearing of the sentence review to be given to the applicant and all other parties by the proper officer of the Childrens Court.

The sentence review is conducted by way of rehearing on the merits.[768]

Section 122 YJA provides:

1. *A review of a sentence must be by way of rehearing on the merits.*

2. *The Childrens Court judge may have regard to—*
    a. *the record of the proceeding before the Childrens Court magistrate; and*
    b. *any further submissions and evidence by way of affidavit or otherwise.*

3. *The review of a sentence order must be conducted expeditiously and with as little formality as possible.*

As a rehearing on the merits, no error in the original proceeding needs to be established. The applicant does not need to show that the sentence was manifestly excessive or inadequate. The review is a re-exercise of the sentencing discretion.

The review should involve a consideration of the Childrens Court Magistrate's sentencing remarks and the sentencing submissions before the Magistrate from either the record of the proceedings or affidavit material. Delays in obtaining the record may impact on the expeditious review as required by s122(3) YJA. That may be overcome by reliance on affidavit material and access to the Magistrates Court file.

[766] ss245(6), 246(6) YJA.
[767] s119(2) YJA.
[768] s122(1) YJA.

The decisions available to the reviewing Childrens Court Judge are specified in s123 YJA:

1. *On reviewing a sentence order, a Childrens Court judge may—*
    a. *confirm the order; or*
    b. *vary the order; or*
    c. *discharge the order and substitute another order within the jurisdiction of the Childrens Court magistrate to make.*

2. *The judge may also make any other order a Childrens Court magistrate could have made in connection with the sentence order as confirmed, varied, or substituted under subsection (1).*

Section 124 YJA provides that if a child starts an ordinary appeal against sentence or conviction or, if another person against whom a sentence order is made, starts an ordinary appeal against the sentence, a sentence review cannot proceed. If a complainant or arresting officer applies for a sentence review and the child starts an ordinary appeal against conviction or sentence, the sentence review cannot be decided until the ordinary appeal is finished.[769]

Section 125(1) YJA provides that no costs may be ordered against a party on a sentence review. Section 125 YJA further provides that the decision of the reviewing Judge takes effect as the decision of the Childrens Court Magistrate who made the sentence order and, subject to s125(3) YJA, may be enforced or appealed against in the same way as the decision of the Childrens Court Magistrate. Sub-section (3) precludes a further sentence review by a Childrens Court Judge and an appeal under s222 JA to a Childrens Court Judge.

Section 125 YJA provides:

1. *No costs may be ordered against a party on a sentence review.*

2. *The decision of a Childrens Court judge on a sentence review—*
    a. *takes effect as the decision of the Childrens Court magistrate who made the sentence order reviewed; and*
    b. *subject to subsection (3), may be enforced or appealed against in the same way as the decision of the Childrens Court magistrate.*

[769] s124(3) YJA.

3. *Subsection (2) does not authorise—*
    a. *a further review by a Childrens Court judge of a sentence already reviewed under this division by a Childrens Court judge; or*
    b. *an appeal to the Childrens Court judge under the Justices Act 1886, section 222.*

If the decision on the sentence review is that the child serve a period of detention or the unserved part of the period of detention, the Judge must direct that a warrant be issued to arrest the child and commit the child to a detention centre.[770]

If a community-based order (a probation order, graffiti removal order, community service order, intensive supervision order, conditional release order or restorative justice order[771] is subject to a review, the effect of the order is stayed until the end of the review.[772] If any period of a community-based order is relevant to the effect of the order or a program, the period between the start and end of the review is not counted for that period.[773]

Pursuant to s121(1) YJA, a Childrens Court Judge may order a stay of all or any proceedings under a sentence order that is subject to a review application. The Childrens Court Judge may impose conditions on the stay which are considerate appropriate.[774] This may be a stay of a detention order. The Childrens Court Judge has jurisdiction to grant bail pursuant to s8 BA and s59 YJA.

See Chapter 12.6.2: Stay of Sentence Orders

If a Childrens Court Judge orders a stay of a proceeding under a sentence order, the proper officer of the court must notify the chief executive (youth justice) of the making of the order.[775]

Section 121 YJA provides:

1. *Without affecting—*
    a. *another power to stay the effect of an order of a court; or*
    b. *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 under this division.*

[770] s126 YJA.
[771] Schedule 4 YJA.
[772] s121(3) YJA.
[773] s121(4) YJA.
[774] s121(2) YJA.
[775] s121(5) YJA.

2. *The Childrens Court judge may impose conditions the judge considers appropriate on the stay.*

3. *Without limiting subsections (1) and (2), if a community-based order is subject to a review under this division, the effect of the order is stayed until the end of the review.*

4. *If the period for which the 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 end of the review is not counted for the purpose of the effect of the order, program, or other thing.*

5. *If a Childrens Court judge orders a stay of a proceeding under a sentence order, the proper officer of the Childrens Court at the place where the Childrens Court judge is sitting must notify the chief executive of the making of the order.*

A sentence review is an appeal for the purpose of the *Bail Act 1980* (BA). Section 8(1) BA provides that a court may grant bail to a person held in custody on the charge if the person is awaiting a criminal proceeding to be held by that court. A **"criminal proceeding"** includes a hearing, trial, or appeal in relation to an offence.[776] Section 59(1) YJA provides that a Childrens Court Judge may grant bail to a child held in custody or enlarge, vary, or revoke bail granted to a child in a criminal proceeding within the meaning of the *Bail Act*.

See Chapter 6.9: Power of Childrens Court Judge as to Bail

12.6 General Matters

12.6.1 Bail Pending Appeal or Sentence Review

Magistrates have jurisdiction to grant bail if the child is awaiting an appeal pursuant to s222 JA.[777]

A Childrens Court Judge has jurisdiction to grant bail in relation to a s222 JA appeal.[778]

Such bail is subject to Part 5 YJA (bail and custody of children). The ordinary position is that the court **must** decide to release the child,[779] unless various exceptions apply.

[776] s6 BA.
[777] s8 BA.
[778] s59 YJA.
[779] s48(2) YJA.

See Chapter 6.9: Power of Childrens Court Judge as to Bail

The usual test of exceptional circumstances having to be shown in relation to bail pending appeal[780] does not apply.

In relation to an appeal to the Court of Appeal, that court[781] or a single Judge of the Supreme Court[782] has the jurisdiction to grant bail. The Court of Appeal's decision as to bail is subject to Part 5 YJA.

A sentence review is an appeal for the purposes of the BA. Section 8(1) BA provides that a court may grant bail to a person held in custody on a charge if the person is awaiting a criminal proceeding to be held by that court. A **"criminal proceeding"** includes a hearing, trial, or appeal in relation to an offence.[783] Section 59(1) YJA provides that a Childrens Court Judge may grant bail to a child held in custody or enlarge, vary, or revoke bail granted to a child in a criminal proceeding within the meaning of the BA.

12.6.2 Stay of Sentence Orders

Section 115 YJA provides that if a child appeals against a community-based order, the effect of the order is stayed until the end of the appeal.

Section 121(3) YJA provides that if a community-based order is subject to a sentence review, the effect of the order is stayed until the end of the review.

Section 121 YJA permits a Childrens Court Judge to order a stay of all or any proceedings under a sentence order that is subject to a sentence review application. This permits a Childrens Court Judge to stay a detention order and grant the child bail pending the review.

See Chapter 12.5: Sentence Reviews

The Court of Appeal may grant bail pending the resolution of an appeal to that court.

See Chapter 12.4: Appeals to the Court of Appeal

[780] See *Ex parte Maher* [1986] 1 Qd R 303.
[781] s8(1)(a)(i) BA.
[782] s8(5) BA.
[783] s6 BA.

Section 211(3) YJA provides that if a child is required to serve a period of detention or the unserved part of a period of detention as a result of an appeal or sentence review, the period or unserved part takes effect from the start of the child's custody on sentence after the appeal or review.

Section 222A JA provides that, if an appeal pursuant to s222 JA is started, against an order for the payment of restitution or compensation or the conviction, the order is stayed until the end of the appeal. Section 670 CC provides that if a notice of appeal or an application for leave to appeal is given to the Court of Appeal, the operation of any order for the restitution of property or for the payment of compensation is suspended until the determination of the appeal or application.

Section 131(20) *Transport Operation (Road Use Management) Act 1995* (Qld) provides that where a person appeals against a conviction for which a disqualification from holding or obtaining a drivers licence followed, the disqualification is suspended upon commencement of the appeal until its determination.

12.7 Mistake in Exercise of Jurisdiction

Section 128 YJA provides that the court may reopen a proceeding in relation to an error and may make a finding or order correcting the error. The time for which an appeal must be made against that finding or order starts from the day the finding or order is made.[784]

See Chapter 2.14: Reopening and Removal of Proceedings

Appendix 1: Role of OPG Child Advocate in Childrens Court (Criminal) Proceedings

Source: Office of the Public Guardian, June 2020

The Office of the Public Guardian (OPG) was established as an independent statutory body on 1 July 2014. The Public Guardian's purpose includes promoting and protecting the rights and interests of children/young people subject to a child protection intervention (s5 *Public Guardian Act 2014 (PGA)*).

What is the Child Advocate role?

[784] s128(6) YJA.

The functions of OPG Child Advocates are defined under s13 PGA (considered below). A Child Advocate's advocacy is focused on supporting children/young people to participate in decision-making and ensuring their rights and interests are protected. Under s54 PGA, a Child Advocate must, to the greatest extent practicable, seek and take into account the views and wishes of the child/young person. A Child Advocate will primarily be focused on promoting the child/young person's views and wishes. Where a child/young person is particularly young, has impaired capacity and assessed as non-Gillick competent, or is unable to express clear views and wishes, a Child Advocate may still advocate for an outcome that is consistent with their rights and best interests in line with the applicable legislation.

OPG has Child Advocates with legal training, called Child Advocate – Legal Officers, or CALOs. A CALO will usually only provide advocacy relating to legal issues, and only where other stakeholders are not able to effectively respond to the child/young person's advocacy needs. A CALO is not a direct legal representative for a child/young person and is not a guardian or decision-maker for the child/young person. A CALO may already be supporting a child/young person with other legal issues when they are charged or required to appear before the Children's Court, in which case the CALO may provide additional assistance to the child/young person through their direct legal representative in relation to matters impacting on their involvement in the criminal justice system. A CALO may assist in providing important contextual information about a child/young person's experience of the child protection system including their access to therapeutic supports, their engagement with education and their placement changes.

Who can a Child Advocate – Legal Officer assist?

A CALO can support a child/young person who is a 'relevant child' under s52 PGA. A 'relevant child' is a child/young person who is currently subject to a child protection order or intervention.

A CALO may support a child/young person anywhere in Queensland. CALOs are predominately based in Brisbane (with outreach to Gold Coast, Toowoomba, and Sunshine Coast), Townsville and Cairns. CALOs may support children/young people in other regional and remote areas through technology (e.g., phone, video-link) where appropriate.

A CALO may support a 'relevant child' until they turn 18, and in some cases the Public Guardian may extend their 'relevant child' status to continue providing support beyond their 18th birthday.

What support can a Child Advocate – Legal Officer provide?

In the context of Children's Court (Criminal) proceedings, a CALO's advocacy may include:

- **helping the child to initiate, or on the child's behalf**, initiating an application to QCAT for review of a child protection matter (s13(1)(j) PGA). This may include supporting a child/young person to apply for a review of placement or family contact decisions in QCAT.
- **Supporting the child/young person at a proceeding before a court** (s13(1)(l) PGA). This may include supporting a child/young person's direct legal representative to understand underlying issues that may be impacting on the young person's criminalisation, provision of complementary submissions in mitigation of sentence, provision of complementary submissions to support case conferencing or negotiation of charges or supporting direct legal representatives to access relevant information to inform submissions to the Children's Court. This information could include the young person's child protection history, trauma background, placement history, history of exposure to physical and emotional harm or neglect, exposure to anti-social attitudes, lack of secure social and familial attachments, unstable living or accommodation arrangements including periods of homelessness, detention, or admission to a health service, and any relevant medical or psychiatric diagnoses. A CALO will usually only provide this support where they are already supporting the child/young person in relation to other issues, and a direct legal representative or other stakeholder has been unable to access and provide this information to the court.
- **Monitoring any plan prepared for the child's health, education or benefit to ensure it is being adhered** to (s13(1)(e) PGA). This may include supporting a child/young person to appeal a decision to suspend, exclude or expel them from a government school, and supporting them to re-engage in education. This may also include advocating to the Department of Child Safety, Youth and Women to ensure the child/young person is being provided with appropriate therapeutic supports including in relation to mental health and neurocognitive impairments and liaising with the child/young person's direct legal representative to consider how psychological or neurocognitive impairments may impact on their fitness, soundness of mind, or capacity for criminal responsibility.
- **seeking to resolve, with the chief executive (child safety), disputes about reviewable decisions including family contact and placement decisions** (s13(1)(g) PGA). This may include working with the Department of Child Safety, Youth and Women to advocate for the young person's rights to be met, including the right to a suitable placement (e.g., the young person is in custody and has no placement address to support a bail application). A CALO's advocacy

in these matters focuses on addressing social and therapeutic issues, as well as systemic issues (e.g., police callouts to residential placements as a behaviour management tool) that may be contributing to the child/young person's criminalisation or limiting bail merit.

The OPG may appear in Children's Court proceedings under s20 *Childrens Court Act 1992 (Qld).* However, a CALO will only appear where necessary to support the child/young person, or if requested by the court.

How to get a Child Advocate – Legal Officer involved

A CALO may already be supporting the child/young person in relation to other legal issues. If not, a child/young person may be referred to the OPG for assessment as to whether it is suitable to allocate a CALO to support the child/young person.

The OPG will consider the following when determining whether to allocate a CALO:

- Whether the child/young person is a 'relevant child' (s52 PGA).
- Whether the child/young person wishes to have a CALO. A CALO will rarely be allocated unless the child/young person consents to the referral and wishes to have a CALO.
- Whether there is a clear role for the CALO to perform, that cannot be performed by another stakeholder already supporting the child/young person (e.g., a direct legal representative, or a Child Safety or Youth Justice officer).

A referral may be made on behalf of a child/young person by contacting the OPG on child-advocate-refer@publicguardian.qld.gov.au and requesting a copy of the current referral form. Once a referral is received, it will be assessed by OPG and a decision to either decline or accept the referral will be communicated to the referrer. Referrals may take up to two weeks to be processed. A similar adjournment period may be appropriate if seeking the involvement of a Child Advocate – Legal Officer in current proceedings. There is no means test involved in the assessment of referrals.

