

Youth Justice Benchbook

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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 throughout 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 [New South Wales 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.

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Michael Shanahan AM

30 October 2020

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Chapter 1 – Childrens Court Act 1992

The [Childrens Court Act 1992 \(CCA\)](#) established the Childrens Court of Queensland. The Court consists of two tiers:

Childrens Court of Queensland

The Childrens Court of Queensland as constituted by a Judge (s 5(2) CCA) or a District Court Judge if a Childrens Court Judge is not available (s 5(2)(b) CCA).

Childrens Court (Magistrates Court)

The Childrens Court as constituted by a Childrens Court Magistrate or any Magistrate if a Childrens Court Magistrate is not available (s 5(3) CCA).

A **Childrens Court Judge** means a District Court Judge appointed to the Childrens Court, and a **Childrens Court Magistrate** means a Magistrate appointed to the Childrens Court (s 3 CCA).

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 under the [District Court of Queensland Act 1967 \(Qld\)](#). In [Cousins v HAL & Anor \[2018\] QCA 49](#), Fraser JA observed at [9] that it 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 [Uniform Civil Procedure Rules 2011](#).

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](#) for the hearing and determination of charges against children, including committal proceedings, must be heard and determined before a Childrens Court Magistrate (s 64 YJA). 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 Court offences** (s 99 YJA).¹

Section 9 of the [Childrens Court Act 1992](#) 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 (ss 8A(1) & 10 CCA). 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, a Magistrate or a Justice (s 8A(2) CCA).

Section 18 of the [Childrens Court Act 1992](#) provides for where the Childrens Court may sit. The Court, as appropriately constituted, may exercise jurisdiction throughout Queensland (s 18(2) CCA).

1.2 Closed or Open Court

Section 20 of the [Childrens Court Act 1992](#) specifies who may be present at a proceeding before the court relating to a child. This section applies even if the court’s jurisdiction is being exercised conjointly with another jurisdiction (s 20(5)(a) CCA). It does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment (s 20(5)(b) CCA).

The court **must** exclude any person who is not (s 20(1) CCA):

- the child; or
- a parent or other adult member of the child’s family; or
- if the proceeding is a criminal proceeding:
 - a victim, or a relative of a victim, of the offence committed by the child; or
 - a relative of a deceased victim of the offence committed by the child; or

¹ A **Supreme Court offence** means an offence for which the District Court does not have jurisdiction to try an adult because of s 61 of the [District Court of Queensland Act 1967 \(Qld\)](#).

- 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: A person who provides support or assistance to a victim, or a relative of a deceased victim, in relation to the proceeding or 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.

- a person who, in the court's opinion, has a proper interest in the proceeding; or
- a person holding media accreditation; or
- a witness giving evidence; or
- a person who is an intermediary under part 2, division 4C of the [Evidence Act 1977](#) for a witness giving evidence; or
- 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
- 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
- a representative of the chief executive of Child Safety or Youth Justice; or
- the public guardian under the [Public Guardian Act 2014](#); or
- if the proceeding is a child protection proceeding under the [Child Protection Act 1999](#)—the chief executive (child safety); or
- if the child is an Aboriginal or Torres Strait Islander person:
 - a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
 - 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
- an infant or young child in the care of an adult who may be present in the room.

The court may permit the following to be present in the courtroom (s 20(2) CCA):

- a person who is engaged in:
 - a course of professional study relevant to the operation of the court; or
 - research approved by the chief executive (child safety) or the chief executive (youth justice); or
- a person who, in the court's opinion, will assist the court.

If the court is hearing a matter under ss 172 and 173 of the [Mental Health Act 2016](#), the court **must** exclude from the room a person unless the court is satisfied it is in the interests of justice to permit the person to be present (s 20(3) CCA).

This section does not affect any order made, or that may be made, by the court under s 21A of the [Evidence Act 1977](#) excluding any person (including a defendant) from the place in which the court is sitting or permitting any person to be present whilst a special witness within the meaning of that section is giving evidence (s 20(4) CCA).

The restrictions in s 20 of the [Childrens Court Act 1992](#) do not apply to the Childrens Court when constituted by a Judge hearing and determining a charge on indictment (s 20(5) CCA). These 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 s 20 of the [Childrens Court Act 1992](#) do not apply. See also the provisions of the YJA concerning restrictions on identifying a child who is being, or has been, dealt with under that Act (s 301 & Schedule 4 YJA).

1.2.1 Definitions

A **criminal proceeding** means a proceeding against a child under the YJA 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 (s 20(6) CCA).

An **offence** committed by a child includes an offence the child is alleged to have committed (s 20(6) CCA).

A **relative** of a victim of an offence committed by a child means:

- a spouse, child, stepchild, parent, stepparent, sibling, stepsibling, aunt, uncle, grandparent, or grandchild of the victim; or
- a child, other than a child mentioned above, for whom the victim had parental responsibility; or
- a person who, under Aboriginal tradition or Island custom, is regarded as a person mentioned above (s 20(6) CCA).

A **relative** of a deceased victim of an offence committed by a child, means a person who would be a relative mentioned above if the victim were not deceased (s 20(6) CCA).

The term **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 the term **victim** should be given its ordinary meaning and referred to the Macquarie Dictionary definition: “*sufferer from any destructive, injurious or adverse action.*”

1.2.2 Transitional provisions

Section 20 of the [Childrens Court Act 1992](#) was amended by the [Making Queensland Safer Act 2024](#). Subject to s 42 of the [Childrens Court Act 1992](#), the amended s 20 applies in relation to a proceeding whether the proceeding was started before or after 13 December 2024 (s 41 CCA).

Section 42 of the [Childrens Court Act 1992](#) applies to existing exclusion orders made by the court under the former s 20 if the order was in effect immediately before 13 December 2024 and applies in relation to a proceeding that has not been decided, discontinued, finalised or withdrawn immediately before that date. A person who is subject to the exclusion order may apply to the court to have the order set aside (s 42(2) CCA). If the court is satisfied that the applicant is a person mentioned in the new s 20(1)(c) of the [Childrens Court Act 1992](#), then the court **must** set aside the exclusion order (s 42(3) CCA).

1.2.3 Confidentiality Provisions

See also Part 9 of the YJA regarding confidentiality and disclosure of information about a child who is being, or has been, dealt with under that Act. Further restrictions on reporting identifying information about a child who is a witness in certain proceedings involving sexual offending or offences of a violent nature are contained in s 193 of the [Child Protection Act 1999 \(CPA\)](#).

1.3 Jury Trials

Section 22(1) of the [Childrens Court Act 1992](#) provides that all indictable offences prosecuted in the Childrens Court must be tried by a Childrens Court Judge and a jury. This is subject to any Act that allows or requires an indictable offence prosecuted in the Childrens Court to be tried in another way.

Section 98 of the 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 (s 98(5) YJA). The child may change an election to have a trial with or without a jury at any time before entering a plea to the charge (s 103 YJA).

If the child is not legally represented before the Judge, the child must be tried by the Judge sitting with a jury (s 103(2) YJA).

Section 105 of the YJA provides a discretion for 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 (s 22(4) CCA & s 101 YJA).

1.4 Practice Directions

The Childrens Court has issued various practice directions relevant to youth 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.](#)

1.5 Youth Justice Regulation 2016

Pursuant to the YJA, the [Youth Justice Regulation 2016](#) commenced on 26 August 2016. It contains provisions relating to restorative justice processes, pre-sentence reports and community-based orders, the regulation of detention centres, and the handling of confidential information concerning a child.

Chapter 2 – Youth Justice Act 1992

2.1 General Matters

The criminal jurisdiction in relation to children is set out in the [Youth Justice Act 1992 \(Qld\) \(YJA\)](#).

2.2 Principles of Youth Justice

The objectives of the Act are set out in s 2 of the YJA:

- to establish the basis for the administration of juvenile justice; and
- to establish a code for dealing with children who have, or are alleged to have, committed offences; and
- to provide for the jurisdiction and proceedings of courts dealing with children; and
- to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and
- 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—
 - rehabilitate children who commit offences; and
 - reintegrate children who commit offences into the community.

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

Section 3 of the YJA provides that the [Charter of Youth Justice Principles](#), contained in Schedule 1 YJA, underpin 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 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
 - 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 nor any other provision of the YJA provided, expressly or impliedly, that any of the Youth Justice Principles have precedence over another.

2.3 International Conventions

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.

2.4 Human Rights Act 2019

One of the main objects of the [Human Rights Act 2019 \(Qld\)](#) (HRA) is to protect and promote human rights (s 3(a) HRA). Human rights that may be relevant to youth justice include:

- All individuals in Queensland have human rights (s 11 HRA).
- Every person is equal before the law and entitled to the equal protection of the law without discrimination (s 15(3) HRA).
- All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person (s 30(1) HRA).
- An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, unless reasonably necessary (s 30(2) HRA).
- An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted (s 30(3) HRA).
- A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing (s 31(1) HRA).
- A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law (s 32(1) HRA).
- A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees (s 32(2) HRA):
 - to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication the person speaks or understands;
 - to have adequate time and facilities to prepare the person's defence and to communicate with a lawyer or advisor chosen by the person;

- to be tried without unreasonable delay;
 - to be tried in person, and to defend themselves personally or through legal assistance chosen by the person or, if eligible, through legal aid;
 - to be told, if the person does not have legal assistance, about the right, if eligible, to legal aid;
 - to have legal aid provided if the interests of justice require it, without any costs payable by the person if the person is eligible for free legal aid under the [Legal Aid Queensland Act 1997](#);
 - to examine, or have examined, witnesses against the person;
 - to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution;
 - to have the free assistance of an interpreter if the person cannot understand or speak English;
 - to have the free assistance of specialised communication tools and technology, and assistants, if the person has communication or speech difficulties that require the assistance;
 - not to be compelled to testify against themselves or to confess guilt.
- 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 (s 32(3) HRA).
 - An accused child who is detained, or a child detained without charge, must be segregated from all detained adults (s 33(1) HRA).
 - An accused child must be brought to trial as quickly as possible (s 33(2) HRA).
 - A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age (s 33(3) HRA).

Section 33(1) of the [Human Rights Act 2019 \(Qld\)](#) recognises that a child held in custody with adults has a higher risk of violent victimisation, exposure to illicit substances and escalating criminality.²

Section 33(2) again emphasises the need for speedy resolution, which is more onerous than the [Human Rights Act 2019 \(Qld\)](#) provisions in relation to adults, which require proceedings to be resolved without unreasonable delay (ss 29(5) and 32(2)(c) HRA).

² Australian Law Reform Commission, [Seen and Heard: Priority for Children in the Legal Process](#), Report No 84 (29 July 2010).

2.5 Definition of Child

A **child** is an individual who is under 18 years of age. Correspondingly, an **adult** means an individual who is 18 years or older.³

The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) raised the age of a child to include 17 year olds by adopting the definitions contained in the *Acts Interpretation Act 1954* (Qld). The Amendment Act commenced on 12 February 2018.

Section 387 of the 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 proceedings for the offence had not been started before commencement.

If a person is alleged to have committed an offence after turning 18 years of age, the law relating to adult offending applies.

2.6 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.
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 of the 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, consideration must be given to involving a respected person of that community in the cautioning process.

³ Schedule 1 of the *Acts Interpretation Act 1954* (Qld)

- Section 34(1)(h) of the YJA provides that a respected person of the child’s community or a representative of a [Community Justice Group \(CJG\)](#) 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. These groups deliver justice-related initiatives within their communities, including participating in court proceedings pursuant to specific legislative provisions, including those 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 Regulation.
 - More commonly, CJGs are established by communities to provide support to Aboriginal and Torres Strait Islander people in contact with the justice system. Section 19(1) of that Act gives these groups the function of taking part in court hearings, sentencing and bail processes under the YJA.
 - An up-to-date list of funded CJGs is available on the [Queensland Courts website](#).
- Section 48AA(4)(a)(vii) of the YJA provides that, when making 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 submissions about the child’s connection with community, family or kin, cultural considerations, or programs and services in which the CJG participates. See also s 48AC of the YJA, which sets out particular matters that CJGs must advise the court or a police officer about if requested.
- Section 48AA(4)(b)(viii) of the YJA provides that, when deciding whether to release a child without bail or grant bail under s 48AA(1)(d), the court or police officer may have regard to the desirability of maintaining the child’s connection with their community, family and kin if the child is an Aboriginal or Torres Strait Islander person.
- In sentencing a child who is an Aboriginal or Torres Strait Islander person:
 - Section 150(3)(ha) of the YJA requires the court to have regard to any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child.

- Section 150(3)(i) of the YJA requires the court to have regard to any submissions made by representatives of the CJG of the child's community. Such submissions may include information about the child's relationship to the community, cultural considerations, or programs or services for offenders in which the CJG participates. See also s 150(8) of the YJA where, if required by the court, the representative must advise of any relationship to the offender or victim or any circumstances that may give rise to a conflict of interest.

2.7 Diversion

Principle 6 of the [Charter of Youth Justice Principles](#) provides that, 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 commenced.

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

- take no action;
- administer a caution to the child;
- refer the offence for a restorative justice process;
- refer the child to a drug diversion program (if the offence is a **minor drugs offence**);⁴ or
- refer the child to a graffiti removal program (if the offence is a **graffiti offence**).⁵

These processes may occur even if a similar action has previously been taken in relation to the child, or if a proceeding for another offence has been started or has ended (s 11(6) YJA). Such action may also be taken in relation to a **serious offence** (s 11(7) YJA).⁶

⁴ Minor drugs offence is defined in [s 378B of the Police Powers and Responsibilities Act 2000](#)

⁵ **Graffiti offence** means an offence against s 469 of the [Criminal Code \(Qld\)](#) that is punishable under Item 9 (Schedule 4 YJA)

⁶ **Serious offence** in this Act 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. However, an offence is not a serious offence if (a) it is a relevant offence under the s 552BA [Criminal Code](#); or (b) it is an offence that is the subject of a charge to which s 552A or 552B of the [Criminal Code](#) applies; or (c) if proceedings for a charge for the offence may be taken summarily under s 13 of the [Drugs Misuse Act 1986](#); or (d) if proceedings for a charge for the offence may be taken summarily under s 14 of the [Drugs Misuse Act 1986](#) (s 8 YJA).

2.8 Child Offenders who Become Adults

2.8.1 Overview

Division 11 of the YJA contains provisions dealing with circumstances in which child offenders or alleged child offenders become adults.

Section	Title	Effect
132	Definitions	Definitions of adult offence , child offence , offender and sentence for this part
134	Offender treated as a child	Subject to Division 11 and Part 8, Division 2A of the YJA, a person must be treated as a child, for the purposes of the Act, in relation to an offence committed as a child.
140	When offender must be treated as an adult	The offender must be treated as an adult if: (a) more than one year has passed since turning 18 and proceedings start after that (b) proceedings started earlier but not completed within one year (c) the offender absconded and cannot be sentenced until after one year
141	When offender may be treated as an adult	The court may treat the offender as an adult where: (a) proceedings started as a child; (b) not completed within a year; and (c) the offender has been sentenced or proceeded against as an adult for another offence.
142	Continuing effect on offender of orders made when child	Child orders continue even after person becomes an adult.
143	When order made as a child may be dealt with as adult order	Allows court to convert a childhood sentence order into a corresponding adult order.

144	Sentencing offender as an adult	Sets limits on adult sentencing for child offences
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2.8.2 Definitions (s 132 YJA)

- An **adult offence** means an offence committed by an adult.
- A **child offence** means an offence committed by a child.
- An **offender** means a person who has committed an offence as a child and who has, since committing the offence, become an adult.
- A **sentence** in relation to an offender sentenced as an adult includes orders made instead of sentences.

In [R v GYZ \[2023\] QSC 127](#), Kelly J considered whether a trafficking charge, where part of the trafficking period occurred when the defendant was 17 years old but continued into adulthood, was a *child offence* under s 132 of the YJA. His Honour held that the sentencing proceeding **was not** a proceeding for a *child offence*. Trafficking is a single, continuous offence, and because the conduct continued well into adulthood, the defendant was not a person who had “committed an offence as a child” and then become an adult. Division 11 therefore did not apply, and the defendant was sentenced as an adult under ordinary sentencing principles.

2.8.3 When an offender must be treated as an adult (s 140 YJA)

Section 140 of the YJA specifies when an offender **must** be treated as an adult:

- If the offender has turned 19 years of age and the proceeding starts after that date, the offender must be treated as an adult (s 140(1) YJA).⁷
- If a proceeding for a child offence started before the offender turned 18 years of age but has not been completed to verdict within one year after the offender becomes an adult, the proceeding must continue under the YJA as if the offender were a child, but if found guilty, the offender must be sentenced as an adult (s 140(2) YJA).
- If, after a finding of guilt as a child, the court has been unable to sentence the offender because the offender escaped from detention or, without reasonable

⁷ See ss 7 and 12 of the YJA for police officer starting a proceeding and s 42 for the preferred way of starting proceedings.

excuse, failed to appear, and one year has passed since the offender became an adult, the offender must be sentenced as an adult (s 140(3) YJA).

However, an offender **must not** be treated as an adult under s 140 of the YJA if the court is satisfied that there was undue delay by the prosecution in starting or completing the proceeding (s 140(4) YJA).

2.8.3.1 Undue delay

In *R v Knight* [1997] QCA 55, the applicant committed offences as a child but was not charged until after turning 18. He argued that prosecutorial delay required him to be sentenced as a child. The Court of Appeal rejected this argument, finding that although there was delay, the applicant contributed to it by being difficult to locate. The delay was therefore not “undue”.

Similarly in *R v WBR* [2022] QCA 62, the applicant committed a child offence but was not indicted until after turning 19 years of age due to significant prosecutorial delay. The Court of Appeal held that the delay was undue and attributable to the prosecution. Because the proceeding commenced after the applicant turned 19, s 140(1) of the YJA applied, but s 140(4) prevented him from being treated as an adult. Section 141 did not apply because the proceeding did not begin before he turned 19. The applicant should therefore have been treated as a child for sentencing purposes.

2.8.4 When an offender may be treated as an adult (s 141 YJA)

Section 141 of the YJA specifies when an offender **may** be treated as an adult. Where a proceeding has started against an offender for a child offence, and:

- one year has passed since the offender became an adult; and
- the proceeding has not been completed to verdict; and
- the offender has been proceeded against or sentenced as an adult for another offence;

the court hearing the child offence may continue the proceeding as if the offender were an adult when the offence was committed. If the offender is found guilty, they must be sentenced as an adult (s 141(4) YJA).

2.8.5 Continuing effect on offender of orders made when child (s 142 YJA)

An order made under the YJA against a child may be made even though the person will cease to be a child before the order is due to end (s 142(1) YJA).

If the person ceases to be a child before the end of the order, the order continues to apply as if the person were still a child. Any further proceedings or orders arising out of the original order that could have been taken or made had the person remained a child must be taken or made as if the person were a child (s 142(2) YJA).

2.8.6 When order made as child may be dealt with as an adult order (s 143 YJA)

Section 143 of the YJA addresses situations where a child has already been sentenced, but further proceedings arise from that original sentence after the person becomes an adult. For example, where a probation order was made when the person was a child, but breach proceedings are commenced after the person becomes an adult.

The court may only treat the person as an adult if one of the following circumstances exists:

- the person has committed another offence as an adult; or
- more than one year has passed since the person became an adult.

If the court decides to treat the person as an adult, the childhood sentence order is declared to be a corresponding adult order. The court may make all the necessary changes to convert it into the adult equivalent. For example, a child probation order becomes an adult probation order under the [*Penalties and Sentences Act 1992*](#).

Once converted, the person is subject to the adult order for the current proceeding and any future proceedings. All enforcement, breach and variation powers under the adult legislation apply.

Section 123 of the [Penalties and Sentences Act 1992](#), which concerns breaches of community-based orders, does not apply to breaches that occurred before the order was converted. Normally, an adult must consent to probation or community service under s 12(6) of the [Penalties and Sentences Act 1992](#). However, under s 143(6)(b) of the YJA, the court does not require the person's consent when converting a child order.

2.8.7 Sentencing offender as adult

Section 144 of the YJA sets out the principles that apply when sentencing an adult for a child offence:

- The court must have regard to the fact that the offender was a child when the offence was committed, and to the sentence that might have been imposed had the offender been sentenced as a child (s 144(2) YJA).
- The court cannot impose a term of imprisonment longer than the period of detention that could have been imposed if the offender had been sentenced as a child, nor impose a monetary penalty greater than that which could have been ordered for a child (s 144(3) YJA). This limitation applies even if an adult would otherwise be liable to a heavier penalty that could not be reduced by operation of law (s 144(4) YJA).

2.8.8 Admissibility of particular evidence (ss 148, 148A & 148B YJA)

Section 148 of the YJA provides that, subject to ss 148A and 148B, evidence of a childhood finding of guilt is not admissible against an adult if a conviction was not recorded (s 148(1) YJA). In [R v Duncombe \[2005\] QCA 142](#), the Court of Appeal held that this restriction applies only to offences committed in Queensland and does not apply to interstate offences.

Section 148A of the YJA applies when a court is sentencing an adult for an offence. During the **prescribed period**:⁸

⁸ **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 (s 148A(4) YJA).

- section 148 does not prevent the court from admitting evidence that the person was found guilty as a child of an offence without the recording of a conviction;
- the court may admit other evidence from the person's criminal history as a child; and
- a previous finding of guilt (other than an ***excluded previous finding of guilt***)⁹ for an offence committed as a child without a conviction being recorded is taken to be a previous conviction.

Section 148 does not prevent the court from receiving information about any other sentence to which the person is subject under the YJA if that information is necessary to mitigate the effect of the court's sentence.

Section 148B of the YJA applies to proceedings involving an adult charged with an offence under s 328A of the [Criminal Code](#) (on indictment or summarily), where the offence is alleged to have been committed after a previous conviction mentioned in that section. It also applies to sentencing proceedings for offences under ss 328A(2)(c) or 328A(3) of the [Criminal Code](#).

Section 148B was inserted by the [Making Queensland Safer Act 2024](#). It applies only to offences under s 328A of the [Criminal Code \(Qld\)](#) if committed after 28 February 2025 (s 438A YJA).

2.8.9 Custodial arrangements (ss 135, 136, 142 & 143 YJA)

Sections 135 and 136 of the 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. Sections 142 and 143 of the 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.

2.9 Identification and Confidentiality Issues

The Childrens Court, when constituted by a Magistrate, is closed to the general public. Only specified persons may be present in court (s 20 CCA). Where the Childrens Court constituted by a Judge is

⁹ ***Excluded previous finding of guilt*** means a finding of guilt to which s 148B(2) of the YJA applies (s148A(4) YJA)

dealing with a matter on indictment, these restrictions do not apply (s 20(5) CCA). However, the restrictions do apply in relation to other criminal proceedings before a Childrens Court Judge.

There are also restrictions on the identification of a child in proceedings under the YJA. Part 9 of the YJA sets out the provisions about disclosure of information:

- Section 301 of the YJA creates offences in relation to the publication of **identifying information**¹⁰ about a child.
- Examples of identifying information include 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 from the relevant chief executive if satisfied that publication is necessary to ensure a person's safety (s 301(2) & (3) YJA).

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

- any offence that is a **life offence**¹¹ 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 (s 234(2)(a) YJA).
- where a court sentences a child for an offence under s 175A of the YJA committed on or after 13 December 2024: 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.

Section 234(3) of the 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 (s 234(4) YJA).

In *R v Rowlingson* [2008] QCA 395, the Court of Appeal upheld the sentencing judge's decision to permit publication of the applicant's name following conviction for murder. The offending was planned, deliberate and cold-blooded, involved disturbing post-offence conduct, and indicated a

¹⁰ **Identifying information** is 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 (Schedule 2 YJA).

¹¹ **Life offence** means an offence for which a person sentenced as an adult would be liable to life imprisonment (Schedule 4 YJA).

moderate to high risk of future violence. The Court held that the sentencing judge had properly exercised the discretion and that the public interest in transparency and community protection outweighed the usual protections for child offenders.

In [R v SBU \[2011\] QCA 203](#), the applicant, aged 14 at the time of the offending, was convicted of murder. The sentencing judge ordered publication under s 234 of the YJA. The Court of Appeal set aside the naming order, emphasising that the YJA is built on rehabilitation, reintegration, detention as a last resort, and protection of a child's anonymity unless exceptional circumstances justify otherwise. The applicant's young age, extremely low cognitive functioning, and prospects of rehabilitation weighed strongly against naming. Seriousness of the offence alone was insufficient.

In [R v SDK \[2020\] QCA 269](#), the applicant pleaded guilty to intentionally doing grievous bodily harm after a sudden, unprovoked attack. The sentencing judge made a s 234 order. The Court of Appeal allowed the appeal, stressing that s 234 is intended for rare and exceptional circumstances requiring a life offence involving violence that was found to be particularly heinous and a further conclusion that publication is in the interests of justice despite the impact on rehabilitation. The Court emphasised that publication is likely to prejudice rehabilitation, a central principle under s 150 of the YJA. The case was distinguished from *Rowlingson*, where there was strong evidence of ongoing dangerousness.

The restrictions in Part 9 of the YJA continue to apply after the child becomes an adult (s 283(3) YJA). They 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 were still a child (s 283(4) YJA). Other sections in Part 9 relate to the authorised sharing of confidential information for various purposes.

Section 193 of the [Child Protection Act 1999](#) imposes further restrictions on the reporting of **identifying information**¹² about a child who is to be a witness in certain proceedings in relation to sexual offences or offences of a violent nature.

¹² **Identifying information** about a child (a) means information that identifies, or is likely to lead to the identification of, him or her as a witness in a proceeding for an offence or a person in relation to whom an offence was committed or is alleged to have been committed; and (b) includes (i) the child's name, age, address, school or place of employment; and (ii) a photograph or film of the child or of someone else that is likely to lead to the child's identification (s 193(6) [Child Protection Act 1999](#))

2.10 Role of Parents

Principle 12 of the [Charter of Youth Justice Principles](#) provides that 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 of the YJA provides that if a **parent**¹³ 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 whereabouts 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 their attendance (s 69(2) YJA).

Under s 70 of the YJA, the court may order a parent of the child to attend the proceeding as directed. Such an order may be made on the prosecutor's application or on the court's own initiative (s 70(2) YJA). Written notice of the order may be given by the proper officer of the court, who may request the Commissioner of Police to assist in giving the notice (s 70(3) & (4) YJA). It is an offence to contravene such a notice (s 70(6) YJA).

Section 71 of the YJA provides that a parent who was not present when a finding or order was made may apply to have the finding or order set aside. 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 attend, or was unable to attend for sufficient reason (s 71(1) YJA); and
- it is in the interests of justice to set aside the finding or order (s 71(2) YJA).

¹³ A **parent** means (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 (Schedule 4 YJA). The definition therefore includes the chief executive of the Department of Families, Seniors, Disability Services and Child Safety where the child is subject to an order under the [Child Protection Act 1999](#) placing them in the custody of or under the guardianship of the chief executive (Schedule 3 [Child Protection Act 1999](#))

The application must be made within 28 days of the order being made (s 71(4)). If successful, the matter must be heard and determined afresh.

In certain circumstances where a child has been found guilty of a personal or property offence, the court may order a **parent**¹⁴ to pay compensation for the offence (s 258 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](#).

Under s 78D of the *Transport Operations (Road Use Management) Act 1995*, if a child under 16 years commits an offence against ss 78B (riding an e-bike or personal mobility device without a valid license) or 84B (riding a prohibited bike in public) of that Act, a parent of the child is taken to have also committed an offence against ss 78B or 84B, as the case may be, and is liable to the same penalty. The parent may be proceeded against, and convicted of, an offence against those sections whether or not the child has been proceeded against, or convicted of, the child's offence against those sections (s 78D(4) TORUM)

It is a defence to a parent to prove that:

- they did not know, and could not have reasonably have been expected to know, of the child's conduct constituting the offence against ss 78B or 84B; or
- they took all reasonable steps to ensure that the child did not engage in the conduct constituting the offence against ss 78B or 84B.

For the purposes of s 78D, a parent of a child means an adult who is the child's mother, father or someone else, other than the chief executive (child safety), having or exercising parental responsibility for the child; but does not include a person standing in the place of a parent of the child on a temporary basis; or an approved carer of the child (s 78D(8) TORUM).

The role of parents in relation to bail considerations was expanded in 2021 with the following provisions inserted into the YJA:¹⁵

¹⁴ For this purpose, **parent** is defined to mean a guardian of the child other than the chief executive (child safety) (s 257 YJA).

¹⁵ [Youth Justice and Other Legislation Amendment Act 2021](#)

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: (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. 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.¹⁶
48AA (6)	The court or police officer must not decide there is an unacceptable risk of a matter mentioned in s 48AAA(2) or (3), or to refuse to release a child from custody, solely because one or both of the following apply: - the child has no apparent family support; - the child will not have accommodation, or adequate accommodation, on release from custody.

2.11 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.

¹⁶ Explanatory Notes to the [Youth Justice and Other Legislation Amendment Bill 2021](#), page 4

Section 72 of the YJA requires the court to take steps to ensure, as far as practicable, that the child and any parent present have a full opportunity to be heard and to participate in the proceeding. The court must also ensure, as far as practicable, that the child and parent understand the nature of the proceedings and the consequences of any order that may be made (s 72(2) YJA).

Examples of steps the court may take under s 72(3) are:

- directly explaining these matters in court to the child and parent; and
- having an appropriate person give the explanation; and
- having an interpreter or another person able to communicate effectively with the child and parent give the explanation; and
- providing, or causing to be provided, an explanatory note in English or another language to the child and the parent.

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

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

Section 32(i) and (j) of the [Human Rights Act 2019](#) provide that a person charged with a criminal offence has the right to the assistance of an interpreter if required, and to specialised communication tools, technology and assistance where communication or speech difficulties require support.

2.12 Chief Executive's Right of Audience

Section 74 of the YJA entitles the chief executive (youth justice) to be heard by the court on the various matters in any proceeding in which the child is charged with an offence. This applies even if the chief executive is not a party to the proceeding (s 74(2) YJA).

The chief executive may be heard on:

- adjournment of the proceeding; and
- matters relating to the custody or release from custody of the child pending completion of the proceeding; and

- sentence orders that may be made against the child; and
- any other matters on which the court considers the chief executive should be heard.

Where the chief executive is a party to the proceeding, the chief executive may appear and be represented by an officer of the department (s 74(5) YJA). The chief executive has no right to be heard in relation to an issue under s 234 of the YJA regarding the publication of identifying information about a child (s 74(4) YJA).

2.13 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**¹⁷ who is subject to a child protection order or intervention (s 52 [Public Guardian Act 2014](#) (PGA)).

Section 13(1)(l) of the PGA provides that the Public Guardian has a **child advocate function** in supporting the child at a proceeding before the court. That support may include:

- assisting a child's direct legal representative to understand underlying issues that may be affecting the child;
- providing supplementary submissions in mitigation of sentence;
- providing complementary submissions to support case conferencing or negotiation of charges;
- assisting the direct legal representative to access relevant information to inform submissions to the court.

Under s 29 of the [Childrens Court Act 1992](#), the Public Guardian may be present in court proceedings. Section 150(9) of the YJA provides 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.

¹⁷ A child is a **relevant child** if (a) the child is subject to any of the following: (i) a temporary assessment order under s 27(1) of the [Child Protection Act 1999](#), (ii) a court assessment order under s 44 of the [Child Protection Act 1999](#), (iii) a temporary custody order under s 51AE of the [Child Protection Act 1999](#), (iv) a child protection order under s 61 of the [Child Protection Act 1999](#) including a child protection order that continues in force (A) under a transition order made under s 65A of that Act; or (B) by operation of s 65A(4) of that Act; (v) an intervention, with the child's parents' agreement, by the chief executive (child safety) under Chapter 2, part 3B, Division 2 of the [Child Protection Act 1999](#) or (vi) a care agreement under s 51ZE of the [Child Protection Act 1999](#); or (b) the child is the subject of an application for an order mentioned in subsection (1)(a)(i) to (iv).

2.14 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 of the YJA provides that if a child appears before a Childrens Court charged with an indictable offence and 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 legal representation and has decided not to be represented by a lawyer.

[Legal Aid Queensland's](#) policy is that legal aid is automatically available to children charged with indictable offences. A merit test applies to applications for aid 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, Legal Aid Queensland does not take the parents' assets into account.¹⁸ Legal Aid Queensland applies a means test to persons 18 years and over who are alleged to have committed an offence as a child.

Under s 22 of the [Legal Aid Queensland Act 1997](#) (Qld), a court may recommend that a person be given legal assistance by Legal Aid Queensland if the person is before the court in a ***specified criminal proceeding***¹⁹ and the court considers it appropriate to make the recommendation.

2.15 Reopening and Removal of Proceedings

Section 128(1) of the YJA provides that a court, whether or not differently constituted, may reopen a proceeding if the court has:

- made a ***finding or order***²⁰ 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

¹⁸ [Youth Justice Practitioners Guide, Legal Aid Queensland \(Version 1, August 2018\)](#), page 44

¹⁹ A ***specified criminal proceeding*** includes a criminal proceeding under the YJA in relation to an indictable offence ([Schedule, Legal Aid Queensland Act 1997](#))

²⁰ ***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 (s 128(7) YJA).

- made a ***finding or order*** in relation to a child based on a clear factual error of substance.

Section 128(2) clarifies that the power to reopen a proceeding based on a clear factual error includes circumstances where the finding or order was incorrectly made:

- in relation to the wrong person;
- because a summons issued on a complaint did not come to the knowledge of the child;
- because the finding or order was made for a matter for which the child had previously been dealt with; or
- because of someone's deceit.

If the court re-opens a proceeding, it must give the parties the opportunity to be heard and may:

- make a finding or order the court considers should have been made in the first place, taking into account the factual error; or
- amend any relevant finding or order to the extent necessary (s 128(3) YJA).

The court may re-open the proceeding:

- on its own initiative at any time; or
- on the application of a party, the chief executive or the court's registrar or the clerk of the court, made within 28 days after the day the ***finding or order*** was made or any further time the court may allow on application at any time (s 128(4) YJA).

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

- give any directions it considers necessary; or
- take or make any procedural action or order that the court of competent jurisdiction could take or make.

If, during a proceeding, a court finds it does not have jurisdiction but does have concurrent jurisdiction, it may continue the proceeding in that concurrent jurisdiction (s 130 YJA). If the court does not have concurrent jurisdiction, it must remove the proceeding under s 129 of the YJA.

Section 131 of the YJA applies where a lack of jurisdiction is discovered after the proceeding has ended.

An application may be made to the court that made the finding or order to set it aside (s 131(2) YJA).

The application may be made by:

- a party to the proceeding;
- the chief executive acting in the child's interest, if the person charged was a child; or
- the Director of Public Prosecutions (s 131(3) YJA).

The application must be made within 28 days after the error is discovered or within a later time that the court may allow (s 131(4) YJA).

On hearing the application, the court may:

- set aside the finding or order and make the finding or order that should have been made, if necessary, after determining the facts the court (when differently constituted) must have found; or
- take any action or make any order that could have been made if the error had been discovered immediately before the finding or order was made (s 131(5) YJA).

A court cannot set aside an acquittal under this section or an order dismissing a charge or discharging a person (s 131(6) YJA).

Chapter 3 – Jurisdiction

3.1 Children

As noted above, a child is an individual who is under 18 years of age.²¹ Section 29 of the *Criminal Code (Qld)* provides that:

- a person under 10 years of age is not criminally responsible for any act or omission; and
- a person under 14 years of age is not criminally responsible 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.

3.2 Definitions of Offences

For the purposes of the criminal law, s 3 of the *Criminal Code (Qld)* defines two kinds of offences:

Criminal offences	Regulatory offences
Criminal offences comprise of crimes, misdemeanours, and simple offences (s 3(2)) ○ For some simple offences, see <i>Summary Offences Act 2005 (Qld)</i>. ○ Crimes and misdemeanours are indictable offences; the offender cannot, unless otherwise expressly stated, be prosecuted, or convicted except upon indictment (s 3(3)). ○ A person guilty of a regulatory offence or a simple offence may be summarily convicted by a Magistrates Court (s 3(4)).	Regulatory offences are created under the <i>Regulatory Offences Act 1985 (Qld)</i> and include: • unauthorised dealing with shop goods (s 5) • leaving hotel etc without payment (s 6) • unauthorised damage to property (s 7)

²¹ Schedule 1 of the *Acts Interpretation Act 1954 (Qld)*.

○ An offence not otherwise designated is a simple offence (s 3(5)).	
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Section 60 of the 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 of the YJA defines a **serious offence** as:

- A **life offence**; ²² or
- An offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more **except for**:
 - A relevant offence under s 552BA of the *Criminal Code (Qld)*;
 - An offence that is the subject of a charge to which ss 552A or 552B of the *Criminal Code (Qld)* applies;
 - Proceedings under s 13 of the *Drugs Misuse Act 1986* that may be taken summarily; or
 - Proceedings under s 14 of the *Drugs Misuse Act 1986* that may be taken summarily.

For the purpose of this section, the type of an offence includes the circumstances in which it is committed (s 8(3) YJA).

3.3 Jurisdiction of the Childrens Court Constituted by a Magistrate

Section 64 of the YJA provides that a Childrens Court Magistrate can hear and determine all proceedings for charges against children under the *Justices Act 1886*, including committal proceedings. A Magistrates Court and justices conducting committal proceedings do not have that jurisdiction (s 64(3) YJA).

A Childrens Court Magistrate therefore has the power to hear and determine:

- regulatory, summary, and simple offences;

²² A **life offence** means an offence for which a person sentenced as an adult would be liable to life imprisonment (Schedule 4 YJA).

- indictable offences (other than **Supreme Court offences**²³ and **serious offences**) for which the child has elected summary disposition; and
- committal proceedings.

Section 65 of the 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 jurisdiction as a Magistrates Court has under the *Justices Act 1886* 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 *Criminal Code (Qld)*, the *Justices Act 1886* 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 orders made by the Childrens Court Magistrate in the same way as they apply to a Magistrates Court (s 66 YJA).

If the Childrens Court is constituted by two justices, the court's jurisdiction is limited to hearing and determining a simple offence where the child pleads guilty and taking or making procedural actions or orders (s 67(1) YJA). The justices cannot make a detention order or a conditional release order (s 67(2) YJA).

3.3.1 Election for summary disposition

Section 76 of the YJA provides that a child may elect to have an indictable offence dealt with summarily by a Magistrate even if more than one year has passed since the commission of the offence. Section 552F of the *Criminal Code (Qld)* confirms that the Magistrates Court has jurisdiction despite the time elapsed. Section 52 of the *Justices Act 1886* sets out the limitation period for simple offences and breaches of duty.

Section 77 of the 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

²³ A **Supreme Court offence** means an offence for which the District Court does not have jurisdiction to try an adult because of s 61 of the *District Court of Queensland Act 1967 (Qld)* (Schedule 4 YJA).

proceeding. Any further proceeding before the court must be conducted as a committal proceeding (s 77(4) YJA).

3.3.2 Committal for sentence

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 (s 186 YJA).

3.3.3 Punishment of contempt

Section 26(3) of the [Childrens Court Act 1992](#) 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 of the [Justices Act 1886](#) applies in relation to the court when so constituted in the same way as it applies to a Magistrates Court (s 26(4) YJA).

3.4 Jurisdiction of the Childrens Court Constituted by a Judge

Section 62 of the YJA provides that a Childrens Court Judge has jurisdiction to inquire into and decide all indictable offences, wherever committed, charged against a child other than **Supreme Court offences** (s 62(1) YJA). It does not matter where the offence occurred or whether the child has been committed for trial or sentence before the Childrens Court Judge. Any trial on an indictable offence may be conducted with a jury or by a Judge alone at the child's election (ss 102-105 YJA).

Under s 105 of the YJA, if the child is not legally represented or if represented, the child has not elected, or withdraws an election to be tried without a jury or, if the Judge considers that, in the 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 and jury.

Section 101 of the YJA provides that the provisions of the [Criminal Code \(Qld\)](#) and any other Act (such as the [Jury Act 1995](#)) relating to the hearing and determination of indictable offences on indictment apply to proceedings before a Childrens Court Judge.

A Childrens Court Judge may also:

- delegate sentencing powers to a Childrens Court Magistrate under s 185 of the YJA (s 62(b) YJA);
- sentence a child on any charge for a summary offence on which the child consents to being sentenced pursuant to s 651 of the *Criminal Code (Qld)* (s 100 YJA);
- hear bail applications under s 59 of the YJA (s 62(c) YJA);
- perform other functions and exercise other powers conferred on the Judge under the YJA (s 62(d) YJA);
- review a sentence order made by a Childrens Court Magistrate (ss 62(e) & 118 YJA);
- decide an application pursuant to s 139 of the 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 of the YJA provides that, for the purpose of the jurisdiction assigned to a Childrens Court Judge under the YJA, the Judge has the same powers and jurisdiction as the District Court in its criminal jurisdiction.

For the purposes of the powers and jurisdiction of a Childrens Court conferred by the YJA, the provisions of the *Criminal Code (Qld)*, the *Justices Act 1886* and other Acts apply to the institution and conduct of proceedings, the exercise of power and jurisdiction, and the enforcement of orders made by the Childrens Court Judge in the same way as they apply to the District Court (s 66 YJA).

Section 26 of the *Childrens Court Act 1992* provides that a Childrens Court Judge has the same powers to punish a person for contempt of court as a District Court Judge. Section 129 of the *District Court of Queensland Act 1967* applies to a Childrens Court Judge in the same way as it applies to a District Court Judge (s 26(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**,²⁴ the court must order that the child be tried before the Supreme Court (s 95 YJA). Proceedings in the Supreme Court are not Childrens Court proceedings. Accordingly, the restricted access provisions in s 20 of the *Childrens Court Act 1992* do not apply.

²⁴ A **Supreme Court offence** means an offence for which the District Court does not have jurisdiction to try an adult because of s 61 of the *District Court of Queensland Act 1967 (Qld)* (Schedule 4 YJA).

Sentence proceedings in the Supreme Court are governed by the YJA (s 149 YJA). Mandatory sentence provisions under other Acts relating to monetary penalties or imprisonment do not apply (s 155 YJA). For sentence orders relating to *life offences*²⁵ and other significant offences, see s 176 of the YJA.

3.6 Jurisdiction of the District Court in relation to Childrens Matters

The District Court may try or sentence a child on indictment if:

- the child is also charged as an adult with an offence (s 140(1) YJA); or
- if a child is a co-accused with an adult in a joint trial (ss 107-113 YJA).

Such a trial must be conducted with a jury (s 113 YJA). If convicted, the child must be sentenced in accordance with the YJA (s 149 YJA).

Proceedings against a child on indictment in the District Court are not subject to the restricted access provisions in s 20 of the *Childrens Court Act 1992*.

3.7 Application of Mental Health Act 2016

The *Mental Health Act 2016* (Qld) applies to a child charged with an offence as it applies to an adult (s 61 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	• Bail applications and applications to review police bail or release decisions.

²⁵ A *life offence* means an offence for which a person sentenced as an adult would be liable to life imprisonment (Schedule 4 YJA).

Constitution	Jurisdiction
Childrens Court Magistrate is not available	• 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 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. • 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 Police Powers and Responsibilities Act 2000.
Childrens Court constituted by a Judge	A Childrens Court Judge has jurisdiction— • to hear and determine, under Division 7 of the YJA, a charge of an indictable offence against a child; • sentence for a summary offence transferred pursuant to s 651 of the Criminal Code (Qld); • to delegate sentencing powers to a Childrens Court magistrate under s 185 of the YJA; and • to hear bail applications under s 59 of the YJA; and • to perform other functions and exercise other powers conferred on the judge under YJA; and • to review a sentence order under s 118 of the YJA made by a Childrens Court Magistrate.

Constitution	Jurisdiction
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 <i>Supreme Court offences.</i> • Means an offence for which the District Court does not have jurisdiction to try an adult because of s 61 of the 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 Mental Health Act 2016 (Qld) applies to a child charged with an offence as it applies to an adult.

Chapter 4 – Capacity

Section 29 of the *Criminal Code (Qld)* provides that:

- a person under 10 years of age is not criminally responsible for any act or omission; and
- a person under 14 years of age is not criminally responsible 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 reflects the common law presumption of *doli incapax* (incapable of crime). The rationale for the presumption was explained in *RP v R* [2016] 91 ALJR 248, where the High Court observed that “a child under 14 is not sufficiently intellectually and morally developed to appreciate the difference between right and wrong” [8].

4.1 Doli Incapax

Section 29(2) of the *Criminal Code (Qld)* establishes a rebuttable presumption against criminal responsibility for children aged 10 to under 14 years. The onus is on the prosecution to rebut the presumption by admissible evidence proving that the child had the requisite capacity. Capacity is an element of the offence and must be proved beyond reasonable doubt. The question of capacity must be determined by the Magistrate or Judge sitting alone, or by the jury in a jury trial (*R v LAH* [2016] QCA 82).

In *R v B (an infant)* [1979] Qd R 417, WB Campbell J said:

“It seems to me that this proof, this rebuttal of the presumption, may be done only by the calling of proper and admissible evidence.” [425]

The High Court in *BDO v The King* [2023] HCA 16 summarised the operation of s 29, confirming “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.” [4]

4.2 What Must be Proved

In *R v B* [1997] QCA 486, the Court of Appeal held that the prosecution must prove that, at the relevant time, the child had the capacity to know they ought not to do the act, not merely that they actually knew it was wrong. The Court also suggested that the closer the child was to 14 years of age, the less strong the evidence required to rebut the presumption. That proposition was later questioned by the High Court in *RP v R* [2016] 91 ALJR 248, which emphasised that children do not mature uniformly.

The mere commission of the offence is not, in itself, sufficient to rebut the presumption (*R v Kershaw* (1902) 18 TLR 357).

In *RP v R* [2016] 91 ALJR 248, the High Court quashed the convictions of an 11-year-old child convicted of rape where the prosecution relied primarily on surrounding circumstances of the offences suggesting only that the child knew the conduct to be “naughty” or “mischievous”. The joint judgment explained (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.”

The Court continued:

“[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 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.”

In [BDO v The King \[2023\] HCA 16](#), the High Court confirmed that the trier of fact must be directed that:

- capacity must be assessed at the time of doing the act; and
- the prosecution must 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 of *doli incapax* may be rebutted by admissible evidence demonstrating that, at the relevant time, the child had the capacity to know that they ought not to do the act. Methods of proof recognised in the authorities include:

- Evidence of previous convictions of the child for relevant offences. The court has a residual power to exclude such evidence if its prejudicial effect outweighs its probative value (*B and A* (1979) 69 Cr App R 362 and [R v F; ex parte Attorney-General \[1999\] 2 Qd R 157](#)).

