

13 December 2024

Making Queensland Safer Act 2024

Amendments to the to the *Youth Justice Act 1992*, the *Childrens Court Act 1992*, and the Criminal Code

The *Making Queensland Safer Act 2024* (the MQS Act) made amendments to the *Youth Justice Act 1992* (YJ Act) and the *Childrens Court Act 1992* (the Childrens Court Act) commencing on 13 December 2024, and by proclamation on a future date, will make further amendments to the YJ Act and to the Criminal Code. This factsheet will be updated once those amendments commence.

The MQS Act also made minor consequential amendments to several other Acts. For information about these amendments, see the explanatory notes on the Office of the Queensland Parliamentary Counsel web page for the [MQS Act](#).

The changes to the YJ Act that commenced on assent on 13 December 2024:

- provide that children who commit specified offences are liable to the same maximum, mandatory and minimum penalties as adults
- remove the principle of detention as a last resort, and the principle that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community
- promote the consideration of the impacts of offending on victims in the Charter of Youth Justice Principles and when sentencing a child
- alter the process for the transfer of 18-year-old detainees from youth detention centres to corrective services facilities.

The changes to the *Childrens Court Act 1992* that also commenced on assent on 13 December 2024:

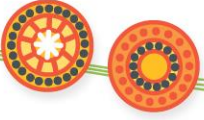
- include a relative of the victim among the classes of persons able to be present during any criminal proceedings

- remove the ability of the court to make an exclusion order in relation to victims' representatives (including the representatives of a relative of a deceased victim) and persons holding media accreditation.

The remaining amendments to the YJ Act and the Criminal Code require implementation work to be completed before commencement – in particular, information technology infrastructure to be developed and tested, and staff training. The government intends those amendments to commence by proclamation as soon as practicable in 2025. They will:

- include cautions, restorative justice agreements, variations of community-based sentence orders, and breaches of supervised release orders and community-based sentence orders in a child's criminal history
- enable a person's child criminal history to be admitted when they are sentenced as an adult, for up to five years after the most recent child entry
- enable an adult's childhood findings of guilt for certain offences to be admitted, for up to five years, as previous convictions for the purpose of a charge of dangerous operation of a vehicle with a circumstance of aggravation relating to a previous conviction
- remove the need for an application for direct victims of a child offender, and immediate family members of victims who have died because of the offence, to be placed on the eligible persons register to receive information about the custody status of the offender.

This factsheet will be updated when those provisions commence.



Amendments to the YJ Act that commenced on 13 December 2024

Adult maximum, minimum, and mandatory penalties for children for specified offences

The MQS Act amended the YJ Act to apply the same maximum, minimum, and mandatory penalties to children as apply to adults for the following offences:

- murder
- manslaughter
- unlawful striking causing death
- acts intended to cause grievous bodily harm and other malicious acts
- grievous bodily harm
- wounding
- serious assault
- robbery
- dangerous operation of a vehicle
- burglary
- entering or being in premises and committing indictable offences
- unlawful use or possession of motor vehicle, aircraft, or vessels
- unlawful entry of a vehicle for committing an indictable offence.

As well as adopting adult penalties, the amendments:

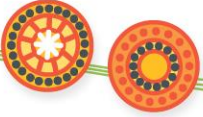
- extended the maximum duration of a probation order to three years for all courts for the prescribed offences
- extended the maximum period of detention a Childrens Court magistrate can impose for those offences to three years
- removed restorative justice orders as a sentencing option for children for those offences.

In summary, the applicable mandatory and minimum penalties are:

- mandatory life detention with a minimum non-parole period of 20 years for murder (or 25 years for murder of a police officer, or 30 years for murder of more than one person or by a person with a previous murder conviction)
- if a child is sentenced to life detention (other than for murder), a minimum non-parole period of 15 years
- if a child is sentenced to serve a period of detention for unlawful striking causing death, unless a conditional release order is made, the child must serve the lesser of 80 per cent of the sentence or 15 years
- detention must form whole or part of the punishment for dangerous operation of a vehicle with a circumstance of aggravation relating to a previous conviction under section 328A(3) of the Criminal Code
- if a child is sentenced for an offence of grievous bodily harm, serious assault (in certain circumstances) or wounding, and the offence was committed in a public place and while adversely affected by an intoxicating substance, they must be sentenced to a community service order, in addition to any other order the court imposes. Consistent with the position for adults, there is no requirement for the child to consent to the community service order.