Appendix Two: Neurodevelopmental Domains: What To Look For

Source: Legal Aid Queensland

Neurodevelopmental domain	Refers to	Signs and/or information to look out for
Brain structure/ neurology	• Abnormal head circumference • Seizure disorder • Significant neurological diagnoses	• Documentation of any neurological conditions and any abnormal CT or MRI scans • Microcephaly – a medical condition where a baby's head is much smaller than expected – could be due to certain infections during pregnancy, malnutrition, exposure to alcohol or other substances during pregnancy. *Diagnoses could include Epilepsy, Cerebral Palsy, Visual Impairment, Hearing Loss, Traumatic or Acquired Brain Injury*
Motor skills	• Fine motor skills (manual dexterity, precision) • Gross motor skills (balance, strength, co-ordination) • Graphomotor skills (handwriting) • Visuo-motor integration (effective communication between the eyes and hands)	Reports or observations of: • problems with balance/coordination e.g., appears clumsy. • problems with handwriting • difficulty with motor sequencing; right-left confusion • Head banging, rocking, shaking, or waving for no reason, biting, or hitting self. • Physical or vocal tics e.g., eye blinking, facial grimaces, jerking of arms, legs, or head, grunting, throat clearing. *Diagnoses could include Developmental Coordination Disorder, Stereotypic Movement Disorder, Tourette Syndrome*.
Cognition	• General Intelligence abilities (i.e., IQ) • Verbal comprehension (ability to understand oral language and express ideas in words) • Working memory (ability to hold information in the short-term memory while simultaneously processing it)	Reports or observations of: • Difficulty understanding and learning verbal or visual information. • Slow processing speed i.e., takes longer to answer questions or provide information. • Persistence of childlike behaviour, possibly demonstrated in their speaking style. • Difficulties recalling and completing multi-step instructions or tasks.

	• Perceptual reasoning (ability to organise, classify, draw inferences and problem solve) • Processing speed (ability to perform already automatically and fluently learned cognitive tasks)	*Diagnoses could include Intellectual Disability, Global Developmental Delay*.
Language	• Expressive (i.e., how the person communicates) • Receptive (i.e., how well a person understands) language skills	Reports or observations of: • Difficulties with speech • Limited vocabulary or difficulty expressing oneself beyond simple sentences. • Difficulties following conversations or stories e.g., conversations are "off-topic or "one sided." • Explaining or describing events *Diagnoses could include Language Disorder, Speech Sound Disorder, Childhood-onset Fluency Disorder (Stuttering)*.
Academic achievement	• Includes skills in reading, mathematics and/or literacy (including written expression and spelling)	Reports or observations or: • Leaving school early or difficulties at school • School reports or NAPLAN results *Diagnoses could include Specific Learning Disorder in Reading, Mathematics or Written Expression. Note – Dyslexia is an equivalence name for learning disorder that impacts word recognition, decoding and spelling abilities*.
Memory	• Includes verbal, visual, and spatial memory (i.e., knowledge of the space around them and includes places and how to get to and from them)	Reports or observations of: • Difficulties with encoding (i.e., storing) verbal or visual information. • Difficulties with recalling verbal or visual information • Could miss or be late to appointments or meetings. • Have difficulty encoding or recalling conditions of community-based orders. • Not remembering where a meeting place or office is – even if have been there before.

		• Could be prone to confabulation i.e., making up stories to fill in the gaps they do not remember.
Attention	• Selective attention – focusing on a particular stimulus. • Divided attention – attending to multiple stimuli at the same time. • Sustained attention – attending for long periods of time and resistance to distractions	Reports or observations of: • Difficulties concentrating or completing tasks. • Being inattentive or daydreaming • Easily distracted or forgetful or losing things • Being overly fidgety and squirmy *Diagnoses could include attention deficit hyperactivity disorder*.

Executive function	• A set of higher-order skills involved in organising and controlling one's own thoughts and behaviours.
	• Includes:
	  ○ Cognitive flexibility
	  ○ Inhibition or impulse control
	  ○ Planning and problem solving
		Reports or observations of:
		• Difficulties controlling impulses that are inappropriate in a given context and interfere with goal-driven behaviour.
		• Difficulties with planning and problem solving.
		• Difficulties in adapting to face new and unexpected conditions (i.e., cognitive flexibility) *e.g., bail conditions that keep changing.*
		• Difficulties understanding consequences of actions.
		• Impulsivity – could present as sensation seeking, impatience and difficulties restraining emotional reactions.

Affect regulation	• Mood and anxiety disorders	Reports or observations of: • Difficulty managing emotions. • Longstanding dysregulation rather than a short-term response to unfavourable life events • 'Hot-headed' behaviour – reactive aggression *Diagnoses could include Major depressive disorder, Persistent Depressive Disorder, Disruptive Mood Dysregulation Disorder, Separation Anxiety Disorder, Selective Mutism, Social Anxiety Disorder, Panic Disorder, Agoraphobia, or Generalised Anxiety Disorder*.

Adaptive skills behaviour, social skills, or social communication	• Skills which enable an individual to live independently in a safe and socially responsible manner and how well they cope with everyday tasks	Reports of observations of: • Difficulties with self-care, personal hygiene, managing money. • Difficulties with empathy, remorse, social judgement, interpersonal communication, and the capacity to make and retain friends. • Difficulties understanding and expressing emotions. • Difficulties comprehending personal space and appropriate touch. • Difficulties understanding other people's perspectives – i.e., impairments in theory of mind – may have disordered interpretations of events and other people's intentions. • Use of inappropriate non-verbal communication or difficulties understanding non-verbal communication *Diagnoses could include Autism Spectrum Disorder, Communication Disorder Pragmatic Language Disorder Also Intellectual Disability requires Adaptive behaviour impairments.*

Appendix 3: Practical tips to assist young people with neuro developmental impairments

Source: Legal Aid Queensland, September 2019

Identify impairments as early as possible and alert the court

- Enable appropriate accommodation and ensure access to assessment and intervention.
- Video testimony for those who may find court too distressing.
- Possible mitigation in sentencing.

Be consistent in appointment days and times, activities, and routines

- Limit staff changes whenever possible.
- Prepare the person for any changes in personnel or schedule.
- Work with the person to set reminders of when they have to leave for their appointments with you or the court (*think smart phone*).

Ensure the interview environment is free from distractions

- Use softer lighting and colours.

Have frequent short appointments rather than infrequent long ones

- Do not leave it months between appointments.
- This includes during court appearances, especially if it is a lengthy matter.

Be careful with verbal communication

- Speak slowly and carefully.
- Use simple everyday language.
- Avoid the use of technical terms or abstract concepts (*time, loyalty, etc.*).
- Use multiple senses (*visual, auditory, tactile*).
- Break things down to one step at a time.

Keep questions simple

- Avoid multi-step questions (*Tell me what you were doing on the night. When and where were you going?*)
- Avoid double negatives (*You didn't misunderstand, did you?)*

Give the young person time to process your question

- Avoid interrupting.
- Allow up to five seconds as a general rule (but this may need to be more).

Do not suggest possible scenarios for what could have happened

- Individuals can be prone to confabulation or can be highly suggestible.

Use visual aids where possible

- Prompt cards, photos, dolls, drawings, stick figures.

Always check for true understanding – use the young person's own words

- What does this mean?
- How would you follow this?
- How would you complete this?

Avoid the use of pronouns (*he, she, we, it*)

- Use the names of people you are referring to.

Consider your language

- Anytime you start a sentence with "if" or "when", think again as conceptual reasoning is not generally a strength in FASD.

Any time you need to tell the FASD person "you can't" you must also say "but you can"

- Extrapolating is not a strength – keep it concrete.

Ensure body language is neutral

- Maintain eye contact.

When an instruction is not followed, identify how to help the person remember and follow it when he or she needs to.

Designate a point person

- This is the individual to go to whenever they have a question or a problem or do not know what to do.
- Help explain court processes and bail conditions.

Be prepared they may not be able to tell you what happened in a chronological order

- Support them to tell the story.
- Use visuals where possible.

Ensure written communication is easy to understand

- Use Easy English principles in letters and other documents.

Identify a mentor or rehabilitation buddy for the person to model

- Models are powerful in a context where an individual is prone to following.

Repeatedly role play situations

- Focus on situations the person may get into.
- Model how you would like them to respond.
- Don't generalise – repetition and being specific is key.

Repetition and consistency

- Needed due to damage to working memory, memory, executive functions.

Positive reinforcement systems work better than a reward and consequence system

- If consequences need to be used, they should be immediate, related to what occurred, and over preferably within the same day.

Limit the plans of action

- One overall integrated plan is best.
- One goal (even if it will take longer).

Use a calendar for daily planning with all appointments/activities

- Put appointment time and when to leave for appointment into their calendar/phone.
- Identify clearly how the person will get to appointments; set reminders for appointments in their phone.
- Review how to put appointment into the calendar/phone with the person often until it is routine for them.

Use literal language

- Do not use metaphors, similes, or idioms.
- Ensure the person understands what you are saying.

Jokes aside

- If you joke with the person, let them know you are joking.
- Point out when others are joking and teach them to check out whether someone is kidding or serious.

Evaluate the person's ability to manage life tasks

- Natural consequences often set the person up to be homeless, hungry and at risk.
- Consider a representative payee if necessary.

Capacity for life

- Evaluate the possible need for a guardian.
- What can the person do in terms of reasoning and deciding, and what can't they do.
- Remember capacity is not a unitary concept and the threshold is quite low.

Sometimes it's simply just better to help

- Complete forms and applications with the person.
- Go to appointments with the person when needed.

Stress, anxiety, and arousal

- Identify signs that the person is beginning to get stressed or anxious.
- Identify one or two things that help the person calm down when he or she gets upset.

- Talk with the person about the importance of recognising when they are beginning to get upset (keep it concrete/specific).
- Do what helps to calm them down at that moment.

Identify, provide, and practice the use of a "chill out" space

- Identify safe and unsafe people and situations – be concrete.

Reframe behaviour

- It is not that someone won't do it, they actually can't do it (see *Neurodevelopmental domains: What to look for*).

Adapted from Dr Natasha Reid and Dr Haydn Till (2019).

Appendix 4: Legal Terms in Easy English

Source: Legal Aid Queensland

How do I get a lawyer?

Lawyers are at Childrens Courts in Queensland.

They are called duty lawyers.

If you **do not** have a lawyer, the duty lawyer can help you for free.

You can get a lawyer from:

- Legal Aid Queensland
- ATSILS if you are Aboriginal or Torres Strait Islander
- a different law firm- you can pay for a private lawyer.

You may need a lawyer to help you when:

- you are given another court date.
- your charges are serious. This is when the law says an adult may go to jail for 14 years or more.

You can complete a legal aid application form to get Legal Aid Queensland to pay for a lawyer.

Confidentiality

A lawyer's job is to give you legal advice and speak for you in court.

To do this, a lawyer will ask you lots of questions about your charges.

They will also ask you lots of questions about your life.

When you tell a lawyer this information, it is confidential.

Confidential means the lawyer **cannot** tell anyone unless you say they can.

When you speak to your lawyer you can choose who is in the room.

If you want to speak to your lawyer by yourself, that is okay.

Who will be in court? (See diagram)

There will be different people in the court room.

There is a long table in the middle of the room. The people who sit there are:

- you
- your lawyer

- the prosecutor
- a worker from Youth Justice.

The magistrate sits at the front of the room.

Their assistant sits in front of the magistrate or next to the magistrate.

Your parent or carer will sit at the back of the room.

If you come to court with a friend or partner, they are often **not** allowed inside.

What may happen in court?

The prosecutor and your lawyer will speak to the magistrate.

The magistrate will listen to what they say.

This can happen really fast in words you **may not** understand.

If you **do not** understand what was said, ask your lawyer to explain.

If the court adjourns your case, it means you must come back another day.

Questions a magistrate may ask

Your lawyer speaks for you at court.

But sometimes the magistrate wants to talk to you as well.

If the magistrate asks you a question, you must answer them.

The magistrate may ask you:

- how do you feel about the charge
- if you think you can stick to bail conditions or orders.

Speak in a loud, clear voice so the magistrate can hear you.

Do not use swear words.

Do not call the magistrate mate.

If you **do not** understand the question, ask your lawyer for help.

In court

Do not use your phone in court.

Turn your phone on silent or switch it off.

Take off your hat or sunglasses.

Do not bring any food into court.

When you enter court, the magistrate will start watching you.

Try to be polite and respectful.

Do not use swear words or put your hands in your pockets.

Do not put anything on the long table or swing on your chair.

Legal words

Charge

If police have evidence that you may have broken the law, they can say it was you.

This is called a charge or an offence.

Evidence

When you are charged, you will go to court.

The prosecutor gives their evidence to the court.

Evidence is information a magistrate or jury uses to decide about a court case.

In court, the magistrate or jury will hear stories about what happened.

You will be given the chance to talk about what happened.

Your lawyer will talk about what happened.

The prosecutor will talk about what happened.

The prosecutor needs to show you did the charge.

If they **cannot** show it, you are **not** guilty of the charge.

QP9 report

When you are charged with an offence, police write a QP9 report.

The QP9 report is given to your lawyer at your first court date.

A QP9 report tells you the police officer's story.

It may tell you what proof they have.

If you think the QP9 report is wrong, tell your lawyer.

Your lawyer can talk about it with police.

If you say you did the charge, the prosecutor will read the QP9 report at court.

The magistrate will listen.

Mention

A mention is a time for the magistrate, police, and lawyers to talk about your case.

Some cases need 2 or 3 mentions.

But some cases need more than 10.

It depends on the evidence the police have.

Plea of guilty

Guilty means you did the charge.

If you tell the magistrate or judge you are pleading guilty, you agree you broke the law.

It means you agree with the police's story in the QP9 report.

If you tell the magistrate or judge you are pleading guilty, the magistrate will decide what to do with your case.

Plea of not guilty

Not guilty means you **did not** do the charge.

If you tell the magistrate or judge you are pleading not guilty, you **do not** agree that you broke the law.

You **may not** agree with the police's story.

If you tell the magistrate or judge you are pleading not guilty, your case may be sent to a trial.

Hand up committal

This is where the magistrate gets all the evidence.

You can say you are:

- guilty

- **not** guilty
- or you can say nothing.

The magistrate then sends your case to a higher court.

This is because the law says serious charges must go to a higher court.

Alibi

If you can prove you were somewhere else at the time of the offence, you may have an alibi.

If you have an alibi, it may mean you are **not** guilty of the offence.

If you think you have an alibi, you must call us and tell us about it.

You must call us as soon as possible.

If you do not call us, it may be bad for your case.

Warrant

If you **do not** go to court, the magistrate may issue a warrant for your arrest.

A warrant means the police can pick you up.

If the police pick you up, they may keep you locked up at the watch house.

Conditions of bail

A bail condition is a rule that you must follow.

You must follow all the rules of bail, so you can stay on bail.