- Evidence of prior police questioning of the child about earlier offending (*R v M* (1977) 16 SASR 589).
- Evidence of cautions administered to the child and restorative justice agreements entered into by the child (s 147 YJA).²⁶
- Proof that the child knew the conduct was “seriously wrong” or “gravely wrong”, including evidence of the child’s intellectual and moral development demonstrating an understanding of moral wrongness rather than mere naughtiness or mischief (*RP v R* [2016] 91 ALJR 248).
- Evidence of the surrounding circumstances of the offence, such as attempts to render a victim incapable of resistance, wearing a disguise or asserting a false alibi (*R v F; ex parte Attorney-General* [1999] 2 Qd R 157).

4.4 Where Prosecution Fail to Prove Capacity

If, at the close of the prosecution case, the prosecution has not proved the child’s capacity to the required standard, the child is entitled to be acquitted. However, the prosecution may apply to reopen its case to prove capacity. In *R v CDR* [1996] 1 Qd R 183, the Court of Appeal held that a trial judge did not err in allowing the prosecution to reopen its case to prove capacity where the omission was not culpable and the evidence proposed to be called was not of a controversial kind.

4.5 Interplay with Section 27 of the Criminal Code (Insanity)

Section 27 of the *Criminal Code (Qld)* is generally inapplicable to children under 14 years of age:

- If the child is under 10 years of age, the presumption against criminal responsibility is absolute, making questions of sanity irrelevant.
- If the child is aged between 10 and under 14 years of age, the rebuttable presumption in s 29(2) applies. It is for the prosecution to prove capacity, not for the child to prove insanity (*R v Brooks* [1945] NZLR 584).

However, if the requisite capacity under s 29(2) is proved, it remains open to a child under 14 years of age to raise the defence in s 27 of the *Criminal Code (Qld)*. The capacities addressed in s 27 are conceptually distinct from the capacity required under s 29 to know that the person ought not to do

²⁶ Note the limitations in s 148C of the YJA regarding the use of admissions made by the child in the course of, for the purpose of, or as a condition of participating in a youth justice program (such as a conference or 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.

the act. Section 61 of the YJA provides that the [Mental Health Act 2016](#) applies to a child charged with an offence in the same way that it applies to an adult.

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 essential to recognise that a child is not a small adult. Depending on the child's stage of development, a range of cognitive, emotional, and behavioural capacities may be immature, affecting their ability to understand and participate meaningfully in court proceedings. These may include:

- the ability to understand meanings and concepts;
- communicate effectively;
- recall past events;
- maintain attention; or
- manage the stress of the courtroom environment.

Judicial officers must be alert to the individual difficulties faced by the child before the court. A child may experience specific challenges arising from:

- social disadvantage;
- disrupted education;
- intellectual disability;
- physical or mental health conditions (including the impacts of FASD); or
- speech, language, or hearing impairments.

These issues may be especially relevant for Aboriginal and Torres Strait Islander children, who may also face cultural and linguistic barriers.

While the primary responsibility for raising specific difficulties rests with the child's legal representative or the party calling the child as a witness, the judicial officer must remain attentive to indicators that a child is struggling to understand or participate. This is particularly important when enabling a child witness to give their best evidence, assessing a child's capacity, and fulfilling the court's obligation to ensure that a child defendant understands and can meaningfully engage in the proceeding.

For child witnesses, the court should be alert to changes in demeanour or in the manner of answering questions. Repeated responses such as “I don’t know” or “I can’t remember”, fidgeting, or changes in posture (such as slumping or lowering the head) may indicate fatigue or distress and signal the need for a break. Judicial officers should remain responsive to such cues.

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 Chapters 3 and 7	Third Edition 2026
Judicial Commission of New South Wales	New South Wales Equality Before the Law Benchbook Section Six	May 2026
Australasian 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	November 2025
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:

- Appendix 2: Neurodevelopmental Domains: What to Look For
- Appendix 3: Practical tips to assist young people with neurodevelopmental impairments
- [Guidelines for Working with Children and Young People](#)

5.2 Children as Witnesses

Section 9 of the [Evidence Act 1977 \(Qld\)](#) (EA) provides that every person, including a child, is presumed to be competent to give evidence in a proceeding and competent to give evidence on ***oath***.²⁷

Two distinct questions may arise:

1. Competence to give evidence at all (s 9A EA).
2. Competence to give sworn evidence (s 9B EA).

An issue may be raised by a party or by the court. The starting point remains the statutory presumption of competence.

5.2.1 Competence to Give Evidence (s 9A EA)

Whether a witness is competent to give evidence is a question for the judicial officer alone. In a jury trial, the issue must be determined in the absence of the jury ([R v Harding \[1989\] 2 Qd R 373](#)).

Where competence is in issue, the statutory test is whether the person is able to give an intelligible account of events they have observed or experienced (s 9A(2) EA). This test applies whether or not the evidence is on ***oath*** (s 9A(3) EA).

The [Supreme and District Court's Criminal Directions Benchbook](#) notes that 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.

²⁷ ***Oath*** includes affirmation, declaration, and promise (Schedule 1 of the [Acts Interpretations Act 1954 \(Qld\)](#)).

A finding that a child is not competent to give evidence under s9A of the [Evidence Act 1977](#):

- Precludes admission of their out of court statement under s 93 of the [Evidence Act 1977](#); but
- Does not preclude admission under s 93B of the [Evidence Act 1977](#).

In [R v SCJ; ex parte Attorney-General \[2015\] QCA 123](#), the Court of Appeal held that s 93A(1)(b) [Evidence Act 1977](#) requires that the maker of the statement be “available to give evidence”. A child who is found incompetent under s 9A is not available, rendering s 93A inadmissible. However, such a child may fall within s 93B(1)(b) of the [Evidence Act 1977](#) as “mentally incapable of giving evidence”, allowing admission under s 93B in prescribed criminal proceedings, subject to the reliability gateways in s 93B(2) and the fairness discretions in ss 98 and 130 in the [Evidence Act 1977](#).

5.2.3 Competence to Give Sworn Evidence (Section 9B of the EA)

If an issue is raised as to whether the person is competent to give sworn evidence, the statutory test is whether, in the court’s opinion, the person understands:

- that the giving of evidence is a serious matter; and
- they have an obligation to tell the truth over and above the ordinary duty to tell the truth (s 9B EA).

If the person is competent to give evidence but **not** competent to give sworn evidence, the court must explain the duty to speak the truth. Failure to do so is an error of law (s 9B(3) EA). In [R v BBR \[2010\] 1 Qd R 546](#), the failure to give this explanation meant the statutory precondition for receiving the evidence was not satisfied. The trial judge failed to explain to the nine-year-old complainant the duty of speaking the truth before she gave her evidence.

The test does **not** involve belief in God or divine sanction. It derives from [R v Hayes \[1977\] 1 WLR 234](#) and concerns the child’s appreciation of the solemnity of the occasion and the heightened obligation to tell the truth.

It is a fundamental error of law to permit a child to give unsworn evidence without first determining competence to give sworn evidence under s 9B of the [Evidence Act 1977 \(Qld\)](#) ([R v BBR \[2010\] 1 Qd R 546](#); [R v MBT \[2012\] QCA 343](#)). See also [R v Chalmers \[2013\] 2 Qd R 175](#)

where the trial judge permitted the nine year old complainant to give unsworn evidence without first conducting the mandatory s 9B inquiry into her competence to give sworn evidence. The Court of Appeal held that this was a fundamental error of law because s 9B requires the judge to first determine competence to give sworn evidence, even if the child ultimately gives unsworn evidence and the judge must then explain the duty to tell the truth if the child is not competent to be sworn. Neither step occurred at trial.

The [Supreme and District Court's Criminal Directions Benchbook](#) provides suggestive but not prescriptive questions for assessing competence under s 9B(2) of the [Evidence Act 1977 \(Qld\)](#), including:

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

If evidence is admitted under s 9A of the [Evidence Act 1977 \(Qld\)](#) but it is not given on oath, the jury should be directed that the probative value of the evidence is not decreased only because the evidence is unsworn (s 9D EA).

5.2.4 Expert Evidence on Competency (Section 9C of the EA)

Section 9C of the [Evidence Act 1977 \(Qld\)](#) permits the admission of expert evidence on the competency of the witness (both adult or child) where issues arise under ss 9A or 9B. Expert evidence may relate to:

- the child's level of intelligence;
- powers of perception, memory or expression;
- any matter relevant to competence to give evidence, competence to give sworn evidence, or ability to give reliable evidence (s 9C(2) EA).

In determining competence, the judicial officer may consider the child's evidence on a voir dire, any previous recordings of the child's evidence under s 93A of the [Evidence Act 1977 \(Qld\)](#) and expert evidence.

Expert evidence is admissible where the evidence of a child under 12 years is admitted, whether sworn or unsworn (s 9C(1)(c) EA). However, in practice, competence is usually determined without expert evidence.

In [R v FAR \[1996\] 2 Qd R 49](#), the Court of Appeal held that expert evidence is not mandatory and that competency is ordinarily determined by the judge's assessment of the child's ability to give an intelligible account, supported by the voir dire and any s 93A interview.

In *Brunsgard v Jennings* [1974] WAR 36, the court identified two potential components of expert evidence:

- evidence about the general perceptual, memory and expressive capacities of children of a particular age; and
- evidence about the particular child and any special factors affecting their abilities.

5.2.5 Summary: 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 s 93A) and expert evidence. - Section 9C(2) makes admissible expert evidence in relation to the child's <i>"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."</i>	- Can refer to the evidence of the child on voir dire, any previous recordings of the child's evidence (pursuant to s 93A) and expert evidence. - Section 9C(2) makes admissible expert evidence in relation to the child's <i>"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."</i>
Effect of finding not competent	Precludes the admission of the evidence and the admission of an earlier out of court statement under s 93A.	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.

	• The evidence may however be admissible under s 93B. • 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.	• 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 s 9B.
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5.3 Principles for Dealing with a Child Witness

Section 9E of the [Evidence Act 1977 \(Qld\)](#) 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.*

A **child** for this section means a child under 16 years.

Section 21 of the *Evidence Act 1977 (Qld)* empowers the court to disallow **improper questions**²⁸ put to a witness in cross examination or to inform a witness that a question need not be answered.

In deciding whether a question is improper, the court must take into account:

- any mental, intellectual, or physical impairment the witness has or appears to have; and
- 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.

The court is not limited in the matters that the court may take into account in deciding whether a question is improper.

5.4 Section 93A Evidence Act (Qld)

Section 93A of the *Evidence Act 1977 (Qld)* 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;
- the child had personal knowledge of the matters dealt with by the statement; and
- the child is available to give evidence in the proceeding.

A **child** for the purposes of s 93A is defined in sub section (5) as:

- a person under 16 years of age when the statement was made (regardless of age at the time of the proceeding); or
- a person aged 16 or 17 years old when the statement was made and who is a **special witness**²⁹ at the time of the proceeding.

In most prosecutions involving child witnesses, the child's evidence-in-chief is tendered under this section by way of a recorded police interview (audio or video).

²⁸ **Improper question** means a question that uses inappropriate language or is misleading, confusing, annoying, harassing, intimidating, offensive, oppressive, or repetitive.

²⁹ A **special witness** is defined in s 21A of the *Evidence Act 1977*.

5.4.1 Admissibility

Statements admitted under s 93A remain subject to exclusionary discretions in ss 98 and 130 of the *Evidence Act 1977 (Qld)*. However, those discretions should not be exercised in a way that frustrates the legislative purpose of s 93A. (*R v FAR* [1996] 2 Qd R 49; *R v Morris; ex parte Attorney-General* [1996] 2 Qd R 68).

In *R v Cowie; ex parte Attorney-General* [1994] 1 Qd R 326, the Court of Appeal held that s 93A(1)(c) requires only that the child be present and available to give evidence at trial. The child need not be able to recall the events described in the statement. “Personal knowledge” refers to knowledge at the time the statement was made, not at trial. Any inability to recall events at trial goes to the weight of the evidence, not the admissibility.

In *R v Cumner* [1994] QCA 270, the complainant’s s 93A interview was the only evidence of the alleged offence. At trial, the child could not recall the incident, the interview, or identify the appellant. The Court of Appeal quashed the conviction, emphasising that the statement was recorded nine months after the alleged incident, the child’s trial evidence contradicted the s 93A interview, cross examination of the child was effectively impossible and ss98 and 130 permit exclusion where admission would be unfair or inexpedient.

In *R v D* (2003) 141 A Crim R 471, the Court of Appeal held that the trial judge erred by focusing only on the child’s ability to form memories, failing to consider expert evidence about compromised memory retrieval due to contamination and emotional factors and admitting the s 93A statement without properly applying s 9A of the *Evidence Act 1977* and the discretions in ss 98 and 130. The Court held that the reliability concerns were such that a reasonable jury may not have been satisfied beyond reasonable doubt.

5.4.2 Weight of Evidence

Where a statement admitted pursuant to s 93A is a recorded statement, the jury should ordinarily be directed that the evidence is not to be given any greater or lesser weight because the evidence has been received in that form.

In [R v Lovell \[2016\] QCA 151](#), the Court of Appeal held that where a direction under s 21W(2) of the *Evidence Act 1977* had already been given in relation to the child's pre-recorded evidence, a further direction specifically about the s 93A recording was unnecessary in that case. By contrast, in [R v HCS \[2024\] QCA 193](#), Davis J observed that in the circumstances of that case, it would have been desirable to give a similar direction specifically addressing the s 93A recording.

Section 102 of the [Evidence Act 1977 \(Qld\)](#) authorises directions to a jury on the circumstances relevant to the weight to be given to a s 93A statement, including:

- whether the statement was made, or the information supplied, contemporaneously with the events; and
- whether the statement maker had any incentive to conceal or misrepresent facts.

In [R v TQ \(2007\) 174 A Crim R 385](#), the jury replayed marginally relevant s 93A evidence after retiring. The trial judge failed to warn the jury not to give the replayed evidence disproportionate weight. The omission created a real risk of unfair prejudice.

In [R v Flynn \[2010\] QCA 254](#), the Court of Appeal held that the trial judge's directions on evaluating the reliability of the s 93A interview were adequate. Directions need not be formulaic; they must simply draw attention to the relevant circumstances affecting weight.

In [R v HBN \[2016\] QCA 341](#), the trial judge directed the jury to consider whether the complainant had any incentive to lie. The Court of Appeal held this was a misdirection because there was no evidence of any incentive to lie, directions under s 102 of the *Evidence Act 1977* are not mandatory, the direction improperly favoured the prosecution, and the judge failed to balance the direction by reminding the jury that lack of motive does not prove truthfulness. The misdirection created a real risk of impermissible reasoning and deprived the appellant of a fair chance of acquittal.

Further guidance is available in the [Supreme and District Court's Criminal Directions Benchbook, sections 10.1 and 10.2](#).

5.5 Evidence of Special Witnesses (s 21A)

Part 2, Division 4 of the [Evidence Act 1977 \(Qld\)](#) concerns the evidence of special witnesses.

5.5.1 Who is a special witness?

The definition of a **special witness** is set out in s 21(1) of the [Evidence Act 1977 \(Qld\)](#) and was recently expanded by the [Criminal Justice Legislation \(Sexual Violence and Other Matters\) Amendment Act 2024](#).

A special witness is:

- a child under 16 years who is not an **affected witness** under Division 4A of the [Evidence Act 1977](#);
- a person who, in the court's opinion would, as a result of a mental, intellectual, or physical impairment or a relevant matter, be likely to be disadvantaged as a witness if required to give evidence in accordance with the usual rules and practice of the court; or
- a person who, in the court's opinion would, if required to give evidence in accordance with the usual rules and practice of the court, be likely to:
 - suffer severe emotional trauma; or
 - be so intimidated as to be disadvantaged as a witness; or
- a person who is to give evidence about the commission of a **serious criminal offence**³⁰ committed by a **criminal organisation**³¹ or a **participant in a criminal organisation**;³² or
- a person:
 - against whom **domestic violence**³³ has been or is alleged to have been committed by another person; and
 - who is to give evidence about the commission of an offence by the other person; or

³⁰ A **serious criminal offence** means an indictable offence punishable by at least 7 years imprisonment, including an offence against a repealed provision of an Act; or a prescribed offence as defined under s 161N of the [Penalties and Sentences Act 1992](#) other than an offence mentioned in paragraph (a), charged with a circumstance of aggravation stated in s 161Q of that Act (s 20B EA)

³¹ See s 161O of the [Penalties and Sentences Act 1992](#)

³² See s 161P of the [Penalties and Sentences Act 1992](#)

³³ See s8 of the [Domestic and Family Violence Protection Act 2012](#)

- a person:
 - against whom a sexual offence has been, or is alleged to have been, committed by another person; and
 - who is to give evidence about the commission of an offence by the other person.

A party in a criminal proceeding, including the defendant, may also be declared a special witness (s 21(2)(b) EA).

5.5.2 Special witness measures

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 including:

General discretionary orders (s 21A(2) EA)

- Excluding the defendant or another party from the courtroom, or obscuring them from the witness's view, while the witness gives evidence or is required to appear for any other purpose in relation to a criminal proceeding (s 21A(2)(a) EA);
- Excluding all persons, other than those specified by the court, from the courtroom while the witness gives evidence (s 21A(2)(b) EA);
- Allowing the witness to give evidence from another room other than in which the court is sitting from which all persons, other than those specified by the court, are excluded (s 21A(2)(c) EA);
- Permitting a support person approved by the court to be present while the witness gives evidence (s 21A(2)(d) EA);
- Ordering that the witness's evidence be video-recorded, to be viewed and heard in the proceeding instead of direct testimony (s 21A(2)(e) EA).
- Making other appropriate orders, including directions about:

- a direction about rest breaks for the special witness;
- a direction that questions for the special witness be kept simple;
- a direction that questions for the special witness be limited by time;
- a direction that the number of questions for a special witness on a particular issue be limited (s 21A(2)(f) EA);

Mandatory orders in relevant proceedings (s 21A(3) EA)

If the proceeding is a **relevant proceeding**,³⁴ then the court **must**, on application of a party to the proceeding, make or give one or more of the following orders or directions unless the court is satisfied that it would not be in the interests of justice to do so, or appropriate equipment and facilities are not available (s 21A(3) EA):

- Obscuring the defendant, or another party to the proceeding, from the view of the special witness while they give evidence or are required to appear in court for any other purpose (s 21A(2)(a) (ii) EA);
- Allowing the witness to give evidence from another room other than in which the court is sitting from which all persons, other than those specified by the court, are excluded (s 21A(2)(c) EA);
- Permitting a support person approved by the court to be present while the witness gives evidence (s 21A(2)(d) EA);
- Ordering that the witness's evidence be video-recorded, to be viewed and heard in the proceeding instead of direct testimony (s 21A(2)(e) EA).

If the defendant is excluded from the courtroom while a special witness gives evidence, arrangements must be made for the defendant to see and hear the evidence (s21A(4) EA). The special witness must not be able to see or hear the defendant.

³⁴ A **relevant proceeding** means a criminal proceeding for a relevant offence (whether or not the proceeding also relates to other offences) or a civil proceeding arising from the commission of the relevant offence. A **relevant offence** in relation to a relevant proceeding means an offence of a sexual nature or an offence involving violence if there is a prescribed relationship between a child who is a witness in the proceeding and a defendant in the proceeding. See Appendix 13 for definition and list of offences of a sexual nature and involving violence.

The court may exclude the public while the video recording of the evidence of the special witness is made (s 21A(5) EA) or played (s 21AAA EA).

Jury directions

If an order or direction is made under s 21A(2)(a)-(c) of the [Evidence Act 1977 \(Qld\)](#), the jury **must** be instructed that:

- no inference of guilt should be drawn from the order or direction;
- the probative value of the evidence is not increased or decreased because of the order or direction; and
- the evidence is not to be given any greater or lesser weight because of the order or direction (s 21A(8) EA).

Failure to give the full warning is an irregularity that may lead to a successful appeal against conviction ([R v Kovacs \[2008\] QCA 417](#); [R v Samson \[2011\] QCA 112](#); [R v Little \[2013\] QCA 223](#); [R v AJH \[2018\] QCA 86](#)).

Further guidance, including draft directions, is available in the [Supreme and District Court's Criminal Directions Benchbook, sections 11.1-11.3](#).

5.6 Evidence of Affected Children

Division 4A of the [Evidence Act 1977 \(Qld\)](#) establishes special procedures for taking the evidence of an **affected child**.

5.6.1 Who is an affected child?

An **affected child** is a child who is a witness in a **relevant proceeding** ³⁵ and who is not a defendant in the proceeding (s 21AC EA).

For the purposes of Division 4A, a child in a criminal proceeding is an individual who is under 16 years when the first of the following things happens (s 21AD EA):

³⁵ A **relevant proceeding** means a criminal proceeding for a relevant offence (s 21AC EA). 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 (s 21AC EA). See Appendix 13 for a list of offences of a sexual nature or an offence involving violence.

- the defendant is arrested;
- a complaint is made under s 42 of the *Justices Act 1886*; or
- a notice to appear is served on the defendant under s 382 of the *Police Powers and Responsibilities Act 2000*.

A person who was 16 or 17 years old when one of the above events occurred is also an affected child if they are a special witness (s 21AD(1)(a)(ii) EA). A child under 16 who is not an affected child is a **special witness** under s 21A of the *Evidence Act 1977*.

A person remains a child for the purposes of giving evidence if they give evidence before turning 18 years of age (s 21AD(2) EA).

5.6.2 Affected child witness provisions

Division 4A establishes a system of pre-recording an affected child's evidence and limiting the evidence to be given at committal. The purposes of Division 4A are to:

- preserve, to the greatest extent possible, the integrity of the affected child's evidence; and
- ensure, wherever practicable, that the child's evidence is taken in an environment that minimises distress and trauma (s 21AA EA).

To achieve those purposes, s 21AB of the *Evidence Act 1977 (Qld)* prescribes various measures for a criminal proceeding:

- the child's evidence is to be pre-recorded in the presence of a judicial officer, but in advance of the proceeding;
- if pre-recording is not possible, the child must give evidence at the proceeding using an audio-visual link or a screen;
- for a committal proceeding, the child's evidence-in chief is to be given only as a statement and the child is ordinarily not to be called for cross-examination.

The affected child's evidence-in-chief must be tendered as a statement. The affected child may be cross-examined only if a Magistrate requires the child to be called under s 21AG of the *Evidence Act 1977*.

An application to cross examine an affected child may be made either at a directions hearing under s 83A of the *Justices Act 1886* or before the presiding Magistrate.

Application at directions hearing (s 21AG(3) EA)

A Magistrate must **not** require the child to be called unless satisfied that:

- the party seeking to cross examine the child has:
 - identified an issue to which the proposed questioning relates; and
 - provided a reason why the evidence of the child is relevant to the issue; and
 - explained why the evidence disclosed by the prosecution does not address the issue; and
 - identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and
- the interests of justice cannot adequately be satisfied by leaving cross-examination of the child about the issue to the trial (s 21AG(3) EA).

Application at committal (s 21AG(4) EA)

The presiding Magistrate at the committal must not require the child to be called unless satisfied that:

- an issue has arisen at the committal that could not reasonably have been anticipated earlier; and
- the party seeking cross examination has:
 - provided a reason why the evidence of the child is relevant to the issue; and
 - explained why the evidence before the court does not address the issue; and
 - identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and
- the interests of justice cannot adequately be satisfied by leaving cross-examination of the child about the issue to the trial (s 21AG(4) EA).

Mandatory considerations (s 21AG(5) EA)

The Magistrate must:

- consider whether the prosecution case is adequately disclosed; and
- consider whether the charge is adequately particularised; and
- have regard to the vulnerability of children, the general principles stated in s 9E of the *Evidence Act 1977 (Qld)*; and
- have regard to the undesirability of calling a child as a witness for a committal proceeding (s 21AG(5) EA).

The magistrate must give reasons for the decision on the application (s 21AG(6)).

How evidence is to be taken (Subdivisions 3 or 4 EA)

If cross examination is ordered under this section, the Magistrate must decide whether evidence is to be taken:

- by pre-recording (subdivision 3 EA); or
- by audio-visual link or screen (subdivision 4 EA).

In deciding between these options, the magistrate must have regard to the following:

- the distress or trauma likely to be suffered by the child and the need to minimise this;
- availability of appropriate equipment and facilities;
- inconvenience to the parties if the matter must be adjourned to another location; and
- the need for committal proceedings to be conducted expeditiously (s 21AG(8) EA).

Limits on cross examination (s 21A EA)

Section 21AH of the *Evidence Act 1977* sets out the limits on cross-examination if it is ordered that the affected child is to be cross examined on the committal:

- 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 s 21AF and the truthfulness of the statement.
- cross-examination must be confined to the **specific issue** for which the child was required to be called;
- the presiding Magistrate or Justice must not allow
 - irrelevant questions;
 - exploratory or “fishing” questions;
 - questions disallowed under ss 20 or 21 of the [Evidence Act 1977](#).

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

Other procedural requirements

Section 21AS of the [Evidence Act 1977](#) requires the prosecutor or applicant to inform the court before the proceeding starts that an affected child may give evidence. On indictment, this must occur at presentation.

Section 21AU requires the court to exclude all non-essential persons while the evidence of an affected child is being taken or presented.

Section 21AV entitles an affected child to have a support person in close proximity while giving evidence. The support person must be approved by the court. The child may waive this entitlement with the court’s agreement.

A child under 16 who is not an **affected witness** under Division 4A is a special witness under s 21A of the [Evidence Act 1977](#). A defendant child in a relevant proceeding is not an affected child (s 21AC EA)

5.7 Children as Defendants

A defendant in a criminal proceeding is not an **affected witness** under Division 4A if the defendant gives evidence (s 21AC EA). However, a defendant may be declared a special witness if they are:

- under 16 years of age; or
- otherwise fall within another category under s 21A(1) of the [Evidence Act 1977](#).

This will only apply where the defendant gives evidence.

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 of the YJA requires the court to take steps to ensure, as far as practicable, that the child and any parent present have a full opportunity to be heard and to participate in the proceeding and the child understands the nature of the proceedings and the consequences of any order made or sentence imposed. Section 72(3) of the YJA provides examples of how such explanations may be given.

A child defendant may experience difficulties arising from:

- mental or intellectual impairment;
- language barriers;
- neurodevelopmental conditions such as FASD;
- the effect of drug use;
- cultural or linguistic difficulties.

These issues may make the required explanations more complex and time-consuming. Communication with Aboriginal and Torres Strait Islander children may also present particular challenges. The [Aboriginal and Torres Strait Islander Legal Service](#) has developed resources to assist in this regard.

Judicial officers should remain alert to indicators that a child is struggling to understand or participate.

Legal representatives, Youth Justice officers, Child Safety officers, or parents who have had dealings with the child should bring any particular difficulties to the attention of the judicial officer. These individuals may also assist in ensuring that explanations are properly conveyed to the child.

In some geographic locations, a Magistrate sitting as a Childrens Court may refer a child for a mental health assessment which should include recommendations about appropriate communication strategies.

In relation to trials, it is particularly important to ensure the child understands their rights, including:

- the right to elect whether to give evidence;
- the implications of that election; and

- the meaning and effect of any orders or sentences requiring the child’s consent.

A failure to take appropriate steps to ensure a child understands and participates meaningfully may result in a lack of procedural fairness and render the trial unfair. Consent to any order must be informed.

Further resources which may be of assistance to judicial officers include:

Agency	Title	Edition/Date
New South Wales Courts and Tribunals Services	New South Wales Equality Before the Law Benchbook Chapter 6.3.4	May 2026
New South Wales Courts and Tribunals Services	Explaining legal terms to children: Quick reference guide	Undated
Law Society of South Australia	Lawyer’s Protocols for Dealing with Aboriginal Clients	3 rd Edition March 2020
Northern Territory Government	Aboriginal Language and a Plain English Guide	Undated
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 (Western Australia)	Blurred Borders Resources (Story Cards)	Undated

See also:

- 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 the <i>Evidence Act 1977</i>	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 s 21A	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 s 21A of the 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 child should not be intimidated in cross-examination;	• The widening of s 21A to include children under 16 by the <i>Evidence (Protection of Children) Amendment Act 2003</i> was “to improve the treatment of child witnesses by the criminal justice system”: Explanatory Notes	• 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 otherwise be experienced by the

	Child Witness	Special Witness	Affected Children
	The proceeding should be resolved as quickly as possible		child when giving evidence.
Court has power to disallow improper questions under section 21 of the <i>Evidence Act 1977</i>	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 considers	- 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 statement and,

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

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:

- to be reintegrated into the community; and
- to continue the child's education, training or employment without interruption or disturbance, if practicable; and
- to continue to reside in the child's home, if practicable.

These principles underpin the youth bail framework, which is distinct from the adult regime and reflects the developmental, welfare and rehabilitative considerations relevant to children.

The approach to the consideration of juvenile bail applications is outlined by Henry J in [Re JTL \[2021\] QSC 211](#):

“Consideration of juvenile bail requires, as with adult bail, consideration of risk. However, a much more benevolent approach notoriously needs to be taken for juveniles. Pursuant to s 48AA in Youth Justice Act 1992 (Qld), the decision-maker may have regard to a host of considerations in s 48AA, including s 48AA(4)(b); considerations which tend inevitably to weigh in favour of a grant of bail.

Of course, it is a significant consideration that I'm dealing with a young and obviously immature person, and I bear in mind at the forefront of my mind that and other aspects favourable to her, to which I have generically referred by reference to the section. However, the problem is her repeated pattern of behaviour.

There comes a point in time when the interests of the community and the safety of the community trumps the specific interests of the community in treating juveniles with care and avoiding their incarceration, particularly whilst awaiting sentence. Section 48AAA Youth Justice Act contemplates that if satisfied, if the child is released, there is an unacceptable risk that the child will commit an offence that endangers the safety of the community and that it is not practicable to adequately mitigate that risk by imposing particular conditions, then the court must decide to keep the child in custody.” [5] & [7]

Section 47 of the YJA provides that, subject to the provisions of the YJA, the [Bail Act 1980 \(Qld\)](#) applies to children. However, several provisions supersede parts of the [Bail Act 1980 \(Qld\)](#):

Topic	Section of YJA	Supersedes sections of BA
Power of police officer to grant bail	Sections 48, 48AA, and 48AE	Section 7
Conditions on release of bail	Sections 52 and 52A	Section 11
Refusal of bail generally	Sections 48(4) and 48AA	Section 16 See section 16(5)
Refusal of bail for defendants convicted of terrorism offences or subject to Commonwealth control orders	Sections 48(2), 48AB and 48A	Section 16A

Section 48(2) of the 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**;³⁶ or
- they are exercising a discretion under the YJA or another Act to keep the child in custody.

This creates a statutory presumption in favour of release, subject to specific exceptions.

Police also have the power to release a child without bail under s 50 of the YJA (release notice) or s 51 of the YJA (notice to appear). A court may also release a child without bail under s 55 of the YJA.

The bail provisions in the YJA were recently amended, first by the [Queensland Community Safety Act 2024](#) and subsequently by the [Making Queensland Safer Act 2025](#). The progression of the amendments and their effect on bail decisions were analysed by Long SC DCJ in [R v BRA \[2025\] QChC 20](#) at [9] – [14].

6.2 Risk Assessment – Bail Considerations

Under s 48(2) of the YJA, a child must be released unless the YJA or another Act requires or permits the decision-maker to keep the child in custody. Section 48AAA sets out the risk assessment to be undertaken by a court or police officer when deciding whether to release a child or keep the child in custody.

³⁶ **Keep the child in custody** includes, for a court, remand the child in custody (Schedule 4 YJA).

6.2.1 Mandatory refusal of release (s 48AAA(2) YJA)

A court or a police officer **must** decide to keep the child in custody if satisfied that (s 48AAA(2) YJA):

- if released, the child would pose an unacceptable risk of committing an offence that endangers the safety of the community or the safety or welfare of a person; **and**
- it is not practicable to adequately mitigate that risk by imposing particular conditions of release on bail.

In *TYV v Office of the Director of Public Prosecutions* [2026] QSC 166, Davis J stated

“Section 48AAA(2) is somewhat circular. At least taken literally, it mandates an assessment of whether the risk is unacceptable and an assessment as to whether or not the risk can be adequately mitigated by imposing conditions of release on bail. Of course, if conditions can be imposed which mitigate the risk so there is not “an unacceptable risk” then the requirements of s 48AAA(2) are surely fulfilled. It seems to me that the appropriate approach is to consider what conditions could be imposed, consider the evidence and then determine whether or not there is an “unacceptable risk” of the occurrence of the event identified in s 48AAA(2)(a), namely the commission of an offence that endangers the safety of the community or the safety or welfare of a person.” [43] & [44]

His Honour further noted, when considering the opinion of a psychiatrist, that the assessment of risk under the *Bail Act 1980* and the *Youth Justice Act 1992* “is an assessment which the court must undertake. It cannot delegate that responsibility to the medical profession.” [51]

6.2.2 Discretionary refusal of release (s 48AAA(3) YJA)

A court or a police officer **may** decide to keep the child in custody if satisfied that, if released, there is an unacceptable risk that 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
- commit an offence, other than an offence endangering community safety under s 48AAA(2) of the YJA; or
- interfere with a witness or otherwise obstruct the course of justice.

6.2.3 Matters to be considered in deciding unacceptable risk

If the court has information suggesting there may be an unacceptable risk but lacks sufficient material to properly assess it, the court may remand the child in custody while further information is obtained (s 48AAA(4) & (5) YJA).

Section 48AA of the YJA sets out the matters to be considered when assessing unacceptable risk, deciding whether to release a child despite risk, determining whether to release without bail or grant bail, and assessing whether a child has shown cause under s 48AF(2).

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.”

In [Iordache v DJM \[2023\] QSC 134](#), Davis J stated “s 48AAA is a clear statutory command that bail should be refused where, having regard to the available conditions of release on bail, there is an unacceptable risk the child will commit an offence that endangers the safety of the community or the safety or welfare of a person.” [46]

Mandatory considerations for terrorism matters (s 48AA(2) YJA)

For offences allegedly committed on or after 13 December 2024, the amended s 48AA of the YJA requires the court or police officer to consider:

- any promotion by the child of terrorism

- any association the child has or has had with a **terrorist organisation**,³⁷ 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—
 - in the carrying out of a terrorist act; or
 - in promoting terrorism.

These matters must be considered when assessing unacceptable risk under s 48AA(1) of the YJA. See also s 48A of the YJA for the exceptional circumstances' requirement for terrorism related matters.

If the decision is being made by a court, the court **must** also have regard to the sentence order or other order likely to be made for the child if found guilty (s 48AA(3) YJA).

Discretionary considerations (s 48AA(4)(a) YJA)

The court or police officer **may** consider:

- 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;
- 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;

³⁷ A **terrorist organisation** is defined in s102.1 of the [Criminal Code \(Cth\)](#) (s 48AA(7) YJA) as an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or an organisation that is specified by the regulations for the purpose of this definition.

- 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:
 - the child’s connection with the child’s community, family, or kin; or
 - cultural considerations; or
 - considerations relating to programs and services established for offenders in which the community justice group participates;
- any other relevant matter.

Additional considerations when deciding whether to release the child (s 48AA(4)(b) YJA)

In deciding whether to release the child without bail or grant bail to the child, a court or police officer **may** have regard to any of the following:

- 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’s 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**³⁸ and for whom the child is the primary caregiver; or

³⁸ **Family relationship** has the meaning given by s 19 of the [Domestic and Family Violence Protection Act 2012](#).

- a person with whom the child is in an *informal care relationship*;³⁹ or
- if the child is pregnant – the child of the pregnancy.

Potential bail conditions (s 48AA(5) YJA)

When assessing unacceptable risk under s 48AAA(3) of the YJA, the court or police officer may:

- consider whether a condition under s 52 of the YJA could be imposed on a grant of bail to the child; and
- consider the effect of imposing that condition on the identified risk.

Prohibited considerations (s 48AA(6) YJA)

A court or police officer **must not** refuse release or find unacceptable risk solely because the child:

- has no apparent family support; or
- will not have accommodation, or adequate accommodation, on release.

6.3 Releasing Children Whose Safety is Endangered Because of Offence

Section 48AE YJA provides an additional, mandatory ground on which a court or police officer **must not** release a child from custody. The decision maker must refuse release if satisfied that:

- the child's safety would be endangered if the child were released; and
- the factors endangering the child's safety arise from the circumstances of the offence; and
- there is no reasonably practicable way of ensuring the child's safety other than by keeping the child in custody.

This provision recognises that, in some cases, the circumstances of the alleged offending may expose the child to retaliation, exploitation, coercion, or other forms of harm if released.

A court or police officer **must not** decide that it is satisfied that the child's safety would be endangered solely because the child has:

- no apparent family support; or

³⁹ *Informal care relationship* has the meaning given by the s 20 of the [Domestic and Family Violence Protection Act 2012](#)

- will not have accommodation, or adequate accommodation, on release.

These factors cannot, by themselves, justify keeping a child in custody under s 48AE of the YJA.

6.4 Show Cause / Reverse Presumption of Bail

On 30 April 2021, amendments to the YJA introduced a presumption against bail for children charged with a **prescribed indictable offence**⁴⁰ where the alleged offence was committed while the child was on bail or at large for another indictable offence (s 48AF(1) YJA). This creates a show cause requirement: the child must demonstrate why detention is not justified.

Show cause applications for children differ from adult show cause applications under s 16(3) of the *Bail Act 1980 (Qld)* as they apply only where the subsequent offending includes a **prescribed indictable offence**.

6.4.1 Case law

Case law interpreting s 16(3) of the *Bail Act 1980* may assist in understanding s 48AF YJA. The authorities establish that where the Crown case is strong, the circumstances relied upon to discharge the onus must be “somewhat special”, “abnormal”, or “extraordinary”.⁴¹

In *Lacey v DPP [2007] QCA 413* at [13], the Court of Appeal described the essence of judicial discretion in assessing show cause as follows:

“[It] 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 one important factor outweighs another”.

In *ABB v Director of Public Prosecutions [2023] QChC 33*, Dearden DCJ considered an application for bail by a 14 year old child in a show cause position under s 48AF YJA. His Honour

⁴⁰ A **prescribed indictable offence** is a life offence, an offence if committed by an adult, that would make the adult liable to imprisonment for 14 years or more (except for s9 of the *Drugs Misuse Act 1986*) or any offence against ss 315A, 323, 328A, 339, 408A(1) if the offence involves a motor vehicle, 408(1A), 412 or 421(1) of the *Criminal Code (Qld)*. See Appendix 12 for a full list of offences.

⁴¹ *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.

accepted that there was a real risk of re-offending, however found it unlikely that the child would receive a detention order given her age, timing of the offences and time already spent in custody. His Honour therefore concluded that there was a real risk that the defendant would serve more time on remand than any eventual sentence. A structured conditional bail program could adequately mitigate the risk posed by the defendant.

In *R v BRA* [2025] QChC 20, Long SC DCJ considered an application for bail by a 15-year-old child in a show cause position. The judgment is significant for its analysis of the Queensland Community Safety Act 2024 and Making Queensland Safer Act 2025, including removal of the principle that detention is a last resort (s 150 YJA), the introduction of the primary sentencing consideration of the impact on the victim (s 150(2) YJA) and the continuing relevance of principles relating to reintegration, education, family support, developmental immaturity and rehabilitation. His Honour considered the likely sentence under s 48AA(3) and concluded that detention was possible but not inevitable. His Honour found that the defendant had shown cause, and the risks could be mitigated by strict conditions including residential requirements, curfew, reporting, Youth Justice engagement and behavioural conditions.

6.4.2 Matters relevant to showing cause

When deciding whether a child has shown cause why detention is not justified, the court or police officer may consider the matters listed in s 48AA(4)(a) YJA, including:

- 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;⁴²
- 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;

⁴² 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."

- 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 considerations; or
 - considerations relating to programs and services established for offenders in which the community justice group participates;
- Any other relevant matter.

When deciding whether to release the child without bail or grant bail, the court or police officer may also consider the matters in s 48AA(4)(b) YJA, including:

- 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's 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**⁴³ and for whom the child is the primary caregiver; or
- a person with whom the child is in an **informal care relationship**;⁴⁴ or
- if the child is pregnant – the child of the pregnancy.

If a court releases the child in a show cause situation, the order releasing the child must state the reasons for the decision (s 48AF(3) YJA).

6.4.3 Terrorism-related show cause

Section 48A of the YJA requires exceptional circumstances before releasing a child who:

- has previously been found guilty of a **terrorism offence**;⁴⁵ or
- is, or has been, subject to a **Commonwealth control order**.⁴⁶

Section 48AA(2) of the YJA requires the court or police officer to consider specific terrorism-related matters when assessing unacceptable risk or deciding whether to release the child.

6.5 Reasons to be Given for Keeping a Child in Custody

Section 48B of the YJA imposes obligations on decision-makers to provide reasons when a child is kept in custody:

- Under s 48B(1), if a court makes an order keeping a child in custody, the court must state the reasons for the decision.
- Under s 48B(2), if a police officer decides to keep a child in custody, the officer must make a record of the reasons.

Failure to comply with these requirements does not invalidate the keeping or remanding of the child in custody (s 48B(3) YJA).

⁴³ **Family relationship** has the meaning given by s 19 of the [Domestic and Family Violence Protection Act 2012](#)

⁴⁴ **Informal care relationship** has the meaning given by s20 of the [Domestic and Family Violence Protection Act 2012](#)

⁴⁵ **Terrorism offence** means a terrorism offence under the [Crimes Act 1914 \(Cth\)](#); or an offence against ss 6 to 9 of the [Crimes \(Foreign Incursions and Recruitment\) Act 1978 \(Cth\)](#); or an offence against s 4B of the [Terrorism \(Community Protection\) Act \(Vic\)](#); an offence against s 310J of the [Crimes Act 1990 \(NSW\)](#); or another offence against a provision of a law of the Commonwealth or another State if the provision is prescribed by regulation and is in relation to an activity that involves a terrorist act, or is preparatory to the carrying out of an activity that involves a terrorist act (Schedule 4 YJA).

⁴⁶ **Commonwealth control order** is defined in s 100.1(1) of the [Criminal Code \(Cth\)](#) as an interim control order or a confirmed control order.

Section 48B(1) and (2) of the YJA operate subject to the restrictions on publication of information in s 12 of the [Bail Act 1980](#), as well as the broader restrictions on identifying children under the YJA (s 48B(4) YJA).

6.6 Police Powers with Respect to Bail

The bail provisions in the YJA apply to decisions made by both a court and a police officer. A police officer's decision about bail under Part 5 of the YJA may be reviewed by a Magistrate on application by the defendant, complainant, or a prosecutor (s 19B BA). The Magistrate's decision may then be reviewed by a Supreme Court Judge with leave (s 19C BA).

A police officer must not grant bail if the charge is one defined in s 13 of the [Bail Act 1980](#).

6.6.1 Power to release without bail

A police officer also has the power to release a child from custody without bail if:

- a release notice is issued (s 50(2) YJA); or
- a notice to appear is given to the child (s 51 YJA).

A police officer may release a child in certain circumstances under s 379 of the [Police Powers and Responsibilities Act 2000 \(PPRA\)](#) for a minor drug offence, resulting in any proceeding being discontinued (s 50(3) YJA).

Any notice to appear must be served on a child as discreetly as possible and not at or in the vicinity of the child's place of employment or school unless no other reasonable place for service exists (s 383 PPRA).

6.6.2 Additional release powers

Section 380 of the [Police Powers and Responsibilities Act 2000](#) provides a further circumstance in which an arrested child may be released. A police officer must release the child at the earliest reasonable opportunity if:

- the reason for arresting the child no longer exists or is unlikely to happen again if the child is released; **and**
- after considering the circumstances of the alleged offence and the child’s previous history known to the police officer, it is more appropriate to:
 - take no action;
 - administer a caution;
 - refer the offence for a restorative justice process; or
 - proceed by a notice to appear or summons (s 380(2) & (3) PPRA).

Section 380 does not apply where:

- because of the nature or seriousness of the offence, it is inappropriate to release the child (s 380(4) PPRA);
- the child was arrested while the officer reasonably believed the child was an adult (s 380(5) PPRA).

In determining whether the officer held a reasonable belief, a court may consider the child’s apparent age and the circumstances of the arrest (s 380(6) PPRA).

6.7 Requirements to Bring Child Before a Childrens Court

Section 49 of the YJA sets strict timeframes for bringing a child before the Childrens Court after arrest or detention.

6.7.1 Timeframes after arrest (s 49(1) YJA)

If a child has been arrested and is in custody in connection with the charge, the child must be brought before the Childrens Court:

- as soon as practicable and within 24 hours after the arrest; or
- 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.

6.7.2 Timeframes after PPRA detention (s 49(2A) YJA)

If the child is detained under Chapter 15, Part 2 of the *Police Powers and Responsibilities Act 2000*, the child must be brought before the Childrens Court:

- as soon as practicable and within 24 hours after the child’s detention under that part ends; or
- 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 of the YJA does not apply if the child is being held under ss 393(2)(c), 393(2)(d) or 393(3)(b) of the *Police Powers and Responsibilities Act 2000*.

6.7.3 When a child is not brought before the Court (s 50 YJA)

If a child is **not** brought before the Childrens Court in accordance with s 49 YJA, an authorised police officer must (s 50(2) YJA):

- issue a **release notice** or **notice to appear** and release the child under s 51 of the YJA (release without bail); or
- grant bail and release the child under s 52 of the YJA; or
- keep the child in custody.

if a child is released under s 379 of the *Police Powers and Responsibilities Act 2000* for a minor drug offence), s 50(2) of the YJA does not apply and proceedings against the child are discontinued (s 50(3) YJA).

Section 50(2) of the YJA operates subject to ss 48, 48AAA and 48AE of the YJA. Subsection (2)(b) is also subject to s 13 of the *Bail Act 1980* (when only particular courts may grant bail).

Section 50(4)(b) of the YJA provides that a police officer **must not** release a child under s 50(2)(a) if the child has previously been found guilty of a terrorism offence or the child is or has been subject to a Commonwealth control order.

6.7.4 Custody pending court appearance (s54 YJA)

If a child is held in custody until brought before the court, s 54 of the YJA specifies who must have the custody of the child during that period.

6.8 Court's Power with Respect to Bail

The bail provisions in the YJA apply to decisions made by both courts and police officers. Under s 48(2) of the YJA, a court **must release a child** unless:

- required under the YJA or another Act to keep the child in custody; or
- exercising a discretion under the YJA or another Act to keep the child in custody.

A child may be released on bail or without bail (s 55 YJA).

Accordingly, there is a presumption against keeping a child in custody, subject to statutory qualifications:

- section 48AAA of the YJA (unacceptable risk)
- section 48A of the YJA (exceptional circumstances for terrorism-related matters)
- section 13 of the [Bail Act 1980](#) (offences for which only particular courts may grant bail).

6.8.1 Discretion to keep child in custody (s 48AAA(3) YJA)

A court may decide to keep a child in custody if satisfied that, if released, there is an **unacceptable risk** that 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
- commit an offence, other than one endangering community safety under s 48AAA(2)(a) of the YJA;
- interfere with a witness or otherwise obstruct the course of justice.

If the court lacks sufficient information to assess risk, it may **remand the child in custody** while further information is obtained (s 48AAA(4)–(5) YJA).