The following provisions of the YJ Act will continue to apply to children found guilty of the prescribed offences:

- the types of sentencing orders available, such as probation, community service, intensive supervision and detention (excluding restorative justice orders as a sentencing option)
- the sentencing considerations, as amended by the MQS Act (see next section)
- the provisions providing for serious repeat offender declarations
- the provisions providing for the making of a restitution or compensation order
- the requirement to consider a pre-sentence report before making a detention order



- the power, when making a detention order, to make a conditional release order
- the considerations for the court in deciding whether to record a conviction.

Previously, if the court ordered that a child serve a period of detention, the earliest that a supervised release order (the youth justice equivalent of parole) could be made was after the child had served 50 per cent of the period of detention. The amendments provide that this does not apply when sentencing a child for a prescribed offence. This means the sentencing court can set the date for the supervised release order at any point during the period of detention (other than when a mandatory non-parole period applies). This is consistent with the arrangements for parole when sentencing adults.

Removing the principle of detention as a last resort and considering impacts on victims

The MQS Act removed the principle of detention as a last resort from the YJ Act so the principle does not apply when a court is sentencing a child for any offence.

Specifically, the MQS Act:

- removed the former principle 18 relating to detention as a last resort from the Charter of Youth Justice Principles, and any references to that principle throughout the YJ Act
- removed the sentencing consideration that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community
- inserted a new sentencing principle to expressly provide that a court must not have regard to the principle of detention as a last resort, or to any principle that a sentence that allows the child to stay in the community is preferable
- removed the requirement that a court may make a detention order against a child only if, after considering all other available sentences as well as the desirability of

not holding a child in detention, the court is satisfied that no other sentence is appropriate in the circumstances.

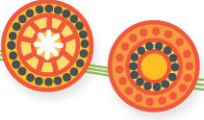
The sentencing consideration relating to the impact of the offending on a victim has been elevated to require the court to have primary regard to this consideration when sentencing a child. The court will still be required to consider other relevant mitigating and aggravating factors, and impose a proportionate penalty.

A new principle is also inserted into the Charter of Youth Justice Principles, which underlie the operation of the whole YJ Act, to require that a child who commits an offence be held accountable in a way that recognises the impact of a child's offending on any victim of that offending. This new principle two has been inserted after principle one, which provides that the community should be protected from offences and, in particular, recidivist high-risk offenders.

New arrangements for the transfer of detainees to adult custody

The MQS Act replaced the arrangements for the transfer of detainees over 18 years old from a youth detention centre (YDC) to a corrective services facility. Under the new framework, a detainee, regardless of whether they are on remand or sentenced, will be transferred to a corrective services facility within one month after they turn 18. The amendments ensure any new 18-year-old persons entering custody on child offences will go directly to corrective services facilities.

For persons in detention when they turn 18, the automatic transfer is subject to an exclusive chief executive discretion to direct otherwise, with no appeal or review (except judicial review). The chief executive can revoke the direction, and therefore transfer the detainee to adult custody, at any time.



Amendments to the Childrens Court Act

All criminal matters proceeding on indictment before a judge are held in open court. Other matters, including all criminal matters before Childrens Court magistrates, are held in closed courts, subject to the exceptions set out in the *Childrens Court Act 1992*.

The MQS Act expanded access to the Childrens Court for criminal proceedings other than on indictment by:

- enabling relatives of victims, not just of deceased victims, to attend the court proceedings
- removing the court's ability to exclude victim's representatives and the media where necessary to prevent prejudice to the proper administration of justice, or for the safety of any person.