The magistrate may make rules that you:

- live at a special address.

- stay at home at nighttime.
- stay away from some places.

- go back to court on another day.

- and some other different rules they may decide.

If you do not think you can stick to the rules, tell your lawyer.

Notice of exercise of power

If the court gives you bail, it means you have agreed to the rules about being on bail.

If you break these rules, the police may pick you up and take you to court.

This is called a notice of exercise of power.

When the police take you to court, the magistrate will ask you why you **did not** stick to your bail.

If you **do not** have a good reason, you may go to detention.

The magistrate will decide this.

Pre-sentence report

If a magistrate wants more information about you before they sentence you, they can ask for a pre-sentence report.

A Youth Justice worker will call you to work out a time to talk about the pre-sentence report.

They may ask you questions about your:

- family

- friends

- school or job
- thoughts about the offences

and some other questions about your life.

After the Youth Justice worker has asked you questions, they will write the pre-sentence report.

The pre-sentence report will go to the magistrate, police, and your lawyer.

The pre-sentence report will help the magistrate decide what to do with your case.

Sentence

A sentence is when the magistrate decides what punishment to give you for your charges.

They may order you to:

- go to Youth Justice
- see a counsellor.

- go to detention.

- or other different things.

Your lawyer will explain these options to you before court.

If you **do not** think you can stick to the rules, tell your lawyer.

Trial

Trial means witnesses come to court and tell the magistrate or jury what they say happened.

A witness is someone the police say saw you break the law.

The magistrate or jury will decide if you are guilty or **not** guilty.

A jury is a group of adults from the community who decide if you broke the law.

A trial may have cross examination.

Cross examination is when your lawyer and the prosecutor ask the witnesses questions about what they say happened.

Breach

If the magistrate gives you an order, you must follow the rules of the order.

If you **do not** follow the rules of your order, this is called a breach, and Youth Justice may warn you.

But Youth Justice can also breach your order.

If you breach your order, Youth Justice will send a report to the magistrate to let them know.

The report will have all the times you **have not** followed the rules of your order.

You will need to go back to court.

The magistrate will decide what happens at court.

Conflict with others

Lawyers and clients have a special relationship.

Your lawyer must do what is best for you.

Your lawyer can only do things you have told them to do.

Your lawyer **cannot** tell anyone anything you tell them.

If you say your lawyer can talk to other people, then they can.

Your lawyer **cannot** do anything you **do not** want them to do.

If your lawyer gives you advice or says things in court, they must make sure they are doing what is best for your case.

There may be other people in your case that have different thoughts to yours.

Co-accused

A co-accused is someone the prosecutor says broke the law with you.

If you have a co-accused, you may have a different memory to them of what happened.

You **may not** agree on who was to blame.

If this happens, your lawyer only has to do what is best for you.

If they need to do what is best for your co-accused, they **may not** be doing what is best for you.

This is why a lawyer or law firm can only represent one person involved in a case.

Conflict with court

Your lawyer must also do what is right to the court.

If you tell your lawyer something, they **cannot** lie to the court about what you told your lawyer.

If you tell your lawyer you committed an offence, they **cannot** lie to the court.

Sometimes this can create a conflict between what is best for you and what is right to the court.

That **does not** mean your lawyer can tell the court you did it.

But your lawyer may need to talk about other ways of dealing with your case.

If that **is not** what is best for you, your lawyer might need to stop being your lawyer.

Then a new lawyer can have a fresh start with your case.

Appendix 5: DYJ Core Interventions and Initiatives

Source: Department of Youth Justice, 27 May 2020

Youth Justice provides targeted service delivery to each young person subject to supervised court orders, which is informed by the evidence on what works to reduce reoffending.

Youth Justice complete professional assessments which guide the service delivery individual young people receive including the level of service intensity, the criminogenic needs targeted and the delivery methods selected.

It should be noted that no one intervention is suitable for all young people. In particular, Youth Justice aims to ensure that intensive interventions are only delivered to young people who are assessed as requiring that level of intervention, as over-servicing can result in additional risk of reoffending.

Aggression Replacement Training (ART®)

Aggression Replacement Training (ART®) is a group based, cognitive behavioural intervention delivered by Youth Justice to address aggressive and violent behaviours. The program aims to develop strategies to reduce aggressive responses, increase positive social skills including effective communication and problem solving, and address developmental delays in moral reasoning by challenging cognitive distortions.

ART® is delivered over 10 weeks, with three sessions each week.

Eligibility Criteria

The young person:

- is aged between 12 and 18 years.
- is on supervised Youth Justice orders or a Conditional Bail Program
- is assessed as requiring a moderate to very high level of service intensity.
- is assessed as requiring an intervention to address aggressive and violent behaviours.
- is willing to participate in the program.

As ART® is a group program, Youth Justice considers the characteristics of other potential participants when selecting suitable young people for the program, including their ages, maturity levels, gender, behaviours, and personal conflicts with other young people.

Referral and Entry Pathways

Youth Justice Service Centres (YJSC) have their own referral process for the program; this may include referrals from key stakeholders in the community. All referrals are screened to ensure that accepted participants require at least a moderate level of service intensity addressing the specific criminogenic needs targeted by the program. Youth Justice Court Coordinators can provide information to the court regarding whether the local YJSC delivers the program, if and when the next program scheduled to be delivered is and the local referral process.

ART® Locations

There is variation in the interventions delivered by Youth Justice across the state, as interventions are selected to meet local needs and YJSC resourcing.

The availability of delivery of ART® is dependent on:

- The availability of a minimum of two trained staff members to deliver the program.
- The identification of a suitable group who would benefit from the program and are well matched to allow learning and reasonable behaviour management.
- The schedule of delivery of ART® and other group programs in the YJSC, as young people cannot enter mid-program.

Youth Justice Court Coordinators can provide information to the court about the specific interventions which are delivered in their local area.

Black Chicks Talking (BCT)

Black Chicks Talking (BCT) is a group-based gender specific and culturally specific intervention delivered by Youth Justice to Aboriginal and/or Torres Strait Islander girls and young women. The program aims to develop participants' understanding of the history of Aboriginal and/or Torres Strait Islander peoples, enhance their cultural connections, and explore their identity as Aboriginal and/or Torres Strait Islander women including their goals for the future. This is achieved through the use of experiential activities, traditional storytelling, and linkages with community partners.

BCT is delivered over five weeks, with one session each week.

Eligibility Criteria

The young person:

- is aged between 12 and 17 years.
- identifies as an Aboriginal and/or Torres Strait Islander female.
- is on supervised Youth Justice orders, a Conditional Bail Program or is at risk of involvement with Youth Justice
- is willing to participate in the program.

As Black Chicks Talking is a group program, Youth Justice considers the characteristics of other potential participants when selecting suitable young people for the program, including their ages, maturity levels, behaviours, and personal conflicts with other young people.

Referral and Entry Pathways

Youth Justice Service Centres (YJSC) have their own referral process for the program; this may include referrals from key stakeholders in the community. All referrals are screened to ensure that accepted participants would benefit from addressing the specific criminogenic needs targeted by the program. Youth Justice Court Coordinators can provide information to the court regarding whether the local YJSC delivers the program, if and when the next program scheduled to be delivered is and the local referral process.

BCT Locations

There is variation in the interventions delivered by Youth Justice across the state, as interventions are selected to meet local needs and YJSC resourcing. Black Chicks Talking commenced in the Far North Queensland Region of Youth Justice and is currently predominantly delivered in that region.

The availability of delivery of BCT is dependent on:

- The availability of a minimum of two staff members to deliver the program; facilitators must identify as Aboriginal and/or Torres Strait Islander women.
- The identification of a suitable group who would benefit from the program and are well matched to allow learning and reasonable behaviour management.
- The schedule of delivery of BCT and other group programs in the YJSC as young people cannot enter mid-program.

Changing Habits and Reaching Targets (CHART)

Changing Habits and Reaching Targets (CHART) is an individual cognitive behavioural intervention delivered by Youth Justice to address the thoughts, feelings and behaviours which influence reoffending. The program aims to develop participants' motivation to change, increase insight into their offending behaviour and develop strategies to reduce reoffending. There are six core modules which are suitable for every young person, and six discretionary modules which are selected for delivery based on the young person's specific needs.

CHART modules are delivered at the frequency and duration appropriate for that young person. At a minimum this will involve one session each week for 16 weeks however, this will extend if young people require additional time to understand the concepts.

Eligibility Criteria

The young person:

- is on supervised Youth Justice orders or a Conditional Bail Program
- is assessed as requiring a moderate to very high level of service intensity.
- is willing to participate in the program.

Referral and Entry Pathways

Youth Justice Service Centres have their own referral process for the program. All referrals are screened to ensure that accepted participants require at least a moderate level of service intensity addressing the specific criminogenic needs targeted by the program. Youth Justice Court Coordinators can provide further information to the court about the local referral process.

CHART Locations

While there is generally variation in the interventions delivered by Youth Justice across the state, all Youth Justice Service and Detention Centres deliver CHART.

Emotional Regulation and Impulse Control (ERIC)

Emotional Regulation and Impulse Control (ERIC) is a brief cognitive behavioural intervention for individuals delivered by Youth Justice to build skills in emotional regulation and impulse control. The program covers content such as mindfulness, emotional literacy, flexible thinking, tolerating discomfort, decision making, and image and identity.

ERIC skills can be delivered in any order and are selected based on the young person's specific emotional regulation and impulse control needs. There are 20 skills in total, each of which can be discussed in a 10–20-minute session.

Eligibility Criteria

The young person:

- is on supervised Youth Justice orders or a Conditional Bail Program; and
- is assessed to have limited emotional regulation and impulse control; and
- is willing to participate in the intervention.

Referral and Entry Pathways

Youth Justice Service Centres have their own referral process for the program; this may include referrals from key stakeholders in the community. All referrals are screened to ensure that accepted participants would benefit from addressing the specific criminogenic needs targeted by the program. Youth Justice Court Coordinators can provide information to the court regarding whether the local YJSC delivers the program and the local referral process.

ERIC Locations

While there is generally variation in the interventions delivered by Youth Justice across the state, all Youth Justice Service and Detention Centres have the availability to deliver ERIC.

Motor Vehicle Offending Program (MVOP)

The Motor Vehicle Offending Program (MVOP) is a group-based intervention delivered by Youth Justice focused on motor vehicle offending. The program aims to develop insight into motor vehicle offending including triggers, urges and environment conditions for this type of offending. The program also focuses on the impacts of motor vehicle offending on the victims and community and supports participants to develop positive strategies to avoid future offending.

The program is delivered over six weeks, with two sessions each week.

Eligibility Criteria

The young person:

- is on supervised Youth Justice orders or a Conditional Bail Program; and
- is assessed as requiring a moderate to very high level of service intensity; and
- has engaged in motor vehicle offending; and
- is willing to participate in the program.

As MVOP is a group program, Youth Justice considers the characteristics of other potential participants when selecting suitable young people for the program, including their ages, maturity levels, gender, behaviours, and personal conflicts with other young people.

Referral and Entry Pathways

Youth Justice Service Centres have their own referral process for the program; this may include referrals from key stakeholders in the community. All referrals are screened to ensure that accepted participants require at least a moderate level of service intensity addressing the specific criminogenic needs targeted by the program. Youth Justice Court Coordinators can provide information to the court regarding whether the local YJSC delivers the program, if and when the next program scheduled to be delivered is and the local referral process.

MVOP Locations

There is variation in the interventions delivered by Youth Justice across the state, as interventions are selected to meet local needs and Youth Justice Service Centre resourcing.

The availability of delivery of MVOP is dependent on:

- The availability of staff members with an understanding of the program content and skills in group facilitation.
- The identification of a suitable group who would benefit from the program and are well matched to allow learning and reasonable behaviour management.
- The schedule of delivery of MVOP and other group programs in the Youth Justice Service Centre, as young people cannot enter mid-program.

Youth Justice Court Coordinators can provide information to the court about the specific interventions which are delivered in their local area.

Transition to Success (T2S)

Transition to Success (T2S) is a voluntary, group based vocational training and therapeutic intervention delivered by Youth Justice, with support from local partners and Register Training Organisations. The program provides opportunities for participants to improve their social and emotional wellbeing and create sustainable education/employment pathways to increase their protective factors from offending.

There are two intakes into the program at each location per year, with each program running for approximately 15 weeks. The group component of T2S is generally delivered over two or three days each week.

Eligibility Criteria

The young person:

- is aged 15-18 years of age;
- is on supervised Youth Justice orders, a Conditional Bail Program or is at risk of involvement;
- is assessed as requiring a moderate to very high level of service intensity;
- is willing and voluntarily consents to consistently attend the program; and
- is not enrolled in any other education program or is at risk of exclusion from mainstream education.

Referral and Entry Pathways

Youth Justice Service Centres have their own referral process for the program; this may include referrals from key stakeholders in the community. All referrals are screened to ensure that accepted participants require at least a moderate level of service intensity addressing the specific criminogenic needs targeted by the program.

Each T2S has two intake periods per year. Youth Justice Court Coordinators can provide information to the court regarding whether the local YJSC delivers the program, if and when the next program scheduled to be delivered is and the local referral process.

T2S Locations

The following Youth Justice Service Centres deliver T2S:

- Aurukun (Rural and Remote)
- Bundaberg
- Caboolture
- Cairns
- Cherbourg
- Gold Coast
- Hervey Bay
- Ipswich
- Logan
- Mount Isa
- Redcliffe
- Rockhampton
- Sunshine Coast
- Tablelands and Cassowary Coast
- Townsville
- Western Districts

Young, Black, and Proud (YBP)

Young, Black, and Proud (YBP) is a group based culturally specific intervention delivered by Youth Justice to Aboriginal and/or Torres Strait Islander young people. The program aims to strengthen cultural knowledge and understanding, build a positive cultural identity and connection, and help participants to challenge negative cultural stereotypes and misconceptions.

The program is delivered over 12 weeks, with one session each week.

Eligibility Criteria

The young person:

- is on supervised Youth Justice orders or a Conditional Bail Program
- is assessed as requiring a moderate to very high level of service intensity.
- identifies as Aboriginal and/or Torres Strait Islander
- is interested in further developing their cultural knowledge.
- is willing to participate in the program.

Referral and Entry Pathways

Youth Justice Service Centres have their own referral process for the program; this may include referrals from key stakeholders in the community. All referrals are screened to ensure that accepted participants require at least a moderate level of service intensity addressing the specific criminogenic needs targeted by the program. Youth Justice Court Coordinators can provide information to the court regarding whether the local YJSC delivers the program, if and when the next program scheduled to be delivered is and the local referral process.