6.8.2 Matters to be considered (s 48AA YJA)

Section 48AA of the YJA specifies the matters to be considered when:

- assessing unacceptable risk;
- deciding whether to release despite risk;
- deciding whether to release without bail or grant bail;
- determining whether the child has shown cause under s 48AF YJA.

Section 48AAA(3) also provides a **discretion to release** a child despite an unacceptable risk of failing to appear, committing a non-s 48AAA(2)(a) offence, or interfering with justice. Conversely, the court may still keep the child in custody despite that discretion.

6.8.3 Reasons for keeping a child in custody (s 48B YJA)

If a court keeps or remands a child in custody, the order **must state the reasons** (s 48B(1) YJA). This requirement is subject to the publication restrictions in s 12 of the [Bail Act 1980](#) and the broader prohibitions on identifying children under the YJA (s 48B(4) YJA).

6.8.4 Release without bail (s 55 YJA)

Where a court has power to grant bail, it may instead **release the child without bail**:

- into the custody of a parent; or
- on the child's own undertaking (go at large).

Release without bail is subject to the condition that the child surrenders into custody at the appointed time and place (s 55(2) YJA). This may be appropriate where, for example, a child has cognitive deficits and does not understand the concept of bail or its conditions.

6.8.5 Remand in custody (s 56 YJA)

Where a court remands a child in custody (other than where the child remains in the custody of the court):

- the child must be remanded into the custody of the chief executive (s 56(1) YJA);

- the Commissioner of Police must take immediate custody and deliver the child to the chief executive as soon as reasonably practicable (s 56(2) YJA).

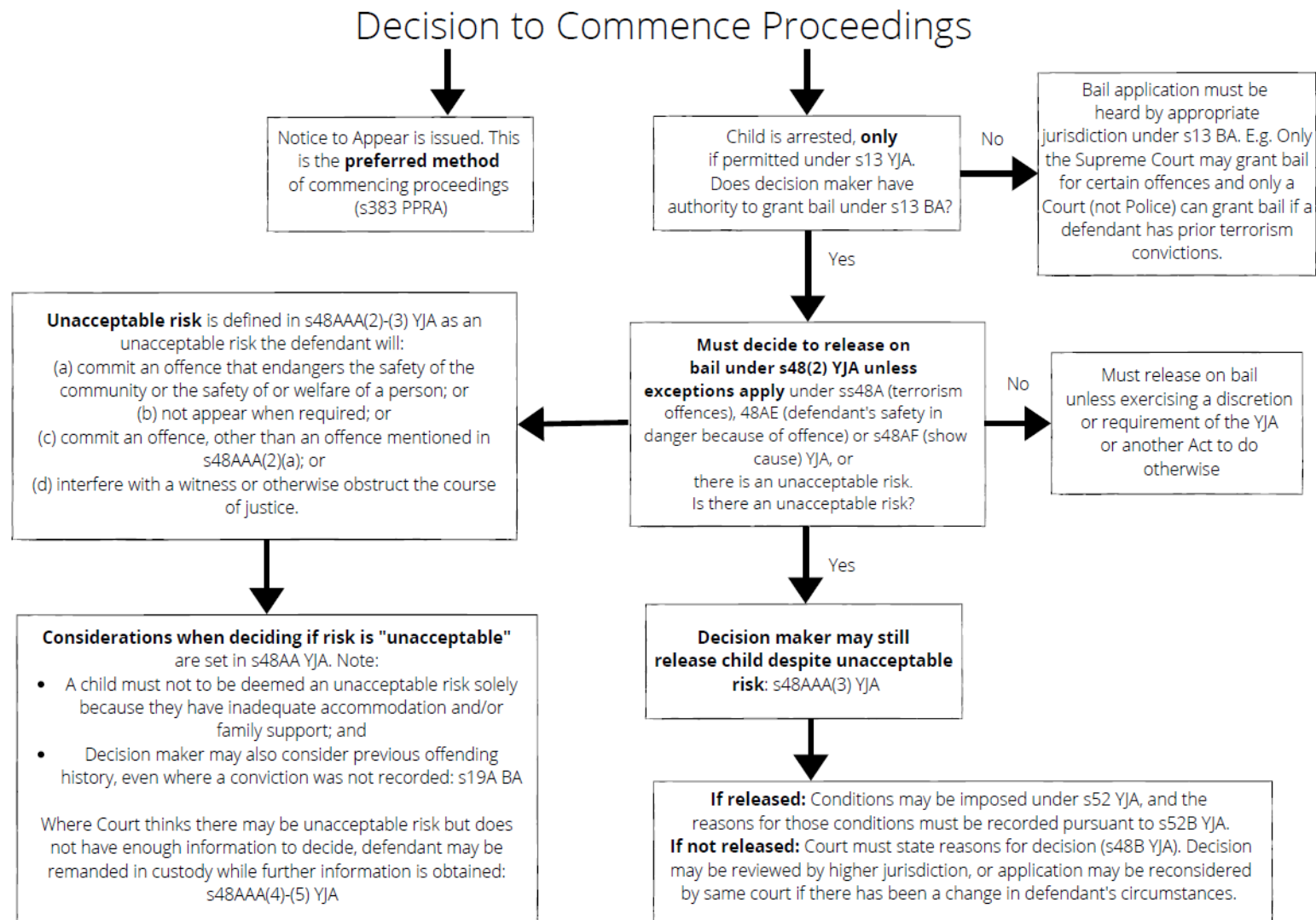
Section 56(1) of the YJA does not apply to an adult being dealt with for a child offence; such persons must be held in a corrective services facility (ss 136–138 YJA). The chief executive does **not** take custody where a child is in a watch house and turns 18 years of age (s 276A YJA).

6.8.6 Bail application by audio or audio-visual link (s 53 YJA)

A court may hear a bail application by audio or audio-visual link if:

- the child agrees; and
- the court is satisfied that the child has had an opportunity to obtain independent legal advice.

6.8.7 Summary: Bail Decision Making Process



6.9 Power of Childrens Court Judge as to Bail

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

- grant bail to a child held in custody on a charge of an offence; or
- 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*; or
- exercise these powers 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 therefore has broad jurisdiction to determine bail matters, even if an indictment has not been presented. Bail applications may be heard by audio or audio-visual link, consistent with *Childrens Court Practice Direction No 1 of 2019* (s 53 YJA).

6.9.1. Prior refusal of bail (s 59 YJA)

Under s 59(2) of the YJA, a Childrens Court Judge retains jurisdiction to determine bail even if the child has previously been refused bail by the Childrens Court constituted by a Magistrate.

Importantly, the Judge is not bound by the restrictions in the *Bail Act 1980* requiring “new facts or circumstances” for a subsequent bail application.⁴⁷ This reflects the distinct statutory framework for children and the supervisory role of the Childrens Court Judge.

6.9.2 Bail for offences under s13 Bail Act 1980 (s 59 YJA)

A Childrens Court Judge may grant bail to a child charged with an offence to which s 13(1) of the *Bail Act 1980* applies (s 59(3) YJA). By contrast, a Childrens Court constituted by a Magistrate does not have jurisdiction to make bail decisions in relation to those offences.

⁴⁷ *Ex Parte Edwards* [1989] 1 Qd R 139 at 142.

6.9.3 Bail pending sentence review

A review of a sentence by a Childrens Court Judge under Part 6, Division 9, Subdivision 4 of the YJA is treated as an appeal for the purposes of the [Bail Act 1980](#) (s 47(2) YJA). Accordingly, the Judge may consider bail in connection with such a review.

6.10 Conditions of Bail

Section 52 of the YJA establishes a hierarchy of bail conditions and limits the circumstances in which additional conditions may be imposed on a child.

6.10.1 Hierarchy of bail conditions

A court or police officer must release the child on the child's own undertaking, without sureties and without a deposit of money or other security, unless satisfied this would be inappropriate in all the circumstances (s 52(2) YJA).

If release on the child's own undertaking is inappropriate, the decision-maker must consider bail conditions in the following sequence (s 52(3) YJA):

1. release on child's own undertaking with a deposit of money or other security of stated value;
2. release on the child's own undertaking with a surety or sureties of stated value;
3. release 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.

This hierarchy requires the court to begin with the least onerous option and progress to more restrictive conditions only if justified.

6.10.2 Limits on additional bail conditions (s 52A YJA)

Section 52A of the YJA restricts the imposition of any additional bail condition (other than appearance/surrender conditions). A court or police officer may impose another condition only if satisfied that:

- 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
- not surrendering into custody as required
- committing any offence
- interfering with a witness or otherwise obstructing the course of justice, whether for the child or another person.
- the condition is necessary to mitigate the risk; and
- 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:
 - the child's age, maturity level, cognitive ability, and developmental needs;
 - 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;
 - the child's home environment;
 - the child's ability to comply with the condition.
- the condition does not unduly restrict the child's ability to carry out the child's responsibilities⁴⁸ for –
 - a person with whom the child is in a ***family relationship***⁴⁹ and for whom the child is the primary caregiver; or
 - a person with whom the child is in an ***informal care relationship***;⁵⁰ or
 - if the child is pregnant – the child of the pregnancy.

6.10.3 Duration of conditions (s 52A(3) YJA)

A condition imposed under s52A of the YJA must:

- State the period for which it has effect; and
- Cease at the end of that period.

⁴⁸ See s52A(2)(d) of the 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.

⁴⁹ ***Family relationship*** has the meaning given by s 19 of the [Domestic and Family Violence Protection Act 2012](#).

⁵⁰ ***Informal care relationship*** has the meaning given by s20 of the [Domestic and Family Violence Protection Act 2012](#).

The period must be no longer than necessary to mitigate the identified risk, having regard to the matters in s 52A(2)(c) of the YJA.

6.10.4 Requirement to state how condition mitigates risk (s 52B YJA)

If a court imposes a condition under s 52A of the YJA, the order must state how the condition is intended to mitigate the identified risk (s 52B(1) YJA). A police officer imposing such a condition must also record how the condition mitigates the risk (s 52B(2) YJA).

6.10.5 Prohibited bail conditions

A police officer must not impose a condition requiring the child to wear a monitoring device (s 52A(5) YJA).

6.10.6 Surrender of passport

If the child is not an ***Australian citizen***⁵¹ or a ***permanent resident***,⁵² the court or police officer must consider imposing a condition requiring the child to surrender the child's current passport (s 52A(6) YJA).

6.10.7 Interaction with other provisions

Section 151(9) of the YJA allows the court to impose conditions when releasing a child pending a pre-sentence report.

Section 48AAA(2)(b) of the YJA requires consideration of whether conditions could adequately mitigate risks under s 48AAA(2)(a).

Section 48AA(5) of the YJA allows the court or police officer to consider whether a condition under s 52A could mitigate risks under s 48AAA(3).

⁵¹ See s 4 of the [Australian Citizenship Act 2007 \(Cth\)](#).

⁵² See s 11(10) of the [Bail Act 1980 \(Qld\)](#).

6.10.8 Conditional bail program

A court may consider that a young person poses an unacceptable risk of breaching bail without more intensive support while in the community. In such circumstances, a legal representative or the court may request Youth Justice to prepare a [Conditional Bail Program \(CBP\)](#).

A CBP should not replace a young person's usual entitlement to bail. Except in cases involving more serious charges and/or a significant criminal history, a CBP should generally only be considered where the young person has already been given opportunities on bail with less onerous conditions and the young person is otherwise likely to be remanded in detention.

A young person can only be placed on a CBP when the court grants bail and makes participation in the CBP a condition of the bail undertaking. Where a young person is on remand and defence requests a CBP, [Youth Justice Service Centre \(YJSC\)](#) managers must decide whether to approve or decline the request and must provide their rationale to defence if the request is declined.

The CBP engages the young person in activities designed to develop their capacity to comply with their bail undertaking. It does **not** address the young person's alleged offending behaviour or monitor other bail conditions that do not involve Youth Justice. Where a young person experiences unstable accommodation, a CBP may be complemented by a bail support referral.

Several community organisations, including [Anglicare](#), [Youth Advocacy Centre](#) and [IFYS](#), offer bail support programs which provide case management and other support to help children meet their bail conditions.

6.11 Electronic Monitoring Devices

In April 2021, amendments to the YJA introduced a power for a court to impose the wearing of an electronic monitoring device as a condition of bail for a child. Further amendments in April 2026, made by the [Youth Justice \(Electronic Monitoring Device\) Amendment Act 2026](#), expanded the eligibility requirements for such conditions. The previous geographical location, age-based and offence-based limitations no longer apply. These amendments apply regardless of the date of the offence, the date the child was charged or the date that any step in the proceeding was taken (s 443 YJA).

Section 52AA(1) of the YJA provides that a **court** may impose, as a condition of bail, that a child wear an electronic monitoring device if the court is satisfied that the condition is appropriate having regard to:

- a) the suitability assessment report given to the court under s 52AA(4); and
- b) any other matter the court considers relevant.

If the court is considering imposing a monitoring device condition, it **must** order the chief executive (youth justice) to provide a suitability assessment report within the period stated by the court, or if no period is stated, as soon as practicable after the order is made.

A monitoring device condition may only be imposed if the chief executive advises the court that **all** of the following services are available in the area where the child lives (s 52AA(1A) YJA):

- a) services necessary to support the effective operation of the device;
- b) services suitable to support the child's compliance with the condition; and
- c) services suitable to support the monitoring of the child.

If bail is granted subject to an electronic monitoring device condition, the court **must** consider whether to order that the child be detained in custody until the device is fitted (s52AA(2)(a) YJA). Any such detention must only be for the purpose of fitting the device and for the least time justified in the circumstances (s 52AA(2A) YJA).

The court may also impose any other condition it considers necessary to facilitate the operation of the monitoring device (s 52AA(2)(b) YJA). Examples include requiring the child to attend at a specified place to be fitted with the device or requiring the child to comply with a direction given by a police officer that is reasonably necessary for the device's operation.

Electronic monitoring devices are fitted in Queensland Police Service watchhouses and monitored by Queensland Corrective Services (QCS) once fitted.

If QCS identifies an alert or notification from the monitoring device, officers or staff may contact the child directly on the child's mobile phone. QCS may also notify the Queensland Police Service or the chief executive about any alerts or notifications generated by the device. If a child intentionally

damages or removes their monitoring device, they may be liable to further charges, including wilful damage.

The Queensland Police Service is responsible for the removal of monitoring devices and will remove the device when ordered by the court or when bail otherwise lapses upon finalisation of the matter.

Note: The term “tracking device” is not culturally appropriate for Aboriginal and Torres Strait Islander people due to its associations with colonial era practices. The appropriate term is “monitoring device” and it should be used when referring to these devices.

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 (s 55 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 (s 52 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 (s 52 YJA).

The court can impose other conditions on bail, other than a condition under s 52(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 (s 48AAA(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 s 48AAA(2)(a) or of interfering with a witness or otherwise obstructing the course of justice, whether for the child or another person (s 48AAA(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 (s 52A(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 (s 52A(3) YJA). The period may be no longer than is necessary to mitigate the risk (s 52A(4) YJA).

The court may impose a condition that a child wear an electronic monitoring device (s 52AA YJA).

If the child is not an Australian citizen or a permanent resident, a condition can be the surrender of the child's passport (s 52A(6) YJA).

If a court imposes a further condition on bail, the order must state how the condition is intended to mitigate the risk (s 52B YJA).

6.12 Provisions in Relation to Aboriginal and Torres Strait Islander Children

Section 48AA(4)(vii) of the YJA provides that, when making a decision about bail or releasing a child from custody, a court or police officer **must** have regard to any submission made by a representative of the Community Justice Group (CJG) for the child's community if the child is an Aboriginal or Torres Strait Islander person. Such a submission may include information about:

- the child's connection with the child's community, family, or kin; or
- cultural considerations; or
- programs and services established for offenders in which the CJG participates.

Community Justice Groups (CJG) are established pursuant to s 18 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*. Section 19(1)(a) of that Act gives CJGs the function of taking part in court hearings, sentencing and bail processes under the YJA.

Under s 48AC of the YJA, the CJG representative must, if requested by the court or police officer, advise whether a member of the CJG is related to the child or the victim, or whether any circumstances exist that give rise to a conflict of interest between a CJG member and the child or victim.

Section 48AA(4)(b) of the YJA further provides that, when considering whether to release a child without bail or to grant bail, the court or police officer **may** have regard to any of the matters specified in that subsection. One such matter is the desirability of maintaining the child's connection with their community, family, and kin if the child is an Aboriginal or Torres Strait Islander person.

6.13 Terrorism Offences

Section 48(2) of the 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 be kept in custody. Section 48A of the YJA applies to a child in custody in connection with a charge who has previously been found guilty of a **terrorism offence**⁵³ or is, or has been, subject to a **Commonwealth control order**.⁵⁴

In those circumstances, the court must not release the child from custody unless satisfied that exceptional circumstances exist to justify release. In considering whether exceptional circumstances exist, the court may have regard to any relevant matter.

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 (s 13(2) BA). If the court releases the child, the order must state the reasons for that decision (s 48A(4) YJA).

Section 48AA of the YJA applies if a court or a police officer is making any of the following decisions in relation to a child in custody in connection with a charge of an offence:

- whether there is an unacceptable risk of a matter mentioned in s 48AAA(2);
- whether there is an unacceptable risk of a matter mentioned in s 48AAA(3);
- whether to release the child despite being satisfied there is an unacceptable risk of a matter mentioned in s 48AAA(3);
- whether to release the child without bail or grant bail;

⁵³ **Terrorism offence** means a terrorism offence under the *Crimes Act 1914 (Cth)*; or an offence against ss 6 to 9 of the *Crimes (Foreign Incursions and Recruitment) Act 1978 (Cth)*; or an offence against s 4B of the *Terrorism (Community Protection) Act (Vic)*; an offence against s 310J of the *Crimes Act 1990 (NSW)*; or another offence against a provision of a law of the Commonwealth or another State if the provision is prescribed by regulation and is in relation to an activity that involves a terrorist act, or is preparatory to the carrying out of an activity that involves a terrorist act (Schedule 4 YJA).

⁵⁴ **Commonwealth control order** is defined in s 100.1(1) of the *Criminal Code (Cth)* as an interim control order or a confirmed control order.

- whether the child has shown cause under s 48AF(2) why detention in custody is not justified.

In making any of these decisions, the court or police officer must have regard to the following matters, to the extent they are known:

- any promotion by the child of terrorism;
- 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:
 - in the carrying out of a terrorist act; or
 - in promoting terrorism.

Section 48AB of the YJA defines ***promoting terrorism*** and ***terrorist act*** for the purposes of s 48AA(2).

A person or organisation promotes terrorism if they:

- carry out an activity to support the carrying out of a terrorist act; or
- make a statement in support of the carrying out of a terrorist act; or
- carry out an activity, or make a statement, to advocate the carrying out of a terrorist act or supporting the carrying out of a terrorist act.

This includes support for a terrorist act that has not occurred and is not limited to a specific terrorist act.

6.14 Breaches of Bail

On 22 March 2023, the [Bail Act 1980](#) was amended to make it an offence for a child to breach a condition of bail.⁵⁵ A range of powers are available to police where a child has breached a bail condition.

6.14.1 Ordinary offences (s 59A YJA)

Section 59A of the YJA applies where:

⁵⁵ The [Strengthening Community Safety Act 2023](#), assented to on 22 March 2023, amended s 29 of the [Bail Act 1980](#). This applies to bail undertakings entered into after commencement: s 50 of the [Bail Act 1980](#).

- a child has breached a bail condition; or
- a child is likely to breach a bail condition, provided the bail relates to an offence that is **not** a prescribed indictable offence or a domestic violence offence under ss 177(2) or 178(2) of the *Domestic and Family Violence Protection Act 2012*.⁵⁶

Before arresting the child, the police **must** consider whether a less intrusive option is available, including:

- taking no action (where the breach is trivial, technical, or excusable);
- warning the child that further breaches may lead to arrest or a variation of bail; or
- applying to vary or revoke bail (where the breached condition is **not** the requirement to appear in court).

In deciding how to proceed, police **must** consider:

- the seriousness of the breach or likely breach;
- whether the child has a reasonable excuse;
- the child's personal circumstances; and
- any other relevant circumstances.

If the officer concludes that it is more appropriate to take no action, warn the child or apply to revoke or vary bail in all the circumstances, then the officer **must** do so.

6.14.2 Prescribed indictable offence or DFV offence (s 59AA YJA)

Section 59AA of the YJA applies in two situations where the underlying offence is either a prescribed indictable offence or a domestic violence offence under ss 177(2) or 178(2) of the *Domestic and Family Violence Protection Act 2012* and:

- the child has breached or is breaching a bail condition (other than an offence under s 29 of the *Bail Act 1980*)
- the child is likely to breach a bail condition.

⁵⁶ Refer to s59AA of the YJA for prescribed indictable offence or DFV offences under ss 177(2) or 178(2) of the *Domestic and Family Violence Protection Act 2012*.

Before arresting the child, the police **may** consider whether a less intrusive option is available, including:

- taking no action (where the breach is trivial, technical, or excusable);
- warning the child that further breaches may lead to arrest or a variation of the bail; or
- applying to vary or revoke bail (where the breached condition is **not** the requirement to appear in court).

In deciding how to proceed, police **may** consider:

- the seriousness of the breach or likely breach;
- whether the child has a reasonable excuse;
- the child's personal circumstances; and
- any other relevant circumstances.

If the police officer concludes that it is more appropriate to take no action, warn the child or apply to revoke or vary bail, then the officer **may** do so.

This differs from s 59A of the YJA which requires police to consider and, where appropriate, use alternatives to arrest. Under s 59AA of the YJA, police have a discretion to consider alternatives but are not required to use them.

6.14.3 Application to revoke bail (ss 29A & 30 BA)

An application under s 30 of the [Bail Act 1980](#) may be made by a complainant or prosecutor to vary or revoke bail. The application may be made to:

- the court that granted bail;
- the court before which an indictment is presented; or
- the Supreme Court

If bail on an undertaking was granted by a police officer, the Childrens Court may vary or revoke bail (s 30(1A) BA). An application may be made ex parte (s 30(2) BA)

If the police officer decides to arrest the child, the child must be brought before the Childrens Court (s 29A(1)(c) BA). If satisfied that the child has broken, or is likely to break, a bail condition, the court may revoke or vary bail (s 29A BA).

It is an offence for a child to fail to surrender into custody in accordance with an undertaking (s 33(1) BA). If the failure to appear occurred when the defendant was a child, any term of imprisonment imposed is not mandatorily cumulative (s 33(5) BA). A court may issue a warrant for the arrest of a child who fails to surrender into custody (s 28A(1)(b) & (ea) BA).

Section 57 of the YJA provides that the warrant provisions of the [Bail Act 1980](#) 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 (s 58 YJA).

In considering an application to vary or revoke bail or dealing with a further bail application following arrest on a warrant, the court is bound by the provisions of ss 48, 48AAA and 48AA of the YJA. In making its decision, the court may have regard to the history of any previous grants of bail to the child (s 48AA(4)(a)(iii) YJA).

6.15 Confidentiality Issues

Court processes in relation to bail applications are subject to the usual restrictions on open justice and to the specific publication restrictions contained in s 12 of the [Bail Act 1980](#).

Where the complainant, prosecutor or a person appearing on behalf of the Crown opposes a defendant's release under Part 2 of the [Bail Act 1980](#) or Part 5 of the YJA, the court may, at any time during the hearing of the application for bail, make an order prohibiting publication by any means of the evidence taken, the information furnished, the representations made by or on behalf either party or the reasons given by the court for granting or refusing bail or release under s 11A of the [Bail Act 1980](#). A non-publication order made under s 12(1) of the [Bail Act 1980](#) operates:

- if an examination of witnesses in relation to an indictable offence is held—until the defendant is discharged; or

- if the defendant is tried or committed for trial—until the trial is ended.

Any person who, without lawful excuse, fails to comply with an order made under s 12(1) of the [Bail Act 1980](#) commits an offence. The maximum penalty is 10 penalty units or six months imprisonment.

Chapter 7 – Diversion

Principle Six of the [Charter of Youth Justice Principles](#) provides that 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

Police officers have several statutory options for diverting a child from formal proceedings. Section 11(1) of the YJA provides that, before starting a proceeding against a child, a police officer must first consider whether, in all the circumstances, it would be more appropriate to do one of the following:

- take no action;
- administer a caution to the child;
- refer the offence to the chief executive for a restorative justice process;
- 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;
- if the offence is a graffiti offence and the child may be offered an opportunity to attend a graffiti removal program under s379A of the [Police Powers and Responsibilities Act 2000](#)—offer the child that opportunity in accordance with that section.

A police officer **must** consider the same alternatives in relation to a person who committed the offence as a child but has since become an adult (s 134 YJA).

Section 11(2) of the YJA specifies the matters a police officer **must** consider when deciding whether to divert a child:

- the circumstances of the alleged offence; and
- the child's criminal history; and
- any other dealings with the child under any Act.

If necessary, the police officer **must** delay commencing proceedings to comply with these requirements (s 11(3) YJA). After considering the matters in ss 11(1)–(2), if the officer considers it more appropriate to take no action or refer the matter for restorative justice (s 11(1)(a) or (c) YJA), the officer must do so (s 11(4) YJA).

If the officer considers diversion inappropriate, they may commence a proceeding against the child (s 11(5) YJA). For offences other than serious offences, proceedings must be commenced by complaint and summons or notice to appear (s 12 YJA).

A police officer may take the actions mentioned in s 11(1)(a)–(c) and (e) of the YJA even if similar action has previously been taken in relation to the child or proceedings for another offence have already commenced or concluded (s 11(6) YJA).

A police officer may also take no action, administer a caution, or refer the offence for a restorative justice process even for a **serious offence** (s 11(7) YJA).

Section 380 of the [Police Powers and Responsibilities Act 2000](#) provides additional circumstances in which a police officer may discontinue the arrest of a child. The available options again include taking no action, administering a caution or referring the matter for a restorative justice process.

7.1.1 Cautions by police (ss 15 – 20 YJA)

Section 15 of the YJA empowers a police officer to administer a caution to a child before bringing the child before a court for an offence. Once a caution is administered, the child is not liable to be prosecuted for the offence (s 15(2) YJA).

A police officer may administer a caution only if the child admits committing the offence to the police officer and the child consents to being cautioned (s 16(1) YJA).

If practicable, the police officer must arrange for an adult chosen by the child, a parent of the child, or a person chosen by a parent to be present during the administration of the caution (s 16(2) YJA).

A police officer who administers, or requests the administration of, a caution to a child must take steps to ensure that the child and the person present under s 16(2) understand the nature and effect of the caution, including its effect on the child's criminal history (s 18(1) YJA).

The procedure for administering a caution may involve the child apologising to the victim of the offence if the police officer considers that an apology is appropriate, the child is willing to apologise, and the victim is willing to participate (s 19(2) YJA).

If a caution is administered, the police officer must give the child an approved notice stating:

- that a caution was administered;
- the time and date of the caution;
- the child's name;
- the substance of the offence; and
- the police officer's details (s 20(1) & (2) YJA).

If a caution is to be administered to a child who is a member of the Aboriginal or Torres Strait Islander community, an authorised officer (s 17(1) YJA):

- must consider whether a respected person of the community is available and willing to administer the caution; and
- if that person is available, must request that the person administer the caution.

7.1.2 Police drug warnings & diversion – minor drugs offence (Chapter 14, Part 4, Division 5)

Chapter 14, Part 4, Division 5 of the *Police Powers and Responsibilities Act 2000* gives a police officer a discretion to offer a person, including a child, the opportunity to receive a warning or complete a drug diversion program for a **minor drugs offence**.⁵⁷

⁵⁷ Minor drugs offence is defined in s 378B of the *Police Powers and Responsibilities Act 2000*

7.1.2.1 Drug diversion warning (s 378C PPRA)

To be eligible for a drug diversion warning under s 378C of the *Police Powers and Responsibilities Act 2000*, the child must not have previously been offered:

- an opportunity to participate in a drug diversion assessment program under ss 379 or 379A of the *Police Powers and Responsibilities Act 2000*; or
- a drug diversion warning (s 378C(1) PPRA).

In respect of a child, the police officer retains the discretion whether to offer a drug diversion warning (s 378C(3) PPRA). This is different to the position for adults where it is mandatory for the offer to be made if the person is eligible to be warned (s 378C(2) PPRA).

The offer may be made at any time before the child appears before a court to answer a charge of the **minor drugs offence** (s 378C (4) PPRA).

When making the offer, the police officer must explain the nature and effect of the drug diversion warning to the child and, if a support person is present when the offer is made, to the support person (s 378C (5) PPRA).

If the child agrees to being given a drug diversion warning, the police officer must give the child a written notice stating the following:

- that a drug diversion warning was given to the child;
- the time and date that the warning was given;
- the child's name;
- the police officer's name and rank;
- the particulars of the minor drugs offence; and
- the nature and effect of the warning (s 378C(6) PPRA).

7.1.2.2 Initial drug diversion assessment program (s 379 PPRA)

To be eligible for an initial drug diversion assessment program under s 379 of the *Police Powers and Responsibilities Act 2000*, the child:

- must have previously been offered a drug diversion warning; and
- must not have previously been offered the opportunity to participate in a drug diversion assessment program under s 379 of the *Police Powers and Responsibilities Act*.

In respect of a child, the police officer retains the discretion whether to offer a drug diversion assessment program (s 379(3) PPRA). This is different to the position for adults where it is mandatory for the offer to be made if the person is eligible to be warned (s 379(2) PPRA).

The offer may be made at any time before the child appears before a court to answer a charge of the *minor drugs offence* (s 379(4) PPRA).

When making the offer, the police officer must explain the nature and effect of the drug diversion assessment program to the child and, if a support person is present when the offer is made, to the support person (s 379(5) PPRA).

If the child agrees to an offer made under this section, the child must sign a drug diversion agreement to participate in, and complete, a drug diversion assessment program (s 379AB(1) PPRA).

The police officer must give the child a written requirement to participate in, and complete, a drug diversion assessment program in accordance with the drug diversion agreement and inform the child that a failure to comply with this requirement is an offence against s 791 of the *Police Powers and Responsibilities Act 2000* (s 379AB(3) PPRA).

7.1.2.3 Subsequent drug diversion assessment program (s 379AA PPRA)

To be eligible for subsequent drug diversion assessment program under s 379AA of the *Police Powers and Responsibilities Act 2000*, the child:

- has previously been offered the opportunity to participate in a drug diversion assessment program under s 379 of the *Police Powers and Responsibilities Act 2000*; and

- has not previously been offered the opportunity to participate in a drug diversion assessment program under s 379AA of the [Police Powers and Responsibilities Act 2000](#).

In respect of a child, the police officer retains the discretion whether to offer a drug diversion assessment program (s 379AA(3) PPRA). This is different to the position for adults where it is mandatory for the offer to be made if the person is eligible to be warned (s 379AA(2) PPRA).

The offer may be made at any time before the child appears before a court to answer a charge of the **minor drugs offence** (s 379AA(4) PPRA).

When making the offer, the police officer must explain the nature and effect of the drug diversion assessment program to the child and, if a support person is present when the offer is made, to the support person (s 379AA(5) PPRA).

If the child agrees to an offer made under this section, the child must sign a drug diversion agreement to participate in, and complete, a drug diversion assessment program (s 379AB(1) PPRA).

The police officer must give the child a written requirement to participate in, and complete, a drug diversion assessment program in accordance with the drug diversion agreement and inform the child that a failure to comply with this requirement is an offence against s 791 of the [Police Powers and Responsibilities Act 2000](#) (s 379AB(3) PPRA).

7.1.4 Police graffiti removal orders (s 379A PPRA)

If a child aged at least 12 years admits their guilt to police in relation to a **graffiti offence**,⁵⁸ the child may be referred to a graffiti removal program, instead of being charged. If the child does not complete the program, police may take further action, including commencing court proceedings.

⁵⁸ **Graffiti offence** means an offence against s 469 [Criminal Code \(Qld\)](#) that is punishable under Item 9 (Schedule 4 of the YJA)

The police officer must inform the child that failure to comply with the requirement is an offence against s 791 of the [Police Powers and Responsibilities Act 2000](#) (s 379A PPRA).

Further operational guidance is contained in Chapter 5.7 (Graffiti Removal Program) of the [Queensland Police Service Operational Procedures Manual](#)

7.1.5 Restorative justice referral by police

A police officer may refer the offence to the chief executive (youth justice) for a restorative justice process (s 22(1) YJA).

Restorative justice processes are established under Part 3 of the YJA. The process is either:

- a conference; or
- if a conference cannot be convened for any reason other than that the chief executive has not been able to contact the child or the child has been unwilling to participate (s 31 YJA), an alternative diversion program.

Section 38 of the 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 (s 33 YJA). The convening of conferences, participation requirements and conference agreements are governed by ss 33 - 37 and 39 of the YJA. A conference agreement may be made if the child admits committing the offence and undertakes to address the harm caused (s 36(1) YJA).

Referral to the chief executive (youth justice) for a restorative justice process can be made by:

- a police officer (s 22 YJA);
- a court as a diversionary process (s 164 YJA);
- a court as a pre-sentence referral (s 165 YJA); or
- as a sentence (s 175(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 (s 22(3) YJA).

The ***deciding factors*** in s 22(4) of the YJA are:

- the nature of the offence; and
- 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 a restorative justice process.

The police officer must inform the child 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 (s 22(5) YJA).

If a restorative justice agreement is made, the child is not liable to be prosecuted for the offence unless otherwise provided by the YJA (s 23 YJA).

If the referral is unsuccessful or the child contravenes the restorative justice agreement, the police officer must consider what further action is appropriate (s 24 YJA). In doing so, the officer must consider:

- the matters in s 11(3) of the YJA;
- the child's participation in the restorative justice process; and
- if an agreement was made, anything done by the child under the agreement.

The police officer may:

- take no action; or
- administer a caution to the child; or
- refer the offence to the chief executive for another restorative justice process; or
- start a proceeding against the child for the offence.

Further operational guidance is contained in Chapter 5.6 (Restorative Justice Process) of the [Queensland Police Service Operational Procedures Manual](#).

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

Section 21 of the 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 (s 21(2) YJA).

If the court dismisses the charge under s 21(1) of the YJA, it may administer a caution to the child or direct a police officer to administer a caution as directed by the court (s 21(3) YJA).

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

Section 24A of the 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 police.

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 (s 24A(1) YJA).

If the court dismisses the charge under s 24A(1) of the YJA, it may refer the offence to the chief executive (youth justice) for a restorative justice process (s 24A(1) YJA). In that event, the police officer is taken to be the referring authority (s 24A(4) YJA).

Dismissal of the charge does not prevent a police officer from restarting a proceeding against the child for the offence or a court from sentencing a child for the offence if the chief executive returns the referral under s 32(1) of the YJA (because no agreement was reached) or if the child fails to comply with an agreement made as a consequence of the referral (s 24A(3) YJA).

7.4 Court Ordered Diversion

The court may hear an application to dismiss a charge and caution a child (s 21 YJA) or an application to dismiss a charge and refer the offence for a restorative justice process (s 24A YJA).

In addition, the court has several options to divert a child from the court process prior to sentence, including:

- referral to a drug assessment and education session (ss 167-174 YJA); and
- referral to a restorative justice process, unless the offence is a **significant offence** under s 175A of the YJA committed on or after 13 December 2024 (ss 161-165, 175A(8) & 192A YJA).

7.4.1 Court graffiti removal orders

A court may make a graffiti removal order for any child aged 12 years or over who is found guilty of, or pleads guilty to, a **graffiti offence** (s 176A & 194A(1) YJA).⁵⁹ This power does not apply where the child is not capable of complying with the order because of a physical or mental incapacity (s 194A(1) YJA).

A graffiti removal order requires the child to attend a graffiti removal program for a set number of hours (s 176A (3) YJA):

- up to five hours for a 12-year-old
- up to 10 hours for a 13- or 14-year-old
- up to 20 hours for a child aged 15 years or older

When deciding the number of hours, the court must take into account the child's age, maturity, and abilities (s 194A YJA).

⁵⁹ **Graffiti offence** means an offence against s 469 of the [Criminal Code \(Qld\)](#) that is punishable under Item 9 (Schedule 4 of the YJA)

The court may set a completion period of no longer than one-year (s 194B(3)YJA). In doing so, the court must consider what is a reasonable period in all the circumstances (s 194B(4) YJA). If no period is specified, a default period of one year applies (s 194B(3) YJA). The court may extend the completion period (s 194D YJA).

7.4.2 Court referral to a drug assessment and education session

Section 172 of the 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, provided the child consents.

A drug assessment and education session is a single one-on-one session delivered by an approved provider involving assessment of the child's drug use, drug education and identification of any appropriate treatment options for the child.

Under s 168 of the YJA, an **eligible child** is a child who :

- is charged with an eligible drug offence; and
- who has pleaded guilty to the offence.

However, a child is not an eligible child if:

- a charge against the child for a **disqualifying offence** is pending; or ⁶⁰
- the child has, at any time, been convicted of a disqualifying offence; or
- two diversion alternatives have previously been given to the child.

A diversion alternative has been given to a child if:

- a court has referred the child to a drug assessment and education session under s 172 of the YJA;
- the child has, at any time, agreed to an offer under s 379AA of the *Police Powers and Responsibilities Act 2000* to attend a drug diversion assessment program; or

⁶⁰ A **disqualifying offence** is (a) an offence of a sexual nature; or (b) an offence against ss 5, 6 8 or 9 of the *Drugs Misuse Act 1986* other than an offence dealt with, or to be dealt with, summarily; or (c) an indictment offence involving violence against another person other than an offence charged under any of the following provisions of the *Criminal Code (Qld)*: s 335, s 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 or s 340(1)(b).

- the child has been given a prescribed diversion alternative under a law of another State or the Commonwealth (s 168(4)(a) YJA).

For counting purposes, a diversion alternative is counted even if given for an offence committed before the first counted diversion. A diversion alternative is not counted if it was given on the same day as the first counted diversion (s 168(4)(b) YJA).

Section 169 of the YJA defines **eligible drug offence** as:

- an offence by a child against s 9 of the [Drugs Misuse Act 1986](#) of unlawfully having possession of a **dangerous drug**⁶¹ if:
 - each dangerous drug mentioned in the charge for the offence is a **prescribed dangerous drug**;⁶² and
 - 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**⁶³ in relation to the dangerous drug; and
 - the court considers each dangerous drug mentioned in the charge was for the child's personal use; or
- an offence against s 10(2), (4) or (4A) of the [Drugs Misuse Act 1986](#).

If the court directs a child to attend a drug assessment and education session, the court must adjourn the proceedings (s 172(3) YJA).

If the child attends the drug assessment and education session, the approved provider must notify the court and:

- the proceedings come to an end (s 173(3)(a) YJA);
- the child is not liable to further prosecution for the offence (s 173(3)(b) YJA);
- the child is taken to have been found guilty without a conviction being recorded (s 173(4) YJA);
- the child is not required to attend any adjourned mention.

⁶¹ See s4 of the [Drugs Misuse Act 1986](#)

⁶² **Prescribed dangerous drug** means a dangerous drug prescribed under a regulation for s 15D of the [Penalties and Sentences Act 1992](#).

⁶³ **Prescribed quantity** means a quantity prescribed under a regulation for s 15D of the [Penalties and Sentences Act 1992](#).

If the child fails to attend the session, the approved provider must notify the court (s 174 YJA). The court's **proper officer**⁶⁴ may take no action or bring the charge back on before the court for sentencing (s 174(3) YJA).

If the charge is brought back before the court for sentencing:

- notice must be given to the child and the chief executive (youth justice) of the hearing date (s 174(4) – (6) YJA);
- the notice must warn that failure to attend may result in a warrant;
- if the child fails to attend, the court may issue a warrant for arrest (s 174(7) YJA);
- if arrested, the child must be treated as if arrested on a charge for an offence (s 174(8) YJA).

7.4.3 Court referral to restorative justice processes

Sections 161-165 of the YJA provide for restorative justice referrals before sentencing. Under s 164 of the YJA, the court may make a court diversion referral. Such a referral brings the proceedings to an end unless the referral is unsuccessful (s 164(2) YJA). Under s 165 of the YJA, the court may make a pre-sentence referral. If a restorative justice process results in an agreement, the court must have regard to the agreement when sentencing the child (s 165(6) YJA).

On sentence, the court may:

- order that the child perform the obligations under a restorative justice agreement (s 175(1)(da) YJA); or
- impose a restorative justice process as part of the sentence (s 175(1)(db) YJA).

A restorative justice order cannot be imposed for a **significant offence** listed in s 175A of the YJA which was committed on or after 13 December 2024 (ss 175A(8) & 192A YJA).

The following offences under the *Criminal Code (Qld)* are **significant offences** for the purpose of s 175A of the YJA.

⁶⁴ A **proper officer** means (a) for the Supreme Court, the District Court or a Childrens Court judge—the registrar or a sheriff or deputy sheriff of the court; and (b) for a Magistrates Court or a Childrens Court magistrate—the clerk of the court.

Due to successive legislative amendments, the following table records the date when each offence was made a **significant offence** for the purpose of s 175A YJA:

Section	Offence	Commencement Date
Criminal Code (Qld)		
302 & 305	Murder	Offences committed on or after 13 December 2024 Making Queensland Safer Act 2024
303 & 310	Manslaughter	
314A	Unlawful striking causing death	
317	Acts intended to cause grievous bodily harm and other malicious acts	
320	Grievous bodily harm	
323	Wounding	
328A	Dangerous operation of a vehicle	
340	Serious assaults	
408A	Unlawful use or possession of motor vehicles, aircraft or vessels	
409 & 411	Robbery • Simpliciter • Armed or pretends to be armed • In company • Wounds or uses personal violence	
419	Burglary	
421	Entering or being in premises and committing indictable offences	
427	Unlawful entry of vehicle for committing indictable offence	
69	Going armed so as to cause fear	Offences committed on or after 23 May 2025 Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025
75	Threatening violence	
306	Attempt to murder	
307	Accessory after the fact to murder	
313(2)	Killing unborn child • Unlawfully assaults another pregnant person and destroys the life of, does GBH or transmits serious disease to unborn child	
320A	Torture	
328C	Damaging emergency vehicle when operating motor vehicle	
328D	Endangering police officer when driving motor vehicle	
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352(2) or (3)	Sexual assaults • Bringing into contact any part of the genitalia or anus of a person with any part of the mouth • Armed or pretends to be armed	

	• In company • Penetration of offender's vagina, vulva or anus • Penetration of person procured by offender's vagina, vulva or anus	
354	Kidnapping	
354 A	Kidnapping for ransom	
355	Deprivation of liberty	
398 Item (12)	Stealing • Stealing of a vehicle	
412(2) or (3)	Attempted robbery ⁶⁵ • Armed or pretends to be armed • In company • Wounds or uses personal violence	
461	Arson	
462	Endangering particular property by fire	
398 Item (15)	Stealing • Stealing firearm or ammunition	Offences committed on or after 11 March 2026 Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026
61(1) if (a) in the penalty section applies	Riot • Offender causes GBH to a person, causes an explosive substance to explode or destroys	Offence committed on or after 30 April 2026 Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026
210(3) or (4A)	Indecent treatment of children under 16 • Child under the age of 12 • Child is a person with impairment of the mind	
216	Abuse of persons with an impairment of the mind	
309	Conspiring to murder	
311	Aiding suicide	
315	Disabling in order to commit indictable offence	
315A	Choking, suffocation or strangulation in a domestic setting	
316	Stupefying in order to commit indictable offence	

⁶⁵ Amended by the [Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026](#) to remove the requirement for subsection (2) or (3) to be present

319	Endangering the safety of a person in a vehicle with intent	
322 if (a) in the penalty section applies	Administering poison with intent to harm Endangers the life or, or does GBH, to the person	
339(2) or (3)	Assaults occasioning bodily harm - Publishes material on social media - Armed or pretends to be armed - In company	
359E	Punishment of unlawful stalking, intimidation, harassment or abuse	
412	Attempted robbery	
535	Attempts to commit indictable offences mentioned in s175 A(1), (1A) or (1B) YJA	
541 or 542	Conspiracy to commit crime or conspiracy to commit other offences mentioned in s175 A(1), (1A) or (1B) YJA	
544	Accessory after the fact to an offence mentioned in s175 A(1), (1A) or (1B) YJA	
Weapons Act 1990 (Qld)		
56A	Reckless discharge of weapon towards building or vehicle	Offences committed on or after 11 March 2026
67A	Possession and distribution of blueprint material for manufacture of firearms	<i>Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026</i>
Drugs Misuse Act 1986 (Qld)		
5	Trafficking in dangerous drugs	Offences committed on or after 23 May 2025 <i>Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025</i>

7.4.4 Court diversion referrals to restorative justice process

Section 162(1) of the YJA requires that, if a child enters a plea of guilty, the court **must** consider referring the offence to the chief executive (youth justice) for a restorative justice process instead of proceeding to sentence. However, a restorative justice order cannot be imposed

for a **significant offence** listed in s 175A of the YJA if committed on or after 13 December 2024 (ss 175A(8) & 192A YJA).

The court may also refer a matter as a pre-sentence referral to assist in sentencing or impose a restorative justice process as part of a sentence order.

Section 163 of the YJA empowers the court to refer an offence to the chief executive (youth justice) if:

- the court considers that the child has been informed of, and understands, the process;
- the child indicates a willingness to comply with the referral;
- the court is satisfied the child is suitable to participate;
- 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 referral would allow the offence to be appropriately dealt with without a sentence order; and
- the court considers the referral is appropriate 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 s 163 of the YJA, the referral brings the court proceeding to an end and the child is not liable to be further prosecuted for the offence, unless:

- the chief executive returns the referral under s 32(1) of the YJA; or
- the chief executive advises the child failed to comply with any agreement made (s 164(1) YJA).

If the chief executive returns the referral pursuant to s 32(1) of the YJA, the proper officer of the court **must** bring the charge back before the court for sentencing. In sentencing the child, the court must not have regard to the referral being returned (s 164(3) YJA).

If the child fails to comply with an agreement, the court must bring the matter back for sentencing and must either:

- take no further action; or

- allow the child a further opportunity to comply with the agreement; or
- sentence the child for the offence (s 164(4) YJA).

If the court takes no further action, the proceeding ends, and the child is not liable to be further prosecuted for the offence (s 164(9) YJA).

If the charge is brought back on for sentence, the proper officer of the court must give notice to the child and the chief executive (youth justice) of the hearing date, including a warning that failure to appear may result in a warrant (s 164(5) – (6) YJA). If the child fails to appear, the court may issue a warrant for the arrest of the child (s 164(8) YJA).

If a child completes the obligations under a restorative justice agreement, the chief executive must notify the referring authority (s 41 YJA).

7.4.5 The restorative justice process

The restorative justice process is established under Part 3 of the YJA. The object of the conference is to allow a child and other concerned persons to consider or deal with the offence in a way that benefits all concerned (s 33 YJA).

The process involves the referring authority (police or a court) referring an offence to the chief executive (youth justice). The process must be a conference (s 31(2) YJA) or, if a conference cannot be convened for reasons other than inability to contact the child or unwillingness to participate, an **alternative diversion program** (s 31(3) YJA).

