Youth Justice

Legislative amendments (*Youth Justice Act 1992*) information for legal professionals

On 11 February 2014, the Youth Justice and Other Legislation Amendment Bill 2014 was introduced to Parliament to amend youth justice legislation. The amendments are part of major youth justice reforms in Queensland. The Bill was passed on 18 March 2014.

This document is not intended to be a comprehensive summary of the law. It is prepared in an attempt to help explain the amendments which will ultimately be interpreted by the courts.

The Queensland Parliament has amended the *Youth Justice Act 1992* to permit the publication of identifying information and opening of the Childrens Court for repeat offenders. The sentencing principal that detention is a last resort has been removed In addition, childhood findings of guilt are admissible for adult sentencing, and recidivist motor vehicle offenders residing in Townsville must be sentenced to a boot camp order.

Section 299A (new) - Prohibition of publication of identifying information

Explanatory note (extract)

Publication of first time offenders identifying information remains prohibited by s 301.

Publication of repeat offenders' identifying information will be permitted at any time during a proceeding. This includes proceedings under way prior to commencement. This means a child currently before the courts, who is a repeat offender may have their identifying information published following commencement of the legislation.

Implementation

The existing publication prohibition regime for first time offenders remains in place. However where a young offender commits a particularly heinous crime the court may authorise the publication of identifying information as they can now.

For repeat offenders, the publication regime has been reversed. The publication of identifying information will be allowed for all repeat offenders unless a publication prohibition order is made to prohibit publication in the interests of justice.

The factors to be taken into account by the court in determining the interests of justice can be found at 299A(4).

A first time offender is a child who at any time during a proceeding has not been found guilty of an offence (refer Schedule 4).

Section 21A-21E inclusive (new) - Closed and open proceedings

Explanatory note (extract)

While the Childrens Court will remain closed when hearing matters for first-time offenders, the Bill amends part 4, division 2 of the *Childrens Court Act 2000* to provide that Childrens Court proceedings under the *Youth Justice Act 1992* involving repeat offenders be held in open court.

The court will have the discretion to hold part or all of a proceeding that relates to a repeat offender in closed court where it considers this to be in the interests of justice.

The Childrens Court will continue to be closed when a complainant is giving evidence in relation to a sexual offence.

Implementation

It is anticipated that courts will commence first mention in a closed court, to determine if the accused is a first time or repeat offender.

The Act states that the court will be closed for a first time offender.

The Act states that the court will be open for a repeat offender unless closed in the interests of justice.

The interests of justice are not defined under 21C(2) of the Childrens Court Act 1992 and is a matter for the court.

Section 59A (new)- Finding of guilt while on bail

Explanatory note (extract)

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

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

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

Implementation

It is intended that when a finding of guilt is reached for a young person and the young person was on bail at the time of the offence a new offence is deemed to have occurred.

A section 59A offence committed while on bail will arise on finding of guilt.

The prosecution will alert the magistrate to the provision so that the magistrate can take account of the offence and penalty in findings of guilt and sentencing.

Part 6 subdivision 4 Sections 118-126 (removed) - Review of sentences

Explanatory note

The Bill omits part 6, division 9, subdivision 4 of the *Youth Justice Act 1992*, which provides that a Childrens Court judge may review a sentence order made by a Childrens Court magistrate.

This omission will leave appeals under subdivision 3—which provides for the appeal of magistrates' orders to be heard by a judge under part 9, division 1 of the *Justices Act 1886*—as the single applicable mechanism under which a Childrens Court judge may provide judicial oversight of a magistrate's sentencing and other decisions in relation to a child.

Implementation

It is intended to remove the review mechanism that a sentence order be reviewed a Childrens Court judge.

Appeals will remain available under s117 pursuant to the Justices Act 1886.

Section 148 - Admissibility of childhood findings of guilt at sentencing as an adult

Explanatory note (extract)

The Bill amends section 148 of the *Youth Justice Act 1992* to provide that, for the purposes of sentencing, a court may receive evidence that an adult was the subject of a court proceeding as a child, and had an unrecorded finding of guilt made against them as a child.

Implementation

An adult court may receive evidence of an adult's findings of guilt as a child, to assist with sentencing. This includes findings of guilt prior to the commencement of the amendments.

Section 176B - Recidivist motor vehicle offenders

Explanatory note (extract)

The amendments define a 'recidivist vehicle offender' as an offender who has been found guilty of committing two or more UUMV offences in the previous 12 month period.

The amendments will require a court sentencing a recidivist vehicle offender for a further UUMV offence to sentence that child to a sentenced youth boot camp program under a new category of order, a boot camp (vehicle offences) order. To receive this order, the young offender must normally be a resident of Townsville.

The young offender must be eligible and suitable to attend the boot camp however there is no requirement that the young offender consent to the order.

Imposition of this sentence will be subject to the child being otherwise eligible to participate in a boot camp program (other than the requirement that they consent) and ordinarily residing in an area prescribed by regulation.

Implementation

If a young offender who is normally resident in Townsville is found guilty of a third motor vehicle offence in a 12 month period, the court will be required to sentence them to a boot camp (vehicle offences) order).

Sections 276A-276E - Transfer to adult detention

Explanatory note (extract)

The new section 276A defines several terms used in the division.