YBP Locations

There is variation in the interventions delivered by Youth Justice across the state, as interventions are selected to meet local needs and Youth Justice Service Centre resourcing. Young, Black, and Proud was developed in the Moreton Region of Youth Justice and is predominantly delivered within that region.

The availability of delivery of YBP is dependent on:

- The availability of a minimum of two staff members to deliver the program; facilitators must identify as Aboriginal and/or Torres Strait Islander.
- The identification of a suitable group who would benefit from the program and are well matched to allow learning and reasonable behaviour management.
- The schedule of delivery of YBP and other group programs in the Youth Justice Service Centre, as young people cannot enter mid-program.

Youth Justice Court Coordinators can provide information to the court about the specific interventions which are delivered in their local area.

Navigate Your Health

Navigate Your Health aims to provide health screening and assessment, referral, and health care coordination to young people subject to community-based youth justice orders. The Navigate Your Health model is supported by dedicated "Nurse Navigators", who are highly trained and qualified Queensland Health clinicians who are responsible for supporting young people with elements of the program. The Navigate Your Health team includes identified Aboriginal and/or Torres Strait Islander Nurse Navigators, identified Māori/Pacific Islander Nurse Navigators and Non-Indigenous Nurse Navigator positions.

Nurse Navigators work with young people and their families to facilitate comprehensive physical, developmental and emotional/mental health assessments, with the goal of identifying any health needs they may have. Nurse Navigators then develop a Health Management Plan that outlines the actions required.

Through involvement in the Navigate Your Health program, children and young people in the Youth Justice system affected by trauma, mental health, disability, developmental delay and/or challenging behaviour can be identified and supported by integrated and therapeutic interventions.

Eligibility Criteria

The young person:

- is aged between 10 and 17 years, at the time of referral;
- is subject to a community-based order, case managed by a YJSC in one of the pilot locations (see below) with a minimum order of three months in total, or with three months remaining in the duration of their order;
- consents to the referral to participate in the Navigate Your Health program.

Referral and Entry Pathways

- Youth Justice Caseworkers are the single point of referral to the Navigate Your Health program.
- In instances where a family member, another professional, community or health agency believes that a young person requires a referral to Navigate Your Health, they can inform the Youth Justice Case workers who can then facilitate the referral.
- If young person who is referred to Navigate Your Health while on a community-based order is at some point later being held in custody, the Nurse Navigator will continue to work with them on the Program, with the view that ongoing health care coordination support by NYH will continue both while the young person is in custody and upon their release.

Navigate Your Health pilot locations:

Pilot site locations include:

- Brisbane North
- Brisbane South
- Western Districts
- Logan
- Cairns

SMART

SMART is an interagency partnership between key government departments, chaired by Department of Youth Justice (DYJ). Key participants include DYJ, Queensland Health, Department of Education, Department of Child Safety Youth and Women (may include Specialist Services, Aboriginal and Torres Strait Islander family support services as required) cultural representatives and other services as deemed necessary on a local level.

Eligibility Criteria

The young person:

- Has had contact with the court (e.g., on community orders or on bail);
- Are assessed as being of high need and at risk of being remanded in custody, as evidenced by:
    - Identified high needs using the Youth Level of Service/Case Management Inventory (YLS/CMI or YLS CMI SRV) or
    - If under functional age of 14 years, determination by a Youth Justice professional-level officer, or
    - Approval by the Youth Justice Service Centre manager
- Have significant vulnerabilities (e.g., previously referred/considered for fitness or soundness assessments, have a suspected or verified disability, deficits, or impairments, disengaged from education);
- Are not effectively engaged in services relevant to their vulnerabilities;
- Require the involvement of more than two SMART panel agencies**.**

Referral and Entry Pathways

A SMART agency, in partnership with Youth Justice, can refer a young person if they are eligible and provide consent or the agency can identify legislative provisions for sharing of information without consent.

SMART locations:

SMART locations include;

- Brisbane North
- Gold Coast
- Ipswich
- Logan
- Caboolture
- Cairns
- Townsville
- Mt Isa.

Conditional Bail Program (CBP)

The court may consider that a young person poses an unacceptable risk of breaching bail without more intensive support whilst in the community. A legal representative or court may ask youth justice to prepare a conditional bail program (CBP).

A CBP should not replace a young person's usual entitlement to bail. Except in instances of more serious charges and/or the presence of a significant criminal history, it should generally only be considered where the young person had already been afforded prior opportunities on bail with less onerous conditions and that the young person is likely to be remanded into detention otherwise.

The CBP engages a young person in activities to develop their capacity to comply with their bail undertaking. It does not specifically address the young person's alleged offending behaviour, nor does it include monitoring other bail conditions, which do not include youth justice. A program may be complemented by a bail support referral where the young person experiences unstable accommodation.

Eligibility Criteria

A young person can only be placed on a CBP when a court grants them bail and makes participation in the CBP a condition of their bail undertaking. As detention (and in the pre-sentence scenario, remand) should be an option of last resort, Youth Justice provide CBPs as a remand alternative that addresses the young person's risks of reoffending.

Referral and Entry Pathways

Both the court and defence may request a Youth Justice Service Centre to prepare a CBP for matters before the court if deemed suitable. Where a young person is on remand and a CBP has been requested by defence, YJSC managers are required to make the decision whether to decline this request and to provide their rationale for this.

A court may place a young person on a CBP when the court grants them bail and makes participation in the CBP a condition of their bail undertaking.

CBP Locations

Youth Justice across the state are able to deliver a CBP to a young person, however the type and intensity of the CBP may vary across the state to meet local needs and Youth Justice Service Centre resourcing.

Restorative Justice – ADP

Alternative Diversion Programs (ADPs) were introduced into QLD legislation in 2016 to ensure that children diverted to non-sentence based restorative justice referrals could remain diverted if a conference could not be held under legislation i.e., when there is no degree of victim participation as outlined under s35 of the *Youth Justice Act 1992*.

Eligibility Criteria

The young person:

- Is referred to a restorative justice process under s22, 24A or 164 of the *Youth Justice Act 1992;*
- Youth Justice determine that a conference cannot be held under legislation through no fault of the young person;
- And there is no degree of victim participation in the restorative justice process.

Referral and Entry Pathways

Any child who has admitted to or been found guilty of an offence can participate in an ADP provided that a restorative justice conference could not be held through no fault of the young person, that there is no degree of participation by a victim of the offence/s in the process and they have been referred to a restorative justice process via:

- A police referral under s22
- A Court based police referral under s24A, or
- A Court Diversion referral under s164

All matters referred to Youth Justice as restorative justice processes are to be referred as conferences in the first instance.

ADP Locations

Youth Justice across the state are able to conduct an ADP as per the legislation, however availability to do so may vary across the state to depending on local services and Youth Justice Service Centre resourcing.

Restorative Community Service Orders

A key aim of the *Youth Justice Strategy 2019-23* is to expand the use of restorative processes offered to children who come into contact with the Youth Justice system. Additionally, the Major General's *Townsville's Voice* report recommended that children and young people subject to Community Service Orders (CSO) should participate in activities that are reparative and visible to the community and while also perceived to be meaningful by the young people completing the activity.

A restorative CSO does not replace traditional CSO, it instead involves the community in the decision-making process around where, what, and why a young person would complete CSO activities. Community involvement is at the heart of this initiative, but all of the legislative requirements pursuant to CSO still remain.

Eligibility Criteria

The young person:

- Must be subject to a Community Service Order;
- May complete some or all of the hours on the order by way of restorative activities;
- Must agree to take part in activities that are restorative inclusive of meeting members of community groups or agencies;
- Be suitable to conduct work activities in the community.

Referral and Entry Pathways

- Restorative CSO is available for any child who is ordered to a CSO.
- Youth Justice assess the child's suitability to be engaged with various community agencies or businesses.

Restorative CSO locations:

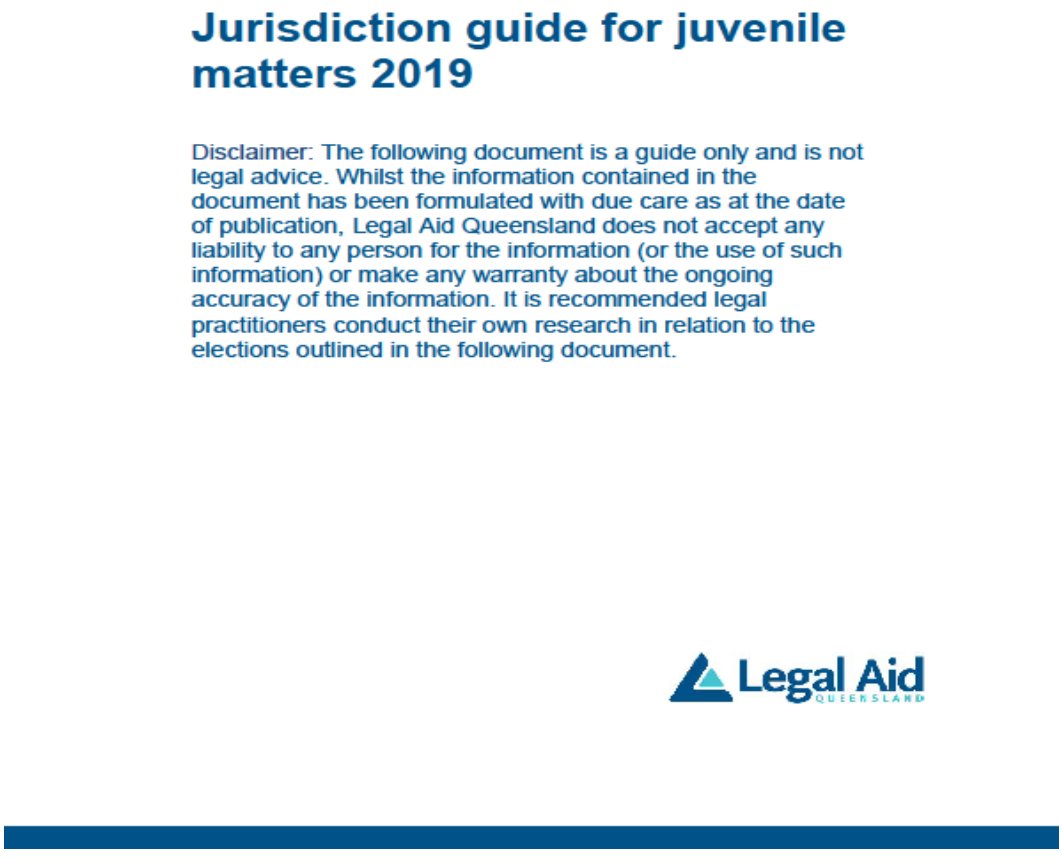
Restorative CSO are currently being trialled at the following locations:

- Townsville North
- Mackay
- Mt Isa
- Western Districts
- Gold Coast.

Appendix 6: Jurisdiction Guide for Juvenile Matters 2019

Source: Legal Aid Queensland, June 2020[785]

Note: Click on the below cover page to open the appendix as a separate document



[785] On 4 October 2023 David Law, Assistant Director of Youth Legal Aid, confirmed that the '*Jurisdiction guide for Juvenile matters 2019'* has not been updated since October 2019.

Appendix 7: Tips for Effective Communication with Indigenous Clients

Source: ATSILS Continuing Professional Development, presented by C'Zarke Maza on 2 May 2017

INTRODUCTION

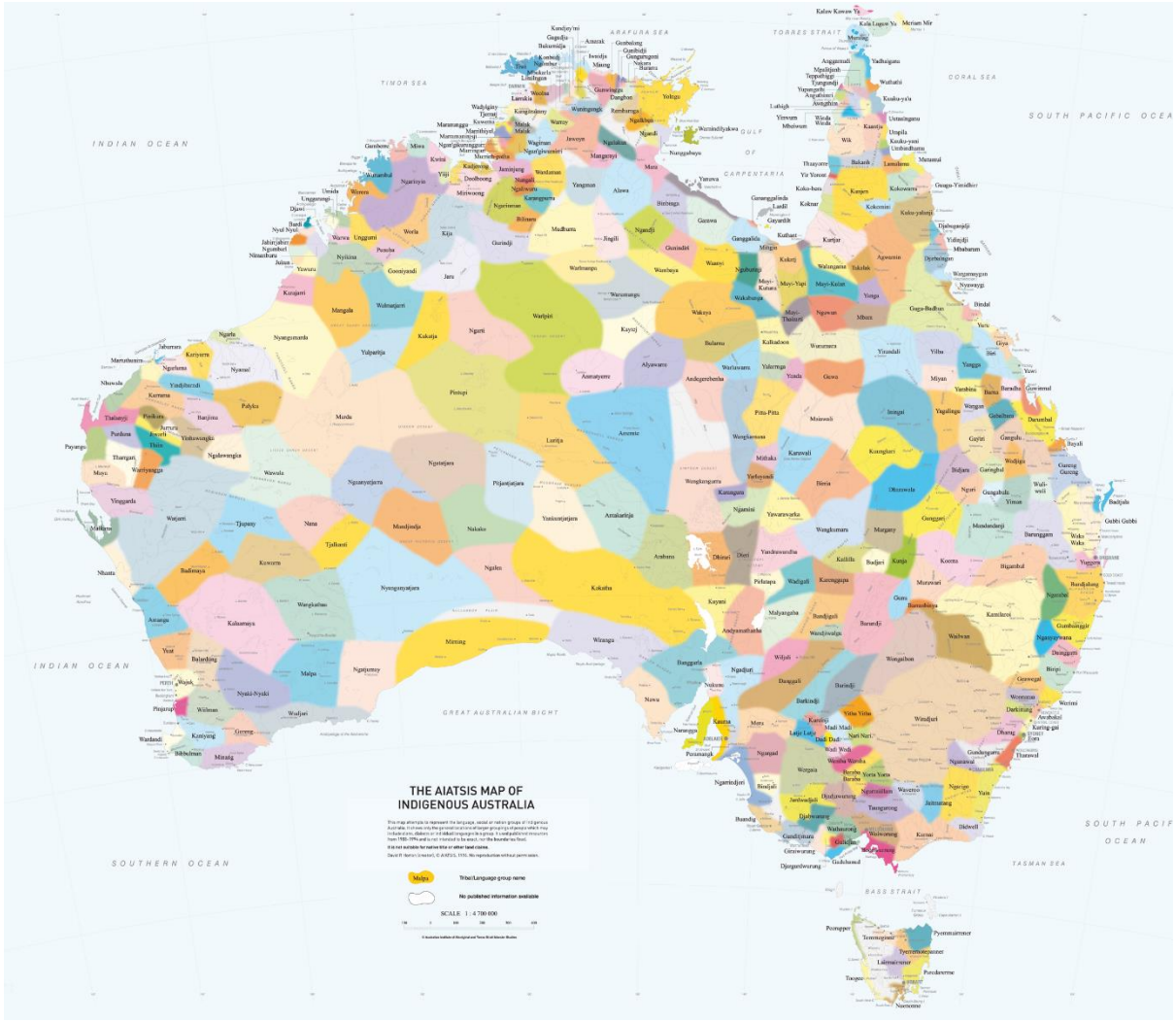
For many lawyers, especially those who do not identify themselves as Aboriginal or Torres Strait Islander or those who do not have Indigenous heritage, communicating with Indigenous clients can often pose some special challenges. For instance, because of the significant differences in language and culture, there is a much higher than usual risk of miscommunication. This is problematic and can often result in serious consequences.