An **alternative diversion program** (s 38 YJA) must:

- involve remedial actions, family/community-strengthening activities, or educational programs;
- help the child understand the harm caused;
- allow the child to take responsibility;
- not treat the child more severely than a court sentence; and
- be in writing and signed by the child.

7.4.5.1 Conference participants

An appropriately qualified person is appointed by the chief executive (youth justice) to convene the conference (s 38 YJA).

Section 34 of the YJA provides who may participate in the conference, including:

- the child;
- the victim;
- the convenor;
- a representative of the commissioner of the police service;
- a parent of the child;
- if represented by the child, one or more of the following:
 - the child's legal representative
 - a member of the child's family
 - another adult;
- if requested by the victim, one or more of the following:
 - the victim's legal representative;
 - a member of the victim's family;
 - another adult
- another person approved by the convenor (e.g., a representative of the chief executive, CJG representatives, observers).

A conference may proceed without the victim if there is victim participation through a representative, pre-recorded communication, or a victim-advocacy organisation (s 35(1) YJA).

The convenor must be independent (s 35(2) YJA), direct the conference toward making an agreement (s 35(3) YJA) and ensure an unrepresented child is informed of their right to legal advice (s 35(4) YJA).

7.4.5.2 Ending a conference

A conference ends when an agreement is made, or when the convenor ends it because:

- the child fails to attend the conference as required; or
- the child denies the offence;
- the convenor concludes a participant's conduct or failure will result in a conference agreement being unlikely to be made; or
- the convenor concludes a conference agreement is unlikely to be made within a time the convenor considers appropriate (s 35(5) YJA).

The convenor may convene another conference if appropriate (s 35(6) YJA).

7.4.5.3 Restorative justice agreement

A restorative justice agreement (s 36(1) YJA) requires the child to admit the offence and to undertake actions addressing the harm. The agreement cannot impose a more severe outcome than a court sentence (s 36(3) YJA). The chief executive may amend the agreement in certain circumstances (s 37 YJA).

If the child completes the agreement, the chief executive (youth justice) must notify the referring authority (s 41 YJA).

7.4.5.4 Returning the referral

The chief executive (youth justice) has the power to return the referral to the referring authority under s 32 of the YJA if:

- the chief executive is unable to contact the child after reasonable inquiries; or
- 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
- 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
- during the restorative justice process the child denies committing the offence to the chief executive, a convenor or victim of the offence; or

- 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
- the chief executive considers that the referral is unsuitable for a restorative justice process; or
- a conference is convened for the referral and the convenor ends the conference without an agreement being made (s 32(1) YJA).

The notice must state reasons, which may be considered by a court in later sentencing (s 32(2) YJA). The referring authority must make reasonable efforts to inform the child (s 32(3) YJA).

If a referral is returned it can have different consequences depending on what type of referral was made:

- If made by a police officer, then the officer may take no action, administer a caution to the child, refer for another restorative justice process or start a proceeding against a child (s 24 YJA).
- In relation to a court diversion referral by a court, the charge must return for sentence and the court must not have regard to the referral being returned (s 164(2) & (3) 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 (s 164(4) YJA).
- In relation to a pre-sentence referral, the court must proceed with sentencing the child for the offence (s 165(3) YJA).
- If the order was made as part of a sentence order under s 175 of the YJA, and the obligation was not complied with, it is a contravention of the order subject to the processes in Division 12 of the YJA.

7.4.6 Cautions by Childrens Court (s 21 YJA)

Section 21 of the YJA empowers the Childrens Court, where a child pleads guilty to a charge, to dismiss the charge instead of accepting the plea if an application is made and the court is satisfied the child should have been cautioned or no action should have been taken.

In deciding whether to act under this section, the court may have regard to:

- any other cautions administered to the child for any offence; and
- whether any previous conference agreements have been made by the child (s 21(2) YJA).

If the court dismisses a charge, the court may administer a caution to the child itself or direct a police officer to administer a caution (s 21(3) YJA).

Chapter 8 – Police Procedures

8.1 Arrest

Section 365(1) of the *Police Powers and Responsibilities Act 2000* makes it lawful for a police officer to arrest an adult without warrant in specified circumstances. Under s 365(3), it is lawful to arrest a **child** without warrant if the officer reasonably suspects the child is committing or has committed an offence. That power is subject to s 13 of the YJA, which provides that the police officer may use the police officer's power of arrest under s 365(3) without regard to ss 11 and 12 of the YJA only if the police officer believes on reasonable grounds that:

- the arrest is necessary:
 - to prevent a continuation or a repetition of the offence or the commission of another offence; or
 - to obtain or preserve, or prevent concealment, loss, or destruction of, evidence relating to the offence; or
 - to prevent the fabrication of evidence; or
 - to ensure the child's appearance before a court; or
- the child is an adult; or
- the child is contravening s 278 of the *Police Powers and Responsibilities Act 2000* or is unlawfully at large.

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

Sections 11 and 12 of the YJA provide for alternatives to commencing proceedings against a child and set out the preferred way of starting proceedings for offences other than **serious offences**. Section 13(5) YJA confirms that a police officer may arrest a child without a warrant under s 365(3) of the *Police Powers and Responsibilities Act 2000* for a **serious offence**.

Section 365(2) of the *Police Powers and Responsibilities Act 2000* authorises arrest without warrant where a police officer reasonably suspects a person has committed or is committing an indictable offence, for the purposes of questioning or investigating the offence.

Bail Act warrants may be issued for various contraventions of bail. Police may arrest without warrant in relation to these matters without regard to ss 11 and 12 of the YJA.

Section 367 of the *Police Powers and Responsibilities Act 2000* authorises arrest without warrant for specified breaches of bail. Before arresting a child, the officer must consider whether it would be more appropriate to apply under the *Bail Act 1980* to vary or revoke bail (s 367(4) PPRA). Section 367(4) does **not** apply where the officer reasonably suspects the child is likely to:

- contravene the appearance condition or another bail condition;
- fail to appear; or
- harass or interfere with a witness (s 367(5) PPRA).

For operational guidance, see Chapter 5.9.2 - 5.9.6 (Commencing Proceedings Against a Child) of the *Queensland Police Service Operational Procedures Manual*.

8.1.1 Alternatives to arrest

Under s 59A of the YJA, police must consider alternatives to arrest for contraventions of bail conditions. This section applies where:

- a police officer reasonably suspects a child has contravened or is contravening a bail condition and the contravention is not an offence; or
- a police officer reasonably suspects a child is likely to contravene a bail condition.

Before arresting the child under s 367(3)(a)(i) of the *Police Powers and Responsibilities Act 2000*, the officer must consider whether it would be more appropriate to:

- take no action;
- warn the child of possible police action under the *Police Powers and Responsibilities Act 2000*, in relation to a contravention of a condition imposed on the grant of bail;
- if the condition is not the appearance condition, then apply to vary or revoke bail under the *Bail Act 1980*.

8.1.2 Arrest on warrant

Sections 369-372 of the *Police Powers and Responsibilities Act 2000* contain provisions in relation to arrest on a warrant.

8.1.3 Notice to appear

Section 382 of the *Police Powers and Responsibilities Act 2000* provides for a notice to appear as an alternative to arrest. For commencing proceedings for an indictable offence, a simple offence or a breach of duty, see ss 42-53 of the *Justices Act 1886* and ss 42-46 of the YJA.

Under s 12 of the YJA, the preferred way to start a proceeding against a child is by complaint and summons or notice to appear. A notice to appear must be served discreetly on a child (s 383 PPRA).

Under s 389 of the *Police Powers and Responsibilities Act 2000*, the court may issue a warrant for arrest if a person fails to answer a notice to appear. If a child is arrested on such a warrant, the bail and custody provisions of the YJA apply (s 389(7) PPRA).

8.1.4 Notification requirements

Section 392 of the *Police Powers and Responsibilities Act 2000* 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 *Child Protection Act 1999*.

8.2 Police Questioning of a Child

Sections 396-441 of the *Police Powers and Responsibilities Act 2000* govern police procedure when interviewing a person about an indictable offence. Section 421 specifically applies where a police officer wants to question a relevant person, and the police officer reasonably suspects that person is a child (s 421(1) PPRA).

Unless the officer is aware that the child has arranged for a lawyer to be present during questioning or has spoken to a lawyer acting for the child, the officer must:

- inform the child that a representative of a legal aid organisation will be notified that the child is in custody for the offence; and
- 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 (s 421(2) PPRA).

The police officer **must not** question the child unless:

- 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
- a support person is present while the child is being questioned (s 421(3) PPRA).

A support person chosen by the child may not be a person against whom the offence is alleged to have been committed (s 421(4) PPRA). If the officer considers that the support person is unreasonably interfering with the questioning, the officer may exclude the person from being present during the questioning (s 421(5) PPRA).

Support person for a child means:

- a parent or guardian of the child; or
- a lawyer acting for the child; or
- a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or
- an adult relative or friend of the child who is acceptable to the child; or
- if the child is an Aboriginal person or a Torres Strait Islander and no-one mentioned above is available—a person whose name is included in the list of support persons and interpreters; or
- if no-one mentioned above 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) (Schedule 6 PPRA).

For further operational guidance, see Chapter 5.9.1 (Commencing Proceedings Against a Child) and Chapter 6.3 (General Policy) of the [Queensland Police Service Operational Procedures Manual](#).

8.2.1 Admissibility of statements

Section 29(1) of the YJA provides that a court must not admit a statement made or given by a child to a police officer unless a support person was present at the time and place the statement was made. This requirement does not apply if:

- 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
- the court considers that, in the particular circumstances, the statement should be admitted into evidence.

Examples in the legislation of a proper and sufficient reason include:

- 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; or
- the support person was excluded under the *Police Powers and Responsibilities Act 2000*.

In *R v L* [2009] QDC 426, Dearden DCJ ruled the police interview of a 13-year-old Aboriginal boy inadmissible because the interview was not voluntary and it was not conducted with a proper support person, as required by the YJA and the *Police Powers and Responsibilities Act 2000*. The adult present was a complainant in another matter, an authority figure, not chosen by the child, and did not act for the child. She did not meet the statutory definition of a support person. The prosecution also failed to show any “proper and sufficient reason” for the absence of a valid support person.

In *R v R & T* [2009] QDC 425, Dearden DCJ ruled the interviews of two young Aboriginal defendants inadmissible because the prosecution failed to prove the interviews were voluntary and admitting them would be unfair. The support person was an Elder, Justice Group member, Aboriginal Legal Aid field officer and domestic violence worker. She was **not** properly briefed, had no recollection of the interviews, and did not ensure the boys understood their rights. Her status and involvement created a risk that she could not act in their best interests.

8.2.1 List of Inappropriate Support Persons under the PPRA

Pursuant to s 428 of the *Police Powers and Responsibilities Act 2000*, 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;
 - This 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 of the *Police Powers and Responsibilities Act 2000* permits a police officer to apply to a Magistrate for a removal order for a child held in custody under the YJA (either on remand or serving a sentence) so that the child may be placed temporarily in police custody for questioning about an indictable offence or the investigation of an indictable offence the child is suspected of committing (s 399(1) & (2) PPRA).

The application must:

- be made in person;

- be sworn; and
- state the grounds on which the order is sought (s 399(4) PPRA).

A Magistrate may refuse to consider the application until the police officer provides all information the Magistrate requires, in the manner required (s 399(5) PPRA).

8.3.1 Criteria for making a removal order

A Magistrate may make a removal order **only** if satisfied that placing the child in the custody of the police officer is reasonably necessary for questioning the child about the offence or the investigation of the offence (s 401 PPRA).

8.3.2 Content of removal order

Section 402 of the [Police Powers and Responsibilities Act 2000](#) specifies the mandatory contents of a removal order. The order must state:

- the name of the child and the prison or detention centre where the child is held;
- that the chief executive (corrective services) or the person in charge of the detention centre must release or arrange for the release of the child into the custody of the named police officer;
- the name of the police officer who will have control of the child while absent from the facility;
- the reason for the child's removal;
- the place, if known, to which the child is to be taken;
- that the child must be returned to the prison or detention centre as soon as reasonably practicable after the detention period ends; and
- any other conditions the Magistrate considers appropriate.

Operational guidance is provided in Chapter 2.5.6 (Removal of Prisoners/Children from Corrective Services Facility and Youth Detention Centres) of the [Queensland Police Service Operational Procedures Manual](#).

8.4 Police Diversion

A police officer has several diversion options available when dealing with a child: release without charge, caution, referral for a restorative justice process, drug diversion or a graffiti removal diversion (s 11 YJA).

8.4.1 Dismissal where a caution should have been administered (s 21 YJA)

The Childrens Court may dismiss a charge if satisfied that the child should have been cautioned instead of being charged or that no action should have been taken against the child (s 21 YJA).

The court may dismiss a charge if:

- the child pleads guilty to the charge; and
- an 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. In deciding the application, the court may consider any other cautions administered to the child and any previous conference agreements in the restorative justice process (s 21(2) YJA).

If the charge is dismissed because a caution should have been administered, the court may administer a caution itself or direct a police officer to administer the caution (s 21(3) YJA).

8.4.2. Dismissal where the offence should have been referred for restorative justice (s 24A YJA)

The Childrens Court may dismiss a charge if satisfied that the offence should have been referred to the chief executive (youth justice) for a restorative justice process under s 22 YJA (s 24A YJA). The court may dismiss the charge if:

- the child pleads guilty to the charge; and
- an application is made by or on behalf of the child; and
- the Court is satisfied the offence should have been referred, regardless of whether or not the child admitted to committing the offence to police.

In deciding the application, the court may consider any other cautions administered to the child and any previous restorative justice agreements that have been made by the child (s 24A(1A) YJA).

If the charge is dismissed, the court may refer the offence to the chief executive for a restorative justice process (s 24A(2) YJA). The police officer is taken to be the referring authority (s 24A(4) YJA).

Dismissal does **not** prevent a police officer from restarting a proceeding against the child or a court sentencing the child for the offence if the chief executive returns the referral under s 32(1) YJA (no agreement reached) or the child fails to comply with an agreement (s 24A(3) YJA).

If the court proposes to dismiss a charge under s 149 of the *Justices Act 1886* and issue a certificate (which bars any subsequent complaint) or issue a certificate of dismissal under s 700 of the *Criminal Code* (which bars further prosecution), the certificate cannot issue until the child has discharged all obligations under any restorative justice agreement (s 24A(5) YJA).

8.5 Bail

The powers of the police officer to grant bail are set out in s 7 of the *Bail Act 1980* and Part 5 (ss 47-59A) of the YJA.

8.5.1 Review of bail decision

Section 19B of the *Bail Act 1980* establishes a mechanism for a defendant, complainant, prosecutor or the Crown to ask a reviewing court to reconsider a bail decision made under the *Bail Act* or under Part 5 of the YJA. This is not an appeal; it is a fresh review, in which the reviewing court may consider new evidence and make any appropriate order (subject to statutory limits). The original decision-maker must give the reviewing court any relevant documents in their possession (s 19B(8) BA).

Certain decisions are excluded from review under s 19B of the *Bail Act 1980*:

- decisions of the Supreme Court;

- decisions under s 10(2) of the *Bail Act 1980* (refusal to consider bail because the defendant is already on bail);
- decisions of a Magistrate acting as a reviewing court under s 19B.

The reviewing court depends on who made the original decision (s 19B(3) BA):

- If bail was decided by police or a Justice of the Peace (not a Magistrate), the reviewing court is a Magistrates Court constituted by a Magistrate.
- For any other decision (Magistrate, Childrens Court Magistrate, District Court Judge), the reviewing court is the Supreme Court constituted by a single judge.

If the complainant, prosecutor or Crown applies for review, they must take reasonable steps to inform the defendant of the hearing time and place (s 19B(4) BA). The review may proceed in the defendant's absence if those steps were taken (s 19B(5) BA).

On review, additional or substitute evidence may be given, and the court may make any appropriate order (s 19B(6) BA). For children, the reviewing court's powers are limited by ss 48, 48AD, 48AA, 48AE and 48A of the YJA (s 19B(7) BA).

8.5.2 Application for bail or to vary bail by defendant in custody (s 19 BA)

Section 19 of the *Bail Act 1980* permits a defendant held in custody who has been refused bail, or who feels aggrieved by any bail condition, to apply to a court empowered by s 8 *Bail Act 1980* for an order granting or varying bail (s 19(1) BA).

On hearing of the application, the court may:

- grant bail to the defendant;
- vary the bail already granted; or
- refuse the application (s 19(2) BA).

8.5.3 Power of Childrens Court to vary bail (s 59 YJA)

A Childrens Court judge may enlarge, vary, or revoke bail granted to a child in, or in connection with a criminal proceeding, whether or not the child has appeared before the Childrens Court judge in relation to the matter (s 59(1)(b) YJA).

[Form 68 \(Children’s Court of Queensland – Application by a Child Applicant to Vary Bail\)](#) is available to be used by a child defendant who is applying to the Childrens Court of Queensland to vary their bail.

[Form 69 \(Children’s Court of Queensland – Application by the DPP to Revoke or Vary Bail\)](#) is available to be used by the Director of Public Prosecutions when applying to the Childrens Court of Queensland to vary or revoke a child’s bail.

8.5.4 Application to vary or revoke bail by complainant, prosecutor or Crown (s 30 BA)

Section 30 of the [Bail Act 1980](#) allows a complainant, prosecutor or the Crown to apply to vary or revoke bail. A defendant seeking to vary their own bail must apply under s 20.

Applications may be made to:

- the court that granted the bail; or
- the court where the indictment is presented; or
- the Supreme Court (s 30(1) BA).

If police granted bail, then the application may be made to the Childrens Court (if the defendant is required to appear there) or a Magistrates Court (s 30(1A) BA).

Applications may be made ex parte but, ordinarily notice must be given to the defendant and any sureties unless the defendant has absconded, is likely to abscond or has broken, or is likely to break, a bail condition (s 30(2) BA).

If the application is made without notice, the court may:

- order notice to be given warning the defendant to surrender or face a warrant; or
- immediately issue a warrant for arrest (s 30(3) BA).

If the defendant fails to appear, the court may issue a warrant (s 30(4)(a) BA). If the defendant appears but cannot show that bail should remain, the court may vary or revoke bail (s 30(4)(b) BA). If the defendant appears and satisfies the court that bail should remain, the court may release the defendant on the original undertaking (s 30(4)(c) BA).

Sureties are entitled to appear and give evidence, and the court may adjourn the application to allow them to attend (s 30(5) BA).

If the only ground for the application is that the defendant has breached, or is likely to breach, a condition imposed under s 11(9) of the [Bail Act 1980](#) to mitigate risk or under s 11AB as to curfew or monitoring conditions, then the court may **vary** the bail, including removing the condition, but must not revoke the bail (s 30(6) BA).

These conditions do not apply to children; bail conditions for children are governed by ss 52 and 52A of the YJA.

Section 30(7) of the [Bail Act 1980](#) confirms that s 30 does not limit police powers under s 367(3) of the [Police Powers and Responsibilities Act 2000](#) to arrest a child for likely failure to appear, likely breach of a condition, or interfering with a witness.

8.6 Starting Proceedings

Section 12 of the YJA provides that a police officer **starting a proceeding** ⁶⁶ against a child for other than a **serious offence** must commence the proceeding by complaint and summons or notice to appear, unless otherwise provided by the YJA.

Section 11 of the YJA requires a police officer to consider alternative diversionary options before starting a proceeding against a child. These include taking no action, administering a caution, or referring the matter for a restorative justice process. A police officer may also take these diversionary options even for a serious offence (s 11(7) YJA).

Section 13 of the YJA permits a police officer to use the powers of arrest under the PPRA to arrest a child without warrant in specified circumstances.

For detailed police powers of arrest, see Chapter 14 of the [Police Powers and Responsibilities Act 2000](#). Operational guidance is provided in Chapter 5.9 (Commencing Proceedings Against a Child) of the [Queensland Police Service Operational Procedures Manual](#)

⁶⁶ **Starting a proceeding against a child** includes obtaining a warrant for the arrest of the child and arresting without a warrant (s 7 YJA).

Sections 42–46 of the YJA set out the complaint and summons procedure for proceedings other than those instituted by a police officer.

8.7 Other Court Applications

8.7.1 Order for removal from detention centre for purpose of questioning or investigation

Section 399 of the *Police Powers and Responsibilities Act 2000* provides that a police officer may apply to a Magistrate for an order authorising the removal of a child from a detention centre for the purpose of questioning the child about an indictable offence or investigating an indictable offence the child is suspected of committing. This power applies to a child held in custody under the YJA, whether on remand or serving a sentence.

8.7.2 Identifying particulars

Section 25 of the YJA permits a police officer to apply to a Childrens Court Magistrate for an order to take **identifying particulars**⁶⁷ of a child who has been charged without being arrested for:

- an indictable offence; or
- an offence against any of the following that is an arrest offence:
 - *Drugs Misuse Act 1986*
 - *Police Service Administration Act 1990*
 - *Regulatory Offences Act 1985*
 - *Summary Offences Act 2005*
 - *Weapons Act 1990*.

The police officer applicant must give notice of the application to the child, a parent of the child (unless a parent cannot be found after reasonable inquiry) and the chief executive (s 25(3) YJA). The court may decide the application in the absence of the child, their parent, or the chief executive if satisfied that notice requirements have been met.

⁶⁷ **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; (g) a measurement of any part of the person's body, other than the person's genital or anal area, buttocks or breasts.

The applicant, the child, the child's parent and/or the chief executive are entitled to be heard and provide evidence on the application (s 25(5)(a) YJA). The court may act on statements of information and belief (s 25(5)(b) YJA).

The court may order the **identifying particulars** be taken if it is satisfied, on the balance of probabilities, that:

- someone has committed the charged offence;
- 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;
- the child is reasonably suspected of being the offender; and
- the order is necessary for the proper conduct of the investigation of the offence (s 25(6) YJA).

The order must state the investigation for which it is made (s 25(7) YJA).

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 within 7 days, between stated hours (s 25(8) YJA).

If the child will be in custody, the order must require the particulars to be taken at the place of custody (s 25(10) YJA).

Section 26 of the YJA requires that a support person be present when identifying particulars are taken (s 25(11) YJA), unless:

- the prosecution satisfies the court there was proper and sufficient reason for the absence of a support person; and
- the court considers that the particulars should be admitted into evidence.

Police are not required to permit the presence of a person reasonably suspected of being an accomplice or likely accessory (s 26(2)(a) YJA) and a parent reasonably suspected of being the victim of the offence under investigation (s 26(2)(b) YJA).

A child must not contravene an identifying-particulars order. The maximum penalty is 10 penalty units (s 25(9) YJA).

Section 27 of the YJA requires destruction of identifying particulars taken under court order if no sentence order is made in relation to the investigation. See also s 474(4A) of the [Police Powers and Responsibilities Act 2000](#), which deals with destruction of identifying particulars where a restorative justice referral is made.

Operational guidance is provided in Chapter 5.11.1 (Taking Identifying Particulars of a Child Not Arrested) of the [Queensland Police Service Operational Procedures Manual](#)

8.8 Police Powers under PPRA to take Identifying Particulars

Section 25 YJA provides that ss 25–27 do not limit the powers of a police officer under the [Police Powers and Responsibilities Act 2000](#) to take identifying particulars, to the extent those powers apply to a child.

Section 467 of the [Police Powers and Responsibilities Act 2000](#) empowers a police officer to take identifying particulars of a person in custody after arrest for an identifying particulars offence. This power applies to children as well as adults, unlike the powers in ss 468–471, which apply only to adults.

Operational guidance is provided in Chapter 5.11 (Taking Children’s Identifying Particulars) of the [Queensland Police Service Operational Procedures Manual](#).

8.9 Court Orders if Child Found Guilty of Specified Offence

Section 255 of the YJA empowers the court to order that a child’s **identifying particulars**⁶⁸ be taken if the child has been found guilty of:

- an indictable offence; or
- an offence against any of the following Acts that is an arrest offence:
 - [Criminal Code \(Qld\)](#);
 - [Drugs Misuse Act 1986](#);
 - [Police Service Administration Act 1990](#);

⁶⁸ **Identifying particulars** for the purpose of s 255 of the YJA are confined to fingerprints and palm prints (s 255(6) YJA).

- [Regulatory Offences Act 1985](#);
- [Summary Offences Act 2005](#);
- [Weapons Act 1990](#).

The order may be made in addition to any sentence order (s 255(2) YJA).

If the child will not be in custody when the identifying particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within seven days to enable the particulars to be taken (s 255(3) YJA).

If the child will be in custody when the particulars are taken, the order must require the particulars to be taken at the place where the child is held in custody (s 255(5) YJA).

A child must not contravene an identifying-particulars order. The maximum penalty is 10 penalty units (s 255(4) YJA).

Operational guidance is provided in Chapter 5.11.4 (Taking Fingerprints Upon a Finding of Guilt by a Court) of the [Queensland Police Service Operational Procedures Manual](#).

8.10 Forensic Orders

Section 447 of the [Police Powers and Responsibilities Act 2000](#) provides that a forensic procedure may be performed on a person if:

- the person gives informed consent (s 453 PPRA); or
- the procedure is performed under a forensic procedure order.

A forensic procedure may relate to a person suspected of committing an offence (s 448 PPRA).

Sections 448 - 456 of the [Police Powers and Responsibilities Act 2000](#) relate to the obtaining of consent:

- Section 450 sets out special requirements for obtaining consent from a child aged 14 years or over.
- Section 451 sets out special requirements for obtaining consent from a child under 14 years.

Sections 457–466 of the *Police Powers and Responsibilities Act 2000* provide for the making of forensic procedure orders. A police officer may apply for such an order if satisfied that performing the procedure on a person suspected of committing an indictable offence may provide evidence of the commission of the offence (s 457 PPRA).

Under s 458 of the *Police Powers and Responsibilities Act 2000*, a police officer may apply to a Magistrate for a forensic procedure order authorising a qualified person to perform:

- an **intimate forensic procedure**; ⁶⁹ or
- a **non-intimate forensic procedure**; ⁷⁰ or
- both procedures

If the person is a child, the application must be made to a Childrens Court Magistrate (s 458(2) PPRA).

8.10.1 Restrictions on applying for a forensic procedure order for a child

A police officer **must not** apply for a forensic procedure order in relation to a child if the only purpose is to obtain:

DNA Sample (s 457(3) PPRA)

A forensic procedure order cannot be sought if:

- the only purpose is to obtain a DNA sample; and
- it is practicable to apply under s 488 of the *Police Powers and Responsibilities Act 2000* for a DNA sample order; and

⁶⁹ **Intimate forensic procedure** means all or any of the following procedures— (a) a procedure performed on a person's external genital or anal area, buttocks or breasts that involves— (i) an external examination of the relevant part of the body; or (ii) taking a sample from the relevant part of the body, by swab, washing, vacuum suction, scraping, or by lifting by tape; or (iii) making an impression or cast from the relevant part of the body; or (iv) measuring the relevant part of the body; (b) photographing a person's external genital or anal area or buttocks; (c) a procedure performed on a person that involves— (i) an internal examination of a body cavity; or (ii) taking a sample of the person's hair from— (A) the genital or anal area; or (B) the buttocks; or (C) the breasts; or (iii) taking a sample, by swab or washing, from a body cavity other than the mouth; or (iv) removing a substance or thing from a body cavity other than the mouth; or (v) taking an X-ray of a part of the person's body; or (vi) taking a dental impression; or (vii) taking a sample of the person's blood or urine.

⁷⁰ **Non-intimate forensic procedure** means a procedure performed on a person, other than an intimate forensic procedure, that involves all or any of the following— (a) an examination of an external part of the person's body, that requires clothing to be removed or contact with the person's body; (b) taking a sample from a part of the person's body, by swab, washing, vacuum suction, scraping, or by lifting by tape; (c) photographing a part of the person's body; (d) making an impression or cast of a part of the person's body; (e) taking a DNA sample; (f) taking a sample of saliva; (g) taking a sample from, or from under, a fingernail or toenail; (h) taking identifying particulars.

- it is likely that such an order can be given immediate effect

An identifying particular (s 457(4) PPRA)

A forensic procedure order cannot be sought if:

- the only purpose is to obtain an identifying particular within the meaning of s 25 YJA; and
- it is practicable to apply under s 25 YJA; and
- it is likely that such an order can be given immediate effect.

8.10.2 Notice and hearing requirements

Notice of the application must ordinarily be given (s 457(4) PPRA). If the person does not appear, the application may be heard in the person's absence (s 459(4) PPRA).

A Magistrate may refuse to consider the application until the police officer provides the information required (s 458(4) PPRA).

8.10.3 Criteria for making a forensic procedure order

Under s 461 of the *Police Powers and Responsibilities Act 2000*, a Magistrate may make a forensic procedure order only if satisfied, on the balance of probabilities, that:

- there are reasonable grounds for believing that performing the procedure may provide evidence of the commission of the indictable offence; and
- carrying out the procedure is justified in the circumstances.

In deciding whether the procedure is justified, the Magistrate must balance the rights and liberties of the person and the public interest (s 461(2) PPRA). Relevant considerations include:

- the seriousness of the circumstances surrounding the commission of the suspected offence and the gravity of that offence;
- the degree of the person's alleged participation in the commission of the suspected offence;

- 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);
- if the person is a child or a person with impaired capacity—the welfare of the person;
- 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;
- 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);
- if the person is in custody for the suspected offence:
 - the period for which the person has already been detained; and
 - the reason for any delay in applying for the forensic procedure order;
- any other matter the magistrate considers relevant to balancing those interests.

8.10.4 Contents of forensic procedure order

Section 462 of the *Police Powers and Responsibilities Act 2000* provides that the forensic procedure order must state:

- the relevant person's name; and
- that a forensic procedure may be performed on the person by a qualified person; and
- whether a qualified person may perform:
 - an intimate forensic procedure; or
 - a non-intimate forensic procedure; or
 - both an intimate and a non-intimate forensic procedure; and
- that a police officer may exercise the powers in s 464 of the *Police Powers and Responsibilities Act 2000*.

Section 464 of the *Police Powers and Responsibilities Act 2000* 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.

8.10.5 Order to detain for non-compliance with reporting notice

Section 514 of the *Police Powers and Responsibilities Act 2000* permits a police officer to apply to a Magistrate for an order to detain a person who 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 (s 514(3) PPRA).

8.11 DNA Samples

Sections 475 - 494 of the *Police Powers and Responsibilities Act 2000* govern forensic procedures involving DNA samples. A DNA sample may be taken with the informed consent of the person (ss 448-456 PPRA) or under a DNA sample order made by the Childrens Court (s 488 PPRA).

Special consent requirements apply to children:

- If the child is **at least 14 years of age**, the police officer may ask the child to give consent to a forensic procedure order. The police officer must ensure a support person is present when the explanation mentioned in s 454 of the *Police Powers and Responsibilities Act 2000* is given and when any consent is given. The police officer must ensure the child is given a reasonable opportunity to speak to the support person in circumstances in which the conversation cannot be overheard, if it is reasonably practicable to do so (s 450 PPRA).
- If the child is **under 14 years of age**, the police officer may ask a parent of the child to give a forensic procedure consent for the child. If the parent gives a forensic procedure consent for the child authorising the taking of a sample for DNA analysis, the sample taken must be a DNA sample and not a sample of the child's blood (s 451 PPRA).

If consent authorises the taking of a DNA sample from a child under 14 years of age, the sample may be used only for the purpose for which consent was given (s 479 PPRA). Section 494 of the *Police Powers and Responsibilities Act 2000* provides further limitations on the use of the DNA sample beyond the consent given.

Section 488 of the *Police Powers and Responsibilities Act 2000* 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.

The police officer must give notice of the application to:

- the child;
- a **parent of the child**⁷¹ unless a parent cannot be found after reasonable inquiry; and
- the chief executive (communities) or a nominated departmental officer (s 488(3) PPRA).

The court may order the taking of a DNA sample if satisfied that:

- an indictable offence has been committed;
- 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 (s 488(4) PPRA).

If the child **will not** be in custody when the sample is proposed to be taken, the order must:

- require the child to report to a police officer at a stated police station or police establishment;
- within seven days, or on a stated day or within stated hours within seven days;
- to enable a DNA sampler to take the sample.

The order may also authorise a police officer to detain the child and take them to an appropriate place if the child does not comply (s 488(5)(b) PPRA).

If the child is in custody, a DNA sampler may take the sample at the place of custody (s 488(8) PPRA).

A child must not contravene an order made under s 488(4) of the *Police Powers and Responsibilities Act 2000* that contains a reporting requirement under s 488(5) unless the child has a reasonable excuse. The maximum penalty is 10 penalty units (s 488(6) PPRA). It is a reasonable excuse if a copy

⁷¹ A **parent, of a child**, includes an approved carer of the child under the *Child Protection Act 1999* (s 488(11) PPRA).

of the order has not been given to the child. It is **not** a reasonable excuse that complying with the order may tend to incriminate the child (s 488(7) PPRA).

To give effect to an order under s 488(4) or s 488(5)(b) of the *Police Powers and Responsibilities Act 2000*, a police officer may detain the child (s 488(9) PPRA). If the child is not already in custody, the maximum period of detention is one hour or a longer period reasonably necessary in the circumstances (s 488(10) PPRA).

Section 514 of the *Police Powers and Responsibilities Act 2000* permits a police officer to apply to a Magistrate for an order to detain a person who 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 (s 514(3) PPRA).

8.12 Non-Medical Examinations

Sections 495 - 500 of the *Police Powers and Responsibilities Act 2000* relate to non-medical examinations authorised to be carried by a police officer. These provisions only relate to examinations of adults (s 498 - 499 PPRA). They **do not** apply to children.

8.13 Disease Test Orders

Chapter 18 of the *Police Powers and Responsibilities Act 2000* provides for the taking of blood and urine samples from persons suspected of committing sexual or other serious assault offences. The purpose of these provisions is to ensure that victims receive appropriate medical, physical and psychological treatment (s 537 PPRA). The relevant offences are listed in Chapter 18 of the *Police Powers and Responsibilities Act 2000*.

Under s 540(2) of the *Police Powers and Responsibilities Act 2000* a police officer may apply to the Childrens Court for a disease test order authorising the taking of a blood and urine sample from a child if the police officer has arrested the child and the child is reasonably suspected of committing a relevant offence.

Notice of the application must be given to:

- the child;
- a parent of the child (unless a parent cannot be found); and
- the chief executive (communities) (s 541 PPRA).

A Magistrate may refuse to consider the application unless the police officer provides all information the Magistrate requires (s 540(5) PPRA).

On the hearing of the application, the Childrens Court:

- must hear and decide the application as soon as practicable and in the absence of the public;
- may adjourn the application for no more than 24 hours in extraordinary circumstances 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 (s 542(2) PPRA).

The Childrens Court may make a disease test order if satisfied that there are reasonable grounds for suspecting a relevant offence has been committed and, in the circumstances of the offence, a blood and urine sample should be taken (s 542(5) PPRA).

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 (s 543 PPRA).

The child may appeal against a disease test order to the District Court (s 544 PPRA).

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 (s 548 PPRA).

Chapter 9 – Childrens Court Constituted by a Magistrate

9.1 Jurisdiction

Under s 14 of the *Childrens Court Act 1992* (CCA), Magistrates are appointed as Childrens Court Magistrates. This appointment does not affect their appointment as a Magistrate (s 11(3) CCA).

Section 60 of the YJA provides that the YJA does not affect the court's jurisdiction in relation to a child charged with an offence, unless the YJA provides otherwise.

Section 66(1) of the YJA provides that, for the purposes of the powers and jurisdiction of the Childrens Court under the YJA, the provisions of the *Criminal Code (Qld)*, *Justices Act 1886* 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.

These provisions apply, with necessary modifications, to a Childrens Court Magistrate in the same way they apply to a Magistrates Court (s 66(2) YJA).

Where another provision of the YJA is inconsistent with a provision applied under s 66(1), the YJA prevails (s 66(3) YJA).

Section 64 of the YJA provides that:

- 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 (s 64(1) YJA)
- A Childrens Court magistrate has jurisdiction to hear and determine those proceedings (s 64(2) YJA).
- A Magistrates Court and Justices conducting committal proceedings do not have that jurisdiction (s 64(3) YJA).

Section 65(1) of the YJA further provides that, for matters assigned to a Childrens Court Magistrate under the YJA, the Magistrate has the same powers and jurisdiction as a Magistrates Court under the *Justices Act 1886*. These powers are additional to those conferred under the YJA (s 65(2)). Where inconsistent, the YJA prevails (s 65(3)).

Under s 3 of the *Criminal Code*:

- Offences are criminal or regulatory.
- Criminal offences comprise crimes, misdemeanours, and simple offences (s 3(2)).
- Crimes and misdemeanours are indictable offences (s 3(3)).
- Regulatory and simple offences may be dealt with summarily (s 3(4)).
- An offence not otherwise designated is a simple offence (s 3(5)).

Sections 553–554 of the *Criminal Code* confirm that jurisdiction and committal procedures are governed by the laws constituting the courts and the *Justices Act 1886*. Accordingly, the *Justices Act 1886*, where not inconsistent with the YJA, regulates proceedings before the Childrens Court constituted by a Magistrate.

A Childrens Court 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)*. Such offences are simple offences, and the proceeding is a summary proceeding under the *Justices Act 1886* (s 46 SOA).
- all simple offences pursuant to a summary proceeding under ss 139-178AA of the *Justices Act 1886*.
- all indictable offences other than **serious offences**⁷² except where the matter may be resolved summarily with the consent of the child (s 81 YJA, ss 99-134 *Justices Act 1886* & ss 552A-552D CC).
- all committals (ss 103B-130 *Justices Act 1886*).

⁷² **Serious offence** in this Act 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. However, an offence is not a serious offence if (a) it is a relevant offence under the s 552BA of the *Criminal Code*; or (b) it is an offence that is the subject of a charge to which s 552A or 552B of the *Criminal Code* applies; or (c) if proceedings for a charge for the offence may be taken summarily under s 13 of the *Drugs Misuse Act 1986*; or (d) if proceedings for a charge for the offence may be taken summarily under s 14 of the *Drugs Misuse Act 1986* (s 8 YJA).

All regulatory, summary and simple offences may be dealt with by a Childrens Court Magistrate as either a trial or sentence. Penalties for regulatory offences (e.g., unauthorised dealing with shop goods, leaving hotel without payment, unauthorised damage to property) are fines (ss 5–7 ROA).

Section 308 of the YJA provides that offences against the YJA are **simple offences** to be dealt with summarily under the [Justices Act 1886](#).

Section 81 of the YJA provides that a charge of a serious offence must proceed by committal. If the child is also charged with a non-serious offence, the court may treat that charge as a serious offence for the purpose of s 81 (s 81(4)). Divisions 3 and 4 of the YJA provide for the summary disposition of indictable offences other than serious offences, but only with the child's consent. Thus, the Childrens Court Magistrate may hear and determine such indictable offences under ss 84, 89 and 93 YJA.

Sections 82–93 of the YJA set out the procedures for indictable offences other than serious offences.

For offences against Commonwealth statutes, the Childrens Court has jurisdiction under s 68 of the [Judiciary Act 1903 \(Cth\)](#). See also [Magistrates Court Practice Direction 22 of 2011 \(Commonwealth Criminal Matters\)](#).

9.2 Arrest, Bail, Remands, Callovers

The remand and adjournment of matters is governed by ss 84 - 88B of the [Justices Act 1886](#). Under s 83A, a Magistrate may direct the parties to attend a direction hearing about the conduct of the proceedings.

Before court, the Magistrate should review the material on the file. At the child's first appearance, the Magistrate should review the child's bail status.

Appearances on remand can be by way of audio-video or audio link (s 53 YJA). See also [Magistrates Court Practice Direction No. 3 of 2019 \(Using video-link or audio-link appearances in the Childrens Court when constituted by a Magistrate\)](#) and the [Childrens Court Practice Direction No. 1 of 2019 \(Use of video-link or audio-link appearances\)](#).

At each appearance, the Magistrate should canvas the presence of a **parent**⁷³ of the child. Under s 70 of the YJA, the court may order a parent of the child to attend the proceedings as directed.

The Magistrate should review the results of the search for outstanding indictable or simple offences within Queensland, in accordance with [Magistrates Court Practice Direction 5 of 2018](#). This facilitates consolidation of matters before one Childrens Court and timely disposition consistent with the Charter of Youth Justice Principles.

The Magistrate should also canvas whether the matter is suitable for case conferencing pursuant to [Magistrates Court Practice Direction No. 2 of 2017](#), which extends case conferencing to the Childrens Court. Case conferencing may apply to summary disposition and committal proceedings.

If the matter is to proceed to sentence, the Magistrate should canvas whether a pre-sentence report under s 151 of the YJA is required or advisable. If so, the child must be arraigned and enter a guilty plea for a report to be ordered. A pre-sentence report should canvas educational issues and health and mental health issues if relevant. The parties should raise such matters with the court.

If the Magistrate is informed that the child is not attending school, the Magistrate may refer the child to an Education Queensland Court Liaison Officer where available. The officer will interview the child and parents and later provide a report to the court.⁷⁴

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 operate in Brisbane, Caboolture, Logan, Ipswich, Gold Coast, Townsville, Mt Isa, and Cairns. These teams provide multidisciplinary assessments of a child's needs and contributing factors to offending.

⁷³ **Parent** means (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 (Schedule 4 YJA).

⁷⁴ Note that a child is of compulsory school age from 10 years until they turn 16, or until completion of Year 10, whichever occurs first (s 9 [Education \(General Provisions\) Act](#))

The Magistrate should canvas whether the child has been referred for assessment by the Mental Health: Child and Youth Court Liaison Service. This service is part of Queensland Health. It supports children aged 10 – 18 years of age and operates from hubs in Brisbane, South East Queensland, Cairns and Townsville. The Court Liaison Service attends courts on scheduled youth justice call over days and is available to rural and remote courts as required.

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.

The Magistrate should endorse the file if an assessment referral has been made.

See also [Magistrates Court Practice Direction No 7 of 2017 \(Mental Health Act 2016 proceedings in the Childrens Court when constituted by a Magistrate\)](#)

In Townsville, the Magistrate should canvas whether the matter is appropriate for referral to the Youth Court (Townsville) which deals with defendants aged between 10 and 17 years of age who are identified as repeat offenders and who have multiple factors associated with a high risk of future offending.⁷⁵

[Murri Courts](#) operate in 15 Magistrates Courts locations in Queensland, however only Rockhampton and Mackay operate a Youth Murri Court. A Magistrate may refer a matter to the Youth Murri Court under [Magistrates Court Practice Direction 2 of 2016](#) if:

- the child identifies as an Aboriginal and or Torres Strait Islander person or has a kinship or appropriate connection to an Aboriginal or Torres Strait Islander community, whether in Queensland or elsewhere;
- the offence falls within the jurisdiction of the Childrens Court so that it can be finally determined in that jurisdiction;
- a guilty plea is entered, or the child intends to plead guilty;

⁷⁵ [Magistrates Court of Queensland, Annual Report 2018-2019](#), page 30.

- the child is on bail or has been granted bail; and
- the child consents to participate fully in the Murri Court process.⁷⁶

If appropriate, the matter is adjourned to the Murri Court.

Murri Courts for adult defendants sit in Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Ipswich, Mackay, Maroochydore, Mt Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville, and Wynnum.⁷⁷

Murri Court enables Elders, Respected Persons, families and victims to contribute to the sentencing process and for culturally appropriate support services to address underlying contributors to offending.⁷⁸

9.3 Mental Health Matters

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:

- the child's ability to plead;
- the potential availability of a mental health defence;
- mental or intellectual issues affecting the child's participation in proceedings;
- communication or comprehension issues relevant to the hearing.

Section 61 of the YJA provides that the [Mental Health Act 2016](#) applies to a child charged with an offence as it applies to an adult.

Chapter 6 of the [Mental Health Act 2016](#) sets out the powers of courts hearing criminal proceedings, including:

- 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

⁷⁶ [Magistrates Court Practice Direction No 2 of 2016](#), page 4

⁷⁷ [Magistrates Court of Queensland, Annual Report 2022-2023](#), page 39

⁷⁸ [Magistrates Court of Queensland, Annual Report 2022-2023](#), pages 38, and 39

- the admission of persons subject to forensic orders (Criminal Code) to authorised mental health services; and
- the detention of persons in authorised mental health services during trial (s 169 MHA).

Under s 170 of the [Mental Health Act 2016](#), a reference to a Magistrates Court includes a Childrens Court dealing with a person under the YJA.

Section 172 of the [Mental Health Act 2016](#) empowers a Magistrates Court 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.

The defence of unsoundness of mind is contained in s 27 of the [Criminal Code \(Qld\)](#). It requires deprivation of one of the following capacities due to mental disease or natural mental infirmity:

- capacity to understand what the person is doing; or
- 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 s 26 of the [Criminal Code \(Qld\)](#) for the presumption of sanity and s 109 of the [Mental Health Act 2016](#) as to unsoundness of mind.

The term **unfit for trial** is not defined in the [Mental Health Act 2016](#).

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.”

Under s 173 of the [Mental Health Act 2016](#), the Magistrates Court may adjourn a complaint for up to six months if reasonably satisfied the defendant is unfit for trial and is likely to become fit within six months. If, after six months, the defendant remains unfit, the court may dismiss the complaint under s 172(2) of the [Mental Health Act 2016](#).

A Magistrates Court may make an examination order if:

- it has dismissed a complaint under s 172; or
- it has adjourned under s 173; or
- it is reasonably satisfied the defendant would benefit from an examination by an authorised doctor; and
- the court is reasonably satisfied the defendant has a mental illness or cannot decide whether the defendant has a mental illness or another mental condition.

An examination order is a judicial order (not an authority for involuntary treatment). It authorises an authorised doctor to examine the person without consent to decide whether to make or vary a treatment authority, forensic order or treatment support order (s 177(4) MHA) and may direct transport to an authorised mental health service or require attendance within 28 days (s 177(5) MHA).

Section 178 of the [Mental Health Act 2016](#) authorises detention for the purposes of the examination. An examination report must be prepared by the authorised doctor (s 179 MHA). The report is admissible only for limited purposes, including deciding whether to make an examination order or deciding whether to refer the matter to the Mental Health Court (s 180 MHA). Sections 180A–180B of the [Mental Health Act 2016](#) restrict the admissibility and release of statements made during the examination.

If the complaint has been dismissed under s 172 of the [Mental Health Act 2016](#) or adjourned under s 173 and the court 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 (s 174 MHA).

For indictable offences (other than Commonwealth offences), the Magistrates Court may refer the matter to the Mental Health Court if satisfied, on the balance of probabilities, that:

- the person was, or appears to have been, of unsound mind when the offence was allegedly committed; or
- the person is unfit for trial; and
- exceptional circumstances exist regarding community protection; and
- a forensic order or treatment support order may be justified.

The mechanism for the reference is set out in s 176 of the [Mental Health Act 2016](#).

The purpose of [Magistrates Court Practice Direction No. 7 of 2017](#) 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**⁷⁹ of the defendant to be completed or a matter to be adjourned for the completion of a mental health assessment.

