

FACT SHEET: Youth Justice and Other Legislation Amendment Act 2019

Provisions commencing by proclamation

The *Youth Justice and Other Legislation Amendment Act 2019* (the Amendment Act) was passed by the Queensland Parliament on 22 August 2019. The following sections of the Amendment Act commenced by proclamation on 16 December 2019.

Bail reforms

A new child-focussed bail decision-making framework has been inserted into the *Youth Justice Act 1992* (YJ Act) to guide courts and police when deciding whether to release or grant bail to a child.

Presumption in favour of release

An explicit presumption in favour of release has been inserted that can only be rebutted where the YJ Act or another Act requires the child to be detained in custody, or where the court or police officer is satisfied that there is an unacceptable risk that if released on bail, the child will fail to surrender into custody as required, commit an offence, endanger the safety or welfare of any person, or interfere with witnesses or otherwise obstruct the course of justice.

Unacceptable risk

The new framework provides that when deciding whether there is an unacceptable risk of one of the above matters, courts and police officers may have regard to a number of factors, including the nature and seriousness of the alleged offence(s) and the history of a previous grant of bail to the child. A court or police officer must not decide that an unacceptable risk exists based solely on a lack of adequate accommodation or family support.

Under new section 48AD, where a bail decision-maker comes to the conclusion that an unacceptable risk exists and the presumption in favour of release is rebutted, a child may still be released if it is not

inconsistent with ensuring community safety, and is otherwise appropriate, having regard to additional listed factors. The factors are child-specific criteria that reflect the complex needs of children involved in the youth justice system, which should be taken into account when making bail decisions.

Bail conditions

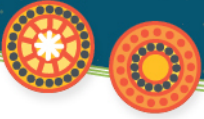
Amendments have also been made to ensure bail conditions are sustainable, appropriate and targeted to manage the actual risks for an individual child, and reduce the risk of a child breaching the conditions of their bail.

A new provision has also been inserted into the YJ Act that provides a child-focused, discretion-based framework to guide police in their response to a child who has breached or is likely to breach a bail condition. The flexibility and discretion given to police is intended to reduce instances of children being unnecessarily arrested and brought before a court for trivial or unavoidable breaches of bail conditions.

Amendments also make it clear that a child must not be required to wear an electronic tracking device as a condition of bail.

Information sharing framework

The establishment of an information sharing framework within the YJ Act is designed to facilitate effective and efficient information sharing between agencies and service providers for the purpose of providing a coordinated response to the needs of children in the youth justice system. The amendments provide that the preferred way of sharing information about a person is with consent. However, where necessary, it will be possible to share relevant confidential information without consent: for example, where a child is unable to be contacted to obtain their consent,



and there is an urgent need to provide the information to protect someone from harm.

Amendments to the *Youth Justice Regulation 2016* (YJ Regulation) provide safeguards designed to focus attention on the purpose of the information sharing (providing a coordinated response to the needs of children in the youth justice system), and limit inappropriate sharing.

Changes to pre-sentence report requirements

Previously, rather than preparing a full pre-sentence report, Youth Justice could provide 'further material' if another pre-sentence report has been prepared for another sentencing of the child on the same day. To make pre-sentence report requirements more flexible, amendments enable Youth Justice to provide further material with a pre-sentence report prepared any time within the six months leading up to the sentence.

Amendments also require a court to consider, before ordering a pre-sentence report (other than when it is mandatory under the YJ Act), whether it is the most beneficial and efficient method of obtaining information. There may be other practical ways the court can obtain the information it is seeking, such as by requesting specific information from Youth Justice.

The minimum 15 day period in which to produce a pre-sentence report has been replaced with a requirement to provide the report within a reasonable time set by the court, having regard to the likely complexity of the report, or if no time is set, as soon as practicable.

Amendments to the YJ Regulation set out factors the court may take into account when considering the likely complexity of the report.

Amendments to the *Police Powers and Responsibilities Act 2000*

Section 384 of the *Police Powers and Responsibilities Act 2000* (PPRA) has been amended to provide that a notice to appear for a child must require the child to appear at the court that the police officer is satisfied is most convenient for the child to access, unless it would delay the ability of the child to appear before the court as soon as practicable.

Section 392 of the PPRA has been strengthened to require police to make all reasonable inquiries to contact a parent of a child who has been arrested or served with a notice to appear, and record the reasonable inquiries taken when contact has not occurred.

Amendments to section 421 of the PPRA require a police officer questioning a child in relation to an alleged indictable offence to notify or attempt to notify a representative of a legal aid organisation, as soon as reasonably practicable and before questioning starts. An amendment to the *Police Powers and Responsibilities Regulation 2012* prescribes Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service as legal aid organisations.

If a legal organisation has not been contacted the police are not prohibited from questioning the child, and the information obtained during questioning is not inadmissible solely because a legal organisation has not been contacted. However, the common law under which a court may exclude evidence still applies.