The new section 276B provides that the division applies to the following offenders:

- Children who will turn 17 while serving a period of detention and who, on turning 17, will have at least six months of that period of detention left to serve and are not required to be released under a supervised release order within those six months.
- It excludes those who, on turning 17, will have less than six months remaining before expiration of their detention order or will be required under section 227 to be released from detention and placed under a supervised release order within six months of turning 17.
- Persons who are already 17 at the time of being sentenced to a period of detention of six months or more for an offence committed as a child and who are not required to be released under a supervised release order within those six months. Again, this confines operation of the division to persons who will be required to serve at least six months in actual detention.

As 'period of detention' is defined for the purposes of the division in the new section 276A as

including any further periods of detention which an offender is liable to serve cumulatively, the division also particularly targets those offenders who have offended repeatedly or those committing more serious offences.

New section 276C requires the chief executive to issue a written prison transfer direction in relation to any child (aged under 17) who has 6 months of actual detention to serve on turning 17, within 28 days of the child being sentenced to the period of detention. The direction must state:

- the date on which the child becomes eligible to be transferred (the child's seventeenth birthday)
- that the child is to be transferred to a corrective services facility on that day
- that the remainder of the child's period of detention is to be served as a period of imprisonment.

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

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

New section 276D makes explicit that the *Corrective Services Act 2006* applies to a person who is either 17 at the time of being sentenced to a period of actual detention of six months or more or who is transferred to a corrective services facility under a prison transfer direction. The person's detention order or prison transfer direction is taken to be a sentence of imprisonment for a period equal to the remaining length of the unserved period of detention.

The person is required to be released on parole on the day they would otherwise have been released from detention under a supervised release order.

Under part 7, division 10, subdivision 3 of the *Youth Justice Act 1992*, a child sentenced to a period of detention must be released from detention and placed under a supervised release order after having served either 70 percent of that period in actual detention or, if ordered by the court in special circumstances, between 50 and 70 percent.

Subsection 276D(4) and (5) confirms that the requirements that a person transferred to a Corrective Services facility be released on parole on the day they would otherwise have been eligible for supervised release, does not prevent the person's earlier release or continued custody where appropriate.

Section 276D has the effect of requiring a person transferred to a corrective services facility under the division to be managed in the same way as a person imprisoned in the facility under a sentence of imprisonment.

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

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

Implementation

These sections provide that where a 17 year old has more than six months to serve in actual detention they must be transferred to adult detention.

The transfer is automatic and not subject to review on merit.

Where the child is not 17 at the time of sentence the chief executive must issue a prison transfer direction within 28 days of sentence.

Where a young person is 17 at the time of sentence s 276B(b) the detention order becomes a transferred detention order and the time to be served is immediately transformed to a period of imprisonment by s 276D

Sections 13, 150 and schedule 1 omission of section 208 - Removal of detention as sentence of last resort

Explanatory notes (extract)

The amendment omits the note to section 13(1)(a)(iv) of the *Youth Justice Act 1992*, which refers to a principle which is being omitted from the charter of youth justice principles.

Subsection 150(2) of the *Youth Justice Act 1992* is amended to delete the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period from the special considerations to which a court must have regard in sentencing a child for an offence.

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

The amendments omit existing section 208, which provides that a court may only impose a detention order if satisfied that no other sentence is appropriate in the circumstances of the case.

The amendments omit principle 17 from schedule 1 – that a child should be remanded or detained
only as a last resort and that for the least time justified in the circumstances – from the charter of youth justice principles in schedule 1 of the *Youth Justice Act 1992*, These principles underlie operation of the Act, and are required under subsection 150(1)(b) to be taken into account by a court in sentencing a child for an offence under the Act.

Implementation

The provisions intend to extinguish the relevant common law and statutory provisions that detention is only to be considered as a last resort. All other sentencing based considerations remain in place.

Sections 237 and 238 - Power to arrest without warning

Explanatory notes (extract)

Subsection 237(3) is amended, exempting the chief executive from the obligation to warn a child reasonably believed to have contravened a community-based order of the consequences of a further contravention before taking any further action.

This amendment applies to a child who left the boot camp centre without written consent.

This will allow a child to be brought immediately before the Childrens Court for a finding that the child has breached their boot camp order and for resentencing for the offence in relation to which the order was originally made.

Subsection 238(6)(b)(ii) is amended so that where the chief executive substantiates on oath, before a justice, that a child is reasonably believed to have breached a community-based order the justice may issue a warrant for the arrest of a child.

This additional circumstance is made out where the chief executive reasonably believes the child has contravened a boot camp order by leaving the boot camp centre stated in the order without written consent.

This complements the amendment of section 237 by clause 14 by enabling an offender who has absconded from a boot camp centre to be detained pending their return to court for resentencing.

Implementation

The amendment will allow a child to be placed before the courts when they abscond from a boot camp without the need to warn them.

When a young person has absconded from a boot camp, a justice will be able to issue a warrant to detain the young person pending their return to court.

Sections 245, 246 and 246A - Courts power on breach of conditional release and boot camp orders

Explanatory note (extract)

Subsection 245(6) is omitted. This technical amendment to removes an unintended statutory interpretation that an order is taken to continue in force administratively beyond its court-ordered, or statutory, expiration date.

Section 246 is amended similarly in relation to the court's power to extend, vary or discharge a conditional release order as clause 16 in relation to other community-based orders.

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

Implementation

This amendment clarifies that once an order has ended it is not extended administratively beyond its expiration because of a breach application to the court.

The breach application can still be heard by the court but the expired order cannot be supervised after the end date of the order.

Please note: This publication was produced prior to the current government.