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.

Under s 22(2) of the [Mental Health Act 2016](#), a Magistrates Court may order that a person appearing before it 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.

⁷⁹ **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. 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.

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* (s 46 SOA); and
- all simple offences (s 64 YJA); and
- all indictable offences that are not **serious offences** with the child's consent (s 8 YJA).

9.4.2 Regulatory, summary and simple offences

Under s 64 of the YJA, all proceedings under the *Justices Act 1886* for hearing and determining charges against children for offences must be conducted by a Childrens Court Magistrate.

Procedures for simple offences and breaches of duty are set out in Part 6 of the *Justices Act 1886*.

Under s 145 of the *Justices Act 1886*, the substance of the complaint shall be stated to the defendant who shall be asked to plead. 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 a bulk plea may be taken with the defendant's consent if:

- the defendant has obtained legal advice on each complaint; and
- the defendant is aware of the substance of each complaint (s 145(2) JA).

If the plea is taken in that way, the court is not required to state the substance of any complaint to the defendant (s 145(3) JA).

Given the child's age and developmental stage, the court must ensure the child understands the number and nature of the charges, consistent with s 72 of the YJA and Principle 7 of the

Charter of Youth Justice Principles. This includes confirming that the child understands the implications of the bulk plea. Suggested questions include:

- 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?
- What do you understand by all that?

Any parent present should also be asked whether they understand and agree to the process.

If the child does not appear to understand, the safer course is to arraign each charge individually.

If the child pleads guilty, the court must then sentence the child or make any other order authorised by law (s 145(4) JA).

Under s 46 of the YJA, a Children's Court Magistrate may hear and determine a simple offence in the child's absence, following s 146A of the [Justices Act 1886](#). Only a fine may be imposed, and only if the child has indicated in writing their capacity to pay (s 46(2) YJA). A court must not order a child to pay the cost of lodging the complaint and summons (s 45 YJA).

9.4.3 Indictable offences that are not serious offences

Section 78 of the YJA provides that the procedures in Part 6 YJA apply despite any other right of election. Sections 82–86 of the YJA set out the steps enabling a child to decide whether to consent to summary disposition.

9.4.3.1 Where the child is legally represented

Under ss 82-84 of the YJA, before evidence is adduced, the court must explain to the child and any parent:

- the child's right of election to proceed by committal or summary hearing (s 83(2)); and
- that the same election is available after all evidence is adduced (s 83(3)).

If the child consents to summary disposition, the court must hear and decide the charge (s 83(5) YJA), reduce the charge to writing and ask the child to plead (s 84(1) YJA). Bulk arraignment does not appear available except for offences under s 552B of the *Criminal Code* (s 552I CC).

If the child pleads guilty, the court proceeds as under s 145(4) of the *Justices Act 1886*.

Orders available are only those under Part 7 of the YJA, which is exclusive (s 149 YJA).

9.4.3.2 Where the child is not legally represented

Under ss 85-86 of the YJA, the proceeding must begin as a committal, with an explanation of the right to elect summary disposition after the prosecution case. If a child elects summary disposition:

- the committal is discontinued;
- the court hears and determines the charge summarily;
- the charge is reduced to writing;
- the child is asked to plead (s 89(1) YJA).

If the child pleads guilty to the charge, the court **must** proceed in the same way as provided in "*section 145(2) JA*" (s 89(2) YJA). Presumably this should refer to s 145(4) of the *Justices Act 1886* 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.

Again, only Part 7 YJA orders are available (s 149 YJA).

9.4.4 Election after prosecution case has closed

Sections 87–89 of the YJA apply whether or not the child is legally represented. If the court considers there is sufficient evidence to commit, it must explain the child’s right to elect to continue as a committal or to discontinue the committal and proceed summarily (s 88 YJA).

If the child consents, the court:

- discontinues the committal;
- hears and determines the charge summarily;
- reduces the charge to writing;
- asks the child to plead (s 89(1) YJA).

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 of the [Criminal Code \(Qld\)](#) (s 552I CC), as is available for simple offences (s145(2) JA). If the child pleads guilty, the court **must** proceed in the same way as in “section 145(2) JA”. Again, presumably, this should be s 145(4) of the [Justices Act 1886](#).

Section 145(4) of the [Justices Act 1886](#) 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.

Only Part 7 YJA orders are available (s 149 YJA).

9.4.5 Plea of guilty when called upon under section 104 Justices Act 1886

Sections 90-93 YJA apply where a child pleads guilty at a committal hearing.

If the child pleads guilty to an indictable offence other than a serious offence when addressed under s 104(2) of the [Justices Act 1886](#), the court must explain the child’s right to elect to be committed for sentence or to be sentenced by the Childrens Court Magistrate (s 93(2) YJA).

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 s 145(4) of the *Justices Act 1886*.

Section 145(4) of the *Justices Act 1886* 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.

Only Part 7 YJA orders are available (s 149 YJA).

9.4.6 Serious offences

Under s 81 of the YJA, a charge of a serious offence must proceed by committal.

If the charge is changed to a non-serious indictable offence during the committal, ss 87–93 of the YJA apply, allowing the child to elect summary disposition.

If the child consents:

- the committal is discontinued;
- the court proceeds under s 89 of the YJA;
- the charge is reduced to writing;
- the child is asked to plead.

If the child pleads guilty the court proceeds to sentence in the same way as is provided in “section 145(2) JA” (presumably s 145(4) of the *Justices Act 1886*).

See s 80 of the YJA regarding use of evidence already adduced.

9.4.7 Limitations on sentence for indictable offences

Under s 77 of the YJA, even where the court has jurisdiction to hear an indictable offence (with the child’s consent), the court must refrain from exercising that jurisdiction unless satisfied the charge can be adequately dealt with summarily. This decision may be made at any stage, after which the proceeding continues as a committal (s 77(4) YJA).

Under s 186 of the YJA, if the Magistrate considers a sentence beyond their jurisdiction is required but within the jurisdiction of a Childrens Court Judge, the Magistrate may commit the child for sentence.

9.5 Delegation of Sentencing Power

Section 185 of the YJA provides that where a child is before a Childrens Court magistrate for sentence and the Magistrate considers that an appropriate sentence would be beyond the Magistrate's jurisdiction because of the limits in s 175(1)(d) or (g) of the YJA, the Magistrate may request a Childrens Court Judge to delegate to the Magistrate the power to impose a sentence which, under s 175(1) of the YJA, may only be imposed by a Childrens Court Judge.

9.6 Costs in relation to indictable offences

Under s 704 of the [Criminal Code \(Qld\)](#), no fees may 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

Under s 175(1)(d)(i) of the YJA, a Childrens Court Magistrate may order a period of probation of no longer than one year.

If the offence is a **significant offence** under s 175A of the YJA, committed on or after 13 December 2024, a Childrens Court Magistrate may order a period of probation for not longer than three years (s 175A(2)(a) YJA).

Under s 175(1)(g)(i) of the YJA, a Childrens Court Magistrate may order detention for not more than one year.

For a **significant offence** committed on or after 13 December 2024, a Magistrate may order detention for up to three years, consistent with the adult sentencing limit under s 552H of the [Criminal Code](#) (s 175A(2)(b)(i) YJA).

9.7.2 Audio-visual or audio link

Under s 159 of the YJA, the court may allow the use of audio-visual or audio link for sentencing a child who is legally represented, if both the prosecutor and the child agree.

Relevant provisions:

- Part 3A of the [Evidence Act 1977](#), particularly s 39R, which empowers the court to direct appearances of evidence via audio-visual or audio-link, including from outside Queensland.
- Rules 52 and 53 of the [Criminal Practice Rules 1999](#) regarding evidence or submissions by telephone, video link or another form of communication in sentence proceedings.
- [Magistrates Court Practice Direction No 3 of 2019](#) and [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

Case conferencing is available for sentences in the Childrens Court when the child is legally represented. Parties may be guided by:

- [Magistrates Court Practice Direction No 2 of 2017](#)
- [Chapter 3.16 of the Queensland Police Service Operational Procedures Manual](#)
- [Guideline 17 of the Director's Guidelines](#).

9.7.4 Outstanding charges

Under s 157 of the YJA, an outstanding charge may be taken into account in sentencing a child, in the same way as for an adult under s 189 of the [Penalties and Sentences Act 1992](#).

9.7.5 Dismissal of a charge

If a child pleads guilty, the court may dismiss the charge on application if satisfied that the child should have been cautioned or no action should have been taken (s 21 YJA). The court may administer a caution.

If the child pleads guilty, the court may also dismiss the charge if satisfied the offence should have been referred for a restorative justice process and may refer the offence accordingly (s 24A YJA). This power applies regardless of whether the child admitted the offence to police.

9.7.6 Prior to the sentence hearing

Before sentencing, the Magistrate should review:

- any schedule of agreed facts;
- the child's criminal history (if agreed);
- any pre-sentence report ordered under s 151 of the YJA; and
- any other relevant reports.

9.7.7 Submissions on sentence

Submissions on sentence are heard in the usual way sentence submissions are heard in the Magistrates Court:

1. Prosecutor
2. Child's legal representative
3. Prosecutor in reply (on a matter of law)

The chief executive (youth justice) may also make submissions on sentence (s 74(3)(c) YJA).

Under s 150(9) of the YJA, the court may receive any information or sentencing submission it considers appropriate to impose the proper sentence.

Given the obligation to ensure the child understands the proceedings (s 158 YJA), over-formality is inappropriate.

Disputed facts are determined under s 132C of the [Evidence Act 1977](#).

9.7.7.1 Impact on victim

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.

Under s 256 of the YJA, the [Victims of Crime Assistance Act 2009](#) (VOCA) applies to offences committed by a child.

Section 256A of the YJA, which was added by the [Making Queensland Safer Act 2024](#), applies regardless of when the offence was committed and provides that Part 10B of the [Penalties and Sentences Act 1992](#) applies when sentencing a child for an offence mentioned in s 179J of the [Penalties and Sentences Act 1992](#).

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, a domestic violence offence or a contravention of a domestic violence order.

Under s 150(2) of the YJA, the court must have primary regard to the impact of the offence on the victim, including harm described under s 179K of the [Penalties and Sentences Act 1992](#).

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 the term **victim** should be given its ordinary meaning and referred to the Macquarie Dictionary definition: “*sufferer from any destructive, injurious or adverse action.*”

In [R v SEV; Ex parte Attorney-General \(Qld\) \[2026\] QCA 31](#), the Court of Appeal considered the amendments to the YJA requiring primary regard to the impact of the offending on the victim. Notably, the Court considered that the requirement to give primary regard to victim impact did not override the broader youth justice principles.

9.9 Transfer of Persons Remanded in Detention

Part 8, Division 2A of the YJA sets out the process for the transfer of persons remanded in detention. This Division was amended by the [Making Queensland Safer Act 2024](#) and, subject to ss 426-428 of the YJA, applies to a detainee regardless of whether detention or remand began before or after 13 December 2024 (s 425 YJA).

The amendments now require that all detainees in youth detention centres must be transferred to an adult correctional facility within one month after turning 18 years, regardless of whether they are on remand or sentenced (ss 276A – 276C YJA).

This requirement is subject only to an exclusive discretion of the chief executive to direct otherwise. That discretion is not subject to appeal or review and may only be challenged by judicial review (s 276D YJA).

9.10 Restorative Justice Processes

Under s 162 of the YJA, if a child pleads guilty to 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 proceeding to sentence.

A restorative justice order cannot be imposed for an offence that is a significant offence within the meaning of s 175A of the YJA, if the offence was committed on or after 13 December 2024 (ss 175A(8), 192A YJA).

Due to successive legislative amendments, the following table records the date when each offence was made a **significant offence** for the purpose of s 175A YJA:

Section	Offence	Commencement Date
Criminal Code (Qld)		
302 & 305	Murder	Offences committed on or after 13 December 2024 <i>Making Queensland Safer Act 2024</i>
303 & 310	Manslaughter	
314A	Unlawful striking causing death	
317	Acts intended to cause grievous bodily harm and other malicious acts	
320	Grievous bodily harm	
323	Wounding	
328A	Dangerous operation of a vehicle	
340	Serious assaults	
408A	Unlawful use or possession of motor vehicles, aircraft or vessels	
409 & 411	Robbery • Simpliciter • Armed or pretends to be armed • In company • Wounds or uses personal violence	
419	Burglary	
421	Entering or being in premises and committing indictable offences	
427	Unlawful entry of vehicle for committing indictable offence	

69	Going armed so as to cause fear	Offences committed on or after 23 May 2025 <i>Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025</i>
75	Threatening violence	
306	Attempt to murder	
307	Accessory after the fact to murder	
313(2)	Killing unborn child Unlawfully assaults another pregnant person and destroys the life of, does GBH or transmits serious disease to unborn child	
320A	Torture	
328C	Damaging emergency vehicle when operating motor vehicle	
328D	Endangering police officer when driving motor vehicle	
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352(2) or (3)	Sexual assaults - Bringing into contact any part of the genitalia or anus of a person with any part of the mouth - Armed or pretends to be armed - In company - Penetration of offender's vagina, vulva or anus - Penetration of person procured by offender's vagina, vulva or anus	
354	Kidnapping	
354 A	Kidnapping for ransom	
355	Deprivation of liberty	
398 Item (12)	Stealing Stealing of a vehicle	
412(2) or (3)	Attempted robbery ⁸⁰ - Armed or pretends to be armed - In company - Wounds or uses personal violence	
461	Arson	
462	Endangering particular property by fire	
398 Item (15)	Stealing Stealing firearm or ammunition	Offences committed on or after 11 March 2026 <i>Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026</i>
61(1) if (a) in the penalty section applies	Riot Offender causes GBH to a person, causes an explosive substance to explode or destroys	Offence committed on or after 30 April 2026 <i>Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026</i>
210(3) or (4A)	Indecent treatment of children under 16 - Child under the age of 12 - Child is a person with impairment of the mind	
216	Abuse of persons with an impairment of the mind	
309	Conspiring to murder	

⁸⁰ Amended by the *Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026* to remove the requirement for subsection (2) or (3) to be present

311	Aiding suicide	
315	Disabling in order to commit indictable offence	
315A	Choking, suffocation or strangulation in a domestic setting	
316	Stupefying in order to commit indictable offence	
319	Endangering the safety of a person in a vehicle with intent	
322 if (a) in the penalty section applies	Administering poison with intent to harm Endangers the life or, or does GBH, to the person	
339(2) or (3)	Assaults occasioning bodily harm - Publishes material on social media - Armed or pretends to be armed - In company	
359E	Punishment of unlawful stalking, intimidation, harassment or abuse	
412	Attempted robbery	
535	Attempts to commit indictable offences mentioned in s175 A(1), (1A) or (1B) YJA	
541 or 542	Conspiracy to commit crime or conspiracy to commit other offences mentioned in s175 A(1), (1A) or (1B) YJA	
544	Accessory after the fact to an offence mentioned in s175 A(1), (1A) or (1B) YJA	
Weapons Act 1990 (Qld)		
56A	Reckless discharge of weapon towards building or vehicle	Offences committed on or after 11 March 2026
67A	Possession and distribution of blueprint material for manufacture of firearms	Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026
Drugs Misuse Act 1986 (Qld)		
5	Trafficking in dangerous drugs	Offences committed on or after 23 May 2025 Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025

9.11 Summary trials/hearings

A Childrens Court constituted by a Magistrate may conduct a trial for a child charged with:

- a regulatory offence under the *Regulatory Offences Act 1985*;
- a summary offence under the *Summary Offences Act 2005* (s 46 SOA);
- a simple offence (s 64 YJA);

- an indictable offence that is not a **serious offence** (s 8 YJA) if the child consents.

9.11.1 Indictable offence which is not a serious offence

Under s 8 of the YJA, an indictable offence that is not a **serious offence** is:

- an offence that is not a **life offence**;
- an offence which, if committed by an adult, carries a penalty of less than 14 years imprisonment; or
- an offence subject to summary disposition pursuant to ss 552BA, 552A or 552B of the [Criminal Code \(Qld\)](#) or ss 13 and 14 of the [Drugs Misuse Act 1986](#).

Although ss 552A–552BA of the [Criminal Code](#) govern summary disposition for adults, children do not proceed under those sections. Instead, Part 6 of the YJA governs the child’s right of election for *all* indictable offences that are not serious offences (s 78 YJA). However, ss 552A–552BA of the [Criminal Code](#) remain relevant for determining whether an offence is a **serious offence**:

- Section 552A relates to charges of indictable offences that must be heard summarily on the prosecution election.
- Section 552B relates to charges of indictable offences that must be heard summarily unless the defendant elects for a jury trial.
- Section 552BA relates to charges of indictable offences against that Act that must be heard summarily. The offence must be a **relevant offence** defined in s 552BA(4).

Sections 13 and 14 of the [Drugs Misuse Act 1986](#) provide for summary determination of certain drug offences. Drug offences that are covered by those provisions are not **serious offences**.

Under s 77 of the YJA, even where the child consents, the Magistrate must refrain from exercising summary jurisdiction unless satisfied the charge can be adequately dealt with summarily.

9.11.2 Regulatory, summary and simple offences

Under s 64 of the YJA, all proceedings under the [Justices Act 1886](#) for charges against children must be heard by a Childrens Court Magistrate.

The provisions in relation to simple offences and breaches of duty are set out in Part 6 of the *Justices Act 1886* (ss 139 - 178AA). Part 3 of the *Justices Act 1886* sets out the general provisions as to jurisdiction. Section 52 of the *Justices Act 1886* sets out time limits for the prosecution of simple offences.

Section 145 of the *Justices Act 1886* provides that the substance of the complaint shall be stated to the defendant and the defendant shall be asked to plead to it. Under s 43A of the *Justices Act 1886*, 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 s 43 of the *Justices Act 1886* (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 (s 145(2) JA).

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.

Under s 146(1) of the *Justices Act 1886*, if the child pleads guilty, the court may:

- hear the complainant and witnesses, then the defence case, and determine the matter; or
- adjourn the hearing for good reason.

Under s 46 of the YJA, a simple offence may be heard in the child's absence. Under s 147 of the *Justices Act 1886*, the court may proceed if the child fails to appear. Only a fine may be imposed, and only if the child has indicated in writing the capacity to pay (s 46(2) YJA). A child must **not** be ordered to pay the cost of lodging the complaint and summons (s 45 YJA).

9.11.3 Indictable offences that are not serious offences

Sections 82–86 of the YJA set out the procedures enabling a child to elect summary disposition. Under s 78 of the YJA, these procedures apply despite any other Act.

9.11.3.1 Where the child is legally represented

Under ss 82 – 84 of the YJA, before the evidence is adduced, the court must explain the child's right to elect committal or summary hearing (s 83(2) YJA), and that the same election is available after all the evidence is adduced (s 83(3) YJA).

If the child consents:

- the court must hear and decide the charge summarily (s 83(5) YJA);
- the charge must be reduced to writing;
- the child must be arraigned (s 84(1) YJA).

If the child pleads not guilty, the court may proceed to hear the matter under s 146 of the *Justices Act 1886* (s 84(3) YJA).

9.11.3.2 Where the child is not legally represented

Under ss 85–86 of the YJA, the proceeding must begin as a committal, with an explanation of the right to elect summary disposition after the prosecution case.

If the child elects summary disposition:

- the committal is discontinued (s 88(4) YJA);
- the charge is reduced to writing;
- the child is asked to plead (s 89(1) YJA).

If the child pleads not guilty, the court may proceed to hear the matter under s 146 of the *Justices Act 1886*.

9.11.4 Election after prosecution case has closed

Under ss 87–89 of the YJA, if the court considers there is sufficient evidence to commit, it must explain the child's right to elect to continue as a committal or to discontinue and proceed summarily.

If the child consents:

- the committal is discontinued;
- the charge is reduced to writing;
- the child is arraigned (s 89(1) YJA);

If the child pleads not guilty the court may proceed to hear the matter in the same way as is provided in s 146 of the [Justices Act 1886](#).

9.11.5 Serious offences

Under s 81 of the YJA, serious offences must proceed by committal. If the charge is changed to a non-serious offence, ss 87–93 of the YJA apply.

If the child consents, the court proceeds summarily under s 89 of the YJA.

Section 80 of the YJA governs the use of evidence already adduced.

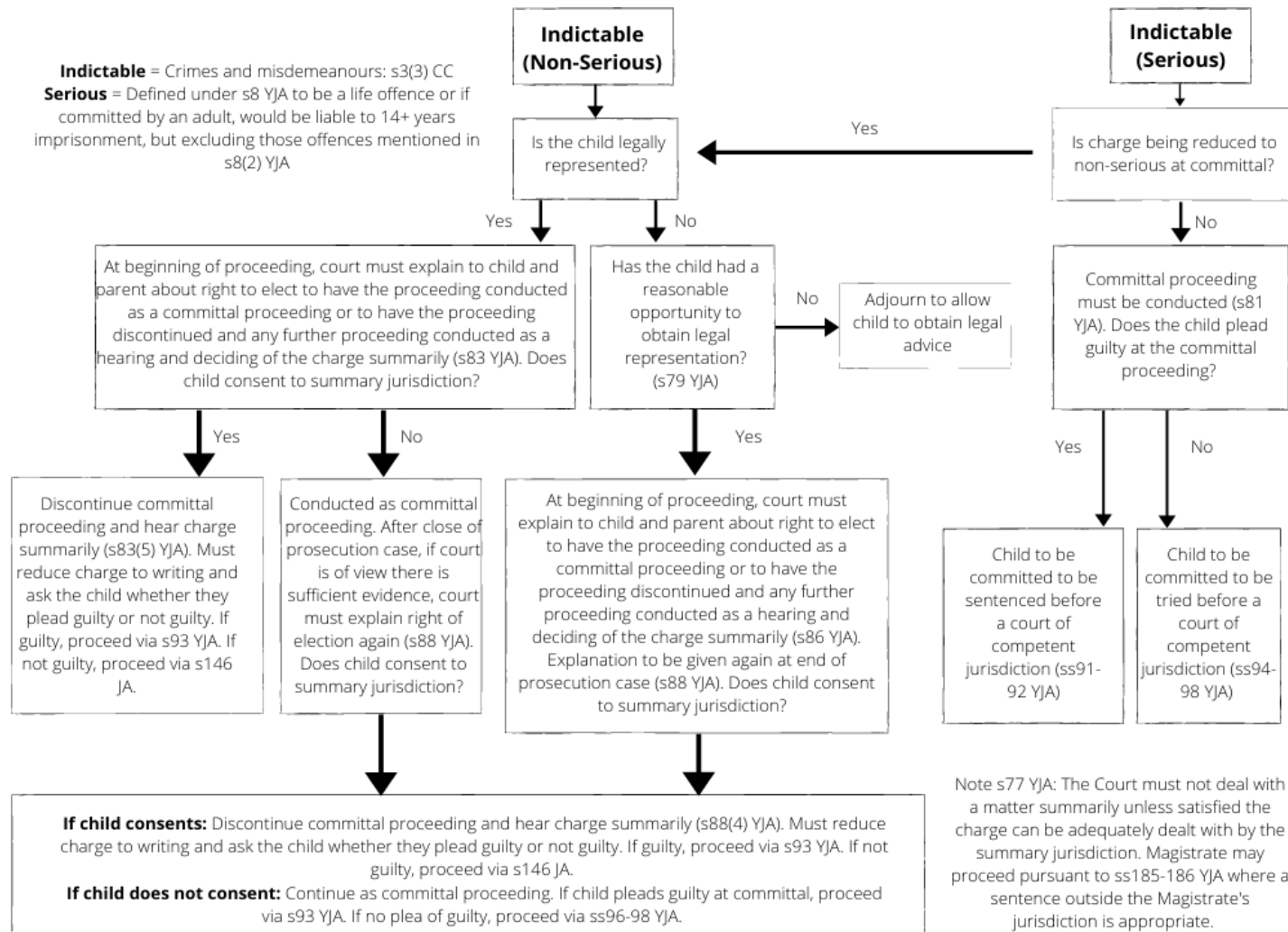
9.11.6 Limitation on summary hearing of an indictable offence

Under s 77 of the YJA, the Magistrate must refrain from summary disposition unless satisfied the charge can be adequately dealt with summarily. This decision may be made at any stage, after which the matter continues as a committal (s 77(4) YJA).

9.11.7 Costs in relation to indictable offences

Under s 704 of the [Criminal Code](#), no fees may 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.

9.12 Summary Table: Elections Flowchart



9.13 General Matters Concerning Hearings/Trials

9.13.1 Joinder of offences and defendants

Under s 574 of the *Criminal Code (Qld)*, the provisions of ss 559A-574 of the *Criminal Code (Qld)* which govern indictments, including joinder of charges and defendants, apply to complaints for the summary hearing of indictable offences.

9.13.2 Limitation of proceedings

Under s 52 of the *Justices Act 1886*, for simple offence or breaches of duty, a complaint must be made within one year of the matter arising, unless another time limit applies. If a proceeding for an indictable offence under the *Criminal Code* or *Drugs Misuse Act 1986* has been commenced and discontinued (or is to be discontinued) by a Crown Law Officer, the complaint may be made within two years.

Section 52(1) does **not** apply where the Act creating the offence gives the Magistrates Court jurisdiction regardless of when the matter arose.

Under s 76 of the YJA, a Childrens Court Magistrate may summarily hear and decide an indictable offence (with the child's consent) even if more than one year has passed since the offence.

9.13.3 How evidence is taken

Under s 73 of the *Justices Act 1886*, witnesses must be examined on oath or in another legally authorised manner. Relevant provisions include:

- Section 93A of the *Evidence Act 1977* as to the evidence of children by statement.
- Section 148 of the *Justices Act 1886* regulates the conduct of summary proceedings in relation to a simple offence or breach of duty.
- Section 148A of the *Justices Act 1886*, 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 of the [Criminal Code](#) provides for the use of the admission of a fact on **trial**⁸¹ by the accused or the Crown if the accused agrees.

9.13.4 Audio-visual or audio link

Part 3A of the [Evidence Act 1977](#) regulates the use of audio-visual or audio links. Under s 39R of the *Evidence Act 1977*, the court may direct a person to appear, give evidence, or make submissions by audio-visual or audio link, including from outside Queensland.

Rules 52 and 53 of the [Criminal Practice Rules 1999](#) apply to Magistrates Court proceedings and permit evidence or submissions by telephone, video link or other communication.

See [Magistrates Court Practice Direction No 3 of 2019 \(Childrens Court\) Practice Direction No 1 of 2019](#) for further guidance.

9.13.5 Disclosure obligations

Under s 66 of the YJA, the [Criminal Code \(Qld\)](#) and the [Justices Act 1886](#) apply to Childrens Court proceedings.

Under s 41 of the [Justices Act 1886](#), prosecution disclosure obligations for a **relevant proceeding** (as defined in s 590AD of the [Criminal Code](#) and including a **prescribed summary trial**) are governed by Chapter 62, Division 3 of the [Criminal Code](#).⁸²

Additional provisions and guidance on disclosure include:

- Section 83C - 83F of the [Justices Act 1886](#) for disclosure obligation directions;
- Chapter 9A of the [Criminal Practice Rules 1999](#) which applies to Magistrates Court proceedings; and

⁸¹ **Trial** includes proceedings before Justices dealing summarily with an indictable offence (s 644(3) CC).

⁸² **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 s 552BA; or (b) a charge for an indictable offence if, under s 552A, the prosecution has elected that the charge be heard and decided summarily; or (c) a charge for an indictable offence to which s 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.

- Chapter 3.14 (Disclosure of Information to Defence – Relevant Proceedings) of the [Queensland Police Service Operational Procedures Manual](#).

9.13.6 Case Conferences

Case conferencing is available for hearings when the child is legally represented. For further guidance on case conferencing, see:

- [Magistrates Court Practice Direction No 2 of 2017](#)
- Chapter 3.16 (Case Conferencing) of the [Queensland Police Service Operational Procedures Manual](#); and
- [Guideline 17 of the Director’s Guidelines](#).

9.13.7 Direction Hearing

Under s 83A of the [Justices Act 1886](#), a Childrens Court Magistrate, in relation to a proceeding for an offence, may direct the parties to attend at a direction hearing. Directions may concern:

- disclosure under the [Criminal Code](#), Chapter 62, Division 3;
- a party providing a copy of—
 - a medical, psychiatric, or other expert report; or
 - 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 s 43A of the [Justices Act 1886](#);
- 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.

9.14 Committal Hearings

Under the YJA, the following matters must proceed by committal hearing:

- all Supreme Court offences
- all **serious offences** (defined in s 8 YJA)
- all indictable offences other than serious offences

9.14.1 Conduct of committals pursuant to Justices Act 1886

Under s 66 of the YJA, the [Criminal Code \(Qld\)](#), [Justices Act 1886](#) and other Acts apply to the conduct of proceedings before the Childrens Court (s 66(1) YJA). Under s 64 of the YJA, all **committal proceedings**⁸³ for children must be heard by a Childrens Court Magistrate.

Relevant provisions include:

- Sections 103B-111 of the [Justices Act 1886](#) for the provisions in relation to a committal proceeding.
- Sections 73-83 of the [Justices Act 1886](#) in relation to how evidence is taken and witnesses.
- Section 110A of the [Justices Act 1886](#) as to the use of tendered statements in lieu of oral testimony in committal proceedings.
- Sections 110B and 110C of the [Justices Act 1886](#) as to the considerations in relation to an order that the witness who has given a written statement give oral testimony.
- [Magistrates Court Practice Direction No 3A of 2004](#) as to the evidence of affected children.

9.14.2 Committals under the Youth Justice Act 1992

Sections 81-98 of the YJA regulate the conduct of committals in the Childrens Court.

⁸³ **Committal proceeding** is defined in Schedule 4 of the YJA to mean a proceeding before a Justice taking examination of witnesses in relation to a charge of an indictable offence.

9.14.3 Supreme Court Offences

Under s 95 of the YJA, if the evidence is sufficient to put the child on trial for a **Supreme Court offence**,⁸⁴ the court must commit the child for trial.

Section 91 of the YJA provides that if the child pleads guilty to a **Supreme Court offence** when addressed under s 104(2) of the [Justices Act 1886](#), the court must commit the child for sentence to the Supreme Court.

Under s 106 of the YJA, a child committed for sentence may later enter a plea of not guilty when arraigned on indictment.

9.14.4 Serious offences

Section 81 of the YJA provides that the hearing of a **serious offence** before a Childrens Court Magistrate **must** be conducted as a committal proceeding (s 81(2) YJA). If the charge is changed to a non-serious offence, ss 87–93 of the YJA apply, allowing the child to elect summary disposition.

Under s 96 of the YJA, if the evidence is sufficient to put the child on trial for an offence other than a Supreme Court offence, the court must commit the child to a court of competent jurisdiction. Where the child is to be tried before a Childrens Court Judge, ss 97–98 of the YJA apply, including:

- explanation of the right to elect trial with or without a jury;
- commitment for trial without a jury if the child consents (s 98(4) YJA);
- commitment for trial with a jury if the child does not consent or is unrepresented (s 98(5) YJA)

The child may later change the election (ss 102–105 YJA).

Under s 92 of the YJA, if the child pleads guilty to a serious offence (not a Supreme Court offence), the court must commit the child for sentence.

⁸⁴ A **Supreme Court offences** means an offence for which the District Court does not have jurisdiction to try an adult because of s 61 of the [District Court of Queensland Act 1967](#).

Section 106 of the 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.

9.14.5 Indictable offences that are not serious offences

Where the child is legally represented, ss 82–83 of the YJA require the court to explain the right of election. If the child does not consent, the matter proceeds as a committal (s 83(6) YJA).

Where the child is not legally represented, ss 85–86 of the YJA apply. The proceeding begins as a committal, with an explanation of the right to elect summary disposition after the prosecution case.

In all such committals, after the prosecution evidence is adduced, the court must explain the right of election (s 88(2) YJA). If the child does not consent, the matter continues as a committal (s 88(5) YJA).

Under s 96 of the YJA, if the evidence is sufficient, the child must be committed for trial.

Under s 93 of the YJA, if the child pleads guilty at committal, the court must explain the right to be sentenced by the Magistrate. If the child does not consent, the child must be committed for sentence.

Under s 106 of the YJA, a child committed for sentence may later plead not guilty on indictment.

9.14.6 Joint committal proceedings

Under s 107 of the YJA, a Magistrate may conduct a joint committal for a child and an adult if, had the child been an adult, the proceedings would have been conducted together.

Under s 108 of the YJA, the prosecution may apply:

- before the summary hearing begins, for the matter to proceed as a committal so the child may be tried with another person; or

- before commitment to a Childrens Court Judge, for the child to be committed to another court to be tried with another person.

The Magistrate may grant the application if satisfied of the matters in s 108(3) YJA.

9.15 General Matters Concerning Committals

9.15.1 How evidence is taken

Under s 73 of the [Justices Act 1886](#), every witness must be examined on oath or in another manner authorised by law.

Key provisions governing evidence in committal proceedings include:

- Section 110A of the [Justices Act 1886](#) provides for the use of statements in lieu of oral testimony in committal proceedings.
- Sections 110A(3) - (6), 110B and 110C of the [Justices Act 1886](#) place restrictions on a witness being required to give oral evidence when the witness' statement has been admitted.
- Section 93A of the [Evidence Act 1977](#) for the admissibility of a statement made before a proceeding by a child.
- Section 21A of the [Evidence Act 1977](#) in relation to the evidence of a special witness.
- Division 4A Subdivision 2 of the [Evidence Act 1977](#) in relation to the evidence of an affected witness in a committal proceeding.
- Section 148C of the 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 s 302 YJA).

See also [Magistrates Court Practice Direction 3A of 2004](#) as to the evidence of affected children.

9.15.2 Disclosure obligations

A committal proceeding is a **relevant proceeding** for the purposes of s 590AD of the [Criminal Code](#), meaning the prosecution disclosure regime in Chapter 62, Division 3 of the [Criminal Code](#) applies.

9.15.3 Case conferences

Case conferencing is available in committal proceedings. See [Magistrates Court Practice Direction No 2 of 2017](#) for further guidance.

9.15.4 Directions hearing

Under s 103B of the [Justices Act 1886](#), a Magistrate has overall supervisory responsibility for committal proceedings, including setting timetables unless otherwise provided by legislation or practice direction.

Section 83A of the [Justices Act 1886](#) provides that a Magistrate may direct parties to attend a directions hearing and may give directions about any aspect of the conduct of the proceeding. Section 83A(5)(g) of the [Justices Act 1886](#) relates specifically to committal proceedings.

9.16 Other Applications

9.16.1 Application to dismiss charge if caution should have been administered

Under s 21 of the YJA, a child may apply to dismiss a charge if the child should have been cautioned or no action should have been taken.

9.16.2 Application to dismiss a charge if the offence should have been referred to restorative justice process

Under s 24A of the YJA, a child may apply to dismiss a charge if it should have been referred to the chief executive (Youth Justice) for a restorative justice process.

9.16.3 Application by police officer to take child's identifying particulars

Under s 25 of the YJA, a police officer may apply for an order to take a child's identifying particulars. The court may also order identifying particulars of a sentenced child to be taken (s 255 YJA), in addition to any sentence order.

9.16.4. Application to set aside finding or order by a parent

Section 71 of the YJA permits a parent to apply to set aside a finding or order made when the child was dealt with in the absence of a parent.

9.16.5 Application for variation of detention order in the interests of justice

Under s 216 of the YJA, where a child is unlawfully at large from detention and held in custody in another State, the child or the chief executive (youth justice) may apply to the original sentencing court to vary the sentence order in the interests of justice. The court may take no action or order that part or all of the interstate custody period be treated as time served under the original detention order.

9.16.6 Application for review of a bail decision by a police officer

Under s 19B(2) of the [Bail Act 1980](#), a defendant, complainant or prosecutor may apply to review a police bail decision relating to a child.

9.16.7 Other bail matters

Section 19 of the [Bail Act 1980](#) provides that a defendant held in custody may make an application to a court with jurisdiction to grant bail for an order granting or varying bail.

Under s 29A of the [Bail Act 1980](#), a child apprehended on a warrant issued under s 21(7) of the [Bail Act 1980](#) or s 367 of the [Police Powers and Responsibilities Act 2000](#) must be brought before the Childrens Court for a bail review.

Section 30 of the [Bail Act 1980](#) permits an application by a complainant or prosecutor to vary or revoke the bail of a child.

9.16.8 Application to remove a child from lawful custody

Under s 399 of the [Police Powers and Responsibilities Act 2000](#), a police officer may apply to a Magistrate for an order to remove a child from a prison or detention centre for questioning or investigation of an indictable offence.

9.16.9 Application for forensic procedures order

Under ss 457- 466 of the *Police Powers and Responsibilities Act 2000*, a police officer may apply for a forensic procedure order. Under s 458(2), an application for a forensic procedure on a child must be made to a Childrens Court Magistrate.

9.16.10 Application for taking a DNA sample

Under ss 475–494 of the *Police Powers and Responsibilities 2000*, a police officer may apply under s 488 to the Childrens Court for an order to take a DNA sample from a child.

9.16.11 Application in respect of failure to comply with a reporting notice in relation to a forensic procedure

Section 514 of the *Police Powers and Responsibilities Act 2000* permits a police officer to apply to a Magistrate for an order authorising the detention of a person who has failed to comply with a reporting notice for a forensic procedure.

9.16.12 Application for disease test order

Under Chapter 18 of the *Police Powers and Responsibilities Act 2000*, a police officer may apply under s 540 to the Childrens Court for a disease test order (blood and urine testing) for a child suspected of committing a sexual or serious assault offence.

9.16.13 Provisions in relation to taking the evidence of an affected child witness

Sections 21AE-21AH of the *Evidence Act 1977* set out procedures in relation to the taking of the evidence of an affected child witness for a committal proceeding.

Chapter 10 – Childrens Court Constituted by a Judge

10.1 Jurisdiction

Under s 11 of the *Childrens Court Act 1992* (CCA), District Court Judges are appointed as Childrens Court Judges. The appointment does not affect their appointment or powers as a District Court Judge (s 11(3) CCA).

Section 60 of the 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) of the YJA provides that for the purposes of the powers and jurisdiction of the Childrens Court conferred by the YJA, the provisions of the *Criminal Code, Justices Act 1886* 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 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 Judge in the way they apply to the District Court (s 66(2)(a) YJA). Where inconsistent, the YJA prevails (s 66(3) YJA).

Section 62 of the YJA provides that a Childrens Court Judge has jurisdiction to:

- hear and determine a charge against a child under Division 7;
- delegate sentencing power to a Childrens Court magistrate under s 185; and
- hear bail applications under s 59; and
- perform other functions and exercise other powers conferred on the judge under this Act; and
- review under s 118 a sentence order made by a Childrens Court magistrate.

Under s 63(1) of the YJA, for matters assigned under the YJA, a Childrens Court Judge has the same powers and jurisdiction as the District Court in its criminal jurisdiction. These powers are additional to those conferred under the YJA (s 63(2)). Where inconsistent, the YJA prevails (s 63(3)).

Section 3 of the [Criminal Code](#) provides that offences are of two kinds: criminal and regulatory. Crimes and misdemeanours are *indictable offences*, and unless otherwise provided, must be prosecuted on **indictment** (s 3(3) CC).⁸⁵

Under s 101 of the YJA, subject to Division 7, the provisions of the [Criminal Code](#) and other Acts relating to indictable offences apply to proceedings before a Childrens Court Judge. See ss 559A–574 of the [Criminal Code](#) regarding presentation and contents of indictments.

Section 553 of the [Criminal Code](#) confirms that the jurisdiction of courts to try offenders is determined by the laws constituting those courts.

Under s 99 of the YJA, a Childrens Court Judge has jurisdiction to inquire into, hear and decide all indictable offences, wherever committed, except **Supreme Court offences**. This jurisdiction applies regardless of where the offence occurred and regardless of whether the child has been committed for trial or sentence (s 99(2)).

Under s 100 of the YJA, a Childrens Court Judge may sentence a child for a summary offence transmitted under s 651 of the [Criminal Code \(Qld\)](#) with the child's consent.

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 s 651 of the [Criminal Code \(Qld\)](#).
- hear and determine bail applications under s 59 of the YJA whether an indictment has been presented or not;
- hear and determine sentence reviews under s 118 of the YJA of orders made by a Childrens Court Magistrate;
- hear and determine appeals from the Childrens Court Magistrate pursuant to s 222 of the [Justices Act 1886](#);
- to delegate sentencing power to a Childrens Court Magistrate pursuant to s 185 of the YJA;
- to hear other applications or appeals as specified to a Childrens Court Judge.

⁸⁵ **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 (s 1 CC).

For offences against Commonwealth law, jurisdiction is conferred by s 68 of the [Judiciary Act 1903](#) (Cth). However, the jurisdiction of a Childrens Court Judge in Commonwealth matters is constrained by s 61 of the [District Court of Queensland Act 1967](#) and whether the offence is a **Supreme Court offence**.

10.2 Trial

Trials for indictable offences before a Childrens Court Judge may proceed with a jury or by Judge alone.

If a child is legally represented, the child may consent to being committed for trial before a Childrens Court Judge sitting without a jury. If the child is not legally represented or does not consent to a Judge-alone trial, the child must be committed for trial before a Judge sitting with a jury.

Pursuant to s 103 of the 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 trial must be by jury.

Where the child appears before a Childrens Court Judge on an indictable charge not arising from a committal, and is legally represented, the child may elect a jury trial or Judge-alone trial. The election must occur before the plea (s 104(3) YJA).

Section 105 of the YJA provides that a jury trial is necessary where:

- the child is not represented by a lawyer; or
- if represented by a lawyer, the child has not elected, or withdraws an election, to be tried without a jury under another provision of this division; or
- 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.

At a mention of the indictment, the Judge should enquire whether the matter is to proceed as a jury trial or Judge-alone trial. The indictment should be endorsed accordingly. The child may change the election until the plea is entered.

Jury trials proceed in the same manner as in the District Court. Relevant procedures are contained in the [Jury Act 1995 \(Qld\)](#). See also Chapter 4 of the [Supreme and District Court Benchbook](#) for jury

directions, procedural guidance and standard warnings. Where a child is unrepresented, see Chapter 5 of the Benchbook for matters to be canvassed. It is essential that the child understands the process and obligations.

Section 79 of the 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.

Legal Aid Queensland policy provides **automatic legal aid** for children charged with indictable offences. Under s 22 of the [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.

Judge alone trials proceed in the same manner as District Court judge-alone trials. See [Supreme and District Court Benchbook](#) for trial procedures, elements of offences and evidentiary requirements. Where the child is under 14 years of age, the prosecution must prove the child's capacity under s 29 of the [Criminal Code \(Qld\)](#).

Although a matter for the individual Judge, it is not advisable to read depositions or witness statements before trial. A judge-alone decision must be based solely on the evidence led at trial.

A judge-alone decision must address the following:

- the onus and standard of proof;
- the evidence admitted;
- the use made of that evidence;
- the inferences drawn;
- the Judge's approach to the evidence;
- the relevant legal principles; and
- the application of those principles to the facts.

In *R v FAX* [2020] QCA 139, 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 may be drawn from the child’s silence.

Boddice J stated:

“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.” [104] – [110]

A **written judgment** is generally advisable, with the Principles of Youth Justice requiring a timely resolution of matters to be considered.

10.3 Joint Trials with an Adult Co-Accused or when also Charged with an Adult Offence

Sections 107 and 108 of the YJA provide for joint committal hearings where an indictable offence is charged against both a child and an adult.

Under s 108(1) of the YJA, the prosecution may apply for the proceeding to be conducted as a committal so that the child may be tried on indictment with another person. Under s 108(2) YJA, the prosecution may instead apply for the child to be committed for trial to another court of competent jurisdiction, rather than a Childrens Court Judge, for the purpose of a joint trial with another person. If satisfied of the statutory criteria, the Magistrate may grant the application and commit the child accordingly.

Under s 110 of the YJA, the prosecution may apply to a Childrens Court Judge for the removal of a committed charge to another court of competent jurisdiction for the purpose of a joint trial with another person. The Judge may grant the application if satisfied that:

- the child may lawfully be charged in an indictment in which the other person will also be charged; and

- 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
- 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.

Under s 110(3) of the YJA, the Judge may exercise power as if the proceeding had been brought before the wrong court. See also s 29 of the YJA.

Under s 111 of the YJA, where a child faces another indictable offence as an adult, the prosecution may apply for the removal of the proceeding to another court of competent jurisdiction. If satisfied, the Judge may grant the application and remove the proceeding. Again, the Judge may exercise power as if the proceeding had been brought before the wrong court (s 129 YJA).

Section 112 of the YJA provides that nothing in Division 7 prevents a Childrens Court Judge from presiding over the trial of a child in the Judge's concurrent jurisdiction as a District Court Judge, where the proceeding has been removed under ss 109–111 of the YJA.

If a proceeding is removed to another court under ss 110 or 111 of the YJA, the provisions authorising a Judge-alone trial before a Childrens Court Judge do not apply (s 113 YJA).

Sections 614-615E of the [Criminal Code \(Qld\)](#) provide for applications by the prosecutor or accused for a Judge-alone trial. However, s 615D(a) expressly provides that such an application is not available for a trial on indictment before a Childrens Court Judge.

Where a child is convicted in another court following removal under ss 110 or 111 of the YJA, the child must be sentenced under Part 7 of the YJA (s 149 YJA).

10.4 Sentence

A Childrens Court Judge may sentence a child for:

- any indictable offence, except a Supreme Court offence (s 99 YJA); and
- any summary offence which has been transmitted pursuant to s 651 of the [Criminal Code \(Qld\)](#) with the child's consent (s 100 YJA).

Under s 157 of the YJA, an outstanding charge may be taken into account on sentence in the same way as for an adult under s 189 of the [Penalties and Sentences Act 1992](#).

10.5 Arraignment

Arraignment of a child charged on indictment occurs in the same manner as in the District Court. The charge is read to the child, and the child must personally plead (ss 597C, 598 & 600 CC). Under s 597C(2) of the [Criminal Code](#), where an indictment contains multiple counts, a bulk plea may be taken if the child consent, so that a plea to one count is treated as a plea to all similar counts.

The Supreme and District Court Associates Handbook provides the standard questions, which may require adaptation to ensure the child understands:

- [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?

Consistent with s 72 of the YJA, the Judge must ensure the child understands the arraignment procedure, appreciates the number and nature of the charges and understands the consequences of entering 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) (s 648 CC).

See also Rule 51 of the [Criminal Practice Rules 1999](#).

If a child has been committed for sentence, the child is entitled to enter a plea of not guilty when called upon to plead on indictment (s106 YJA). This right prevails over s 600 of the [Criminal Code](#). Evidence of the earlier guilty plea at committal is inadmissible at trial.

If it appears the child will plead guilty, the Judge should canvass whether a pre-sentence report under s 151 of the YJA is required. A report may only be ordered after arraignment and entry of a guilty plea. Consistent with the youth justice principles of timely resolution, arraignment should occur as soon as practicable. Principle Nine of the [Charter of Youth Justice Principles](#) emphasises priority for children remanded in custody.