This paper will propose to offer those in the legal profession with some useful tips that may assist lawyers in their communications with Indigenous clients. This paper will provide some related discussion on potentially problematic issues that may arise between a lawyer's obligations under either the Australian Solicitor Conduct Rules or Barrister Conduct Rules and when following an Indigenous client's instructions.

As Indigenous people are culturally, linguistically, and geographically diverse, it must be remembered that some of the information and tips in this paper may not necessarily be relevant and applicable as a blanket approach to all Indigenous clients. There is no 'one size fits all' approach to effectively communicating with Indigenous clients. With that said, what this paper aims to achieve is providing useful information that will be relevant for lawyers who have dealings with Indigenous clients. Further, this paper will hopefully assist lawyers in providing a better level of service to their Indigenous clients, including better protecting the interests of their client and fulfilling their obligations as an officer of the court.

Understanding, Respecting and Accommodating Language Difference

Before there can be any form of effective communication with an Indigenous client, the speaker (i.e., lawyer, paralegal, etc) must first come to understand, respect, and accommodate the diversity of the Aboriginal & Torres Strait Island populations, one that is apparent from whatever perspective one chooses - geographic and demographic, cultural, linguistic, political, and economic.



"To effectively communicate we must realise that we are all different in the way we perceive the world and use this understanding as a guide to our communication with others."

– Anthony Robbins

In Queensland, over 100 Aboriginal and Torres Strait Islander languages and dialects were once spoken. Today around 50 of these remain spoken (in varying degrees), with less than 20 being used as first languages, predominantly in the north of the state, i.e., Cape York and the Torres Strait. The 2011 Census states that approximately 8 % of Indigenous people in Queensland speak an Indigenous language as their primary language and where English is their second, third or fourth language.[786]

[786] Biddle, N. 2011. 'Indigenous Population Project 2011 Census Papers', *CAEPR Working Paper No. 1,* CAEPR, ANU, Canberra at page 10.

What appears unclear in these statistics, however, is whether this percentage is inclusive of vernaculars such as pidgins, Creoles, or Aboriginal English.

What is evident from these Census statistics, is that most Aboriginal and Torres Strait Islander people will largely speak English when speaking with non-Indigenous people. However, it is important for a lawyer when representing an Indigenous client to acknowledge the fact that they should not simply assume an Indigenous client is speaking proficient Anglo-Australian English, or is sufficiently comfortable doing so in a courtroom setting.[787] Indeed, the 2011 Census further discloses that among the 17 % of Aboriginal and Torres Strait Islander people who spoke English as their primary language at home, also reported that they did not speak English well.[788]

The traditional languages and dialects actively spoken in Indigenous communities throughout Queensland are too many to list in any great detail given the limitations of this paper. This paper will discuss, however, the traditional languages of the Torres Strait Islands, Miriam Mir, Kala Lagaw Ya and their dialects, Torres Strait Creole, and Aboriginal English which the writer of this paper largely has dealings with on a day-to-day basis.

Meriam Mir (also written as Miriam Mer) is the Language of the Eastern Islands of the Torres Strait. Linguistically, it is connected to the Papuan languages of the Austronesian family of languages. There are two regional dialects:

- **Mer dialect** – Mer (Murray), Waier, Dauar.
- **Erub dialect** – Erub (Darnley) and Ugar (Stephen).

Kala Lagaw Ya (also written as Kalaw Lagaw Ya) is the traditional language owned by the Western and Central islands of the Torres Strait. It is linguistically connected to the Aboriginal languages of the Australian mainland and has four distinct regional dialects derived from this language:

- **Mabuyag** – The dialect of Mabuiag, Badu, and St Paul's Village.
- **Kalaw Kawaw Ya** – The dialect of the top western islands of Saibai, Dauan and Malu Ki'ai.
- **Kawrareg** – The dialect of the southwestern islands of Kubin, Kaiwalagal, Muralag (Prince of Wales), Nurupai (Horn), Giralag (Friday), Waiben (Thursday Island), Keriri (Hammond), Maurura (Wednesday), Moa (Banks). It is also known as Kawalgau Ya.

[787] See *Adamopoulos v Olympic Airways SA* (1991) 25 NSWLR 75
[788] Australian Bureau of Statistics, *2076.0 Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians, 2011 – Language* (28 November 2012)

- **Kulkalgau Ya** – The dialect of the central islands of Aurid (Aureed), Damut (Dalrymple), Iama (Yam or Turtle-backed), Masig (Yorke), Mauar (Rennel), Naghir (Mt Earnest), Poruma (Coconut) and Warraber (Sue).

The dialects are determined geographically and developed over time with influences by traditional trade, visits, inter-marriage, and kinship ties.

Torres Strait Creole

Torres Strait Creole ("Creole"), which is related to Kriol, is the most widely spoken indigenous language in Queensland. The contact with missionaries and others since the 1800's has led to the development of Torres Strait Creole; it has developed from a Pidgin and now has its own distinctive sound system, grammar, vocabulary, usage and meaning. Torres Strait Creole (also known as Ailan Tok or Yumplatok) is spoken by most Torres Strait Islanders (and many Aboriginal people in the Northern Peninsula Area) and is a mixture of Standard Australian English and traditional languages. It is an English-based creole; however, each island has its' own version of creole.

Aboriginal English

Many Aboriginal people throughout Queensland speak dialects of English also known as 'Aboriginal English' which is also known as 'non-standard English'. Aboriginal English is a term generally used to denote the dialects of English used among Aboriginal people of urban and rural backgrounds throughout Australia. Usually, such dialects are spoken in a domestic or familiar social environment. The differences between standard and Aboriginal English are found in every area of language sounds or accent, grammar, vocabulary, meaning, use and style.[789] Some Aboriginal people are 'bi-culturally competent', adept at switching between Anglo-Australian English and Aboriginal English. However, many people are not:

> *"The number of Aboriginal English speakers who are truly bi-culturally competent is very small. The extent of bi-cultural competence…depends to a significant extent on the individual's experience in mainstream domains, such as education and employment… [E]xperience with Aboriginal students in tertiary education indicates that even many of them lack significant bicultural competence."*[790]

Problems associated with the grammatical structure, word usage and the meanings of words in Aboriginal English are likely to create a significant risk of misunderstandings and miscommunication in the legal system.

---

[789] D Eades Aboriginal English and the Law, The Queensland Law Society Inc, 1992, p 25

[790] Id, p 1.

In view of these Indigenous languages and dialects spoken throughout Queensland, for a lawyer such may pose as a significant obstacle when attempting to obtain instructions from an Indigenous client. Particularly so, when a lawyer is ethically bound to obtain and act only on lawful, proper, or competent client instructions.

> Australian Solicitor Conduct Rules
>
> 8.1. A solicitor must follow a client's **lawful, proper, and competent instructions**.
>
> Barrister Conduct Rules
>
> 39. A barrister must seek to assist the client to understand the issues in the case and the client's possible rights and obligations, sufficiently to permit the client to give **proper instructions**, including instructions in connection with any compromise of the case.

In light of these legal and ethical rules, what should a lawyer do in situations where a client is unable to provide competent and proper instructions but is in need of legal assistance? There is certainly need for clarification in relation to a lawyers legal and ethical position. The rules provide little guidance about what the lawyer should do. For instance, at what point is the presumption of 'proper' and 'competent' instructions displaced? This is a very significant issue for lawyers in publicly funded legal assistance services.

The recent Western Australian Court of Appeal decision involving an Aboriginal Pintubi speaker, Gene Gibson whose conviction for manslaughter was overturned, highlights these legal and ethical dilemmas faced by one lawyer. Not only providing a good case study on point, but it is also a good reminder of the thin ice a lawyer walks on when following dubious client instructions. During the appeal hearing, it is reported that the appellant Gibson told the Appeals Court that when he pleaded guilty, he did not understand what was going on and said he was advised by his lawyer to pleaded guilty to manslaughter.[791] Gibson then went on to tell the Court that his lawyer (which Gibson's lawyer later denied) told him if he pleaded not guilty, he would get a "big time" prison term of about 20 years, whereas if he pleaded guilty he would get a "small time" sentence of about nine.[792]

It is further reported that when Gibson's lawyer gave evidence, he told the Appeal Court that when the DPP offered to downgrade the charge to manslaughter soon before the trial was set to begin, he said he felt pressured to quickly act on this plea deal.[793] As reported, Gibson's lawyer was subtly

[791] See ABC News article "Gene Gibson advised to plead guilty after witness statements implicated him in Broome death, court told" (4 April 2017)
[792] Ibid
[793] See ABC News article "Gene Gibson's lawyer says he felt under pressure to act on manslaughter plea deal" (5 April 2017)

questioned about the instructions he obtained from his client (i.e. whether he was acting on lawful, proper and competent instructions), he revealed to the court the general communication difficulties he had with his Indigenous client, which he described as "inscrutable".[794] Further, he said that after the plea offer from DPP he met with his client, without an interpreter, and then relayed the plea offer to the judge's associate. It is noted that the Trial Judge at the time had sensibly adjourned the matter after raising concerns about whether Gibson had given his lawyer instructions without an interpreter. Gibson's lawyer told the Appeal Court he was also "troubled" about acting on those instructions and explained that it was not easy to get a Pintupi interpreter. After Gibson had finally entered his plea of guilty with the assistance of a Pintupi interpreter, it is reported that Gibson's lawyer told the appeal court that his client may still not have always understood what he was saying but chose to still act on those instructions.[795] As reported, Gibson's lawyer then explains what compelled his actions in this matter. Namely, he told the Appeal Court that the WA Aboriginal Legal Service was under resourced and at the time the plea bargain was struck in the Gibson matter he was under a lot of pressure, over-worked and handling multiple homicide matters at the time.[796]

Indeed, such a concession by Gibson's lawyer could be viewed that he acted on questionable, doubtful, or dubious client instructions. That he did not displace this presumption of 'proper' and 'competent' instructions. Interestingly, could this therefore be regarded as an ethical breach of a lawyer's duty to act *only* on competent and proper instructions? Could this lead to disciplinary proceedings? Despite internal investigations being conducted by the WA ALS, it is certainly too early to tell what will transpire, if at all anything.[797] What can be drawn from this case study, what is paramount for any lawyer, is - not jeopardising an individual's right to the most careful presentation and consideration of their case, despite all odds, such as difficulties communicating with clients and pressures that are common in any busy legal practice. More importantly, that a lawyer **must** only follow and act upon an Indigenous client's lawful, proper, and competent instructions.

His Honour Justice Muirhead highlights this issue, when he stressed the importance of receiving adequate instructions before appearing for Indigenous clients in *Putti v Simpson* (1975) 6 ALR 47, at 50-51:

> *"...it is absolutely vital that counsel remember their function and obligations, not the least of which is to ensure they are adequately instructed before appearing for clients - especially when the liberty of those clients may be in jeopardy - and that the clients*

[794] Ibid
[795] Ibid
[796] Ibid
[797] See ALS Media Statement – Gene Gibson (12 April 2017)

are properly advised. These matters are basic. Half-baked instructions which may come from unreliable sources are, as a rule, just not good enough. The practice of appearing with only hurriedly gained instructions, especially where language or cultural differences jeopardise understanding, may result in substantial injustice to individuals.

...

If counsel requires an adjournment for a given purpose, surely it is his responsibility to make a firm application in unambiguous terms. If the grounds have merit, such an application will seldom be refused. If counsel does not understand his client's instructions then he should not proceed until he does.

...

I am not unaware of the difficulties faced by all involved in the administration of justice in remote areas, of poor communications, of the problems encountered in obtaining instructions, in arranging legal representation, of arranging for interpreters and for the attendance of witnesses. There are many problems such as distance and weather which jeopardise transport arrangements. Yet neither these matters, nor crowded lists to be coped with on hurried court itineraries, should be allowed to jeopardise an individual's right to the most careful presentation and consideration of his case."

In consideration of Justice Muirhead comments, what steps should be taken therefore when a lawyer who is representing an Indigenous client seriously doubts their client's ability to provide competent or proper instructions? A good starting point would be to first determine an Indigenous client's proficiency in English and ultimately their ability to provide proper or competent instructions. This, however, can be a complicated process because of the use of, for example Creole or Aboriginal English. Indigenous clients may often use English words, but the meaning of those words can differ significantly from the Anglo-Australian English meaning of the same words. The result is that you might hear a person using English words and mistakenly assume they can communicate proficiently in English.

For example, some of the differences between Creole/Aboriginal English and Standard English meanings:

Creole/Aboriginal English	**Meaning (in Standard English)**
Kill	To hurt physically (hit, kick, punch, strike, injure etc.)
Don't have to	Must not

Cheeky	Aggressive or dangerous
Can't	Will not (e.g., I can't help you = I won't help you)
Force	Tease or tempt
I don't know	I can't explain it
Drunk	Tipsy
Smash	Wrecked, rough, messy (e.g., kitchen be smash = the kitchen was messy)
Hit	To punch, push, slap
Deadly	Fantastic, great, or awesome.

> **"The difference between the right word and the almost right word is the difference between lighting and the lightning bug."**
>
> **– Mark Twain**

As illustrated in the above table, sometimes these differences in meaning can obviously become an issue at law. A now notorious pitfall for the inexperienced lawyer (and often police officer) is to accept the use of the word 'kill' at face value, since in Aboriginal English (as with Creole) **kill** means to 'hit', 'strike' or 'injure' and not necessarily 'kill dead'.

Assessing an Indigenous client's proficiency in English

When assessing an Indigenous client's proficiency in English there are dangers if simply relying on the attainment of the client's general antecedents (for example, when filling out a court sheet). Just because a client can adequately answer simple questions about life does not mean they have sufficient English proficiency to understand court proceedings, discuss legal concepts or listen to and give evidence in court.

Most Indigenous people who speak English as a second language may have had repeated experience providing their antecedents to service providers (*where do you live? What's your date of birth?, are you employed?, etc*.) In view of such, no reliance should be made on an Indigenous client's ability to provide such information as the sole basis for deciding whether they are proficient in English and therefore competent to provide instructions. In order to get a more accurate picture of a person's

English proficiency, one must move the conversation into topics and styles that an Indigenous client does not use on a regular basis.