Transitional amendments were included to deal with exclusion orders that were already in existence when the amendments commenced. A person who is subject to an existing exclusion order can apply to the court to have the order set aside, and if the person is entitled to attend under the *Childrens Court Act 1992*, the court must set aside the order.

These amendments do not interfere with any existing power of the court to deal with contempt of court, or to exclude persons under other laws (such as when a special witness is giving evidence, or the court is dealing with certain matters under the *Mental Health Act 2016*).

Offences found in other Acts which prohibit the publication of certain information that may be heard by persons present during Childrens Court proceedings continue to apply. This includes the prohibition in the YJ Act on publishing information which identifies or tends to identify a child defendant or offender.

Amendments to commence by proclamation

Contents and admissibility of child criminal histories

These amendments are yet to commence. This factsheet will be updated when they commence.

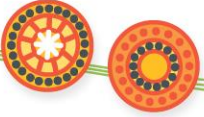
When part 4 division 3 of the MQS Act commences, the YJ Act will be amended to provide that police cautions, restorative justice agreements, and breaches of community-based sentence orders and supervised release orders will appear on a child's criminal history, including on their history into adulthood for sentencing purposes for up to five years after the outcome for the last child offence.

These amendments will apply to police cautions, breaches of community-based sentence orders and breaches of supervised release orders that occur after commencement, and restorative justice agreements where the referral to restorative justice occurred after commencement.

When administering cautions or making restorative justice referrals, police will be required to explain to the child that the caution or any restorative justice agreement will appear on their criminal history.

Changes will also be made to the law relating to previous convictions as circumstances of aggravation for the offence of dangerous operation of a vehicle (section 328A of the Criminal Code). The relevant circumstances of aggravation are:

- previously convicted of dangerous operation of a vehicle
- previously convicted of dangerous operation of a vehicle whilst adversely affected by an intoxicating substance
- twice previously convicted of a prescribed offence (including dangerous operation of a vehicle and driving under the influence).



These circumstances of aggravation result in maximum penalty increases from three to five years imprisonment, and in the last two scenarios, the court must impose imprisonment as whole or part of the punishment.

Currently, unless a conviction had been recorded, a childhood finding of guilt does not count towards these circumstances of aggravation for an adult. Amendments to the Criminal Code and the YJ Act, when they commence, will provide that these childhood findings of guilt can be relied upon for this purpose for up to five years. These amendments will only apply where an adult has committed a dangerous operation of a vehicle after commencement.

Implementation of these arrangements requires the development and testing of significant information technology infrastructure by the Queensland Police Service.

Opt-out arrangement for victims to be placed on the eligible persons register

These amendments are also yet to commence. This factsheet will be updated when they commence.

When part 4 division 3 of the MQS Act commences, it will amend the eligible persons register provisions under the YJ Act so that a victim of a violent or sexual offence committed by a child, or a family member of a victim who dies because of the offence, will no longer need to apply to be placed on the register. Unless they opt out, they will be kept informed of the offender's custodial status, including any leave of absence, transfers between facilities, and release dates.

Once the Department of Youth Justice and Victim Support receives the necessary information from the police or the Office of the Director of Public Prosecutions, who are victims' primary contacts in the criminal

justice system, registration will be automatic. The information will be the person's name and contact details, their consent to be registered, and a confidentiality declaration.

However, the chief executive will still have the discretion to refuse registration where disclosure of information about the offender may put someone's safety or the security of a YDC at risk.

There are no changes for other categories of eligible persons, who will still need to apply to be placed on the register. These are:

- the parent or guardian of a victim, if the victim is a child or an adult with legal incapacity
- another person who satisfies the chief executive that the person's life or physical safety could reasonably be expected to be endangered because of the child's history of violence against the person or a connection between the person and the offence.

Implementation of these arrangements requires the training of staff across the Department of Youth Justice and Victim Support, the Queensland Police Service, and the Office of the Director of Public Prosecutions.

Further support

If you would like any further information, contact Youth Justice Strategy and Performance at osed_spc@youthjustice.qld.gov.au.