Upon a guilty plea, the Judge must consider whether the matter should be referred for a restorative justice process. Under ss 161–165 of the YJA:

- the court must consider referring the offence to the chief executive (youth justice) instead of sentencing (s 162(1) YJA); or
- may refer the matter to assist in determining an appropriate sentence (s 162(2)YJA).

To progress the matter efficiently, a short adjournment may be required to allow the parties to consider whether restorative justice is appropriate and available, as well as the most suitable restorative justice order.

10.6 Sentence Hearing

Prior to the sentence hearing, the Childrens Court Judge should review all material filed, including:

- any agreed schedule of facts;
- the child’s criminal history (if agreed);
- any pre-sentence report;
- any report on a pre-sentence restorative justice referral (s 165 YJA).

These reports should be tendered as exhibits.

See ss 151–153A of the YJA for the requirements of pre-sentence reports. Under s 152 of the YJA, the court may require the author of a pre-sentence report to attend to provide further information.

Under s 150(9) of the YJA, the court may receive any information or sentencing submission it considers appropriate to impose the proper sentence or make a proper order. Under s 74(3)(c) YJA, the chief executive (youth justice) is entitled to be heard on any sentence order that may be made.

Section 159 of the 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](#) for further guidance.

Where facts are disputed on sentence, s 132C of the [Evidence Act 1977](#) applies.

Under s 256 of the YJA, the [Victims of Crime Assistance Act 2009](#) applies to offences committed by children. Principle 11 of the [Charter of Youth Justice Principles](#) provides that victims should be given the opportunity to participate in the process in a manner permitted by law. Victim impact statements are governed by ss 179I–179N of the [Penalties and Sentences Act 1992](#). Under s 150(2) of the YJA, the court must have primary regard to the impact of the offence on the victim, including harm described under s 179K of the [Penalties and Sentences Act 1992](#).

Section 255 of the 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.

Under ss 257–260 of the YJA, the court may make compensation orders against parents in relation to offences committed by the child.

10.7 Mental Health Issues

Under s 61 of the YJA, the [Mental Health Act 2016](#) applies to a child charged with an offence in the same way as it applies to an adult.

Sections 181–188 of the [Mental Health Act 2016](#) establish a procedure enabling a court, after a guilty plea to an indictable offence, to set aside the guilty plea and refer the matter of the child’s mental state to the Mental Health Court if the court is reasonably satisfied, on the balance of probabilities, that the child was, or appears to have been, of unsound mind when the offence was committed or is unfit for trial. This power is only available after a guilty plea has been entered.

10.8 Delegation of Sentencing Power

Under s 185 of the YJA, where a child is before a Childrens Court Magistrate for sentence and the Magistrate considers that an appropriate sentence would be beyond the Magistrate's jurisdiction because of the limits in s 175(1)(d) of the YJA (probation not exceeding 12 months) or s 175(1)(g) (detention not exceeding 12 months), the Magistrate may request a Childrens Court Judge to delegate the power to impose a sentence that may only be imposed by a Judge under s 175(1) of the YJA.

For significant offences committed on or after 13 December 2024, the Magistrate's jurisdiction extends to three-year probation or detention orders (s 175A YJA). Delegation is required only where the appropriate sentence exceeds these expanded limits.

Section 185 of the YJA applies when:

- a proceeding in which a child may be sentenced is before a Childrens Court Magistrate; and
- the Magistrate considers that an appropriate sentence would exceed the Magistrate's jurisdiction under s 175(1)(d) or (g) of the YJA.

In such circumstances, the Magistrate may request a Childrens Court Judge to delegate the necessary sentencing power. The Judge has jurisdiction to make the delegation.

The delegation must ordinarily occur before any evidence is heard, any plea is entered, or any election made. However, if the child is legally represented, the child may consent to the delegation occurring at a later time.

The request and delegation may be made informally, including by distance communication. The Magistrate must inform the child of the delegation.

Separately, under s 186 of the YJA, if the Magistrate considers that the circumstances require a sentence beyond the Magistrate's jurisdiction, the Magistrate may commit the child for sentence before a Childrens Court Judge.

10.9 Bail

Under s 47 of the YJA, and subject to the YJA, the [Bail Act 1980](#) applies to children. Certain provisions of the [Bail Act 1980](#) do not apply to children (e.g., ss 7, 11, 16, 16A).

Under s 48(2) of the YJA, when deciding whether to release a child in custody, the court must release the child unless one of the statutory exceptions applies.

Section 59A of the YJA provides that a Childrens Court Judge may grant bail, enlarge bail, vary bail or revoke bail whether or not the child has appeared before the Childrens Court in relation to the offence. This power applies even if bail has previously been refused by a Childrens Court Magistrate (s 59(2) YJA).

A Childrens Court Judge may grant bail for any criminal offence, including offences to which s 13(1) of the *Bail Act 1980* applies and Supreme Court offences, even where no indictment has been presented. The Judge is not bound by the *Bail Act 1980* restrictions requiring new facts or changed circumstances for a subsequent bail application.

Where bail has been refused by a Childrens Court Magistrate, the Judge should have access to the record of the earlier proceedings and the reasons for the refusal in order to determine the application afresh.

A bail application may be heard by audio-visual or audio link (s 53 YJA).

10.10 Other applications or appeals

10.10.1 Application to set aside finding or order by a parent

Under s 71 of the YJA, a parent may apply to set aside a finding or order made against a child where the child was dealt with in the absence of a parent.

10.10.2 Application for removal to another jurisdiction for joint trial

Under s 110 of the YJA, the prosecution may 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 (typically an adult).

Under s 111 of the YJA, the prosecution may apply for removal where the child is to be tried on an indictment charging the offence for which the child was committed and another offence on which the child will be dealt with as an adult.

If satisfied of the statutory criteria, the Judge may grant the application and remove the proceeding.

10.10.3 Application for variation of detention order in interests of justice

Under s 216 of the YJA, where a child is unlawfully at large from detention and held in custody in another State, the child or the chief executive (youth justice) may apply to the original sentencing court to vary the sentence order in the interests of justice.

The court may take no action or order that part or all of the interstate custody period be treated as time served under the original detention order.

10.10.4 Appeal against disease test order

Under s 540(2) of the [Police Powers and Responsibilities Act 2000](#), a police officer may apply to a Childrens Court Magistrate for a disease test order in relation to a child. The Childrens Court can make such an order (s 542 PPRA).

A “relevant person” may appeal a disease test order to the District Court. The appeal:

- must be filed without delay;
- does not stay the order unless the court orders otherwise; and
- cannot be stayed for more than 48 hours from the time the order was made (s 544 PPRA).

The District Court must hear and decide the appeal within 48 hours after the order appealed against is made, in the absence of the public and without adjourning the appeal. If the relevant person or their lawyer is present, they may make submissions, but not submissions that unduly delay the appeal.

The court may allow or refuse the appeal.

Chapter 11 – Sentence

11.1 General Principles

Under s 149 of the YJA, the jurisdiction for sentencing a child is governed exclusively by Part 7 of the YJA, despite any other Act or law (s 149(2)). Section 2(a) of the YJA confirms that one of the Act's objectives is to establish a comprehensive code for dealing with children who have, or are alleged to have, committed offences.

The *Penalties and Sentences Act 1992* does not apply to a child or the Childrens Court except to the extent permitted by the YJA (s 6 PSA).

In *R v F and P* [1997] QCA 98, White J (with whom Davies JA agreed) emphasised that sentencing a child involves different considerations from sentencing an adult. Her Honour noted, at pages 12 and 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(c)(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 s 149] 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 s 150] 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 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 [Penalties and Sentences Act 1992](#). It is "a quite separate scheme for sentencing juvenile offenders."⁸⁶

In sentencing a child for an offence, a court **may** receive any information, or a **sentencing submission**⁸⁷ 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 (s 150(9) YJA).

Section 150 of the YJA sets out the sentencing principles to which a court must, must not and may consider when sentencing a child:

11.1.1 Principles the court must not consider (s 150(1) YJA)

A court **must not** have regard to:

- any principle that a detention order should only be imposed as a last resort (s 150(1)(a) YJA).
- any principle that a sentence that allows the child to stay in the community is preferable (s 150(1)(b) YJA).

11.1.2 Principles of primary regard (s 150(2) YJA)

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 s 179K of the [Penalties and Sentences Act 1992](#).

⁸⁶ [R v A and S; ex parte Attorney-General \[2001\] 2 Qd R 62](#) at [24] and [25].

⁸⁷ **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.

11.1.3 General matters to which the court must have regard (s 150(3) YJA)

In sentencing a child for an offence, a court **must** have regard to:

- general principles applying to the sentencing of all persons, subject to the YJA;
- the [Charter of Youth Justice Principles](#) in Schedule 1 of the YJA;
- victim impact considerations under s 150(2) of the YJA;
- the special considerations in s 150(4) of the YJA:
 - a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed;
 - the rehabilitation of a child found guilty of an offence is greatly assisted by the child's family and opportunities to engage in educational programs and employment;
 - 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.
- the nature and seriousness of the offence;
- the child's criminal history;
- 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
- regardless of whether there are exceptional circumstances, the probable effect that any sentence would have on:
 - a person with whom the child is in a **family relationship**⁸⁸ and for whom the child is the primary caregiver; and
 - a person with whom the child is in an **informal care relationship**;⁸⁹ and
 - if the child is pregnant – the child of the pregnancy; and
- the presence of any aggravating or mitigating factor concerning the child; and
- without limiting s150(3)(f) of the YJA, whether the child committed the offence:
 - while released into the custody of a parent, or at large with or without bail, for another offence; or
 - after being committed for trial, or awaiting trial or sentencing, for another offence; and

⁸⁹ **Informal care relationship** has the meaning given by s 20 [Domestic and Family Violence Protection Act 2012](#)

- also, without limiting s 150(3)(f) of the YJA, the following matters:
 - whether the child is a victim of, or has been exposed to domestic violence;
 - 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;
 - the child’s history of being abused or victimised; and
- any information about the child, including a pre-sentence report, provided to assist the court in making a determination; and
- 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
- 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,⁹⁰ including, for example—
 - the child’s connection with the child’s community, family, or kin; or
 - any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child; or
 - any considerations relating to programs and services established for offenders in which the community justice group participates; and
- a sentence imposed on the child that has not been completed; and
- 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
- the fitting proportion between the sentence and the offence.

11.1.4 Traffic history (s 150(8A) YJA)

Without limiting the matters that a court may have regard to in sentencing a child for an offence, the court may have regard to any relevant matter on the child’s traffic history under the [Transport Operations \(Road Use Management\) Act 1995](#).

Amendments to the [State Penalties Enforcement Act 1999](#), commencing in July 2026, allow unpaid fines for certain vehicle-related infringement notices issued to 16- and 17-year-old

⁹⁰ If required by the court 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 (s 150(8) YJA).

children to be fully enforced in the same manner as adult fines. Once the fine is paid, the offence may be recorded on the child's traffic history.⁹¹

11.1.5 Manslaughter of a child under 12 years (s 150(5) YJA)

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.

11.1.6 Child defendants who are victims of domestic violence (s 150(6) YJA)

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:

- the effect of the **domestic violence**⁹² or **exposure to domestic violence**⁹³ on the child; and
- 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.

11.1.7 Relevant serious offence involving destruction of an unborn child (s 150(7) YJA)

In determining the appropriate sentence for a child convicted of a **relevant serious offence**⁹⁴ committed in relation to a pregnant person that resulted in 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.

⁹¹ See s 5(2) of the *State Penalties Enforcement Act 1999* as amended by the *Transport and Other Legislation (Managing E-Mobility Use and Protecting Our Communities) Amendment Act 2026*.

⁹² See s 8 *Domestic and Family Violence Protection Act 2012*

⁹³ See s 10 *Domestic and Family Violence Protection Act 2012*

⁹⁴ **Relevant serious offence** means an offence against (a) the following provisions of the *Criminal Code (Qld)*: (i) ss 302 and 305; (ii) ss 303 and 310; (iii) s 320 (iv) s 323 (v) s 328A (vi) s 339; and (b) s 83 *Transport Operations (Road Use Management) Act 1998*.

The reference to the general principles applying to the sentencing of all persons in s 150(3)(a) of the YJA refers to “*such principles as had, prior to the PSA, been worked out by the Judges and, not to any principles stated in the (PSA).*”⁹⁵

The [Charter of Youth Justice Principles](#) are listed in Schedule 1 of the 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

⁹⁵ *R v W; ex parte Attorney-General* [2000] 1 Qd R 460 at [7].

- 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 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 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 that the community should be protected from offences and, in particular, recidivist high-risk offenders.

General deterrence plays a reduced but still relevant role in sentencing children. While rehabilitation is usually the primary focus, deterrence cannot be ignored.

In [R v AS; ex parte Attorney-General \[2004\] QCA 259](#), the Court of Appeal emphasised that general deterrence remains an important consideration, particularly for very serious offences. De Jersey CJ at [17] expressly rejected the argument that deterrence is of minor significance merely because the offender is a child.

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 stated:

“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.” [37]

In *R v KU & Ors; ex parte Attorney-General (No. 2)* [2011] 1 Qd R 439, the Court of Appeal again stressed that sentences must reflect the gravity of the offending and the need to protect the community, even where the offenders are children.

11.3 Parity with Adult Offenders

In *R v LY* [2008] QCA 76, the Court of Appeal considered a disparity argument between sentences imposed on an adult and a child co-offender. The Court noted that because different legislative schemes apply to adults and children, there will often be considerable disparity.

11.4 No Mandatory Sentences

Under s 155 of the YJA, when sentencing a child, a court must:

- disregard any requirement under another Act prescribing a minimum penalty; and
- treat any requirement that a penalty be the only penalty as prescribing the maximum, not the minimum.

Mandatory penalties that attach to **significant offences** in s 175A of the YJA will apply to child offenders, but detention can be served by a conditional release order (s 175A(3) YJA).

11.5 Diversion from Sentence

Principle Six of the [Charter of Youth Justice Principles](#) provides that a child who commits an offence should be treated in a way that diverts the child from the criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding should be commenced.

Diversion options are available if the child pleads guilty to an offence:

- The court may dismiss a charge if a caution should have been administered or no action should have been taken (s 21 YJA).
- The court may dismiss a charge if it should have been referred for a restorative justice process (s 24A YJA).
- The court may refer the offence for a restorative justice process instead of sentencing, except where the offence is a **significant offence** under s 175A of the YJA committed on or after 13 December 2024 (ss 161 – 165 YJA).
- The court may refer a child who pleads guilty to an eligible drug offence to a drug assessment and education session (ss 167 – 174 YJA).

11.6 Pre-Sentence Reports

Under s 150(3)(h) of the YJA, the court must have regard to any information about the child, including a pre-sentence report and bail history, provided to assist in sentencing.

A pre-sentence report is mandatory before the court may make an intensive supervision order (s 203 YJA) or a detention order (s 207 YJA).

Pursuant to s 152(3) of the 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](#).

11.6.1 Ordering a pre-sentence report

Under s 151 of the YJA, before sentencing a child, the court may order the chief executive (youth justice) to provide a pre-sentence report. Before making the order, the court must

consider whether a pre-sentence report is the most efficient and effective way to obtain relevant information (except where required under ss 203 or 207 YJA).

The report:

- must be prepared for the purpose of sentencing the child for the offence;
- may be directed to include specified information, assessments reports about the child, the child's family or other matters;
- must **not** include the chief executive's opinion on the impact of a publication order under s 234 of the YJA.

The court may order that the report include other information, assessments or reports (s 151(5) YJA). This may include psychiatric, psychological or medical assessments, assessments by the Mental Health Child and Youth Court Liaison Service or reports from the Griffith Youth Forensic Service or similar providers for sexual offence matters.

A pre-sentence report should also include information about the child's education. In some Magistrates Courts, the Education Justice Initiative provides liaison support.

The court may ask that the pre-sentence report be provided within a stated period that is reasonable, having regard to the likely complexity of the report (s151(6) YJA). Reports that request specialist assessments or reports often require extended preparation time, and the timeframe for completion must reflect this.

Pending the giving of a pre-sentence report, the court may:

- adjourn the proceeding;
- remand the child in custody; or
- exercise the powers conferred by Part 5 of the YJA to grant bail to and release the child from custody.

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.

Section 152(1) of the 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.

See s 153A of the YJA for permitted use and disclosure of information in a pre-sentence report. See also Rules 5 and 6 of the [Youth Justice Regulation 2016](#) for the contents of a pre-sentence report.

11.6.2 Additional material

The chief executive may provide additional written material relating to other offences committed by the child so that all matters may be finalised together (s 151(10) YJA).

Under s 151A of the YJA, the chief executive may disclose information obtained under the YJA or another Act (including the [Child Protection Act 1999](#)) to assist in preparing the report. Publication of such information is restricted under s 153A(3) of the YJA.

Section 153 of the YJA provides for the disclosure of a pre-sentence report to the prosecution and the child's legal representative (if applicable) once the report is given to the court. 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.

11.7 Pre-Sentence Restorative Justice Referrals

Under s 162(2) of the YJA, when a finding of guilty is made, the court **must** consider referring the offence to the chief executive (youth justice) for a restorative justice process to assist the court in making an appropriate sentence order. Failure to consider such a referral is an error in the sentencing discretion: [R v PBD \[2019\] QCA 59](#) at [32] and [R v PBE \[2019\] QCA 185](#) at [29].

A restorative justice order **cannot** be imposed for a **significant offence** under s 175A of the YJA committed on or after 13 December 2024 (s 175A(8) YJA).

Due to successive legislative amendments, the following table records the date when each offence was made a **significant offence** for the purpose of s 175A YJA:

Section	Offence	Commencement Date
Criminal Code (Qld)		
302 & 305	Murder	Offences committed on or after 13 December 2024 <i>Making Queensland Safer Act 2024</i>
303 & 310	Manslaughter	
314A	Unlawful striking causing death	
317	Acts intended to cause grievous bodily harm and other malicious acts	
320	Grievous bodily harm	
323	Wounding	
328A	Dangerous operation of a vehicle	
340	Serious assaults	
408A	Unlawful use or possession of motor vehicles, aircraft or vessels	
409 & 411	Robbery • Simpliciter • Armed or pretends to be armed • In company • Wounds or uses personal violence	
419	Burglary	
421	Entering or being in premises and committing indictable offences	
427	Unlawful entry of vehicle for committing indictable offence	
69	Going armed so as to cause fear	Offences committed on or after 23 May 2025 <i>Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025</i>
75	Threatening violence	
306	Attempt to murder	
307	Accessory after the fact to murder	
313(2)	Killing unborn child • Unlawfully assaults another pregnant person and destroys the life of, does GBH or transmits serious disease to unborn child	
320A	Torture	
328C	Damaging emergency vehicle when operating motor vehicle	
328D	Endangering police officer when driving motor vehicle	
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352(2) or (3)	Sexual assaults • Bringing into contact any part of the genitalia or anus of a person with any part of the mouth • Armed or pretends to be armed • In company • Penetration of offender's vagina, vulva or anus • Penetration of person procured by offender's vagina, vulva or anus	
354	Kidnapping	
354 A	Kidnapping for ransom	
355	Deprivation of liberty	
398	Stealing	
Item (12)	• Stealing of a vehicle	
412(2) or (3)	Attempted robbery ⁹⁶ • Armed or pretends to be armed • In company	

⁹⁶ Amended by the *Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026* to remove the requirement for subsection (2) or (3) to be present

	Wounds or uses personal violence	
461	Arson	
462	Endangering particular property by fire	
398 Item (15)	Stealing Stealing firearm or ammunition	Offences committed on or after 11 March 2026 <i>Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026</i>
61(1) if (a) in the penalty section applies	Riot Offender causes GBH to a person, causes an explosive substance to explode or destroys	Offence committed on or after 30 April 2026 <i>Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026</i>
210(3) or (4A)	Indecent treatment of children under 16 - Child under the age of 12 - Child is a person with impairment of the mind	
216	Abuse of persons with an impairment of the mind	
309	Conspiring to murder	
311	Aiding suicide	
315	Disabling in order to commit indictable offence	
315A	Choking, suffocation or strangulation in a domestic setting	
316	Stupefying in order to commit indictable offence	
319	Endangering the safety of a person in a vehicle with intent	
322 if (a) in the penalty section applies	Administering poison with intent to harm Endangers the life or, or does GBH, to the person	
339(2) or (3)	Assaults occasioning bodily harm - Publishes material on social media - Armed or pretends to be armed - In company	
359E	Punishment of unlawful stalking, intimidation, harassment or abuse	
412	Attempted robbery	
535	Attempts to commit indictable offences mentioned in s175 A(1), (1A) or (1B) YJA	
541 or 542	Conspiracy to commit crime or conspiracy to commit other offences mentioned in s175 A(1), (1A) or (1B) YJA	
544	Accessory after the fact to an offence mentioned in s175 A(1), (1A) or (1B) YJA	
Weapons Act 1990 (Qld)		
56A	Reckless discharge of weapon towards building or vehicle	Offences committed on or after 11 March 2026
67A	Possession and distribution of blueprint material for manufacture of firearms	<i>Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026</i>

Drugs Misuse Act 1986 (Qld)		
5	Trafficking in dangerous drugs	Offences committed on or after 23 May 2025 <i>Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025</i>

11.7.1 Power to make restorative justice referral (s 163 YJA)

A court may refer an offence for a restorative justice process if:

- the court considers the child is informed of, and understands, the process; and
- the child indicates willingness to comply with the referral; and
- the court is satisfied that the child is a suitable person to participate in a restorative justice process; and
- having regard to the deciding factors for referring the offence, the court considers the referral would:
 - allow the offence to be appropriately dealt with without making a sentence order (a court diversion referral); or
 - help the court make an appropriate community-based order or detention order (a presentence referral); and
- 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.

In this section, deciding factors for referring an offence means:

- 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 a restorative justice process.

11.7.2 Procedure for pre-sentence referral (s 165 YJA)

Upon making a referral, the court may give directions to the child or the chief executive and adjourn the proceeding.

If the referral is returned under s 32(1) of the YJA, the court must proceed to sentence.

If a **restorative justice agreement** is made, the chief executive must give the court a copy and the court must provide copies to the prosecution and the child's legal representative.

In sentencing the child for the offence, the court must have regard to:

- the child's participation in the relevant restorative justice process; and
- the child's obligations under the restorative justice agreement; and
- anything done by the child under the restorative justice agreement; and
- any information provided by the chief executive about sentencing the child.

11.7.3 When chief executive may return a referral (s 32(1) YJA)

The chief executive (youth justice) may return a referral under s 32(1) of the YJA if:

- the chief executive is unable to contact the child after reasonable inquiries; or
- 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
- 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
- during the restorative justice process the child denies committing the offence to the chief executive, a convenor or victim of the offence; or
- 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
- the chief executive considers that the referral is unsuitable for a restorative justice process; or
- a conference is convened for the referral and the convenor ends the conference without an agreement being made.

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. The referring authority must make reasonable efforts to inform the child that the referral has been returned.

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.

Under s 150(3)(i) of the YJA, when sentencing an Aboriginal or Torres Strait Islander child, the court must have regard to submissions made by a community justice group (CJG) representative. These submissions may include the child's connection to community, family or kin, relevant cultural considerations and information about programs or services in which the CJG participates. Section 150(8) of the YJA requires disclosure of any relationship or conflict of interest involving the CJG representative.

Under s 19(1)(a) of the [Aboriginal and Torres Strait Islander Communities \(Justice, Land and Other Matters\) Act 1984](#), CJGs have 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.⁹⁷ At [56], His Honour stated that s 150(1)(i) of the YJA (previously s 150(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*".

⁹⁷ At [25]-[26], [47]-[48], [56] and [113]-[114].

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];
- [R v MBY \[2014\] QCA 17](#);
- [Bugmy Bar Book](#).

These authorities emphasise that the effects of profound social disadvantage do not diminish over time and remain relevant to sentencing.

11.9 Compensation and Restitution

Under s 156 of the YJA, if the court considers it appropriate to order both a fine and compensation or restitution, but the child lacks sufficient resources to pay both, the court must give preference to ordering compensation or restitution.

The court must be satisfied that the child has capacity to pay the fine (s 190 YJA) or the restitution or compensation amount (s 235(5) YJA).

11.10 Recording of Conviction

Under s 183 of the YJA, a conviction **must not** be recorded unless authorised by that section. A conviction must not be recorded where the court makes a reprimand (s 175(1)(a) YJA) or a good behaviour order (s 175(1)(b) YJA). For all other orders under ss 175(1)(c)–(g), 175A, 176 or 176A, the court has a discretion whether to record a conviction.

Because the YJA is a code, this discretion also applies to findings of guilt for offences under the [Transport Operations \(Road Use Management\) Act 1995](#): [SAW v Crown \[2007\] QChC 4](#) and [R v MCK \[2012\] QChC 33](#).

See also s 254 of the YJA in relation to licence disqualification orders, some of which are mandatory if the circumstances of the [Transport Operations \(Road Use Management\) Act 1995](#) apply.

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].

11.10.1 Mandatory considerations (s 184 YJA)

In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including:

- the nature of the offence; and
- the child’s age and any previous convictions; and
- the impact the recording of a conviction will have on the child’s chances of:
 - rehabilitation generally; or
 - finding or retaining employment.

The matters listed in s 184(1)(a)-(c) of the YJA are mandatory but not exhaustive: [R v SBP \[2009\] QCA 408](#) at [21]. Failure to consider these matters is an error in the exercise of the discretion: [R v SBP \[2009\] QCA 408](#).

In [R v TAO \[2020\] QCA 4](#) at [20]–[22], the Court held that the sentencing judge should have considered recent positive changes in the child’s life and attitudes when assessing rehabilitation prospects.

It is an error not to invite submissions if the court is contemplating recording a conviction: [R v JAB \[2020\] QCA 124](#).

Even where detention is imposed, the court retains 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 held that one factor against recording a conviction for sexual offences was that it would make the child a reportable offender, contrary to the assessed low to moderate risk of recidivism. See also [R v SBP \[2009\] QCA 408](#) and [R v SBR \[2010\] QCA 94](#).

In [R v HCC \[2020\] QCA 178](#), Henry J held that gross delay in bringing charges may weigh against recording a conviction:

“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

Before the sentence hearing, the judicial officer should review all material filed including:

- any agreed schedule of facts;
- the child's criminal history (if any);
- any reports concerning the child (e.g., pre-sentence reports, restorative justice reports, psychological or educational material).

11.11.2 Arraignment

For simple offences, the child must personally plead to the charge under s 145 of the *Justices Act 1886*. See *XIY v Commissioner of Police* [2024] QChC 15. Section 145(3) permits a bulk plea to multiple simple offences.

Under s 46 of the YJA, a Childrens Court Magistrate may deal with a simple offence in the child's absence where a written guilty plea is provided, consistent with ss 139–140 of the *Justices Act 1886*.

In relation to indictable offences where the child elects summary jurisdiction, ss 84(1) and 89(1) of the 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 s 552B of the *Criminal Code* and its relevance for the definition of what is an **indictable offence** that is not **a serious offence** (s 8 YJA).

See s 552I(4) of the *Criminal Code (Qld)* for the bulk arraignment procedure in relation to s 552 offences if the defendant is legally represented.

For offences prosecuted on indictment, the child must personally enter a plea (ss 597C, 598 & 600 CC).

Under s 597C(2) of the [Criminal Code](#), a bulk arraignment may occur with the child's consent. Consistent with s 72 of the YJA, if a bulk arraignment is proposed, the court must ensure the child:

- understands the procedure;
- appreciates the number and nature of the charges; and
- understands the consequences of entering guilty pleas.

After a guilty plea on indictment, the child must be asked whether they have anything to say why sentence should not be passed (the allocutus) under s 648 of the [Criminal Code](#). See also Rule 51 of the [Criminal Practice Rules 1999](#)

An outstanding charge may be taken into account in the same way as for an adult under s 189 [Penalties and Sentences Act 1992](#) (s 157 YJA).

Section 100 of the 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 s 651 of the [Criminal Code \(Qld\)](#).

Under s 106 of the YJA, if a child has been committed for sentence on an indictable offence, the child is entitled to enter a plea of not guilty when arraigned. This provision prevails over any inconsistency with s 600 of the [Criminal Code \(Qld\)](#).

11.11.3 Restorative justice referrals

Under s 162 of the YJA, when a child enters a plea of guilty, the court must consider making a restorative justice referral, either a diversion from sentence (s 164 YJA) or as a pre-sentence referral (s 165 YJA).

A restorative justice order cannot be imposed for a significant offence under s 175A of the YJA committed on or after 13 December 2024 (s 175A(8) YJA).

11.11.4 Criminal History

For the purposes of the YJA, the criminal history of a child is defined in s 6 of the YJA and includes:

- cautions administered to the child after 28 February 2025 (s 439(1)(a) YJA);
- findings of guilt, other than those set aside or quashed, including findings before 28 February 2025 (s 439(1)(b) YJA);
- restorative justice agreements made on or after 28 February 2025, or arising from referrals made on or after that date (s 439(1)(c) YJA);
- all decisions, findings and orders made, and actions taken, by a court, Childrens Court judge, Childrens Court magistrate or other judicial officer:
 - under ss 245, 246 or 246A in relation to the child's contravention of a community-based order; or
 - under s 247 on an application made by the child or the chief executive in relation to a community-based order made against the child; or
 - under ss 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 ordered that a conviction be recorded in relation to the offence for which the child was resentenced (s 439(1)(d) YJA).

If a child fails to comply with a restorative justice agreement, the criminal history also includes any action taken by police under s 24(3) of the YJA.

Section 6 of the YJA applies **despite** the [Criminal Law \(Rehabilitation of Offenders\) Act 1986](#) and applies regardless of whether the person is a child or adult on 28 February 2025 (s 439(2) YJA).

11.11.4.1 Use of criminal history

Courts must consider the child's criminal history when sentencing (s 150(3)(e) YJA).
Courts may consider relevant matters in the child's traffic history (s 150(8A) YJA).

Police and courts may consider criminal history and previous bail grants when making bail decisions (ss 48AA(4)(a)(ii)–(iii) YJA).

Courts may consider previous cautions or restorative justice agreements when assessing criminal responsibility under s 29 of the [Criminal Code](#) (s 147 YJA).

11.11.4.2 Use of childhood findings in adult proceedings

Under s 148 YJA, evidence of a childhood finding of guilt must not be admitted against an adult unless a conviction was recorded, subject to limited exceptions. This restriction applies only to Queensland offences: [R v Duncombe \[2005\] QCA 142](#).

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 s 143 of the YJA in relation to a breach of the order (s 148(3) YJA).

11.11.5 Sentence submissions

Under s 150(9) of the YJA, a court may receive any information or **sentencing submission**⁹⁸ made by a party to the proceedings that it considers appropriate to impose a proper sentence.

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 (s 150(3)(i) YJA).

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 s 165(6) YJA) and bail history provided to assist the court in making a determination (s 150(3)(h) YJA).

Section 159 of the 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 \(Use of Video-Link or Audio Link Appearances\)](#) for further guidance.

⁹⁸ **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 (s 150(11) YJA).

Section 74(3)(c) of the 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.

Under s 152 of the YJA, the court may require the author of a pre-sentence report (or a person who provided information for it) to attend and may permit questioning of that person.

In relation to any dispute as to the facts on the sentence proceeding, s 132C of the *Evidence Act 1977* (Qld) applies.

11.11.5.1 Information on victim impact

The [Victims of Crime Assistance Act 2009 \(Qld\)](#) (VOCA) applies to an offence committed by a child (s 256 YJA) .

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.

Victim impact statements are governed by s 179I – 179N of the [Penalties and Sentences Act 1992](#).

Section 150(2) of the 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 of the [Penalties and Sentences Act 1992](#).

11.12 Sentence Orders

Pursuant to s 158 of the 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. Examples of the steps a court may take are:

- directly explaining these matters in court to the child; or
- having some appropriate person give the explanation; or

- having an interpreter or other person able to communicate effectively with the child give the explanation; or
- causing an explanatory note in English or another language to be supplied to the child.

This obligation applies even where the child is sentenced in their absence for simple offences (ss 158(3) & 46 YJA)

Under s 160 of the YJA, the court must ensure that the sentence order is promptly reduced to writing and a copy provided to the child, a parent and the chief executive. Failure to comply does not affect the validity of the order (s 160(4) YJA).

Section 175 of the YJA sets out the general sentence orders in relation to a child found guilty of an offence. Section 176 provides for sentence orders for life offences and other relevant serious offences. Section 176A sets out particular orders available in relation to graffiti offences. Section 181 allows for restitution and compensation orders, disqualification from holding or obtaining a driver's licence (ss 253-254 YJA) and an order to take a child's identifying particulars (s 255 YJA).

11.12.1 Sentence orders – general (s 175(1) YJA)

When a child is found guilty, the court may make one or more of the following orders:

- Reprimand (s 175(1)(a) YJA)
- Good behaviour order (up to one year) (s 175(1)(b) YJA)
- Fine (s 175(1)(c) YJA)
- Probation (subject to limits in s 175(1)(d) YJA)
- Order to perform obligations under a restorative justice agreement (s 175(1)(da) YJA)
- Order to participate in a restorative justice process (s 175(1)(db) YJA)
- Community service (subject to age-based limits) (s 175(1)(e) YJA)
- Intensive supervision order (child under 13 years of age) (s 175(1)(f) YJA)
- Detention (subject to jurisdictional and statutory limits) (s 175(1)(g) YJA)

Where a child is sentenced to probation, the period may be:

- Up to one year if the court is not constituted by a judge and the offence is not a significant offence (s 175(1)(d)(i) YJA).

- Up to two years if the court is constituted by a judge and neither ss 175A nor 176 of the YJA apply (s 175(1)(d)(ii) YJA).
- Up to three years for significant offences committed on or after 13 December 2024.

Where a child is sentenced to community service, the period may be:

- Up to 100 hours (child aged 13–14 years); or
- Up to 200 hours (child aged 15 years or older).

A child may be sentenced to a period of intensive supervision for a period of up to six months if the child is under 13 years.

Where a child is sentenced to detention, the period may be:

- Up to one year if the court is not constituted by a judge and the offence is not a significant offence (s 175(1)(g)(i) YJA).
- Up to three years if the court is not constituted by a judge and the offence is a significant offence committed on or after 13 December 2024.
- If the court is constituted by a judge and ss 175A and 176 of the YJA do not apply, detention is capped at the **shorter** of:
 - Half the adult maximum; or
 - Five years (s 175(1)(g)(ii) YJA).

Probation, community service and intensive supervision orders may only be made where the offence would make an adult liable to imprisonment (s 175(2) YJA).

Detention may be ordered with or without a conditional release order (s 175(3) YJA).

Section 175 operates subject to the [Childrens Court Act 1992](#) (s 175(4) YJA).

11.12.2 Serious repeat offender declarations (s 150A YJA)

Inserted in 2023 and amended in 2025, s 150A of the YJA allows the court, on prosecution application, to declare a child a serious repeat offender when sentencing for a prescribed indictable offence.

The amended provision applies regardless of when the offence was committed or when the finding of guilt occurred (s 438C YJA).

The court may declare a child a serious repeat offender if (s 150A(2) YJA):

- the child has previously had at least one detention order for a prescribed indictable offence;
- the court has ordered, received and considered a pre-sentence report;
- the court has had regard to:
 - the child's criminal and bail history;
 - any rehabilitation efforts;
 - any other relevant matters; and
- the court is satisfied there is a high probability the child would commit a further prescribed indictable offence.

The court must have primary regard to:

- protection of the community;
- nature and extent of violence used;
- disregard for public safety;
- impact on public safety;
- the child's criminal and bail history; and
- the victim-impact considerations in s 150(2) YJA.

Where an order is made the court must state, in its sentencing remarks, reasons for making the declaration (s 150A(4) YJA).

A declaration made under this section is taken to be a sentence imposed on a conviction for the purposes of Chapter 67 of the *Criminal Code* (s 150A(5) YJA).

Section 150B of the YJA 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** (s 150B(1) YJA).

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⁹⁹ For the purposes of this section, **relevant period** for a child, is defined at s 150B(4) to mean (a) if the child was ordered by the original court to be detained—the period starting on the day the declaration under s 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

11.12.2 Sentence orders – Life and other significant offences (ss 175A and 176 YJA)

Section 175A YJA was inserted by the [Making Queensland Safer Act 2024](#) and applies to offences committed on or after 13 December 2024.

11.12.2.1 Significant offences

Due to successive legislative amendments, the following table records the date when each offence was made a **significant offence** for the purpose of s 175A YJA:

Section	Offence	Commencement Date
Criminal Code (Qld)		
302 & 305	Murder	Offences committed on or after 13 December 2024 Making Queensland Safer Act 2024
303 & 310	Manslaughter	
314A	Unlawful striking causing death	
317	Acts intended to cause grievous bodily harm and other malicious acts	
320	Grievous bodily harm	
323	Wounding	
328A	Dangerous operation of a vehicle	
340	Serious assaults	
408A	Unlawful use or possession of motor vehicles, aircraft or vessels	
409 & 411	Robbery • Simpliciter • Armed or pretends to be armed • In company • Wounds or uses personal violence	
419	Burglary	
421	Entering or being in premises and committing indictable offences	
427	Unlawful entry of vehicle for committing indictable offence	
69	Going armed so as to cause fear	Offences committed on or after 23 May 2025 Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025
75	Threatening violence	
306	Attempt to murder	
307	Accessory after the fact to murder	
313(2)	Killing unborn child • Unlawfully assaults another pregnant person and destroys the life of, does GBH or transmits serious disease to unborn child	
320A	Torture	
328C	Damaging emergency vehicle when operating motor vehicle	
328D	Endangering police officer when driving motor vehicle	

starting on the day the declaration under s 150A was made by the original court and ending on the day that is 12 months later.

349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352(2) or (3)	Sexual assaults - Bringing into contact any part of the genitalia or anus of a person with any part of the mouth - Armed or pretends to be armed - In company - Penetration of offender's vagina, vulva or anus - Penetration of person procured by offender's vagina, vulva or anus	
354	Kidnapping	
354 A	Kidnapping for ransom	
355	Deprivation of liberty	
398 Item (12)	Stealing Stealing of a vehicle	
412(2) or (3)	Attempted robbery ¹⁰⁰ - Armed or pretends to be armed - In company - Wounds or uses personal violence	
461	Arson	
462	Endangering particular property by fire	
398 Item (15)	Stealing Stealing firearm or ammunition	Offences committed on or after 11 March 2026 <i>Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026</i>
61(1) if (a) in the penalty section applies	Riot Offender causes GBH to a person, causes an explosive substance to explode or destroys	Offence committed on or after 30 April 2026 <i>Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026</i>
210(3) or (4A)	Indecent treatment of children under 16 - Child under the age of 12 - Child is a person with impairment of the mind	
216	Abuse of persons with an impairment of the mind	
309	Conspiring to murder	
311	Aiding suicide	
315	Disabling in order to commit indictable offence	
315A	Choking, suffocation or strangulation in a domestic setting	
316	Stupefying in order to commit indictable offence	

¹⁰⁰ Amended by the *Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Act 2026* to remove the requirement for subsection (2) or (3) to be present

319	Endangering the safety of a person in a vehicle with intent	
322 if (a) in the penalty section applies	Administering poison with intent to harm Endangers the life or, or does GBH, to the person	
339(2) or (3)	Assaults occasioning bodily harm - Publishes material on social media - Armed or pretends to be armed - In company	
359E	Punishment of unlawful stalking, intimidation, harassment or abuse	
412	Attempted robbery	
535	Attempts to commit indictable offences mentioned in s175 A(1), (1A) or (1B) YJA	
541 or 542	Conspiracy to commit crime or conspiracy to commit other offences mentioned in s175 A(1), (1A) or (1B) YJA	
544	Accessory after the fact to an offence mentioned in s175 A(1), (1A) or (1B) YJA	
Weapons Act 1990 (Qld)		
56A	Reckless discharge of weapon towards building or vehicle	Offences committed on or after 11 March 2026
67A	Possession and distribution of blueprint material for manufacture of firearms	Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Act 2026
Drugs Misuse Act 1986 (Qld)		
5	Trafficking in dangerous drugs	Offences committed on or after 23 May 2025 Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025

11.12.2.2 Available orders (s 175A YJA)

The court may:

- order probation for a period of up to three years;
- order detention for up to:
 - three years (if the court is **not** constituted by a judge);

- the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve (if the court is constituted by a judge).

Section 155 of the YJA in relation to no mandatory minimum sentences does not apply to the court.

Any adult requirement for imprisonment under the *Criminal Code (Qld)* is taken to require detention. Any adult minimum term is taken to require a minimum detention period. For murder, s 305 of the *Criminal Code* applies, with references to imprisonment taken to be references to detention.

Detention may be ordered with or without a conditional release order (s 220 YJA). The court must set a release date during the detention period. The 70% rule in s 227(1) of the YJA does not apply (s 227(4) YJA).

For certain violent offences committed in a public place while adversely affected by an intoxicating substance, the court **must** impose community service unless the child (s 175A(9) – (10) YJA):

- has a disability preventing compliance;
- is unsuitable; or
- cannot be provided with suitable community service.

11.12.2.3 Life offences and other relevant offences (s 176 YJA)

Section 176 of the YJA applies only where a child is found guilty of a **relevant offence**¹⁰¹ and the court is presided over by a judge.

11.12.2.4 Available orders (s 176 YJA)

The court may order:

- Probation for up to three years (s 176(1)(a) YJA)

¹⁰¹ **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 s 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 s 13 *Drugs Misuse Act 1986* (s 176(7) YJA).

- Detention:
 - For up to seven years for **relevant offences** other than life offences (s 176(2) YJA);
 - For up to ten years, or life for **life offences**¹⁰² involving violence and considered “particularly heinous” (s 176(3) YJA).

Detention may be ordered with or without a conditional release order (s 176(4) YJA) or an order under s 234 of the YJA allowing publication of identifying information (s 176(5) YJA).

For detention for life for murder, s 305(2), (3) and (5) of the *Criminal Code* apply (s 176(6) YJA) references to imprisonment are taken to be references to detention (s 176(8) YJA).

Section 176 of the YJA does not limit the court’s power to make an order under s 175 (s 176(9) YJA).

11.13 Specific Sentence Orders

11.13.1 Reprimand

Under s 175(1)(a) of the YJA, the court may **reprimand**¹⁰³ a child if found guilty of an offence. If a reprimand is ordered, then a conviction must not be recorded (s 183(2) YJA).

A reprimand is distinct from a dismissal and caution under s 21 of the YJA and a referral for a restorative justice process under s 24A of the YJA where the court is satisfied that one of those processes should have occurred.

11.13.2 Good behaviour order

The court may order a child to be of good behaviour for a period not longer than one-year (s 175(1)(b) YJA). A good behaviour order is not a supervised order. A conviction **must not** be recorded (s 183(2) YJA).

¹⁰² **Life offence** means an offence for which a person sentenced as an adult would be liable to life imprisonment (Schedule 4 YJA)

¹⁰³ **Reprimand** is not defined in the YJA. Its ordinary meaning is “a severe reproof, especially a formal one by a person in authority”.

The order must include a condition that the child abstain from violation of the law for the duration of the order (s 188 YJA). That condition should be explained to the child in terms the child understands (s 158 YJA).

If a child commits an offence during the period of the order, a later sentencing court may have regard to the breach. Otherwise, there are no breach proceedings available where a child breaches a good behaviour order (s 189 YJA).

11.13.3 Fine

The court may order a child to pay a fine of an amount prescribed under the relevant Act (s 175(1)(c) YJA). The court has a discretion to record a conviction if a fine is imposed (s 183(3) YJA).

If an Act that creates the offence does not specify the penalty, then s 46 of the *Penalties and Sentences Act 1992* governs the maximum fine:

- If the court is a Magistrates Court and the offender is:
 - An individual – 165 penalty units
 - A corporation – 835 penalty units
- If the court is a District Court and the offender is:
 - an individual – 4,175 penalty units
 - a corporation – no limit
- If the court is a Supreme Court, there is no limit on the fine that may be imposed for a single offence.

The court may only impose a fine if satisfied that the child has the capacity to pay the amount (s 190 YJA).

Under s 191 of the YJA, a fine order must:

- specify a time for payment or instalment arrangements; and

- require payment to the **proper officer**¹⁰⁴ of the court.

There is no power to order detention for default. If the fine is not paid, 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 (s 192 YJA). 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 (s 192(4) YJA).

The hours for the community service order are calculated under s 192(5) – (8) of the YJA. The hours must not be more than 100 or 200 hours, depending on the age of the child (s 175(1)(e) YJA) or 200 hours in any event (s 192(6) YJA). If calculated hours exceed the maximum, the court may order only the maximum (s 192(8) YJA). If fewer than 20 hours, the fine cannot be converted (s 192(7) YJA).

A community service order made on conversion:

- is made under s 175(1)(e) of the YJA (s 192(9) YJA);
- requires the child's consent; and
- requires the court to be satisfied the child is suitable and that suitable community service is available (s 195 YJA).

A child or another party to the proceeding, can apply to extend the time to pay the fine (s 309 YJA). Unpaid fines become a debt to the State and may be enforced through the Magistrates Court (s 310 YJA).

Under s 156 of the YJA, if the child lacks resources to pay both a fine and compensation or restitution, the court must give preference to compensation or restitution.

11.13.4 Restorative justice order

Under s 175(1)(db) of the YJA, the court may, as a sentence, order that a child participate in a restorative justice process as directed by the chief executive (youth justice). After a finding of guilt, the court must consider whether to refer the offence for a restorative justice process

¹⁰⁴ 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 (Schedule 4 YJA).

either as a diversion from sentence or as a presentence referral to assist the court in determining an appropriate sentence (s 162 YJA).

The court has a discretion to record a conviction if a restorative justice order is made (s 183(3) YJA).

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 s 165 of the YJA (s 175(1)(da) YJA). Again, the court has a discretion to record a conviction in relation to such an order (s 183(3) YJA).

11.13.4.1 Preconditions for making a restorative justice order (s 192A YJA)

Section 192A of the YJA sets out the pre-conditions for making a restorative justice order, namely that

- the court considers the child is informed of, and understands, the process; and
- the child indicates willingness to comply with the order; and
- the court is satisfied that the child is a suitable person to participate in a restorative justice process; and
- having regard to the following, the court considers the order is appropriate in the circumstances:
 - a submission by the chief executive about the appropriateness of the order;
 - the deciding factors for referring the offence.

In this section, deciding factors for referring an offence means:

- 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 a restorative justice process.

11.13.4.2 Mandatory requirements of a restorative justice order (s 192B YJA)

A restorative justice order must require that the child (s 192B YJA):

- report in person to the chief executive within one business day after the order is made or any longer period that may be specified in the order;
- abstain from violation of the law during the order;
- comply with every reasonable direction of the chief executive during the order; and
- report and receive visits as directed by the chief executive during the order; and
 - notify the chief executive within two business days of any change of the child's address, employment, or school; and
 - must not leave, or stay out of, Queensland while the order is in force, without the prior approval of the chief executive; and
 - participate in a restorative justice process as directed by the chief executive; and
 - 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 such an order is made, the offence is taken to be referred to the chief executive for a restorative justice process (s 175(2A) YJA).