Further, when assessing an Indigenous client's proficiency in English, a lawyer may out of habit resort to asking questions with yes/no responses. There are, however, pitfalls if a lawyer overly modifies their speech in this manner. Simply relying on yes/no questions is not a good method of deciding whether an Indigenous client is proficient in English. In these situations, even though the client appears to easily answer questions with a yes/no response, they have not been provided with the option of fully expressing their own story or version of events.

> **"The most important thing in communication is hearing what isn't said."**
>
> **– Peter Drucker**

How the courts have approached the issue of language difficulties:

In *The Recognition of Aboriginal Customary Laws,* the Australian Law Reform Commission (ALRC) pointed out that conceptual as well as language issues may render an Aboriginal accused unfit to plead:

> "*A difficulty that has arisen in a number of cases concerning Aborigines relates to their fitness to plead (and thus to be tried) because of their inability to understand the charge or the nature and course of the court proceedings to which they are being subjected. This difficulty may result in part from language problems, which can be addressed, if not overcome, by the provision of an interpreter. However, such problems may still occur, because it may be difficult, perhaps impossible, to explain even basic legal concepts to an Aborigine who has no knowledge or experience of the criminal justice system (e.g., the concepts of 'guilty' or 'not guilty').*"[798]

At common law, an inability to understand the plea and its consequences may render an Indigenous accused unfit to plead. In a High Court decision of *Eastman v, The Queen* [2000] HCA 29, Justice Gaudron considered that the issue of fitness to plead arises where "language difficulties make it impossible for [an accused] to make a defence".[799]

TIPS FOR OVER-COMING LANGUAGE BARRIERS

[798] ALRC, The Recognition of Aboriginal Customary Law, Report No 31, 1986. See also *Eastman v The Queen* [2000] HCA 29
[799] Id at [59] per Gaudron J.

> **"If you talk to a man in a language, he understands that goes to his head. If you talk to him in his language, that goes to his heart."**
>
> **– Nelson Mandela**

Interpreters

As a general rule, it is clear that a lawyer must act on instructions from a client when they provide proper or competent instructions.[800] What happens however, if a lawyer has serious doubts whether their Indigenous client is providing proper or competent instructions? The Australian Solicitor Rules and Barrister Conduct Rules aren't particularly helpful on this issue. What consequences flow, if any, if a lawyer follows/acts upon a client's improper and incompetent instructions? Will it be regarded as a breach of lawyer's ethical professional duties? It is the authors opinion that it is a lawyer's role and duty to assess their client's ability to give proper and competent instructions.

It is commonly accepted, not to mention good practice to refer a client for a medical assessment when a client's capacity is in question. In fact, lawyers who have followed a client's instructions when the client lacks capacity, even inadvertently, has led to disciplinary proceedings and civil liability for negligence.[801] Considering such, if an Indigenous client's ability to give proper or competent instructions is in question, would not it also be warranted to obtain the assistance of trained linguist/interpreter? If so, a good starting assumption is if an Indigenous person speaks English as a second language and has had limited education in English, it is likely that the lawyer should therefore work with an interpreter. This is especially true when you are dealing with specialised legal language, such as bail, conditions, operational periods, and unfamiliar situations with technical jargon, such as courts.

Tips for assessing need for an interpreter

Assess the client's response and any other communication you have already had with them by using the columns below. If two or more of the points in the 'likely to need an interpreter' column apply to your client, it is advisable to work with an interpreter.

	Likely to need an interpreter	**Less likely to need an interpreter**

[800] Rule 8 of the Australian Solicitors Conduct Rules states that you must follow a client's lawful, proper and competent instructions and Rule 39 of the Barrister Conduct Rules – 'proper instructions'.
[801] *Legal Services Commissioner v Ford* [2008] LPT 12

Articulating back	The person has difficulty articulating back what you said to them.	The person is able to meaningfully articulate most of what you said to them using their own words.
Short or long answers	The person only speaks in short sentences (four or five words or fewer) or mainly gives one-word answers.	The person speaks in full sentences of six to seven words or more and elaborates on answers to questions.
Agrees or disagrees	The person consistently agrees with your questions or propositions you put to them.	The person is easily able to disagree and articulate a different point of view.
Inappropriate responses	The person frequently responds inappropriately to your comments or questions (e.g., responding with 'yes' to 'what' or 'where' questions).	The person consistently responds meaningfully and appropriately to questions and comments.
Unsure of meaning	You are sometimes unsure about what your client is telling you, even when the words and grammar they are using are clear to you.	You can process the person's speech clearly and understand what they are telling you.
Contradicts themselves	The person appears to contradict themselves and is unaware of the apparent contradictions.	The person does not contradict themselves, or if they do, they are aware of it and can address the contradiction.
Uses new vocabulary	The person does not add significant amounts of new vocabulary to the conversation. They rely on using the words or phrases you have previously said to them.	The person frequently adds new vocabulary to the conversation.
Good grammar	The person does not use correct grammar. E.g., mixes up pronouns ('he' instead of 'she') or uses the past tense incorrectly ('he look at me').	The person's grammar is mostly correct.
Repeating and simplifying	You find yourself frequently needing to restate and simplify your messages.	You can talk easily in a normal manner.

A lawyer wishing to engage an interpreter for court proceedings, it is beneficial to know that the court can arrange interpreters for some court proceedings. The court can also bear the costs of

interpreters.[802] The National Accreditation Authority for Translators and Interpreters (NAATI) also provide accredited professional interpreters for individuals or organisations.[803]

Court Support Officers/Field Officers – Cultural translators and Interpreters

Notably, in Queensland, Field Officers/Court Support Officer's employed by the Aboriginal & Torres Strait Islander Legal Service (being Indigenous designated positions) play a key role in connecting often vulnerable Indigenous people to legal services and helping to overcome the apparent cultural and linguistic barriers ever so present today. It has been noted that Indigenous Field Officers/Court Support Officers are:

> *"**cultural translators and interpreters** ⋯ [who] ⋯ operate between and on behalf of [ATSILS] lawyers and ⋯ clients ... Field Officers provide Aboriginal people with immediate access to advice [i.e., legal information] and assistance ⋯ arrange for referral in appropriate cases ⋯ and they provide legal and social justice education in the community. They provide assistance in areas such as criminal law, care and protection, and prisoner matters."*[804]

Indeed, Field Officers/Court Support Officer's play are integral role in the frontline service delivery for ATSILS and ensure ATSILS provides a culturally competent service. For a lawyer (particularly non-Indigenous), they are an important means of facilitating engagement between Indigenous clients and lawyers and thereby enhancing culturally appropriate services. More importantly, they are a means of preventing any misunderstanding between lawyer and client and subsequently, a means of preventing any risk of misinterpretation between the courts and the client.

The courts position in regard to interpreters

Australia is bound by a number of international agreements and conventions implying rights to an interpreter for NESB people facing criminal charges where they are unable to participate effectively in proceedings due to language difficulties.[805] Requirements also extend from common law where defendants in criminal cases have the strongest claims to interpreters, while the need for interpreters for witnesses in civil and criminal matters is less compelling.[806] The situation is clarified by His Honour Justice Mildren:

---

[802] See Practice Direction No. 7 of 2010 - Interpreters – Magistrates Court criminal proceedings. See also Practice Direction No. 1 of 2010 - Interpreters – District Court.
[803] See https://www.naati.com.au
[804] See www.alsnswact.org.au
[805] Laster, K. & Taylor, V. 1994, *Interpreters and the Legal System*, Federation Press, Sydney, Chapter 4.
[806] Ibid, p 78.

> *"An accused person who does not understand the language of the court is entitled to an interpreter and this right cannot be waived unless the person is represented by counsel. In civil cases a party—and, it is submitted, in both civil and criminal cases, a witness—may have the services of an interpreter only with the leave of the court."*[807]

Risk management strategies

If a lawyer decides however, that their Indigenous client does not require the assistance of a Field Officer/Court Support Officer or an interpreter, the lawyer must then be satisfied that their client can handle the full range of language (including speed, technical terms, implied accusations, and nuances) they will encounter in the court situation. Otherwise, the lawyer is putting their client at a disadvantage compared to a native speaker of English in the same situation. If such a course is taken, there are some good risk management strategies that can be put in place, namely:

- Document, document, document everything: due diligence would require the lawyer to fully document the efforts made, steps taken during their assessment and reason for their decision.
- Witness: in some cases, it may prove prudent to consider having an additional witness to the giving and taking instructions. A Court Support Officer could also be used to sign off that they believe the client understands what they have signed.

Other than language difficulties, there are also many other **external** factors that should be considered by a lawyer when communicating with an Indigenous client that will reduce the ability of a non-native speaker of English to communicate effectively in English:

- Stress
- Unfamiliarity with the situation or uncertainty about what is expected
- An imbalance in power/knowledge between the parties
- Background noise
- A conversation involving more than two people, especially if there is overlapping speech
- An inability to see the speakers face
- People speaking too quickly
- Time constraints
- The use of technical terms, figurative language, abstract nouns, and complicated sentences.

COMMUNICATION STYLES

[807] Mildren, Hon Justice D. 1997, 'Redressing the imbalance against Aboriginals in the criminal justice system', *Criminal Law Journal*, Vol. 21, no. 1, pp 17-18.

Characteristics of Communication within Indigenous Society

Some of the characteristics of communication within Indigenous societies that may potentially form as a barrier to effective communication may include:

- The avoidance of direct eye contact demonstrates politeness and respect – Be mindful that for some Aboriginal and Torres Strait Islander people, avoidance of eye contact is customarily a gesture of respect. In Western society averting gaze can be viewed as being dishonest, rude.
- Silence plays an important and valued role in communication – For example, in Aboriginal and Torres Strait Islander cultures, extended periods of silence during conversations are considered the 'norm' and are valued. Silent pauses are used to listen, show respect or consensus. The positive use of silence should not be misinterpreted as lack of understanding, agreement, or urgent concerns. Observe both the silence and body language to gauge when it is appropriate to start speaking. Be respectful and where possible provide the person with adequate time. Seek clarification that what was asked or discussed was understood.
- Aboriginal and Torres Strait Islander people use sign language quite widely - some non-verbal communication cues (hand gestures, facial expressions etc.) used by Aboriginal and Torres Strait Islander people may have different meanings in the Western context. Be mindful how your own non-verbal communication will be observed and interpreted. For example, feelings of annoyance may be reflected by your body language and are likely to be noticed.
- Indigenous people prefer to communicate indirectly, rather than to ask direct questions – often a most difficult task for most lawyers. As such an Indigenous person may have difficulty in answering questions which are put directly.
- In Aboriginal and Torres Strait Islander culture, family or kin relationships are accorded primacy.
- Gratuitous concurrence (or the tendency to agree with a particular proposition or question, regardless of whether the Indigenous client in fact does agree with it) may be a particular problem.[808]
- Be conscious about the distance to which you are standing near your Indigenous client. Standing too close to a person that you are unfamiliar with, or of the opposite gender, can make a person feel uncomfortable or threatened.

COMMUNICATING EFFECTIVELY WITH SPEAKERS OF ABORIGINAL ENGLISH/CREOLE

[808] This is a particularly big issue across the State of Queensland and to adequately explain it would literally require a paper of its own.

Suggested "Do's"

- Speak slowly and clearly – Lawyers need to focus on their own communication, consider possible communication barriers for the Indigenous client, and work to remove any such barriers, often by putting the Indigenous client at ease or by asking clear and right questions. Much will depend on the lawyer making a quick and accurate assessment of the Indigenous client's sophistication and ability to understand issues: what is confusing for one Indigenous client might be patronizingly simple for another. The key is flexibility. Lawyers need to be able to adapt to different situations and tailor their language accordingly.
- Use an ordinary tone of voice.
- Use the name or title by which the Indigenous client wishes to be addressed – i.e., Aunty, Uncle, Councillor, Father, etc.
- Use an indirect approach to the asking of questions (three suggestions) – sometimes it may assist to first explain why you need to ask any questions.
- Check with the speaker of Aboriginal English/Creole to establish if he or she understands the legal words being used.
- Show respect and consideration at all times – you can never go wrong.
- Simplify the use of words - Avoid using complex words and jargon. Use diagrams, models, DVDs, and images to explain concepts, instructions, and terms.
- Be careful of "I don't know" responses – this answer doesn't necessary mean what it says, it may in fact mean that the Indigenous client is merely reluctant to answer the question. For instance, this response may be due to some inadvertent offense already caused to the Indigenous client. It may be due to other cultural barriers (i.e., women and men business).
- Build a rapport with your Indigenous client - In Aboriginal and Torres Strait Islander cultures, a high sense of value is placed on building and maintaining relationships. Taking a 'person before client' approach will certainly help form this relationship and build rapport. On this point, continuity in legal representation is a good way to build rapport and trust with an Indigenous client as opposed to the model of an Indigenous client having to explain their instructions to five different lawyers.
- If required, seek help from local Aboriginal and Torres Strait Islander staff, i.e., Court Support Officer, local Elders, community groups.
- Read and familiarise yourself with, if you haven't already, the 'Aboriginal and Torres Strait Islander Cultural Capability – Respectful Language Guide'.

Suggested "Dont's"

- Don’t attempt to speak Aboriginal English - unless you have excellent understanding, it could be regarded as disrespectful, if not offensive to use traditional languages, Aboriginal English, or Creole words.
- Don’t use complex sentences or figurative speech.
- Don’t ask negative questions.
- Don’t use “either-or” questions.
- Don’t use technical legal words unless it is essential.
- Don’t use terminology and descriptors (i.e., ‘GBH’, ‘UTAG’) which may cause offence.

“The single biggest problem in communication is the illusion that it has taken place.”

– George Bernard Shaw

“The biggest communication problem is we do not listen to understand. We listen to reply.”

– Unknown

Appendix 8: Sentence Options: Youth Justice Act

Source: Department of Youth Justice

Note: Click on the below cover page to open the appendix as a separate document

Sentence options – *Youth Justice Act 1992*

Section149 of the *Youth Justice Act 1992* establishes that Act as the exclusive sentencing code for criminal court matters involving children.

The sentencing options available to the court are contained in Part 7, Division 4 of the Act.

Restorative justice order

Subject to section 175 of the Act, a young person guilty of an offence may be referred to a restorative justice order (RJO).

The court may only make an RJO if satisfied that a young person is suitable to participate in a restorative justice process in regard to:

- the nature of the offence
- the harm suffered by anyone because of the offence
- if the interests of the community and young person would be served by having the offence dealt with under an RJO.

An RJO can only be made in relation to an offence for which an adult would be liable to service a period of imprisonment.

A young person has 12 months to complete the RJO.

Purpose of the order

The purpose of an RJO is to allow a young person who has committed an offence, and other concerned people, to think about and deal with the offence in a way that benefits everyone involved.

Consequences of offending

The principle consequences for a young person are:

- facing their victim
- being held accountable for their offending by participating in a restorative justice process
- the potential for being breached and returned to court for not complying.

Opportunity for support and assistance

When a young person participates in a restorative justice process it can help them to:

- take accountability for their actions
- challenge their beliefs about the offence and its consequences
- do something meaningful to repair the harm done
- restore self-image.

The restorative justice process can help the victim to:

- talk about how they have been affected,
- have their say on how the offence should be deal with
- get answers to questions
- potentially reduce fear of re-victimisation
- gain closure
- restore their dignity and feel empowered.

Probation order

Subject to section 175 of the Act, a young person found guilty before a Childrens Court constituted by a magistrate may be sentenced to a maximum of 12 months probation.

A judge may sentence a young person to a maximum of:

- three years if guilty of a serious offence, as defined in section 8 of the Act
- two years for any other offence.

A probation order (PO) can only be made in relation to an offence for which an adult would be liable to serve a period of imprisonment.

Purpose

The purpose of a PO is to:

- have the young person participate in counselling and programs to address their offending behaviour

Queensland Government

Appendix 9: Mental Health: Child and Youth Court Liaison Service

Source: Queensland Health, June 2020

The Mental Health: Child and Youth Court Liaison Service (Court Liaison Service) is part of Queensland Health, providing support to children aged 10 to 18 years. The Court Liaison Service is separate and distinct from the Child and Youth Mental Health Service (CYMHS). CYMHS provides case management and crisis response support; the Court Liaison Service provide court assessments.

Court Liaison Service operation varies via region. There are three distinct operational hubs:

- Brisbane, greater Southeast Queensland (SEQ) and all rural areas that are not covered by the Cairns and Townsville;
- Cairns Court Liaison Hub; and
- Townsville Court Liaison Hub ((including Mt Isa).

Referrals to the Court Liaison Service can be provided by any court stakeholder (duty lawyers, Department of Youth Justice (DYJ), judiciary etc.). Additionally, the Court Liaison Service has access to court lists in QWIC and review Children's Court lists in advance - screening for known young people with mental health vulnerabilities, to ensure appropriate services can be provided (particularly to those remanded in watch houses). The Court Liaison Service also liaises with the Department of Youth Justice (DYJ) to identify young people requiring assistance and ensure connection to post court supports.

Upon receipt of a referral the Court Liaison Officer will prepare:

- a general mental health assessment;
- a fitness for trial assessment (whether the person has capacity to plead and give instructions in defence of their matter, at the time of criminal proceedings); OR
- unsoundness of mind assessment (whether the person was of unsound mind at the time of the offence).

Pursuant to s172 of the *Mental Health Act 2016* (Qld), a Magistrates Court may dismiss a complaint for a simple offence if the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence was, or appears to have been, of unsound mind when the offence was allegedly committed or is unfit for trial.

Both soundness and fitness assessments must be finalised within four weeks (this period of time is provided to enable clinicians to obtain collateral information, e.g., from Education Queensland, Child Safety etc.), however may be finalised sooner. Dependent on the location of the young person, general mental health assessments are generally provided expediently.

Clinicians can attend court to provide oral evidence on their written assessments, if requested by the court.

Reports authored by Court Liaison clinicians are saved to Queensland Health patient records.

Details of each operational centre (including areas serviced) are outlined below.

Brisbane – Forensic Child and Mental Health Court Liaison Service

- *Referral contact: Program Manager/Forensic Psychologist, Grey St Clinic, Ph: 07 3310 9444*

Brisbane based operations service greater Southeast Queensland and all rural areas that are not covered by the Cairns and Townsville Court Liaison Hubs. Brisbane operates a hub model of eight, Brisbane based, Court Liaison Officers. Brisbane based staff attend the courts below on the scheduled youth justice call over days, as required. Rural and remote court (additional to those outlined below) do not have a rostered presence of clinicians but are also available on a needs basis – assessment interviews can be conducted by video conferencing (VC), or clinicians can drive/fly out, as necessary.

Court	Sitting Days	Frequency of sittings
Brisbane Children's Court	Monday, Tuesday, Friday	Weekly
Caboolture	Wednesday	Weekly
Redcliffe	Friday	Weekly
Pine Rivers	Thursday	Weekly
Rockhampton	Tuesday	Weekly
Woorabinda	Monday	Monthly
Wynnum	Thursday	Monthly
Cleveland	Friday	Fortnightly
Beenleigh	Monday	Weekly
Richlands	Thursday	Weekly
Gladstone	Wednesday	1st and 3rd Wednesday of each month
Cherbourg	Wednesday	Fortnightly
Kingaroy	Thursday	Every 2-3 weeks
Southport	Wednesday	Weekly
Toowoomba	Thursday	Weekly
Ipswich	Tuesday	Weekly
Maroochydore	Wednesday	Weekly

Cairns – Court Liaison Hub (also known as the Cairns Child and Youth Forensic Outreach Service)

- *Referral contact: Team Leader – Cairns (Cape and Torres) Ph: 07 4226 5280*

Cairns operates a hub model of three clinicians, one indigenous health worker and a part-time psychiatrist. Clinicians attend Cairns, Mareeba, Innisfail, and Cairns regularly (detailed in the highlighted rows below) on the scheduled youth justice call over days. All other Children's Courts within the Cairns hub (listed below) are covered remotely, on a needs basis. Interviews can be conducted by video conferencing (VC) or clinicians can drive/fly out, as necessary.

Court	Sitting Days	Frequency of sittings
Cairns Children's Court	Wednesdays Fridays	Weekly Weekly
Mareeba	Monday	Weekly (Court Liaison Service attends fortnightly)
Innisfail	Tuesday	Fortnightly
Atherton	Tuesday	Weekly (Court Liaison Service attends fortnightly)
Yarrabah	Wednesday	Monthly
Tully	Thursday	Monthly

Mossman	Wednesday	3 x weeks per month
Cooktown	Tuesday	5-week cycle
Cape area		
Aurukun	Wednesday	Monthly
Coen	Wednesday	9-week cycle
Lockhart River	Tuesday	Monthly
Pormpuraaw	Monday	Monthly
Kowanyama	Thursday	Every 3rd
Hopevale	Wednesday	2-month cycle
Weipa	Monday	Monthly

Townsville – Court Liaison Hub (also known as the North Queensland Adolescent Forensic Mental Health Service)

- *Referral contact: Townsville & Mt Isa (and surrounding courts): TSV-MH-NQAFMHS-CLS@health.qld.gov.au / Ph: 07 44339004*
- *Referral contact: Mackay, Ph: 07 4968 3893*

The North Queensland Adolescent Forensic Mental Health Service (NQAFMHS) provides a hub model with 2.5 Court Liaison Officers based in Townsville, and an additional Court Liaison Officer based in Mackay.

Townsville (including the Youth Court (Townsville)), Mackay and Mt Isa (detailed in the highlighted in) have Court Liaison Officers in regular attendance on the youth justice call over days. All other Children's Courts within the Townsville hub (listed below) are covered remotely, on a needs basis. Where appropriate and possible, interviews can be facilitated by video conferencing (VC). There is limited capacity for our service to travel to Courts outside of the Courts we attend in person.

Court	**Sitting Days**	**Frequency of sittings**
Townsville	Wednesday	Weekly
Youth Court (Townsville)	Tuesday and Wednesday	Weekly
Mackay	Friday	Fortnightly
Mt Isa	Tuesday	Weekly (Court Liaison Service attends monthly)
Ingham	Thursday	Fortnightly
Charters Towers	Monday	Fortnightly
Palm Island	Wednesday	Fortnightly
Ayr	Tuesday	Fortnightly
Normanton	Monday	Monthly
Cloncurry	Various	Monthly
Doomadgee	Wednesday	Monthly
Proserpine	Monday	Monthly
Bowen	Tuesday	Monthly
Moranbah	Various	Monthly
Sarina	Monday	Monthly

Appendix 10: Education Justice Initiative

Source: Department of Education, 2020 (Updated in December 2024)

The Education Justice Initiative (EJI) is an information, referral and advocacy service that provides specialist expertise in education to help vulnerable young people involved with the criminal justice system to re-engage with education and training.

The EJI aims to improve educational outcomes and disrupt patterns of offending by providing targeted, appropriate education and training pathways to young people involved in the court system. The EJI specifically targets young people of compulsory school age between the ages of 10-15 years. The EJI program:

- Is funded and administered by the Department of Education (DoE)
- Is supported by the Children's Court of Queensland
- Operates in 20 Children's Courts across Queensland and is delivered by 21 Court Liaison Officers (CLO's) and
- Is managed by the Student Protection and Wellbeing team in the Department of Education, who provide policy and strategic oversight and direction for the program.

The EJI acts as a critical safety net that reaches young people who are not actively enrolled in school or who are enrolled but are not attending school (or a training program) at a particularly important time in their lives.

The EJI aims to:

- Connect / reconnect young people of compulsory school age with appropriate education or training pathways, in particular, young people making their first court appearance and link these young people with support aimed at improving their opportunities and life outcomes.
- Operate using a collaborative and multi-agency approach. The EJI CLO's work closely with other government agencies and stakeholders, drawing on the capabilities of various services and support, and joining them together to devise tailored advice and support to young people who appear in court.
- Provide a culturally responsive service that recognises the over representation of Aboriginal and/or Torres Strait Islander young people in the youth justice system as well as acknowledges that for these young people, their connection to family, community and culture is integral to their sense of identity as well as their social, emotional, educational, and psychological development. This is done through genuine and deliberate collaboration with Indigenous Stakeholders.
- Build the capability of schools and staff within the youth justice and child protection sector by providing information and advice on systems, policy, processes, responsibilities, and accountabilities relating to young people and the justice or education systems.

Background

In 2018, the Queensland Government commenced the most significant reform of the youth justice system ever undertaken in the State.

Many children involved in the Youth Justice system come from complex and difficult backgrounds and 48% of the young people supervised by Youth Justice as at the 2023 Census date, were disengaged

from education, employment, and training. The Queensland Government committed over half a billion dollars since February 2018 to reform the youth justice system.

In December 2018, the Government released the *Working Together Changing the Story: Youth Justice Strategy* 2019-2023 (the strategy) which was structured around the four 'Pillars' recommended Bob Atkinson's report.

The strategy commits to improving community safety and confidence by intervening early to address the causes and prevent youth offending, as well as ensuring young people who do offend are held accountable and guided to change their behaviour. To drive implementation of the Strategy and Action plan, on 30 April 2019 the Queensland Government announced a record $332.50 million investment in the youth justice system.

The *Youth Justice Strategy Action Plan* 2019-2021 (the Action Plan) sets out the practical steps to implement the *Youth Justice strategy* and builds on reforms introduced by the Queensland Government.

The EJI was highlighted through the *Keeping Communities Safe (KCS)* initiative as an important service that could strengthen the critical link between young people (and their families and support workers) and the education system – a link that is often compromised during times of crisis in a young person's life.

DoE subsequently launched the EJI (which is modelled off the Victorian EJI) in December 2018. Two CLO positions were initially created to provide tailored and individualised support to young people aged between 10 and 15 years. These positions commenced in the Metropolitan region (Brisbane Children's Court) and the North Queensland region (Townsville Children's Court).

Given the preliminary success of the trial, the EJI was expanded to 20 locations by December 2024:

- Brisbane
- Moreton
- Ipswich
- Redlands
- Richlands
- Gold Coast
- Beenleigh
- Toowoomba
- Darling Downs
- Sunshine Coast
- Bundaberg
- Hervey Bay
- Rockhampton
- Mackay
- Townsville
- Mount Isa
- Cairns
- Mareeba
- Innisfail
- Aurukun

Referral and General Workflow

Info Sharing	•CLO receives an identified Children's Court List prior to the Court date.
Preparation	•Based on the provided court list, CLO compiles an education history for each EJI eligible young person (based on age). This includes checking the DoE database and contacting key stakeholders to gather additional information on attendance and engagement (if relevant).
Court Attendance	•CLO attends court (ie on call-over and sentencing days). CLO will actively seek out and engage with the identified young people (as per the court list) and their families / support people whilst waiting for court (or following court).
Info Provision	•Where relevant, the CLO will provide informaiton to Youth Justice and / or the young person's lawyer. •When requested by the Magistrate, the CLO will appear in the Children's Court to provide direct education information to the court.
Consent	•CLO seeks and obtains the written consent of all guardians of the EJI eligible young people. This allows the CLO to communicate with other services for the purposes of education re-engagement.
Ongoing Support	•CLO to provide ongoing post-court support to young people (and their families / carers when necessary) in order to connect the young people with other DoE, government and community sector services that may assist the young person to engage in the education system or in an appropriate training / employment pathway. •CLO to record all contacts, level of intervention provided and completed referrals.

Specialist Multi-Agency Response Team (SMART)

In eight locations, *Specialist Multi-Agency Response Teams* (SMART) support the Children's Court through the provision of a multidisciplinary assessment of a young person's needs including the identification of factors that contribute to their offending. The eight locations include: Brisbane, Caboolture, Logan, Ipswich, Gold Coast, Townsville, Mt Isa, and Cairns.

SMART comprises of representatives from the Department of Youth Justice, the Department of Child Safety, Youth and Women (Child Safety), Queensland Health and DoE.

Young people identified as having needs related to education, health or substance use can be referred to SMART for assessment and follow-up intervention. SMART will also provide advice to the court on an appropriate integrated approach to meeting the young person's needs to reduce the risk of re-offending.

The implementation of SMART closely aligns with the work of the DoE's Court Liaison Officers under the EJI.

The six Court Liaison Officers align with the proposed locations of SMART, those being: Brisbane, Townsville, Southport, Ipswich, Beenleigh, and Cairns.

While the remaining two locations of Caboolture and Mt Isa are not currently within scope of the EJI and therefore do not have a Court Liaison Officer, a DoE representative has been nominated by the Regional Director to participate in SMART.