11.13.4.3 Interaction with community service or graffiti removal orders

Where a restorative justice order is made together with a community service order or graffiti removal order, the court must consider the child's obligations under any existing restorative justice agreement when determining the number of hours to be ordered (s 192C YJA).

This requirement applies only where a restorative justice agreement is already in place at the time of making the additional order (s 192C(4) YJA).

11.13.4.4 Duration of restorative justice order (s 192D YJA)

A restorative justice order remains in force until the earliest of:

- the chief executive being satisfied the child has discharged all obligations under the restorative justice agreement;
- the order being discharged under ss 245 or 247 of the YJA (breach or variation of a community-based order);
- 12 months from the date of the order.

A restorative justice order is a community-based order (Schedule 4 YJA).

11.13.5 Probation

Under s 175(1)(d) of the YJA, a court may order that a child found guilty of an offence be placed on probation for a specified period.

A court may make a probation order only if the child is willing to comply with the order (s 194 YJA). The court has a discretion to record a conviction if a probation order is made (s 183(3) YJA).

11.13.5.1 Length of probation

The maximum period of probation depends on the constitution of the court and the type of the offence:

- Up to one year where a Magistrate is sentencing the child (s 175A YJA does not apply) (s 175(1)(d)(i) YJA)
 - If a longer period is required, the Magistrate may request a delegation of sentencing power from a Childrens Court Judge (s 185 YJA) or refer the matter to a Childrens Court Judge for sentence (s 186 YJA).
- Up to two years where a Judge is sentencing the child (ss 175A and 176 do not apply) (s 175(1)(d)(ii) YJA).

A probation order may only be made if the offence is one that would make an adult liable to imprisonment (s 175(2)(a) YJA). If the adult maximum penalty is non-custodial, probation is not available.

11.13.5.2 Mandatory requirements (s 193(1) YJA)

A probation order must require that the child:

- report in person to the chief executive within one business day after the order is made (or longer if specified);
- abstain from violation of the law;
- satisfactorily attend programs as directed by the chief executive; and
- comply with every reasonable direction of the chief executive; and
- report and receive visits as directed by the chief executive; and
- notify the chief executive within two business days of any change of address, employment, or school; and
- not leave, or stay out of, Queensland during the probation period, without the prior approval of the chief executive.

11.13.5.3 Additional conditions (s 193(2) – (4) YJA)

The court may 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 (s 193(2) YJA).

Section 193(4) of the 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.

A **curfew**¹⁰⁵ condition, for example, must be justified by the circumstances of the offending and the risk of reoffending, and must not operate as 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 committed at night.

¹⁰⁵ **Curfew** means a requirement to remain at a stated place for stated periods (Schedule 4 YJA).

Any condition imposed must have sufficient nexus to the purpose of the condition required by s 193(2) of the YJA.

A probation order may contain a requirement that the child must comply with the order outside Queensland (s 193(3) YJA).

11.13.5.4 Interaction with other orders

If probation and community service are imposed for a single offence, they must be made as separate orders, and one cannot be a condition of the other (s 178 YJA).

If probation and detention are imposed for a single offence, then detention may be ordered for only up to six months and no conditional release order may be made. Probation begins after release and may continue for up to one year after release (s 180 YJA).

Detention and probation may be imposed for different offences.

11.13.6 Community Service Order

Under s 175(1)(e) of the YJA, a court may order a child aged 13 years or older to perform unpaid community service for a specified number of hours. The maximum hours are:

- Up to 100 hours for a 13 – 14-year-old.
- Up to 200 hours for a child 15 years or older.

11.13.6.1 Mandatory community service for certain offences (s 175A (9) – (10) YJA)

For offences committed on or after 13 December 2024 involving:

- grievous bodily harm;
- serious assault (in specified circumstances); or
- wounding

committed in a public place while the child was adversely affected by an intoxicating substance, the court must impose a community service order unless satisfied that:

- the child has a physical, intellectual or psychiatric disability preventing compliance;
- the child is not a suitable person to perform community service; or
- suitable community service cannot be provided.

The child's consent is not required in these cases.

The court has a discretion to record a conviction if a community service order is made (s 183(3) YJA).

11.13.6.2 General preconditions (s 195 YJA)

Except for mandatory orders under s 175A(9) of the YJA, a community service order may only be made if:

- the child indicates willingness to comply;
- the court is satisfied the child is suitable to perform community service;
- the court is satisfied, on a report from the chief executive, that suitable community service can be provided.

The court has a discretion to record a conviction if a community service order is made (s 183(3) YJA).

11.13.6.3 Mandatory requirements of the order (s 196 YJA)

Section 196 of the YJA sets out the requirements of a community service order:

- that the child report in person to the chief executive within one business day after the order is made (or longer if specified);
- 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
- the child, while performing community service, comply with every reasonable direction of the chief executive; and
- the child or a parent of the child inform the chief executive of every change in the child's place of residence within two business days of the change; and
- the child abstain from violation of the law during the period of the order; and

- the child does not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.

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 the order outside Queensland (s 196(2) YJA).

11.13.6.4 Timeframes for completion (s 198 YJA)

Section 198 of the 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 s 196(3) of the YJA;
- if the order is for 50 hours or more, a period of one year from the date of the order; or
- within any extended period that the court orders under ss 245 or 247 of the YJA or by an order of the proper officer of the court under s 252 of the YJA.

11.13.6.5 Multiple community service orders (s 199 – 200 YJA)

A court may impose multiple community service orders, including where the child is already subject to an existing order (s 199 YJA). There are, however, limitations on the number of hours to which a child can be subject at any one time.

The minimum total period is 20 hours. The maximum total period is 100 hours (for a child aged 13 – 14 years) or 200 hours (for a child 15 years or over). Hours in excess of the maximum are of no effect (s 200(4) YJA). Hours are cumulative unless the court orders otherwise (s 200(5) YJA).

If the making of the order has the consequence that the child is subject to both a child community service order and an adult community service order, then the maximum number of hours is 240 hours (s 201 YJA & s 103(2) PSA). Any hours ordered in excess of the maximum are of no effect (s 201(2) YJA).

11.13.6.6 Breach, variation and re-sentencing

Section 245(1)(b)(ii) of the 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.

The court may vary the requirements under s 247 of the YJA. The proper officer may amend requirements with consent (s 252 YJA) but cannot increase hours or shorten the performance period (s 252(5)(c) YJA).

If resentencing a child for an offence for which a mandatory community service order was made under s 175A(9) of the YJA, the court need not make a further community service order (s 249(2A) YJA).

11.13.6.7 Chief Executive's Obligations (s 197 YJA)

The chief executive must, where practicable:

- avoid conflicts with the child's religious or cultural beliefs;
- avoid interference with employment or education;
- ensure the child is kept separate from adults under sentence.

Further requirements are placed on the chief executive (youth justice) by Regulation 8 of the [Youth Justice Regulation 2016](#).

11.13.6.8 Duration of order (s 202 YJA)

Section 202 of the YJA provides that a community service order made against a child remains in effect until:

- the child completes the required hours;
- the order is discharged under ss 245 or 247 of the YJA; or
- the performance period expires under s 198 of the YJA

whichever first happens.

11.13.6.9 Interaction with probation

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 (s 178 YJA).

11.13.7 Graffiti removal order

Under s 176A of the YJA, if a child aged 12 years or older is found guilty of a **graffiti offence**,¹⁰⁶ the court must make a graffiti removal order unless the child is physically or mentally incapable of complying (s 194A YJA).

A graffiti removal order may be made in addition to any other sentence order under s 175 of the YJA. The court has a discretion to record a conviction (s 183(3) YJA).

11.13.7.1 Maximum hours (s 176A(3) YJA)

The order must require the child to perform **graffiti removal service**¹⁰⁷ for no more than:

- 5 hours for a child under 13 years of age;
- 10 hours for a child aged 13 or 14 years of age; or
- 20 hours for a child aged 15 years or older

When deciding the number of hours, the court must consider the child's age, maturity and abilities (s 194A YJA). There is no requirement for the child's consent.

11.13.7.2 Requirements of graffiti removal order (s 194B YJA)

The graffiti removal order must require the child to:

- report in person to the chief executive within one business day after the order is made or any longer period that is specified in the order; and

¹⁰⁶ A **graffiti offence** means an offence against s 469 *Criminal Code* that is punishable under s 469, Item 9 (Schedule 4 YJA).

¹⁰⁷ **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 (Schedule 4 YJA).

- perform in a satisfactory way graffiti removal service, directed by the chief executive, for the number of hours specified in the order; and
- comply with every reasonable direction of the chief executive during the order; and
- inform the chief executive of every change in the child's place of residence within two business days of the change; and
- abstain from violation of the law during the period of the order; and
- not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.

An order may contain a requirement that the child must comply with the order outside Queensland (s 194B(2) YJA).

See Regulation 7 of the [Youth Justice Regulation 2016](#) in relation to a child's reporting obligations under a graffiti removal order.

11.13.7.3 Time for completion (ss 194B(3)-(4), 194D YJA)

The child must complete the hours within one year of the order, unless a shorter period is specified. Before imposing a shorter period, the court must consider what is **reasonable**, including the child's obligations under other orders.

The completion period may be extended under ss 245 or 247 of the YJA (breach/variation) or by the proper officer under s 252 of the YJA.

11.13.7.4 Multiple graffiti offences (s 194E – 194F YJA)

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;
- the total hours must not exceed the maximum applicable for one offence under s 176A(3) of the YJA.

11.13.7.5 Interaction with community service order (s 194G-194I YJA)

Where the court makes both a graffiti removal order and a community service order, the combined total hours must not exceed the maximum number of hours of community service permitted under s 175(1)(e) of the YJA for one offence.

If the child already has existing graffiti removal or community service orders, the total unperformed hours must not exceed the maximum for one offence and any hours above the maximum are performed concurrently (s 194I(3) YJA).

Subject to these limits, all unpaid service is cumulative, unless the court orders otherwise (s 194J YJA).

Where a child is subject to both adult and child community service or graffiti removal orders, any hours exceeding the statutory maximum are of no effect (s 194K YJA).

11.13.7.6 Interaction with other sentence orders

The court may make multiple types of orders for a single offence (s 177 YJA).

Probation, community service and graffiti removal orders must be separate orders (s 178A YJA).

The court may impose both detention and a graffiti removal order for a graffiti offence (s 180A YJA). The graffiti removal order begins after release from detention (s 180A(2)(a) YJA). If the child is later sentenced to detention, the graffiti removal order is suspended until release (s 180A(2)(b) YJA).

11.13.7.7 Chief Executive's obligations (s 194C YJA)

In administering the order, the chief executive must, where practicable:

- avoid conflicts with the child's religious or cultural beliefs;
- avoid interference with employment or education;
- ensure the child is kept separate from adults under sentence.

Further requirements are placed on the chief executive (youth justice) by Regulation 8 of the [Youth Justice Regulation 2016](#).

11.13.7.8 Duration of the order (s 194L YJA)

Section 194L of the YJA provides that a graffiti removal order made against a child remains in effect until:

- completion of the required hours;
- the order is discharged under ss 245 or 247 of the YJA; or
- the expiry of the performance period under s 194D of the YJA;

whichever first happens.

11.13.8 Intensive supervision order

Under s 175(1)(f) of the 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 of the order is six months.

A court may only make an intensive supervision order if the offence is one that would make an adult liable to imprisonment (s 175(2)(c)) YJA). If the adult maximum penalty is non-custodial, an intensive supervision order is not available.

11.13.8.1 Preconditions for making the order (s 203 YJA)

The child must be willing to comply with the order (s 203(1) YJA).

Further preconditions to making the order are:

- the court has ordered a pre-sentence report and considered the report; and
- 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:
 - the number of offences committed by the child, including the child's criminal history;
 - the circumstances of the offences;
 - the circumstances of the child; and
 - whether other sentence orders have not or are unlikely to stop the child from committing further offences.

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 (s 203(1)(b) and (2) YJA).

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 s 203(1)(c) of the 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*”.¹⁰⁸

11.13.8.2 Mandatory requirements of the order (s 204 YJA)

An intensive supervision order must require the child to:

- participate in an intensive supervision program as directed;
- abstain from violation of the law;
- comply with every reasonable direction of the chief executive;
- report and receive visits as directed;
- notify the chief executive within two business days of any change of address or school; and
- not leave Queensland without prior approval.

The order may contain a requirement that the child must comply with the order outside Queensland (s 204(3) YJA).

See Regulation 7 (child’s reporting obligations) and Regulation 8 (limits on chief executive’s directions) of the [Youth Justice Regulations 2016](#).

11.13.8.3 Additional conditions (s 204(4) YJA)

Section 204(4) of the YJA provides that any additional requirement:

- must relate to the offence for which the order was made; and

¹⁰⁸ [Explanatory Notes](#), *Juvenile Justice Amendment Bill 2002*.

- 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 purpose of a condition and should not be imposed as additional punishment.

11.13.8.4 Program period (s 205 YJA)

The program period starts when the order is made and ends on the later of:

- the last day of the order; or
- the last day of the order plus any suspended days (where the program was suspended for good reason).

Pursuant to s 205(2) of the 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.

11.13.8.5 Suspension

Section 206 of the YJA provides for the suspension of an intensive supervision program if the child is unable to participate for good reason.

11.13.9 Detention

Under s 175(1)(g) of the YJA, a court may order a child to be detained for a period of time. For more serious offences, s 176(2) – (3) of the YJA provides higher maximum periods of detention.

Section 150(1) of the YJA expressly provides that a court **must not** apply any principle that detention should be a last resort, or that a community-based sentence is preferable. However, Principle 18 of the [Charter of Youth Justice Principles](#) requires that a child be dealt with in a way that, where practicable:

- supports reintegration into the community; and
- allows the child to continue education, training or employment;
- allows the child to continue to reside at home.

In [R v M \[1996\] 1 Qd R 650](#), the Court of Appeal observed that the clear legislative policy 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 (s 183(3) YJA).

A detention order may be made with or without a conditional release order (ss 175(3) & 176(4) YJA).

Under s 209 of the YJA, the court must state and record its reasons for imposing detention. A court need not comply with s 209(1)(b) if the reasons are recorded under the [Recording of Evidence Act 1962](#). Failure to comply does not invalidate the order, but an appellate court must take the failure into account.

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 sentencing court must consider whether a conditional release order is an appropriate alternative to actual 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 of the YJA provides that a court may make a detention order **only** if it has:

- ordered a pre-sentence report (s 151 YJA); and
- received and considered the report.

In *R v T* [1995] 2 Qd R 192, the Court of Appeal held that a report pursuant to s 207 of the YJA was to be written, rather than oral.

A fresh report is required when resentencing after a breach of a community-based order: *R v Gage* [1998] QCA 243.

In *R v S* [2000] 2 Qd R 663, the Court of Appeal held that a pre-sentence report justifies detention for all offences sentenced in the same sentencing process, including offences committed after the report was ordered.

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:

- A maximum period of one year if the offence is not a significant offence under s 175A of the YJA (s 175(1)(g)(i) YJA).
- A maximum period of three years if the offence is a **significant offence** under s 175A of the YJA which was committed on or after 13 December 2024 (s 175A(2)(b)(i) YJA).

If the court is constituted by two justices, a detention order or a conditional release order cannot be made (s 67(2) YJA).

A Magistrate may seek delegation of a greater sentencing limit from a Childrens Court Judge (s 185 YJA) or commit for sentence to a Childrens Court Judge (s 186 YJA).

For a Childrens Court constituted by a Judge:

- The maximum period of detention is the shorter of half the adult maximum or five years detention if the offence is not a significant offence covered by ss 175A or 176 of the YJA.

- The maximum period of detention is the adult maximum term of imprisonment if the offence is a **significant offence** pursuant to s 175A of the YJA which was committed on or after 13 December 2024 (s 175A(2)(b)(ii) YJA).
- The maximum period of detention is seven years if the offence is a **relevant offence** other than a life offence pursuant to s 176(2) of the YJA.
- The maximum period of detention is ten years if the offence is a **relevant offence** that is a life offence pursuant to s 176(3) of the YJA.
- The maximum period of detention is up to life if the offence is a **relevant offence** that is a life offence pursuant to s 176(3) of the YJA where the offence involves the commission of violence against a person and the court considers the offence to be a particular heinous offence.

A Childrens Court Judge may sentence for life offences except Supreme Court offences (s 99(1) YJA).

Section 150(5) of the YJA requires that in sentencing for manslaughter of a child under 12 years of age, the victim's vulnerability is an aggravating factor.

A child sentenced to life imprisonment is subject to the parole regime under the [Corrective Services Act 2006 \(Qld\)](#) (s 233 YJA).

11.13.9.3 "Particularly heinous offence"

Under s 176(3)(b) of the YJA, life detention may only be imposed where:

- the offence involved violence; and
- the court considers it particularly heinous, 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 Williams* [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.”

Where a child is sentenced under s 176(3)(b) of the YJA or for a particularly heinous significant offence, the court may allow publication of identifying information if in the interests of justice, considering:

- community protection
- safety or wellbeing of others;
- impact on the child’s rehabilitation; and
- any other relevant matters.

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.

This power does not apply to a Childrens Court Magistrate.

That power is subject to the findings required in s 176(3)(b) of the YJA. See [R v Rowlingson \[2008\] QCA 395](#); [R v SBU \[2011\] QCA 203](#).

11.13.9.4 Detention periods

Section 211 of the YJA provides that a period of detention under a detention order starts on the day the court made the order.

On appeal or review, unserved detention takes effect from the start of custody after the appeal (s 211(3) YJA).

Detention is concurrent, unless ordered cumulative under s 213 of the YJA or required by another Act (s 212 YJA). Cumulative detention cannot exceed one year (Magistrate) or seven years (Judge) when imposed in the same proceeding (s 214 YJA). Cumulative detention may be imposed where the child is also serving adult imprisonment (s 271 YJA). Failure to appear on bail does **not** automatically make detention cumulative (s 33(5) BA).

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, the sentencing court may:

- take no action; or
- order that part or all of the interstate custody be counted as detention served.

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 detention period (s 227(1) YJA).

Early release (50 – 70%)

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 (s 227(2) YJA).

Apart from the example of parity in s 227(2) of the YJA, the Act contains no definition of “*special circumstances*”. Some guidance may be taken from case authorities:

- 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.

Significant offences (s 175A YJA)

For significant offences, the court must set a release proportion it considers appropriate, subject to any requirement under the *Criminal Code* mentioned in s175A(5) of the YJA that relates to the offence (s 227(4) YJA).

Terrorism offences (s 227(3) YJA)

Early release cannot be ordered if the child:

- has been found guilty of a terrorism offence;
- is subject to a Commonwealth control order; or
- the court is satisfied that the child has promoted terrorism (s 227(3) YJA).

Section 395 of the YJA provides that ss 226A 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).

Pre-sentence custody (s 218 YJA)

Pre-sentence custody must be counted as time served unless:

- it was served while the child was also serving another sentence; or
- it was less than one day.

The chief executive calculates the period (s 218(4) YJA).

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.

Supervised release (s 228 YJA)

After being released from detention the child is subject to a supervised release order made by the chief executive (youth justice) (s 228 YJA). The chief executive may impose and amend conditions.

The supervised release order must require that, during the period of the order:

- the child abstain from violation of the law;
- the child satisfactorily attend programs as directed by the chief executive;
- the child comply with every reasonable direction of the chief executive;
- the child report and receive visits as directed by the chief executive;
- the child or a parent of the child notify the chief executive within two business days of any change of address, employment, or school; and
- the child does not leave, or stay out of, Queensland without the prior approval of the chief executive.

A supervised release order may contain a requirement that the child must comply with the order outside Queensland. A supervised release order must not require, or be subject to a condition, that the child must wear a monitoring device.

See ss 252A-252J of the YJA for the procedures when a supervised release order is contravened.

11.13.9.6 Combination of detention with other orders

A court may make more than one type of order for a single offence (s 177 YJA), subject to the following:

- Detention may be ordered with or without a conditional release order (ss 175(3) & 176(4) YJA).
- Detention may be combined with a restorative justice order, but separate orders must be made (s 178C YJA).
- Detention cannot be combined with an intensive supervision order (s 179 YJA).
- Detention may be combined with probation for a single offence (s 180 YJA):
 - the detention may only be for a maximum of six months;
 - there is no conditional release order;
 - probation begins on release and may last up to 12 months.
- Detention may be combined with a graffiti removal order (s 180A YJA).

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.

11.13.10 Conditional release order (CRO)

Under ss 175(3) and 176(4) of the YJA, a court that makes a detention order may do so with or without a conditional release order (CRO) under s 220 of the YJA. A conditional release order provides an alternative to actual detention, allowing the child to be immediately released into a structured program with strict conditions (s 219 YJA).

The child must express a willingness to comply with the conditional release order (s 222 YJA). The child must fully understand the obligations under the order and the consequences of contravention in order to express that willingness.

The court has a discretion to record a conviction if a detention order is made with a conditional release order (s 183(3) YJA).

11.13.10.1 Nature and effect of a CRO

Under s 220 of the YJA, when a detention order is made:

- the detention period is immediately suspended; and
- the child is immediately released on condition that they participate in a conditional release program for a period of up to six months.

The underlying detention order remains in force and may be activated if the CRO is breached. The detention period itself may be longer than three months and may extend to the maximum permitted for the offence and jurisdiction.

A conditional release order is treated as a detention order for the purposes of ss 150(2)(d) and 208 YJA (*R v C & M* [2000] 1 Qd R 636). Accordingly, a court must be satisfied that detention is the only appropriate option before imposing a CRO.

11.13.10.2 Requirement to consider CRO before actual detention

A sentencing court must consider whether a CRO would adequately serve the purposes of punishment before imposing actual detention (*R v RBB* [2019] QCA 277 and *R v SCU* [2017] QCA 198).

11.13.20.3 Pre-sentence report requirements (s 223 YJA)

Before making a detention order (with or without a CRO), the court must have considered a pre-sentence report that includes:

- comments on the child's potential suitability for a CRO; and
- advice on whether an appropriate conditional release program is available.

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 it is:

"....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”.

11.13.20.4 Mandatory requirements of CRO (s 221 YJA)

Requirements of a conditional release order are set out in s 221 of the YJA:

- that the child participate as directed by the chief executive in a program (the conditional release program) for the period, of not more than six months, stated in the order (the program period); and
- that, during the period of the order:
 - the child abstain from violation of the law; and
 - the child comply with every reasonable direction of the chief executive; and
 - the child report and receive visits as directed by the chief executive; and
 - the child or a parent of the child notify the chief executive within two business days of any change of address, employment or school; and
 - the child does not leave, or stay out of, Queensland without the prior approval of the chief executive.

11.13.20.5 Additional conditions (s 222(2) – (4) YJA)

The order may impose additional conditions necessary to prevent reoffending, but:

- they must relate to the offence;
- they must be supported by written reasons; and
- they must not require the child to wear a monitoring device.

The order may include requirements that apply outside Queensland (s 222(3) YJA).

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.

11.13.20.6 Program period and suspension (s 225-226 YJA)

The program period begins on the day the order is made. It ends on the last day of the order, extended by any days for which the program was suspended (s 225(1) YJA).

The chief executive (youth justice) may suspend the program if the child, for good reason, is unable to participate (s 226 YJA).

If more than one conditional release order exists in relation to the child, the orders are to operate concurrently in relation to any overlap (s 225(2) YJA).

At the end of the program, the child is no longer liable to serve a period of detention under the detention order (s 224 YJA).

11.13.20.7 Contravention of CRO

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 (ss 238 & 241-244 YJA).

Non-prescribed indictable offence (s 246 YJA)

For a non-prescribed indictable offence, the court may:

- revoke the CRO and order the child to serve detention; or
- give the child a further opportunity by varying requirements or extending the program period (up to a total of six months).

The onus is on the child to show why a further opportunity should be granted.

Indictable offence (s 246A YJA)

The court must revoke the CRO and order the child to serve the detention unless there are special circumstances.

If special circumstances exist, the court may vary or extend the order, having regard to the period already complied with.

Section 410(a) of the YJA applies s 246A to breaches occurring after commencement, regardless of when the CRO was made.

11.13.20.8 Variation of CRO

If satisfied there are special circumstances, the court may permit the child a further opportunity to comply with the order by varying the order or extending the order having regard to the period that the child has complied with the order.

A community-based order may be varied by a court order in the interests of justice (s 247 YJA).

The proper officer of the court does not have the power to make amendments to a conditional release order (s 252(1) YJA).

11.13.20.9 Interaction with other orders

A detention order together with a conditional release order cannot be combined with a probation order for a single offence (s 180 YJA).

If detention and probation are combined for a single offence:

- detention is limited to six months;
- probation begins on release and may last up to 12 months.

Detention with a CRO and probation can be imposed for separate offences: *R v A & S; ex parte Attorney-General* [2001] 2 Qd R 62 at [36].

11.14 Other Orders

11.14.1 Restitution and Compensation

Under s 181(a) of the YJA, when making a sentence order under ss 175, 175A or 176, the court may also order:

- restitution of property;
- compensation (up to 20 penalty units) for loss of property;
- compensation for injury suffered by another person.

Section 235 of the YJA similarly empowers a court, where the child is found guilty of a property or personal offence, to order that:

- the child make restitution of offence affected property;
- the child pay compensation (not more than an amount equal to 20 penalty units) for loss caused to offence affected property;
- 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.

A restitution or compensation order must:

- specify a time for payment or instalment schedule;
- require payment to the **proper officer**¹⁰⁹ of the court (s 235(3) YJA);
- be made only if the court is satisfied the child has the capacity to pay (s 235(5) YJA).

In making a restitution or compensation order, the court should ensure the prosecution provide the proper officer with the contact details of the person to whom the payment should be directed

The amount of compensation that can be ordered is limited to not more than 20 penalty units (s181(a)(ii) YJA). The amount for restitution of property is not so limited but a restitution order is for the return of the actual property (s 35 PSA). Compensation for injury is assessed using

¹⁰⁹ 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 (Schedule 4 YJA).

ordinary civil principles, subject to the child's capacity to pay.¹¹⁰ The quantum is limited by the child's ability to pay (s235(5) YJA).

There is no power to order a default period of detention for the non-payment of restitution or compensation. Time for payment may be extended on written application by a child or other party to the **proper officer** of the court, subject to any conditions that the proper officer considers just (s 309 YJA). The **proper officer** may delegate this power under s 313 of the 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 (s310 YJA).

Section 156 of the 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.

Compensation cannot be imposed as a condition of another sentence order; it must be made under ss 181 or 235 of the YJA. A restitution or compensation order is not itself a sentence order and is not subject to the recording of a conviction under s 183 of the YJA.

11.14.2 Compensation orders against parents (s 257 – 260 YJA)

Sections 257-260 of the YJA provide a procedure for the making of a compensation order against the **parent**¹¹¹ of the child found guilty of a **personal offence**¹¹² or **property offence**¹¹³ in certain circumstances.

Pursuant to s 259(5) of the 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:

¹¹⁰ See *R v Stieler* [1983] 2 Qd R 573; *R v Ferrari* [1997] 2 Qd R 472.

¹¹¹ **Parent** means a guardian of the child other than the chief executive (child safety) (s257 & 259(12) YJA).

¹¹² **Personal offence** means an offence relating to the person of another.

¹¹³ **Property offence** means an offence relating to property (Schedule 4 YJA).

- ***compensation for the offence***¹¹⁴ 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 (s258(1) & (2) YJA).

The court may act on its own initiative or on the prosecution's application (s258(3) YJA).

Section 258 of the YJA applies if it appears to the court that on the evidence or submissions in a case against a child found guilty of a personal or property offence, that compensation for the offence should be paid to anyone, 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, as directed by the court, why the parent should not pay the compensation. The court may do so on its own initiative or on the prosecution's application.

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. If a court calls on a parent, the court must reduce its grounds to writing and give a copy to the parent.

The court in all cases, instead of acting under s 258(2) of the YJA 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. If a parent is called on, the court must reduce its grounds to writing; and 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.

¹¹⁴ ***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 (s258(9) YJA).

A proceeding under ss 258 or 259 of the YJA is a civil proceeding, and a court may make an order for the costs of the proceeding.

See ss 69 and 70 of the YJA for the requirement on a parent to attend court proceedings involving a child.

Section 259 of the YJA sets out the proceedings on the show cause hearing:

- evidence and submissions in the case against the child are to be treated as evidence and submissions in the show cause hearing; and
- further evidence may be given, and submissions made; and
- the parent may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
- the parent may require any fact stated in submissions mentioned in paragraph (a) to be proved.

The determination of the issues on the show cause hearing must be by way of a fresh hearing on the merits; and the court is not bound by a determination made by it under s 258 YJA.

If the parent was called on to show cause on the prosecution's application, the prosecution is a party to the show cause hearing. 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, appear and give the court the assistance it may require; or intervene as a party with the court's permission.

If, on consideration of the evidence and submissions in s 259(1)(a) and (b) of the YJA, a court is satisfied of the matters mentioned in s 258(1)(a), (b) and (c), the court may make an order requiring the parent to pay compensation. The court is to make its decision on the basis of proof beyond a reasonable doubt.

The maximum amount of compensation payable under an order is 67 penalty units. The order must direct that:

- the amount must be paid by a time specified in the order or by instalments specified in the order; and

- the amount must be paid in the first instance to the proper officer of the court.

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 effect any order would have on the parent's capacity to provide for dependants (s 259(9) YJA).

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 s 258 of the YJA (s 259(10) YJA) and may be differently constituted to the court which called on the parent to show cause (s 259(11) YJA).

Section 260 of the YJA provides that any amount ordered to be paid as compensation by the parent and any costs ordered (s 258(8) YJA) 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 (s 260(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

Under s 181(b) of the YJA, when making a sentence order under ss 175, 175A or 176, the court may also make an order under ss 253–254 of the YJA in relation to driver's licence disqualification.

Section 253 of the 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.

If a child is **found guilty**¹¹⁵ of an offence against the [Criminal Code, Transport Operations \(Road Use Management\) Act 1995 \(Qld\)](#) or another Act and an adult convicted of the same offence would be liable to disqualification, the child is also liable to be disqualified to the same extent (s 254(2) YJA).

If the child is **under** 17 years, a conviction is recorded and an adult would be automatically disqualified by operation of law, the child is also automatically disqualified to the same extent (s 254(3) YJA).

If the child is 17 years or older, and an adult would be automatically disqualified, the child is also automatically disqualified (s 254(4) YJA).

A court has no power to vary the automatic disqualification imposed pursuant to provisions on TORUM: [R v Catchpole \[1995\] QCA 217](#). Note also that s 155 of the YJA only applies to monetary penalties and imprisonment.

Section 254 of the 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.

A child for whom a pre-sentence restorative justice referral is made must either plead guilty or be found guilty of the offence (s 162 YJA). A child so referred would be liable to the disqualification under s 254(2), and if under 17 years, subject to disqualification by law if a conviction was recorded (s 254(3) YJA) and if over 17 years, subject to the disqualification by law (s 254(4) YJA).

Section 254(5) of the YJA provides that s 82 of the [Transport Operations \(Road Use Management\) Act 1995 \(Qld\)](#) applies to a child found guilty of an offence under s 79 of the Act (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 (s 254(7) YJA).

¹¹⁵ **Finding of guilt** means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded (Schedule 4 YJA)

A child who is acquitted may still be disqualified if the court is satisfied, on the evidence, that the disqualification is in the interests of the public (s 254(6) YJA). This applies only where the child is of licensing age (s 254(7) YJA). See also s 187 of the [Penalties and Sentences Act 1992](#) where the test is in the interests of justice.

For guidance on determining the appropriate period of any discretionary disqualification period, see [R v Osborne \[2014\] QCA 291](#) at [57]-[58].

11.14.4 Domestic violence protection order

Under s 42 of the [Domestic and Family Violence Protection Act 2012](#) (DFVPA), a court may make a protection order against a person who has been convicted of a **domestic violence offence**.¹¹⁶

Section 37 of the [Domestic and Family Violence Protection Act 2012](#) sets out the circumstances in which a court may make a protection order, including where the court is satisfied that:

- domestic violence has occurred; and
- a protection order is necessary or desirable to protect the aggrieved from further domestic violence.

Section 22 of the [Domestic and Family Violence Protection Act 2012](#) provides that a child may be named in a protection order as an aggrieved or respondent where the statutory criteria are met.

A child may not be named as an aggrieved or respondent in a Police Protection Direction (s 100C(1)(a)(i) DFVPA).

11.14.5 Order for identifying particulars to be taken

Section 181(c) of the YJA provides that a court that makes a sentence order against a child under ss 175, 175A or 176 may also make an order under s 255 of the YJA requiring that the child's **identifying particulars**¹¹⁷ be taken.

¹¹⁶ **Domestic violence offence** means a domestic violence offence within the meaning of s1 [Criminal Code](#) or an offence under Part 7 [Domestic and Family Violence Protection Act 2012](#).

¹¹⁷ **Identifying particulars** for this section means fingerprints and palm prints.

Section 255 of the YJA applies if a child is found guilty of:

- 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*.

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 seven days to enable a police officer to take the identifying particulars.

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.

A child must not contravene the order made under s 255 of the YJA. The maximum penalty is 10 penalty units.

See also Chapter 5.11.4 (Taking fingerprints upon a finding of guilt by a court) of the [Queensland Police Service Operational Procedures Manual](#) for procedures relating to the taking of identifying particulars.

11.15 Combination of Orders

Pursuant to s 177 of the YJA, a court may make more than one type of sentence order for a single offence subject to the limitations in s 178-180A of the YJA.

11.15.1 Probation and community service (s 178 YJA)

A court may combine a probation order and a community service order for a single offence, provided:

- the court makes separate orders; and
- one order is not imposed as a condition of the other.

If the child is resentenced for a contravention of one of the orders, the other order is discharged (s 178(3) YJA).

11.15.2 Graffiti removal order with probation and/or community service (s 178A YJA)

A graffiti removal order may be combined with a probation order, a community service order or both for a single offence (s178A YJA). 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 (s 178A(3) & (4) YJA).

11.15.3 Restorative justice order with any other order (s 178C YJA)

A restorative justice order may be combined with any other sentence order for a single offence (s 178C YJA). 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 (s 178C(3) & (4) YJA).

11.15.4 Detention and probation (s 180 YJA)

A detention order may be combined with a probation order for a single offence, subject to strict limits:

- the detention order must be no more than six months;
- the court must not make a conditional release order;
- the probation order begins on release from detention and may be for up to one year (s 180 YJA).

11.15.5 Detention and graffiti removal (s 180A YJA)

A detention order may be combined with a graffiti removal order for a single graffiti offence (s 180A YJA).

Where a child is already subject to a graffiti removal order:

- the order commences when the child is released from detention; or
- is suspended while the child is in detention (s 180A(2) YJA).

11.15.6 Other orders in addition to sentence orders (s 181 YJA)

In addition to any sentence order under ss 175, 175A or 176 of the YJA, the court may also make:

- a restitution or compensation order;
- a driver's licence disqualification order;
- an order for identifying particulars to be taken.

These orders may accompany any sentence order.

11.15.7 Combination of orders for separate offences

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].

11.15.8 Prohibited sentence order (s 179 YJA)

Section 179 of the YJA prohibits the combination of an intensive supervision order and probation or detention orders for a single offence.

11.15.9 Summary Table: Combination Sentence Orders Under the YJA

Section	Combinations	Conditions
178	Community service	Permitted if:

	and Probation	• 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. • 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

Under s 128 of the YJA, a court may reopen a proceeding if it is satisfied that a sentence imposed on a child was not according to law.

11.17 Child Offenders Who Become Adults

Sections 140–146 of the YJA govern the circumstances in which an offender is treated as a child or an adult for the purposes of sentencing and related proceedings.

11.17.1 When offender must be sentenced as an adult (s 140 YJA)

Section 140 of the YJA provides for when a person must be sentenced as either an adult or a child

Where proceedings commenced one year after person turns 18 (s 140(1) YJA)

If one year has passed after the offender became an adult:

- any proceeding afterwards started for a child offence must be taken as if the offender were an adult at the time of the offence; and
- if found guilty, the offender must be sentenced as an adult.

Proceedings started as a child but not completed within one year after turning 18 (s 140(2) YJA)

If a proceeding for a child offence was properly started under the YJA but has not been completed to verdict within one year after the offender becomes an adult, then:

- the proceeding must be finished as a child proceeding; but
- if found guilty, the offender must be sentenced as an adult.

Offender absconds or fails to appear (s 140(3) YJA)

If, after a finding of guilty, the court has been unable to sentence the offender because the offender:

- escaped from detention;
- failed to appear without reasonable excuse; or
- failed to return from leave; and

one year has passed since the offender became an adult, then the offender must be sentenced as an adult.

Exception – Undue delay by prosecution (s 140(4) YJA)

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”.

11.17.2 When court may treat a child offence as adult proceeding (s 141 YJA)

Section 141 of the YJA applies where:

- a proceeding for a child offence has been properly started; and
- by one year after the offender becomes an adult:
 - the childhood proceeding has not been completed to a finding of guilty or not guilty; and
 - the offender, for another offence is proceeded against as an adult or has been sentenced as an adult.

In this situation, the court **may** decide to continue the child-offence proceeding as if the offender were an adult at the time of the offence. If found guilty, the offender must be sentenced as an adult. This section applies despite s 140(2) of the YJA.

11.17.3 Continuing effect of child orders after turning 18 (s 142 YJA)

A court may make an order under the YJA even if the child will become an adult before the order expires (s 142 YJA).

If the person becomes an adult before the order ends:

- the order continues to apply as if the person were still a child; and
- any further proceedings or orders arising from the original order must be taken as if the person were a child (s 142(2) & (3) YJA).

Section 142 of the YJA provides that 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.

If such proceedings would ordinarily require the person to be found guilty before a court, and the person is found guilty of an adult offence in the Magistrates Court, that court has concurrent jurisdiction to deal with the matter.

11.17.4 Converting a child order to an adult order (s 143 YJA)

A court may treat a childhood sentence order as a corresponding adult order if:

- the person is being proceeded against or has been sentenced for an adult offence; or
- more than one year has passed since the person became an adult.

Once converted, the person is subject to the adult order for the purposes of the proceeding.

11.17.5 Sentencing an adult for a child offence (s 144 YJA)

When sentencing an offender as an adult under ss 140, 141 or 143 of the YJA, the court must have regard to:

- the fact that the offender was a child when the child offence was committed; and
- the sentence that might have been imposed on the offender if sentenced as a child.

The court cannot:

- impose imprisonment longer than the maximum detention that could have been imposed as a child; or
- impose a fine, restitution or compensation greater than the child maximum.

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](#).

11.17.6 Treating a detainee as a child for new offences (s 146 YJA)

Section 146 of the YJA applies where:

- a proceeding is started against a detainee for an offence committed within one year after they ceased to be a child; and
- the proceeding is started within one year of the commission of the offence.

The court may treat the detainee as a child for the purpose of the proceeding if appropriate, for example:

- treatment of the detainee as an adult would disrupt the application of an existing sentence order; or
- 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
- a recommendation made by the chief executive or in a pre-sentence report supports the treatment of the detainee as a child.

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 of the YJA provides that the child or the chief executive (youth justice) may apply to the **court that made the order** ¹¹⁸ for the variation or discharge of a **community-based order** ¹¹⁹ that is in force. Note that a supervised release order is not a community-based order.

The applicant must give written notice of the making of the application:

- if the application is made by the child—to the chief executive; or
- if the application is made by the chief executive—to the child.

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 (s 247(3) YJA).

The application cannot be made on the grounds that the child has contravened the order (s 247(4) YJA).

In proceedings under this division, affidavit evidence from a person with direct knowledge is admissible and the matter may be decided on affidavit alone, unless the court orders oral evidence in the interests of justice (s 250 YJA).

If the court varies or discharges a community-based order, it must give written notice of the change to the child, the chief executive (youth justice) and the original sentencing court if different (s 251 YJA).

11.18.1 Vary the requirements of the order (s 247(1)(a) YJA)

The court may vary any requirement except the requirement that the child abstain from violation of the law (s 247(1)(a) YJA).

11.18.2 Discharge the order other than a CRO (s 247(1)(b) YJA)

For any community-based order other than a conditional release order (CRO), the court may:

¹¹⁸ See s 9 YJA

¹¹⁹ 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 (Schedule 4 YJA).

- discharge the order; or
- discharge the order and resentence the child for the original offence as if they had just been found guilty.

On resentencing, the child cannot receive a greater penalty than would apply if the balance of the order were served (s 247(5) YJA).

11.18.3 Extend a restorative justice order (s 247(1)(ba) YJA)

For a restorative justice order, the court may extend the period for completing obligations, but not beyond one year after the court acts under s 247 of the YJA.

11.18.4 Revoke a CRO (s 274(1)(c) YJA)

For a conditional release order, the court may:

- revoke the CRO;
- order the child to serve the detention for which the CRO was made.

In doing so, the court must reduce the detention period by the amount it considers just, having regard to the child's compliance (s 248(2) YJA). The child is also entitled to credit for pre-sentence custody under s 218 of the YJA: [R v GT \[1997\] 2 Qd R 183](#).

This procedure is distinct from breach proceedings for a conditional release order under ss 237-244 and 246 of the YJA.

11.18.5 Variation by proper officer (s 252 YJA)

Section 252 of the 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 breaching an order made against a child under the YJA. Instead, the Act provides specific mechanisms for responding to breaches depending on the type of order:

11.19.1 Good behaviour order (s 189 YJA)

Under s 189 of the YJA, if a child commits an offence during the period of a good behaviour order, the court dealing with the new offence may have regard to the breach when determining sentence (s 189(1) YJA).

The court must not take any other action in relation to the breach (s 189(2) YJA). There are no breach proceedings for a good behaviour order.

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 (Schedule 4 YJA). A supervised release order is not a community-based order.

A breach may occur by failing to comply with a requirement of an order or by committing another offence during the period of the order.

The YJA provides detailed procedures for breach action depending on the type of the order (ss 237-252J YJA), including:

- variation or discharge of the order;
- resentencing;
- activation of detention (for conditional release orders);
- extension of time for performance (for community service or restorative justice orders).

11.19.3 Breach by non-compliance

Section 187 of the YJA provides that contravening a sentence order in Part 7 of the YJA includes contravening a requirement applying to the order under a regulation. See Regulation 7 of the [Youth Justice Regulation 2016](#) for the reporting requirements under community-based orders.

If the chief executive (youth justice) reasonably believes a child has contravened a community-based order, the chief executive must warn the child of the consequences of further contravention (s 237 YJA).

11.19.3.1 Bringing breach before the court (s 238 YJA)

If the child has not been charged with an offence for the act or omission constituting the breach, the chief executive 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.

A copy of the complaint must be served on a **parent**,¹²⁰ unless the parent cannot be located after reasonable inquiry.

If the child fails to appear, the Magistrate may issue a warrant for arrest. Under s 239 of the YJA, the Magistrate may cancel the warrant if the child appears voluntarily.

11.19.3.2 Court's powers on breach (s 240 YJA)

If the court is satisfied beyond reasonable doubt that a contravention has occurred, it may:

- act under ss 245, 246 or 246A of the YJA depending on the order breached;
- or
- commit the matter to a higher court if that court made the original order.

A Childrens Court Magistrate may deal with the breach even if the order was made by a higher court, unless the Magistrate considers that the order should be discharged, and the child should appear before the higher court for resentencing (s 240(3) YJA).

¹²⁰ A **parent**, of a child, includes someone who is apparently a parent of the child.

11.19.3.3 Breach of community-based orders other than CROs (s 245 YJA)

Probation

For probation, the court may extend 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 ss 175(1)(d), 175A (2)(a), 176(1)(a) and 180(3) of the YJA.

Graffiti removal order

For a graffiti order, the court may:

- increase the number of hours but not beyond the limits in ss 176A(3), 194F – 194I of the YJA;
- extend completion period not beyond one year from the court's action.

Restorative justice order

For a restorative justice order, the court may extend the period within which the child's obligations under the order must be performed but not beyond one year.

Community service order

For a community service order, the court may:

- increase the number of community service hours, but not so that the total number of hours is more than the number allowed under s 175(1)(e) of the YJA; or
- extend the period within which the community service must be performed, but not so that the extended period ends more than one year after the court acts under this section.

Intensive supervision order

For an intensive supervision order, the court may extend the period of the order, but not beyond six months from the court's action.

Any community-based order

For any **community-based order**,¹²¹ the court may:

- vary another requirement of the order other than the requirement that the child abstain from violation of the law; or
- 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
- on the undertaking of the child to comply in all respects with the order, take no further action.

The court may vary the community-based order only if the child expresses a willingness to comply with the order as varied.

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.

An order may be made even if the original order has expired.

11.19.3.4 Resentencing considerations

When resentencing, the court must consider:

- the sentencing principles in s 150 of the YJA, including s 150(3)(l) (liability to further sentence due to revocation); and
- the matters in s 249 of the YJA (the reasons for the original order and the child's compliance).

If the breached order was a mandatory community service order under s 175A(9) of the YJA or a graffiti removal order, the court need not impose a further order of the same type.

¹²¹ **Community-based order** means a community-based order other than a conditional release order.

11.19.3.5 Breach of a CRO (s 246 YJA)

If a conditional release order (CRO) is breached, the court may:

- revoke the CRO, order the child to serve the detention for which the CRO was made and reduce the detention period by the amount considered just, having regard to the child's compliance (s 248 YJA); or
- vary the requirements or extend the program period not beyond six months after the court acts.

The onus is on the child to show why a further opportunity should be granted.

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 it considers just, having regard to everything done by the child to conform with the conditional release order (s 248 YJA)

Orders may be made even if the CRO has expired (s 248(5) YJA).

11.19.3.6 Breach committed to a higher court (s 241 YJA)

If the child is committed to a higher court under s 240(3)(a) of the YJA:

- For orders other than CROs, the higher court may exercise all powers under s 245 of the YJA;
- For CROs, the higher court may exercise powers under ss 246 or 246A of the YJA.

The higher court must be satisfied beyond reasonable doubt of the contravention (s 241(1) YJA).

The proceeding is heard by a Judge sitting without a jury (s 241(3) YJA).

11.19.3.7 Interaction with combination of orders

In relation to a combination of orders when one or more is contravened and the child is resentenced, see:

- section 178(3) of the YJA for probation and community service orders;
- section 178A(3) and (4) of the YJA for a graffiti removal order and probation and community service orders; and
- section 178C(3) and (4) of the YJA for a restorative justice order and other sentence orders.

11.19.4 Breach by re-offending

Section 242 of the YJA sets out the options available to a court when a child is found guilty of an indictable offence while subject to a community-based order. This section applies **only** where the new offence is indictable.

11.19.4.1 Where community-based order was made by the same court

If the order was made by the same court dealing with the new indictable offence, the court may (s 242(2) YJA):

- for orders other than a conditional release order, take any action allowed by s 245 of the YJA;
- for a conditional release order, take any action allowed by ss 246 or 246A of the YJA.