EJI – Location and Court Days

Locations	Children's Court
Brisbane Metropolitan Region	**Brisbane Children's Court** Tuesday: sentencing Friday: call-over Monday → Friday: fresh arrests (CLO provides additional written updates) Brisbane EJI email: BrisbaneEJI@qed.qld.gov.au
Ipswich Metropolitan Region	**Ipswich Children's Court** Monday Tuesday Monday → Friday: fresh arrests (CLO provides additional written updates)
Gold Coast Southeast Region	**Southport Children's Court** Monday: lengthy pleas and sentences Wednesday: call-over
Beenleigh / Logan Southeast Region	**Beenleigh Children's Court** Monday: call-over Friday: lengthy pleas and sentences
Townsville North QLD Region	**Townsville Children's Court** Tuesdays: Youth Court (Townsville) call-over Wednesdays: Children's Court - call-over Youth Court (Townsville) - bail applications and sentencing. Thursdays: Children's Court video link Monday → Friday: fresh arrests (CLO provides additional written updates)
Cairns Far North QLD Region	**Cairns Children's Court** Tuesday (fortnightly): lengthy pleas Wednesday Friday

Appendix 11: Aboriginal English in the Courts

Source: Department of Justice and Attorney-General

Note: Click on the below cover page to open the appendix as a separate document

Aboriginal English in the Courts

table of contents

ISBN: 0-7242-8071-5

Appendix 12: Prescribed Indictable Offences triggering show cause under s48AF YJA

Definition of "**prescribed indictable offence**" is contained in *Youth Justice Act 1992* Schedule 4 Dictionary.

This list is subject to legislative amendments and the relevant legislation should be referred to when using this guide.

Legislation	Offence	Maximum penalty
(a) Life Offences		
Criminal Code Act 1899 (Qld)		
54A(4)	Demands with menaces upon agencies of government	Life imprisonment
61	Riot	
80	Piracy	
124(2)	Perjury	
131(2)	Conspiracy to bring false accusation	
213(3)(a)	Owner permitting abuse of children on premises	
215(3), (4), (4A)	Carnal knowledge of child under 16	
216(3)	Abuse of persons with an impairment of the mind	
217A(2)	Obtaining commercial sexual services from a child under 12 years	
219(3)(a)	Taking child for immoral purpose	
222	Incest	
229B	Repeated sexual conduct with a child	
305	Murder	
306	Attempted murder	
307	Accessory after the fact to murder	
310	Manslaughter	
311	Aiding suicide	
313	Killing unborn child	
314A	Unlawful striking causing death	
315	Disabling in order to commit indictable offence	
316	Stupefying in order to commit indictable offence	
317	Acts intended to cause grievous bodily harm	
318	Obstructing rescue or escape from unsafe premises	
319	Endangering the safety of a person in a vehicle with intent	
349	Rape	
352(3)	Sexual assault: • armed or pretends to be armed; or	

Legislation	Offence	Maximum penalty
	• penetrated any part of the offender's vagina, vulva, or anus to any extent with a thing or part of a person's body that is not a penis; or • person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis	
411	Robbery	
412(3)	Attempted armed robbery with personal violence or wounding	
415	Extortion: • causes or likely to cause serious personal injury to a person other than the offender; or • causes or likely to cause substantial economic loss in an industrial or commercial activity conducted by a person or entity other than the offender	
417A(3)	Taking control of aircraft: • using or threatening to use actual violence; or • armed with a dangerous or offensive weapon; or • in company with one or more other person; or • takes or exercise control by any fraudulent representation trick device or other means.	
419 (2)	Burglary by break	
419(3)(a)	Burglary committed in the night	
419(3)(b)	Burglary where the offender: • uses or threatens to use actual violence; or • is or pretends to be armed with a dangerous or offensive weapon, instrument, or noxious substance; or • is in company with one or more persons; or • damages or threatens or attempts to damage, any property	
419(5)	Burglary and commit indictable offence	
421(3)	Entering or being in premises by break and committing indictable offences	
461	Arson	
467	Endangering the safe use of vehicles and related transport infrastructure	
469	Wilful damage: • destroying or damaging premises by explosion where anyone is in or on the premises when the explosion happens, or the destruction or damage actually endangers anyone's life;	

Legislation	Offence	Maximum penalty
	• sea walls and other property where the destruction or damage causes an actual danger of inundation or of damage to land or a building	
474	Communicating infectious diseases to animals	
536	Attempt to conceal an indictable offence punishable by mandatory life imprisonment (if no other punishment is provided)	
Criminal Code Act 1995 (Cth)		
71.2	Murder of a UN or associated person	Life imprisonment
72.3	International terrorist activities using explosive or lethal devices	
80.1AA	Treason—assisting enemy to engage in armed conflict	
80.1AC	Treachery	
91.1	Espionage	
101.1	Terrorist acts	
101.6	Other acts done in preparation for, or planning, terrorist acts	
103.1	Financing terrorism	
103.2	Financing a terrorist	
119.1	Incursions into foreign countries with the intention of engaging in hostile activities	
119.4	Preparations for incursions into foreign countries for purpose of engaging in hostile activities	
119.5	Allowing use of buildings, vessels, and aircraft to commit offences	
Drugs Misuse Act 1986 (Qld)		
5	Trafficking in dangerous drugs	Life
6(1)(a)	Supplying dangerous drugs (Schedule 1) to a minor under 16 years	
(b) Offence where maximum penalty is 14+ years imprisonment - Excl s9(1) Drugs Misuse Act		
Criminal Code Act 1899 (Qld)		
54A(1)	Demands with menaces upon agencies of government	14 years
124(1)	Perjury	
131(3)	Conspiracy to bring false accusation	
210(2)	Indecent treatment of child under 16	
210 (3), (4), (5)	Indecent treatment of child under 16	20 years
213(3)(b)	Owner permitting abuse of children on premises	14 years
215(2), (3), (4)	Engaging in penile intercourse with child under 16	
216(1)	Abuse of persons with an impairment of the mind	
217	Procuring young person etc. for penile intercourse	
217A (2)	Obtaining commercial sexual services from a child under 16 years	

Legislation	Offence	Maximum penalty
217B	Allowing person who is not an adult to take part in commercial sexual services	
217C	Conduct relating to provision of sexual services by person who is not an adult	
218	Procuring sexual acts by coercion etc.	
218A (2)(a)	Using the internet to procure a child under 12	
218A(2)(b)	Using the internet to procure a child under 16 years (aggravated)	
219(3)(b)	Taking child for immoral purpose (aggravated)	
228A(1)(a)	Involving child in making child exploitation material	25 years
228A(1)(b)		20 years
228B(1)(a)	Making child exploitation material	25 years
228B(1)(b)		20 years
228C(1)(a)	Distributing child exploitation material	
228C(1)(b)		14 years
228D(1)(a)	Possessing child exploitation material	20 years
228D(1)(b)		14 years
228DA(1)(a)	Administering child exploitation material website	20 years
228DA(1)(b)		14 years
228DB(1)(a)	Encouraging use of child exploitation material website	20 years
228DB(1)(b)		14 years
228DC(1)(a)	Distributing information about avoiding detection	20 years
228DC (1)(b)	Distributing information about avoiding detection	14 years
228I	Producing or supplying child abuse object	14 years
228J	Possessing child abuse object	
238(4)	Contamination of goods (aggravated)	
309	Conspiring to murder	
317A (1)	Carrying or sending dangerous goods in a vehicle	
320	Grievous bodily harm	
320A	Torture	
321	Attempting to injure by explosive or noxious substances	
322(a)	Administering poison with intent to harm	
323A	Female genital mutilation	
323B	Removal of child from State for female genital mutilation	
328A(4)(a)	Dangerous operation of a vehicle causing death or grievous bodily harm	
328A(4)(b)	Dangerous operation of a vehicle causing death or grievous bodily harm: • whilst adversely affected; or • whilst excessively speeding; or	20 years

Legislation	Offence	Maximum penalty
	• whilst taking part in an unlawful race or unlawful speed trial; or • having left the scene • whilst committing an evasion offence	
328C	Damaging emergency vehicle when operating motor vehicle	14 years
328D	Endangering police officer when driving motor vehicle	
330	Sending or taking unseaworthy ships to sea	
338A	Assaults of member of crew on aircraft	
340	Serious assault (aggravated)	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352(2)	Sexual assault (contact any part of the genitalia or anus of a person with any part of a mouth of a person)	
354A(2)	Kidnapping for ransom	
398	Stealing • Wills; or • Vehicles; or • Firearms for use in another indictable offence	
408C(2)	Fraud	
408C(2A)	Fraud	20 years
411	Robbery	14 years
412 (2)	Attempted armed robbery	
415	Extortion	
417A(2)	Taking control of aircraft	
419 (1)	Burglary	
419(4)	Burglary with publication on social media or online social network	16 years
421	Entering or being in premises and committing indictable offences	14 years
427(2)(a)	Unlawful use of a motor vehicle for committing indictable offence in the night	
427(2)(b)	Unlawful use of a motor vehicle for committing indictable offence where the offender: • uses or threatens to use actual violence; or • is or pretends to be armed with a dangerous of offensive weapon, instrument, or noxious substance; or • damages, threatens to damage, or attempts to damage any property	
427(3)	Unlawful use of a motor vehicle for committing indictable offence where the vehicle is an emergency vehicle	
433	Receiving tainted property if:	

Legislation	Offence	Maximum penalty
	• the property was obtained by way of an act constituting a crime; or • the property is a firearm or ammunition; or • the offender received the property whilst acting as a pawnbroker or dealer in second hand goods under a license or otherwise.	
462	Endangering particular property by fire	
463	Setting fire to vegetation	
469	Wilful damage • Wills; • Railways; • Aircraft	
469A(1)	Sabotage and threatening sabotage with the intent to cause: • major disruption to government functions; or • major disruption to the use of services by the public; or • major economic loss	25 years
469A(2)	Sabotage and threatening sabotage	14 years
470	Attempts to destroy property by explosives	
510	Instruments and materials for forgery	
514	Personation	
536 (2)	Attempts to conceal indictable offences punishable by life imprisonment but not mandatory life imprisonment (if no other punishment is provided)	
Drugs Misuse Act 1986		
6(1)(b)	Supplying dangerous drugs (Schedule 1) to: • a minor who is 16 years or more • an intellectually impaired person • a person within an educational institution • a person within a correctional facility • a person who does not know he or she is being supplied with the thing.	25 years
6(1)(c)	Supplying dangerous drugs (Schedule 1)	20 years
6(1)(d)	Supplying dangerous drugs (Schedule 2) to a minor under 16 years	25 years
6(1)(e)	Supplying dangerous drugs (Schedule 2) to: • a minor who is 16 years or more • an intellectually impaired person • a person within an educational institution • a person within a correctional facility • a person who does not know he or she is being supplied with the thing.	20 years

Legislation	Offence	Maximum penalty
6(1)(f)	Supplying dangerous drugs (Schedule 2)	15 years
7	Receiving or possessing property obtained from trafficking or supplying	20 years
8(1)(a)	Producing dangerous drugs (Schedule 1 drug, quantity of or over Schedule 4 amount)	25 years
8(1)(b)(i)	Producing dangerous drugs (Schedule 1 drug, quantity of or over Schedule 3 amount and person is drug dependant)	20 years
8(1)(b)(ii)	Producing dangerous drugs (Schedule 1 drug, quantity of or over Schedule 3 amount)	25 years
8(1)(c)	Producing dangerous drugs (Schedule 1 drug)	20 years
8(1)(d)	Producing dangerous drugs (Schedule 2 drug, quantity of or over Schedule 3 amount	
8(1)(e)	Producing dangerous drugs (Schedule 2 drug)	15 years
8A(1)(a)	Publishing or possessing instructions for producing dangerous drugs (Schedule 1)	25 years
8A(1)(b)	Publishing or possessing instructions for producing dangerous drugs (Schedule 2)	20 years
9A	Possessing relevant substances or things	15 years
9B	Supplying relevant substances or things	
9C	Producing relevant substances or things	
9D	Trafficking in relevant substances or things	20 years
10(1)	Possessing things: • for use in connection with the commissioner of a crime in Part 2; or • that the person has used in connection with such a purpose.	15 years
10B	Possession of a prohibited combination of items	25 years
11	Permitting use of place	15 years
Weapons Act 1990		
65(1)(a)	Unlawful trafficking in weapons (Category H or R weapons)	20 years
65(1)(b)	Unlawful trafficking in weapons (Category A, B, C, D or E weapon, a category M crossbow, or explosives)	15 years
Criminal Code Act 1995 (Cth)		
71.3	Manslaughter of a UN or associated person	25 years
71.4	Intentionally causing serious harm to a UN or associated person	20 years
71.5 (aggravated)	Recklessly causing serious harm to a UN or associated person	19 years
71.8	Unlawful sexual penetration	15 years
71.9	Kidnapping a UN or associated person	
73.2	Aggravated offence of people smuggling (danger of death or serious harm etc.)	20 years

Legislation	Offence	Maximum penalty
73.3	Aggravated offence of people smuggling (at least 5 people)	
82.3	Offence of sabotage involving foreign principal with intention as to national security	25 years
82.4	Offence of sabotage involving foreign principal reckless as to national security	20 years
82.6	Offence of sabotage reckless as to national security	15 years
82.7	Offence of introducing vulnerability with intention as to national security	
83.2	Assisting prisoners of war to escape	
83.3	Military-style training involving foreign government principal etc	20 years
91.1	Espionage	25 years
91.2		
91.3		
91.6		
91.8		
91.11	Offence of soliciting or procuring an espionage offence or making it easier to do so	15 years
91.12	Offence of preparing for an espionage offence	
92.2	Offence of intentional foreign interference	20 years
92.3	Offence of reckless foreign interference	15 years
92.7	Knowingly supporting foreign intelligence agency	
92.9	Knowingly funding or being funded by foreign intelligence agency	
92A.1	Theft of trade secrets involving foreign government principal	
101.2	Providing or receiving training connected with terrorist acts	25 years
101.4(1)	Possessing things connected with terrorist acts	15 years
101.5(1)	Collecting or making documents likely to facilitate terrorist acts	
102.2	Directing the activities of a terrorist organisation	25 years
102.4	Recruiting for a terrorist organisation	
102.5	Training involving a terrorist organisation	
102.6	Getting funds to, from or for a terrorist organisation	
102.7	Providing support to a terrorist organisation	
115.1	Murder of an Australian citizen or a resident of Australia	
115.3	Intentionally causing serious harm to an Australian citizen or a resident of Australia	20 years
115.4	Recklessly causing serious harm to an Australian citizen or a resident of Australia	15 years
119.6	Recruiting persons to join organisations engaged in hostile activities against foreign governments	25 years
132.2	Robbery	15 years
132.3	Aggravated robbery	20 years
132.5	Aggravated burglary	17 years

Legislation	Offence	Maximum penalty
(c) Other		
Criminal Code Act 1899 (Qld)		
315A	Choking, suffocation or strangulation in a domestic setting	7 years
323	Wounding	7 years
328A	Dangerous operation of a vehicle	200 penalty units or 3 years
339	Assaults occasioning bodily harm	7 years
408A(1) – If the offence involves a motor vehicle	Unlawful use of a motor vehicle	10 years
408A(1) to which 408A(1A) applies	Unlawful use of a motor vehicle – facilitating indictable offence	12 years
412	Attempted robbery	7 years, 14 years, or life
421(1)	Entering or being in premises and committing indictable offences	10 years, 14 years