11.19.4.2 Where community-based order was made by another court

If the order was **not** made by the court dealing with the new offence, the court may (s 242(3) YJA):

Order the child to appear before the original court

If the court considers that, having regard to the circumstances of the new offence, the order should be discharged and the child resentenced for the original offence, it may:

- order the child to appear before the court that made the order; or
- if the court has jurisdiction under s 243 of the YJA, act under that section.

Otherwise

If discharge and resentencing are not appropriate:

- For orders other than a CRO, take any action under s 245 of the YJA, except discharging the order and resentencing (s 245(1)(d)(ii) YJA);
- For a CRO, take action under s 246(3) or 246A(3) YJA.

If the court orders the child to appear before another court, it may:

- release the child under Part 5A of the YJA (bail and custody); or
- order the child to be held in custody (s 242(4) YJA).

A court of lower jurisdiction cannot resentence a child for an offence originally sentenced in a higher court.

11.19.4.3 Where the child is committed to another court (s 244 YJA)

If the child is committed to another court for breach by re-offending, that court may:

- For orders other than a CRO, take action allowed by s 245 of the YJA;
- For a CRO, take any action allowed by ss 246 or 246A of the YJA.

If the other court is the Supreme Court or a Childrens Court Judge, the proceeding must be heard and decided by a Judge sitting without a jury.

11.19.4.4. Powers of Superior Court to resentence (s 243 YJA)

Section 243 of the YJA empowers a superior court to resentence a child originally sentenced by a lower court.

If the superior court is the Supreme Court or a Childrens Court Judge, and the original order was made by a Childrens Court Magistrate, the superior court may make any sentence order that a Magistrate could have made:

- for orders other than a CRO, s 245(1)(d)(ii) of the YJA (discharge and resentence);
- for a CRO, ss 246(2) or 246A(2) of the YJA.

If the superior court is the Supreme Court and the original order was made by a Children's Court Judge, the Supreme Court may make any sentence order that a Children's Court Judge could have made:

- for orders other than a CRO, s 245(1)(d)(ii) of the YJA
- for a CRO, s 246(1) of the YJA.

11.19.4.5 Interaction with combination of orders

Where multiple orders are in force and one is contravened, the court must apply the relevant combination provisions:

- Section 178(3) of the YJA for probation and community service orders;
- Section 178A(3) – (4) YJA for graffiti removal and probation and/or community service orders;
- Section 178C(3) – (4) YJA for restorative justice and other orders.

These provisions determine when other orders must or may be discharged upon resentencing.

11.19.5 Breach of supervised release order

A supervised release order is governed by Division 12A, Part 7 of the YJA. The breach process is distinct from breach of community-based orders.

If the chief executive (youth justice) reasonably believes a child has contravened a supervised release order, the chief executive must warn the child of the consequences of further contravention (s 252B YJA).

11.19.5.1 Bringing breach before the court (s 252C YJA)

Section 252C of the YJA applies where:

- the child is on release from detention under a supervised release order;
- the chief executive reasonably believes the child has contravened the order;
- and
- either:

- the contravention is believed to have occurred after a prior warning under s 252B of the YJA; or
- the chief executive is not required to warn the child under s 252B(3) of the YJA; and
- the child has not been charged with an offence for the act or omission constituting the breach.

The chief executive may apply, by complaint and summons, to a Childrens Court Magistrate for a finding that the child has contravened the order. A copy of the complaint must be served on a **parent** ¹²² unless the parent cannot be located after reasonable inquiry.

The child must be on supervised release at the time of the application (s 252C(1)(a) YJA). If a supervised release order expires before the child is finally dealt with on an application under Division 12A, the application expires (s 252J YJA).

11.19.5.2 Magistrate's powers on breach (s 252D YJA)

If the Magistrate is satisfied beyond reasonable doubt that the contravention occurred, the Magistrate may:

- order that no further action be taken
- if the unexpired portion of the sentence is the **prescribed period** ¹²³ or less:
 - order that the child be returned to detention and set a day for the chief executive to make a new supervised release order; or
 - order the child to be returned to detention for the unexpired part of the sentence;
- If the unexpired portion exceeds the prescribed period:
 - order that the child appear before the original sentencing court.

A Childrens Court Magistrate may deal with a breach of a supervised release order made by a superior court, unless the unexpired portion exceeds one year.

¹²² In this section, **parent, of a child**, includes someone who is apparently a parent of the child.

¹²³ **Prescribed period** means (a) for a sentence imposed under s 175A – three years; or (b) otherwise – one year

When making an order under ss 252D, 252E or 252F of the YJA, the court must have regard to anything done by the child in compliance with the supervised release order (s 252G YJA).

11.19.5.3 Powers of the Court to which the child is committed (s 252F YJA)

Where a child is ordered to appear before another court under ss 252D or 252E of the YJA, that court may:

- order no further action;
- order the child to be returned to detention and set a day for a new supervised release order; or
- order the child to be returned to detention for the unexpired part of the sentence.

The court may act if satisfied beyond reasonable doubt of the contravention (s 252F(1)(d) YJA). If the court is the Supreme Court or a Childrens Court Judge, the proceeding is heard by a Judge sitting without a jury (s 252F(4) YJA).

When making an order under ss 252D, 252E or 252F of the YJA, the court must have regard to anything done by the child in compliance with the supervised release order (s 252G YJA).

11.19.5.4 Breach by re-offending – supervised release orders (s 252E YJA)

Section 252E of the YJA applies where a child on supervised release is found guilty of an indictable offence.

If the court is the original sentencing court or a **higher court**¹²⁴

The court may:

- order no further action;

¹²⁴ **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.

- order return to detention and set a day for a new supervised release order;
or
- order return to detention for the unexpired part of the sentence.

If the court is a Childrens Court Magistrate or Magistrates Court

If the unexpired portion is the **prescribed period**¹²⁵ or less, the court may:

- order no further action;
- order return to detention and set a day for a new supervised release order;
or
- order return to detention for the unexpired part.

If the unexpired portion is more than the prescribed period, the court must order the child to appear before the original sentencing court.

If neither s 252E(2) nor (3) applies, the court must order the child to appear before the original sentencing court (s 252E(4) YJA).

If the court is a Magistrates Court or District Court, orders under s 252E(2), (3) or (4) of the YJA must be made in its concurrent jurisdiction.

When making an order under ss 252D, 252E or 252F of the YJA, the court must have regard to anything done by the child in compliance with the supervised release order (s 252G YJA).

11.19.5.5 Custody matters (s 252H YJA)

If a court orders a child to appear before another court under ss 252D or 252E of the YJA, it may:

- commit the child to custody; or
- release the child under Part 5 of the YJA (bail and custody of children).

¹²⁵ **Prescribed period** means (a) for a sentence imposed under s 175A YJA – three years; or (b) otherwise – one year.

Any time spent in custody under such an order is counted as time served in detention (s 252H(1) YJA).

Time spent on supervised release counts as time served in detention (s 230 YJA). Time spent in pre-sentence custody must also be counted (s 218 YJA).

11.19.6 General matters

Section 250 of the YJA permits the use of affidavit evidence in breach proceedings (other than breaches of supervised release orders).

Under s 143(3)(b) of the YJA, where a sentence order was made when the person was a child, and a proceeding arising from that order occurs after the person turns 18, the court may deal with the person as if the original offence had been committed as an adult and the original order were an adult order.

Chapter 12 – Appeals and Sentence Reviews

12.1 Appeals

Section 114 of the 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

Under s 19B of the [Bail Act 1980 \(BA\)](#), the defendant, complainant, or prosecutor may apply to a Childrens Court Magistrate for a review of a decision about release or bail under Part 5 of the YJA by a police officer or a justice (s19B(2) BA).

A Magistrate's decision on such a review is itself subject to review by a single Supreme Court Judge on the application of the defendant, complainant, or prosecutor (s 19C BA).

Other provisions of the [Bail Act 1980](#) provide for applications to a court to vary or revoke bail granted (ss 19 & 30(1A) BA).

12.3 Appeal to a Childrens Court Constituted by Judge

12.3.1 Appeal Pursuant to Justices Act 1886 (Qld)

12.3.1.1 Right of Appeal (s 222 JA)

An appeal against a conviction or sentence from the summary determination of an offence to a single Childrens Court Judge is pursuant to s 222 of the [Justices Act 1886](#).

Other orders may also be appealed (e.g. s 172 of the [Mental Health Act 2016](#) for dismissal of a complaint due to unsound mind or unfitness for trial or s 540 of the [Police Powers and Responsibilities Act 2000](#) for application for order for blood and urine sample of person).

Section 117 of the YJA provides that:

- Part 9, Division 1 of the [Justices Act 1886](#) applies to orders made by justices dealing summarily with a child, subject to subsections (2) – (4).
- Appeals must be made to a Childrens Court Judge.
- All references to a District Court Judge in Part 9, Division 1 are taken to be references to a Childrens Court Judge.
- A District Court Judge has no jurisdiction to hear such appeals.

Thus, appeals that would ordinarily lie to the District Court instead lie to the Childrens Court Judge.

Section 222 of the [Justices Act 1886](#) provides that a person who feels aggrieved as complainant, defendant or otherwise by an order made summarily may appeal within one month of the order. Pursuant to exceptions in s222(2), no appeal lies:

- against a conviction or order made summarily under s 651 of the [Criminal Code](#) (summary disposition of indictable offences dealt with on indictment);
- by a complainant against conviction for an indictable offence dealt with summarily—only sentence or costs may be appealed;
- by a defendant who pleaded guilty, except on the ground that the penalty was excessive or inadequate.

To start the appeal, the appellant must file a notice of appeal in the District Court registry (treated as filing for the Childrens Court Judge under s 117 YJA). The notice must state:

- the grounds of appeal;
- the details required by s 222C of the [Justices Act 1886](#); and
- the respondent's name and address.

Special filing rules apply where the registry is more than 50km away (s 222(4) JA) or the appellant is in custody (s 222(5) JA).

A receipt must be issued upon lodgement (s 222(6) JA).

Where a defendant enters an unequivocal plea of guilty, there is no right of appeal against conviction under s 222: [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 s 222 of the *Justices Act 1886* is from an order made on a complaint for an offence or breach of duty and 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.

The appeal must be filed within one month, but the court retains jurisdiction to extend time: *Double Time Pty Ltd v Ryan* [2002] 1 Qd R 371 and *Owen v Edwards* [2006] QCA 526. See also s 224(1) of the *Justices Act 1886*.

An order made for the payment of restitution or compensation may be appealed pursuant to s 222 of the *Justices Act 1886* and the order is stayed until the end of the appeal (s 222A JA).

If the appellant is in custody, a Magistrates Court may grant bail pending the appeal being heard in the District Court (s 8 BA). A Childrens Court Judge has the power to grant bail pursuant to s 59 of the YJA.

12.3.1.2 Nature of the appeal – rehearing (s 223 JA)

Section 223 of the *Justices Act 1886* provides that an appeal pursuant to s 222 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.

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.

12.3.1.3 Appeals against sentence

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.

12.3.1.4 Powers of Childrens Court Judge (s 225 JA)

The powers of the Judge hearing the appeal are set out in s 225 of the *Justices Act 1886*:

- 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.
- 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.
- For s 225(1), the judge may exercise any power that could have been exercised by whoever made the order appealed against.
- An order made under s 225(1) has effect, and may be enforced in the same way, as if it had been made by whoever made the appealed order.

12.3.1.5 Further appeal to Court of Appeal

An appeal from the decision of the District Court Judge lies to the Court of Appeal by leave pursuant to s 118 of the *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 of the [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 of the YJA applies Chapter 67 of the [Criminal Code](#) (ss 668–677), with necessary and prescribed modifications, to appeals involving children. Chapter 67 applies:

- to a finding of guilt or order made in a proceeding against a child as it applies to a conviction or order against an adult;
- to proceedings before a Childrens Court Magistrate as it applies to proceedings before a Magistrates Court; and
- to proceedings before a Childrens Court Judge (with or without a jury) as it applies to proceedings before the District Court.

The Attorney-General may refer to the Court of Appeal any point of law arising from a pre-trial direction or ruling under s 590AA of the [Criminal Code \(Qld\)](#) (s 668A CC). The Attorney-General may also appeal against sentence.

A trial judge may reserve a question of law in relation to an indictment for consideration by the Court of Appeal (s 668B CC).

12.4.1 Appeals by persons convicted on indictment or under s 651 Criminal Code (s 668D CC)

A person convicted on indictment or under s651 of the [Criminal Code](#) may appeal:

- as of right, on any ground involving a question of law alone;
- with leave, or on the trial judge’s certificate, on any ground involving:
 - a question of fact;
 - a mixed question of law and fact; or
 - any other sufficient ground.
- with leave against sentence.

A person summarily convicted under s 651 of the [Criminal Code](#) may, with leave, appeal against sentence, including any order made under that section.

A child convicted summarily of an indictable offence has a right of appeal to a Childrens Court Judge under s 222 of the *Justices Act 1886*. There is no direct appeal to the Court of Appeal in such cases.

12.4.2 Determination of appeal against conviction (s 668E & 669C CC)

The Court must allow the appeal against conviction if it considers:

- the verdict is unreasonable or cannot be supported by the evidence;
- the judgment should be set aside due to a wrong decision of law; or
- there has been a miscarriage of justice.

However, under s 668E(1A) of the *Criminal Code*, the Court may dismiss the appeal despite such error if no substantial miscarriage of justice has actually occurred.

If the appeal against conviction is allowed, the Court must quash the conviction and direct a verdict of acquittal.

If the Court of Appeal overturns a conviction on indictment and considers a miscarriage of justice has occurred, it may order a new trial.

The Court also has additional powers in specific circumstances (s 668F CC).

12.4.2 Determination of appeal against sentence (s 668E CC)

If the Court considers that a different sentence is warranted in law and should have been imposed, it must quash the sentence and substitute the appropriate sentence. Otherwise, the appeal must be dismissed.

Any order for restitution of property or payment of compensation is suspended until the determination of the appeal (s 670 CC).

12.5 Sentence Reviews

Under s 118 of the YJA, 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, the chief executive (youth

justice) acting in the child's interest, or the complainant/arresting officer for the charge to which the sentence order relates (s 119(1) YJA).

A sentence order made on breach of a community-based order or conditional release order under ss 245 or 246 of the YJA is also reviewable (ss 245(6), 246(6) YJA).

A sentence review includes a declaration that a child is a serious repeat offender under s 150A(2) of the YJA (s 117A YJA).

The application must be made within 28 days after the sentence order was made or within a later period allowed at any time by the Childrens Court Judge (s 119 YJA). The proper officer of the Childrens Court must give notice of the hearing to the applicant and all other parties (s 120 YJA). If a supervised release order expires before the child is finally dealt with on a review application, the application expires (s 252J YJA).

No costs may be ordered against any party (s 125 YJA). The reviewing Judge's decision takes effect as the decision of the Magistrate and may be enforced or appealed in the same way as the Magistrate's decision. However, no further sentence review or s 222 of the [Justices Act 1886](#) appeal lies from the Judge's decision (s 125(3) YJA).

12.5.1 Nature of review – rehearing on the merits (s 122 YJA)

A sentence review is a rehearing on the merits. The Childrens Court Judge may consider the record of the proceeding before the Magistrate, further submissions and further evidence, including by affidavit.

The review must be conducted expeditiously and with as little formality as possible (s 122(3) YJA). Where delay in obtaining the transcript would impede expedition, the Judge may rely on affidavit material and the Magistrates Court file.

No error in the original proceeding needs to be shown. The applicant does not need to establish manifest excess or inadequacy.

12.5.2 Powers on review

The Childrens Court Judge may:

- confirm the order;

- vary the order; or
- discharge the order and substitute another order within the Magistrate's jurisdiction.

The Judge may also make any other order a Magistrate could have made in connection with the sentence order as confirmed, varied, or substituted.

If the decision requires the child to serve detention (or the unserved part), the Judge must direct that a warrant issue for the child's arrest and committal (s 126 YJA).

If a community-based order (probation, graffiti removal, community service, intensive supervision, conditional release, restorative justice) is under review:

- the order is stayed until the end of the review (s 121(3) YJA);
- the period between the start and end of the review is not counted for the purpose of the order or any program (s 121(4) YJA).

A Childrens Court Judge may order a stay of all or any proceedings under a sentence order that is subject to review (s 121(1) – (2) YJA). The Judge may impose conditions considered appropriate. This includes staying a detention order. If a stay is ordered, the proper officer must notify the chief executive (youth justice) (s 121(5) YJA).

The Judge also has jurisdiction to grant bail under s 8 of the [Bail Act 1980](#) or s 59 of the YJA.

12.5.3 Interaction with ordinary appeals (s 124 YJA)

A sentence review cannot proceed if:

- the child starts an ordinary appeal against sentence or conviction; or
- another person against whom the sentence order was made starts an ordinary appeal.

If a complainant or arresting officer applies for a sentence review and the child starts an ordinary appeal, the review cannot be decided until the appeal is finalised (s 124(3) YJA).

12.5.4 Custody and time counting

Time spent on supervised release counts as time served in detention (s 230 YJA). Time spent in pre-sentence custody must also be counted (s 218 YJA).

12.6 General Matters

12.6.1 Bail pending appeal or sentence review

A number of courts have jurisdiction to grant bail to a child who is awaiting the determination of an appeal or sentence review.

12.6.1.1 Appeals under s 222 Justices Act 1886

A Magistrate may grant bail to a child awaiting an appeal under s 222 of the [Justices Act 1886](#) (s 8 BA). A Childrens Court Judge also has jurisdiction to grant bail in relation to such an appeal (s 59 YJA).

Bail is subject to Part 5 of the YJA (bail and custody of children).

The ordinary position is that the court must release the child (s 48(2) YJA) unless an exception applies. The usual “exceptional circumstances” test for bail pending appeal does not apply to children.

12.6.1.2 Appeals to the Court of Appeal

For appeals to the Court of Appeal, either the Court of Appeal (s 8(1)(a)(i) BA) or a single Supreme Court Judge (s 8(5) BA) may grant bail.

Any such decision is also subject to Part 5 of the YJA (bail and custody of children).

12.6.1.3 Sentence reviews

A sentence review is an appeal for the purposes of the [Bail Act 1980](#).

Under s 8(1) of [Bail Act 1980](#), a court may grant bail to a person awaiting a criminal proceeding before that court. Under s 59(1) of the YJA, a Childrens Court Judge may grant bail to a child held in custody, or enlarge, vary or revoke bail.

12.6.2 Stay of sentence orders

If a child appeals against a community-based order, the effect of the order is stayed until the end of the appeal (s 115 YJA). If a community-based order is subject to a sentence review, the effect of the order is stayed until the end of the review (s 121(3) YJA).

Where the period of the order is relevant to its effect or to a program, the period between the start and end of the review is not counted (s 121(4) YJA).

Under s 121(1)- (2) of the YJA, a Childrens Court Judge may order a stay all or any proceedings under a sentence order subject to review and impose conditions on the stay. This includes the power to stay a detention order and grant the child bail pending the review. If a stay is ordered, the proper officer must notify the chief executive (youth justice) (s 121(5) YJA).

The Court of Appeal may grant bail pending the resolution of an appeal to that court.

If, as a result of an appeal or sentence review, a child is required to serve detention (or the unserved part), the period takes effect from the start of the child's custody on sentence after the appeal or review (s 211(3) YJA).

If an appeal under s 222 of the *Justices Act 1886* is started against an order for restitution or compensation (or the conviction), the order is stayed until the end of the appeal (s 222A JA). Under s 670 of the *Criminal Code*, if a notice of appeal or application for leave is filed in the Court of Appeal, any order for restitution or compensation is suspended until the appeal is determined.

Under s 131(2) of the *Transport Operation (Road Use Management) Act 1995 (Qld)*, where a person appeals against a conviction that carries a licence disqualification, the disqualification is suspended upon commencement of the appeal until its determination.

12.7 Mistake in Exercise of Jurisdiction

Under s 128 of the YJA, a court may reopen a proceeding to correct an error in the exercise of jurisdiction and may make any finding or order necessary to correct the error. The time for filing an appeal against the corrected finding or order runs from the date the new finding or order is made (s 128(6) YJA).

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?

The functions of OPG Child Advocates are defined under s 13 of the 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 s 54 of the 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 s 52 of the 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 (s 13(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** (s 13(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** (s 13(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** (s 13(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 s 20 of the [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’ (s 52 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

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. <i>Diagnoses could include Epilepsy, Cerebral Palsy, Visual Impairment, Hearing Loss, Traumatic or Acquired Brain Injury</i>
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.

		<i>Diagnoses could include Developmental Coordination Disorder, Stereotypic Movement Disorder, Tourette Syndrome.</i>
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) • Perceptual reasoning (ability to organise, classify, draw inferences and problem solve) • Processing speed (ability to perform already automatically and fluently learned cognitive tasks)	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. <i>Diagnoses could include Intellectual Disability, Global Developmental Delay.</i>
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 <i>Diagnoses could include Language Disorder, Speech Sound Disorder, Childhood-onset Fluency Disorder (Stuttering).</i>
Academic achievement	• Includes skills in reading, mathematics and/or literacy (including written expression and spelling)	Reports or observations of: • Leaving school early or difficulties at school • School reports or NAPLAN results <i>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.</i>
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 <i>Diagnoses could include attention deficit hyperactivity disorder.</i>
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) <i>e.g., bail conditions that keep changing.</i> • 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 <i>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.</i>
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

		<i>Diagnoses could include autism spectrum disorder; Communication Disorder Pragmatic Language Disorder Also Intellectual Disability requires Adaptive behaviour impairments.</i>
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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) | • Logan |
| • Bundaberg | • Mount Isa |
| • Caboolture | • Redcliffe |
| • Cairns | • Rockhampton |
| • Cherbourg | • Sunshine Coast |

- Gold Coast
- Hervey Bay
- Ipswich
- 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 | • Logan |
| • Brisbane South | • Cairns |
| • Western Districts | |

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 | • Caboolture |
| • Gold Coast | • Cairns |
| • Ipswich | • Townsville |
| • Logan | |
| • 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 2020¹²⁶

Note: Click on the below cover page to open the appendix as a separate document

Jurisdiction guide for juvenile matters 2019

Disclaimer: The following document is a guide only and is not legal advice. Whilst the information contained in the document has been formulated with due care as at the date of publication, Legal Aid Queensland does not accept any liability to any person for the information (or the use of such information) or make any warranty about the ongoing accuracy of the information. It is recommended legal practitioners conduct their own research in relation to the elections outlined in the following document.



¹²⁶ 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

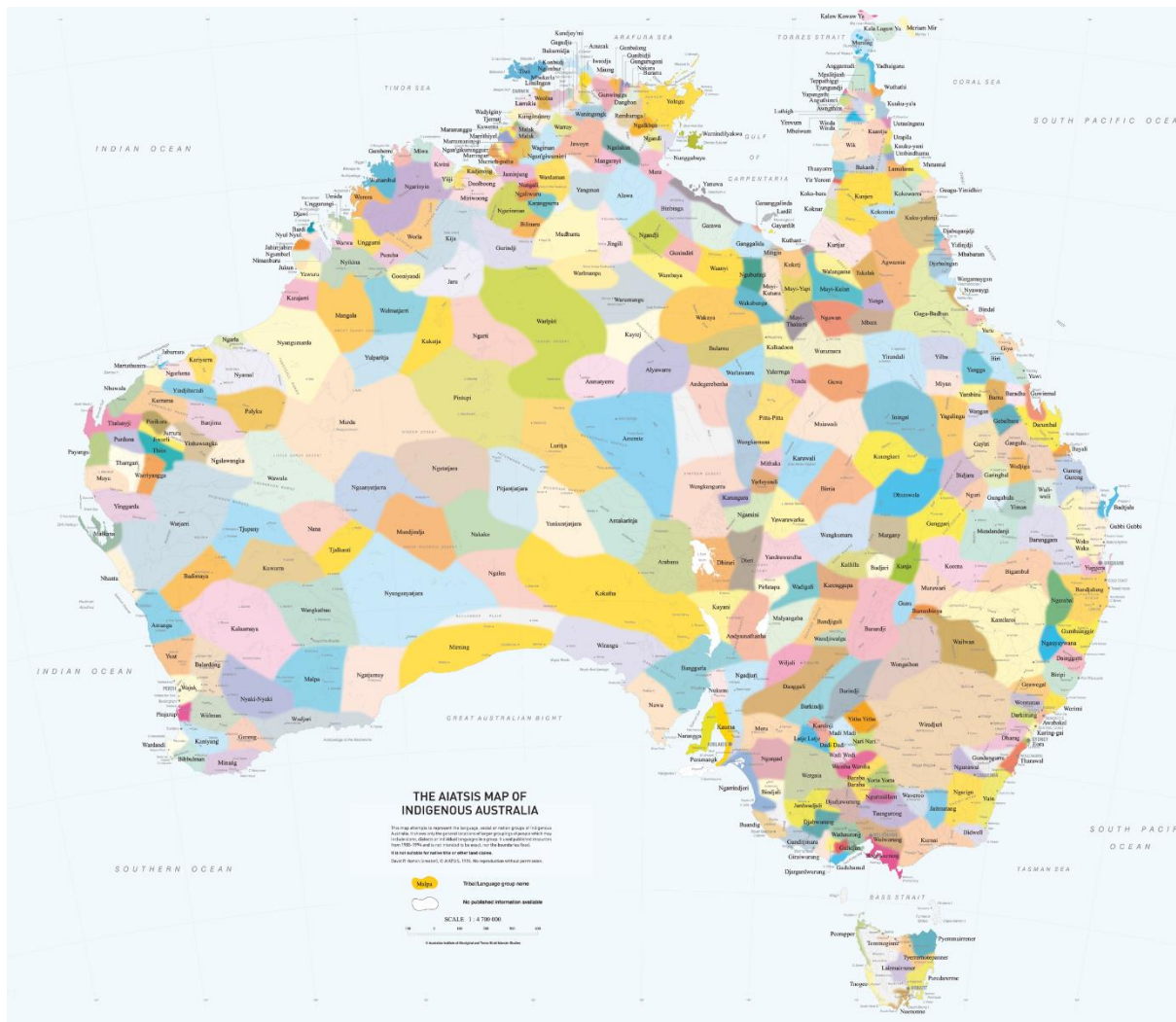
For many lawyers, especially those who do not identify themselves as Aboriginal or Torres Strait Islander or those who do not have Indigenous heritage, communicating with Indigenous clients can often pose some special challenges. For instance, because of the significant differences in language and culture, 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.¹²⁷

¹²⁷ 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.¹²⁸ 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.¹²⁹

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.

¹²⁸ See *Adamopoulos v Olympic Airways SA* (1991) 25 NSWLR 75

¹²⁹ 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.¹³⁰ 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."*¹³¹

¹³⁰ D Eades *Aboriginal English and the Law*, The Queensland Law Society Inc, 1992, p 25

¹³¹ *Id*, p 1.

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.

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 lawyer's 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 plead guilty to manslaughter.¹³² 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.¹³³

¹³² See ABC News article ["Gene Gibson advised to plead guilty after witness statements implicated him in Broome death, court told"](#) (4 April 2017)

¹³³ Ibid

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.¹³⁴ As reported, Gibson's lawyer was subtly 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".¹³⁵ 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.¹³⁶ 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.¹³⁷

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.¹³⁸ 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.

¹³⁴ See ABC News article "[Gene Gibson's lawyer says he felt under pressure to act on manslaughter plea deal](#)" (5 April 2017)

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ See [ALS Media Statement – Gene Gibson](#) (12 April 2017)

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 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’).”¹³⁹

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”.¹⁴⁰

TIPS FOR OVER-COMING LANGUAGE BARRIERS

**“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.¹⁴¹ 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.¹⁴² 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,

¹³⁹ ALRC, [The Recognition of Aboriginal Customary Law, Report No 31](#), 1986. See also [Eastman v The Queen \[2000\] HCA 29](#)

¹⁴⁰ Id at [59] per Gaudron J.

¹⁴¹ [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’.

¹⁴² [Legal Services Commissioner v Ford \[2008\] LPT 12](#)

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
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	The person's grammar is mostly correct.

	past tense incorrectly ('he look at me').	
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.¹⁴³ The National Accreditation Authority for Translators and Interpreters (NAATI) also provide accredited professional interpreters for individuals or organisations.¹⁴⁴

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."*¹⁴⁵

Indeed, Field Officers/Court Support Officer's play an 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

¹⁴³ See [Practice Direction No. 7 of 2010 - Interpreters – Magistrates Court criminal proceedings](#). See also [Practice Direction No. 1 of 2010 - Interpreters – District Court](#).

¹⁴⁴ See <https://www.naati.com.au>

¹⁴⁵ See www.alsnswact.org.au

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.¹⁴⁶ 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.¹⁴⁷ The situation is clarified by His Honour Justice Mildren:

*“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.”*¹⁴⁸

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

¹⁴⁶ Laster, K. & Taylor, V. 1994, *Interpreters and the Legal System*, Federation Press, Sydney, Chapter 4.

¹⁴⁷ Ibid, p 78.

¹⁴⁸ 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.

- 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

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.¹⁴⁹
- 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

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).

¹⁴⁹ This is a particularly big issue across the State of Queensland and to adequately explain it would literally require a paper of its own.

- 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

Section 149 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 serve 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 dealt 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 Children's 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



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	1 st and 3 rd 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 3 rd
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.

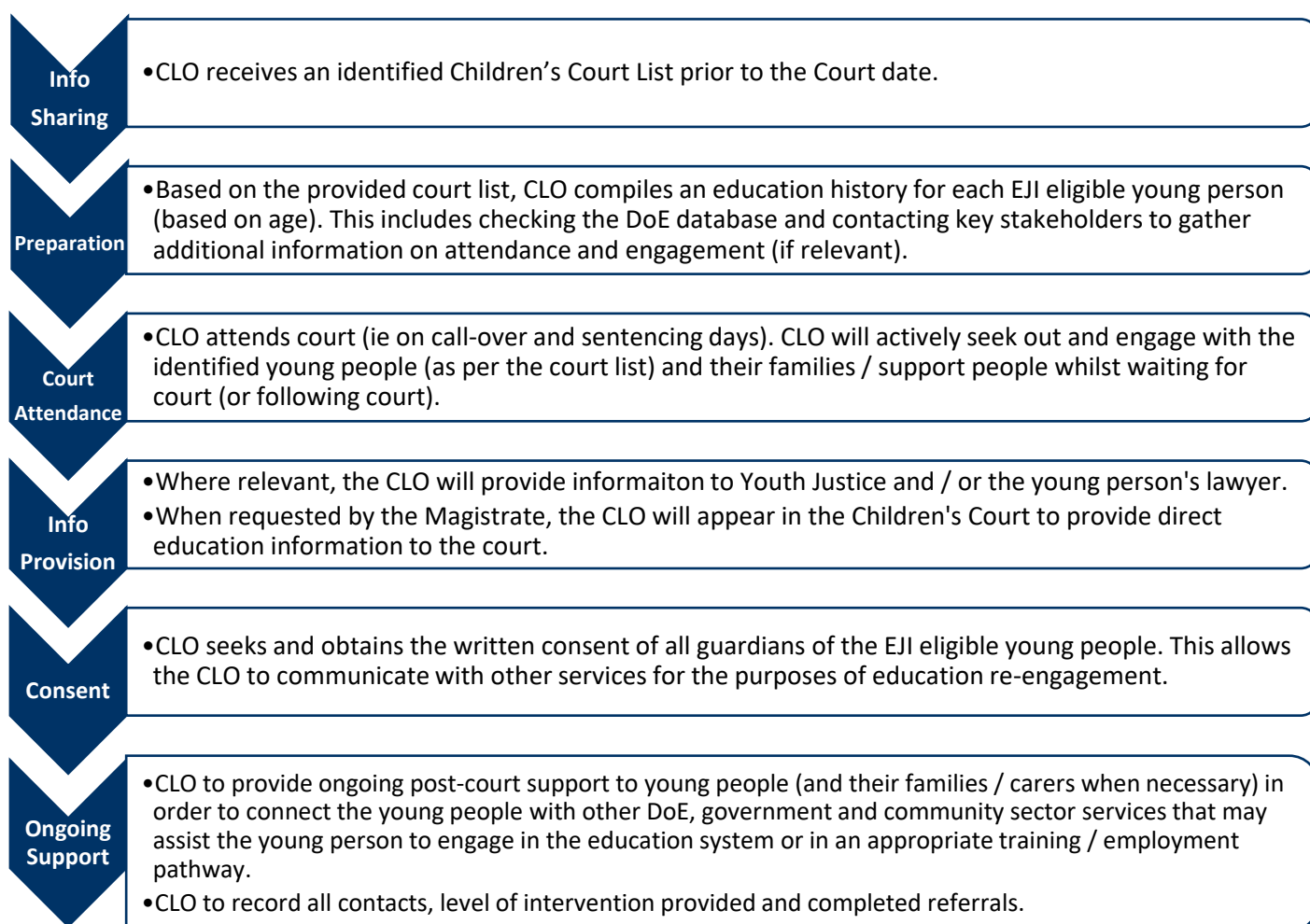
The EJI was highlighted through the *Keeping Communities Safe (KCS)* initiative as an important service that could strengthen the critical link between young people (and their families and support workers) and the education system – a link that is often compromised during times of crisis in a young person's 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 | • Bundaberg |
| • Moreton | • Hervey Bay |
| • Ipswich | • Rockhampton |
| • Redlands | • Mackay |
| • Richlands | • Townsville |
| • Gold Coast | • Mount Isa |
| • Beenleigh | • Cairns |
| • Toowoomba | • Mareeba |
| • Darling Downs | • Innisfail |
| • Sunshine Coast | • Aurukun |

Referral and General Workflow



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

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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](#):

- a) Life offence
- b) an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, other than an offence against s 9(1) of the Drugs Misuse Act 1986 for which the maximum penalty is 15 years imprisonment; or
- c) An offence against ss 315A, 323, 328A, 339, 408(1) if offence involves motor vehicle, 408A (1) to which s 408(2) applies, 412 and 421(1).

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: if the offender causes GBH to a person, causes an explosive substance to explode or destroys or starts to destroy a building, vehicle, or machinery	
80	Piracy	
124(2)	Perjury: if the offender commits the crime in order to procure the conviction of another person for a crime punishable with imprisonment for life	
131(2)	Conspiracy to bring false accusation: if the offence is such that a person convicted of it is liable to be sentenced to imprisonment for life	
213(3)(a)	Owner permitting abuse of children on premises: where the proscribed act is one defined to constitute an offence in section 215	
215 (4A)	Engaging in penile intercourse with a child under 16 if the child is a person with an impairment of the mind	
216(3)(a) & (b)	Abuse of persons with an impairment of the mind - if the offender is the guardian of the person or has the person under their care; and - engaged or attempted to engage in unlawful penile intercourse with the person	

Legislation	Offence	Maximum penalty
217A(2)	Obtaining commercial sexual services from a person who is not an adult: if the child is under 12 years	
219(3)(a)	Taking child for immoral purpose: - if the child is under the age of 12 years; and - the proscribed act is one defined to constitute an offence in section 215	
222	Incest	
229B	Repeated sexual conduct with a child	
302 & 305	Murder	
306	Attempted murder	
307	Accessory after the fact to murder	
303 & 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 and other malicious acts	
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 - 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 (2)	Robbery if person: - is armed or pretends to be armed with dangerous or offensive weapon or instrument; - wounds or uses any other personal violence to any person; and/or - is in company with one or more other person/s	
412(3)	Attempted robbery if person: - is armed with any dangerous or offensive weapon, instrument, or noxious substance; and - wounds or uses personal violence to any person by the weapon, instrument, or noxious substance	
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	

Legislation	Offence	Maximum penalty
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 in the premises	
461	Arson	
467	Endangering the safe use of vehicles and related transport infrastructure	
469 Special case 1 Special case 2	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; • 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)	
<u>Criminal Code Act 1995 (Cth)</u>		
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	

Legislation	Offence	Maximum penalty
119.5	Allowing use of buildings, vessels, and aircraft to commit offences	
<u>Drugs Misuse Act 1986 (Qld)</u>		
5	Trafficking in dangerous drugs	Life
6(1)(a)	Supplying dangerous drugs (Schedule 1) to a minor under 16 years	
Weapons Act 1990 (Qld)		
65(1)(a) & (b)	Unlawful trafficking in weapons: - if the offence relates to a category H or R weapon - if the offence relates to a category A, B, C, D or E weapon, a category M crossbow or explosives	Life
(b) Offence where maximum penalty is 14+ years imprisonment - Excl s9(1) Drugs Misuse Act		
<u>Criminal Code Act 1899 (Qld)</u>		
54A(1)	Demands with menaces upon agencies of government	14 years
124(1)	Perjury	
131(3)	Conspiracy to bring false accusation: If offence is such that a person convicted of it is liable to be sentenced to imprisonment, but for a term less than life	
210(2)	Indecent treatment of child under 16: If the child is of or above the age of 12 years	
210 (3), (4), (5)	Indecent treatment of child under 16: - If the child is under the age of 12 years - If the child is lineal descendent of the offender, the offender is the guardian of the child, or the child is under the care of the offender - If the child is a person with an impairment of the mind	20 years
213(3)(b)	Owner permitting abuse of children on premises If the child is under the age of 12 years	14 years
215(2), (3), (4)	Engaging in penile intercourse with child under 16 - If the child is of or above the age of 12 years - If the child is under the age of 12 years and the offender attempts to engage in penile intercourse with the child; or - If the child is not the lineal descendant of the offender but the offender is the child’s guardian or, for the time being, has the child under the offender’s care and the offender attempts to engage in penile intercourse with the child.	
216(1)	Abuse of persons with an impairment of the mind	
217	Procuring young person etc. for penile intercourse	

Legislation	Offence	Maximum penalty
217A (2)	Obtaining commercial sexual services from a child under 16 years If the child is under 16 years	
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)	Using the internet to procure a child: - If the child is under 12 years or the offender believed the person is under 12 years; or - If the offence involves the offender intentionally meeting the person or going to a place with the intention of meeting a person	
219(3)(b)	Taking child for immoral purpose: If the child is under the age of 12 years	
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(a)	Producing or supplying child abuse object	14 years
228I(b)		20 years
228J	Possessing child abuse object	14 years
238(4)	Contamination of goods: If a threat to contaminate or interfere with the goods is accompanied by a demand	
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: If the poison or other noxious thing endangers the life of, or does grievous bodily harm to, the person to whom it is administered or by whom it is taken	

Legislation	Offence	Maximum penalty
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 • whilst taking part in an unlawful race or unlawful speed trial; or • having left the scene • whilst committing an evasion offence	20 years
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: • if the person assaults a police officer, working corrective services officer or public officer by biting, spitting or throwing/applying bodily fluid or faeces • if the person assaults a police officer, working corrective services officer or public officer and causes them bodily harm • if the person assaults a police officer, working corrective services officer or public officer while armed, or pretending to be armed, with a dangerous or offensive weapon	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352(2)	Sexual assault • if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or anus of a person with any part of the mouth of a person	
354A(2)	Kidnapping for ransom	
398	Stealing:	
Special case 1 Special case 12 Special case 14	• Wills; or • Vehicles; or • Firearms for use in another indictable offence;	
399	Fraudulent concealment of particular documents: • If the offence was not committed in relation to a document recording title to property	14 years
408A(4)(a) 408A(4)(b)	Unlawful use or possession of a motor vehicle, aircraft or vessel:	

Legislation	Offence	Maximum penalty
408A(5)	• If the offence was committed in the night; or • The offender uses or threatens to use actual violence; or • The offender 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; • damages, or threatens or attempts to damage, any property. • If the motor vehicle, aircraft or vessel is an emergency vehicle and the offender knows, or ought reasonably to know, it is an emergency vehicle.	
408C(2)	Fraud: • If the offender is a director or officer of a corporation and the victim is the corporation; or • the offender is an employee of the victim; or • any property in relation to which the offence is committed came into the possession or control of the offender subject to a trust, direction or condition that it should be applied to any purpose or be paid to any person specified in the terms of trust, direction or condition or came into the offender's possession on account of any other person; or • the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least \$30,000 but less than \$100,000; • the offender is or was an employer of the victim	
408C(2A)	Fraud • the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least \$100,000; or • the offender carries on the business of committing the offence.	20 years
411	Robbery	14 years
412 (2)	Attempted robbery: • If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument; or • If the offender is in company with one or more other person or persons.	
415	Extortion	

Legislation	Offence	Maximum penalty
417A(2)	Taking control of aircraft: If another person not being an accomplice of the offender is on board the aircraft	
419 (1)	Burglary	
419(4)	Burglary: If the offender publishes material on a social media platform or an online social network to advertise the offender's involvement in the offence or advertise the act or omission constituting the offence.	16 years
421(2)	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 or 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 and the offender knows, or ought reasonably to know, the vehicle is an emergency vehicle.	
433	Receiving tainted property if: - 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	14 years
463	Setting fire to vegetation	
469	Wilful damage - Wills; - Railways; - Aircraft	
Special case 3 Special case 5 Special case 6		
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	25 years

Legislation	Offence	Maximum penalty
	major economic loss	
469A(2)	Sabotage and threatening sabotage	14 years
470	Attempts to destroy property by explosives	
488	Forgery if the document is a valuable security, insurance policy, testamentary instrument (whether the testator is living or dead) or registration document or is evidence of an interest in land	
510	Instruments and materials for forgery	
514 (2)	Personation: If the representation is that the offender is a person entitled by will or operation of law to any specific property, and the person commits the offence with intent to obtain such property or possession thereof	
536 (2)	Attempts to conceal indictable offences punishable by life imprisonment but not mandatory life imprisonment (if no other punishment is provided)	
540A	Preparation or planning to cause death or grievous bodily harm	14 years
Drugs Misuse Act 1986 (Qld)		
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
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

Legislation	Offence	Maximum penalty
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 commission 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
<u>Weapons Act 1990 (Qld)</u>		
50B(1)(a)	Unlawful supply of weapons: if the person unlawfully supplies 5 or more weapons at least 1 of which is a category D, E, H or R weapon	20 years
50B(1)(b), (1)(c)(i) & (1)(c)(ii)	Unlawful supply of weapons - if s50B(1)(a) does not apply and the person unlawfully supplies 5 or more weapons - if s50B(1)(a) and (b) do not apply – for a category D, H or R weapon - if s50B(1)(a) and (b) do not apply – for a category C or E weapon	15 years
50(1)(a)	Possession of weapons ten or more weapons at least 5 of which are category D, E, H or R weapons	20 years
50(1)(b)	Possession of weapons: if s50(1)(a) doesn't apply and the person possesses 10 or more weapons	15 years
50(1)(c)(i)	Possession of weapons if s50(1)(a) and (b) do not apply – for a category D, H or R weapon	14 years

Legislation	Offence	Maximum penalty
56A (1)(a)	Reckless discharge of a weapon towards building or vehicle	16 years
56A	Reckless discharge of a weapon towards a building or vehicle for an offence that is a prescribed offence	20 years
69(1A)(a)	Armourers to be licensed for a category D, H or R weapon	20 years
69(1A)(b)	Armourers to be licensed for a category C or E weapon	15 years
61	Shortening firearms	14 years
62	Modifying construction or action of firearms	15 years
63	Altering identification marks of weapons	14 years
<u>Criminal Code Act 1995 (Cth)</u>		
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
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	

Legislation	Offence	Maximum penalty
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
(c) Other		
<u>Criminal Code Act 1899 (Qld)</u>		
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

Appendix 13: Special Witness Provisions

An **offence of a sexual nature** means an offence against chapters 22 and/or 32 of the [Criminal Code](#):

Chapter 22 – Offences Against Morality	
210	Indecent treatment of a child under 16
210A	Sexual acts with a child aged 16 or 17 under one's care, supervision or authority
211	Bestiality
213	Owner etc permitting abuse of children on premises
215	Engaging in penile intercourse with a child under 16
216	Abuse of persons with an impairment of the mind
217	Procuring young person etc. for penile intercourse
217A	Obtaining commercial sexual services from person who is not an adult
217B	Allowing person who is not an adult to take part in commercial sexual services
217C	Conduct relating to provision of commercial sexual services by person who is not an adult
218	Procuring sexual acts by coercion etc.
218A	Using internet etc. to procure children under 16

218B	Grooming child under 16 years or parent or carer of child under 16 years
219	Taking child for immoral purposes
221	Conspiracy to defile
222	Incest
223	Distributing intimate images
227	Indecent acts
227A	Observations or recordings in breach of privacy
227B	Distributing prohibited visual recordings
228	Obscene publications and exhibitions
228A	Involving child in making child exploitation material
228B	Making child exploitation material
228C	Distributing child exploitation material
228D	Possessing child exploitation material
228DA	Administering child exploitation material website
228DB	Encouraging use of child exploitation material website
228DC	Distributing information about avoiding detection
228I	Producing or supplying child abuse object
229G	Possessing child abuse object
229A	Threats to distribute intimate image or prohibited visual recording
229B	Repeated sexual conduct with a child
229BB	Failure to protect child from child sexual offence
229BC	Failure to report belief of child sexual offence committed in relation to child
Chapter 32 – Rape and Sexual Assaults	
349	Rape
350	Attempt to commit rape
351	Assault with intent to commit rape
352	Sexual assaults

An ***offence involving violence*** means the following offences:

Chapter 28 – Homicide, Suicide & Concealment of Birth	
302 & 305	Murder
303 & 310	Manslaughter

306	Attempt to murder
307	Accessory after the fact to murder
308	Threats to murder in document
309	Conspiring to murder
311	Aiding suicide
313	Killing unborn child
314	Concealing the birth of children
Chapter 28A – Unlawful Striking Causing Death	
314A	Unlawful striking causing death
Chapter 29 – Offences Endangering Life	
315	Disabling in order to commit indictable offence
315A	Choking, suffocation or strangulation in a domestic setting
316	Stupefying in order to commit indictable offence
316A	Unlawful drink spiking
317	Acts intended to cause grievous bodily harm and other malicious acts
320	Grievous bodily harm
320A	Torture
322	Administering poison with intent to harm
323	Wounding
323A	Female genital mutilation
323B	Removal of child from State for female genital mutilation
324	Failure to supply necessities
326	Endangering life of children by exposure
328	Negligent acts causing harm
328A	Dangerous operation of a vehicle
328C	Damaging emergency vehicle when operating motor vehicle
328D	Endangering police officer when driving motor vehicle
Chapter 29A – Coercive Control	
334C	Coercive control
Chapter 30 - Assaults	
335	Common assault
339	Assaults occasioning bodily harm
340	Serious assaults

Chapter 33 – Offences Against Liberty	
354	Kidnapping
354A	Kidnapping for ransom
355	Deprivation of liberty
Chapter 33A – Unlawful Stalking, Intimidation, Harassment or Abuse	
359E	Unlawful stalking, intimidation, harassment or abuse
Chapter 34 – Offences Relating to Marriage and Parental Rights and Duties	
363	Child-stealing
363A	Abduction of child under 16
364	Cruelty to children under 16