

# YOUTH JUSTICE IN QUEENSLAND

Judge Chowdhury  
District Court of Queensland

# CRIMINAL RESPONSIBILITY

- Section 24 of the Criminal Code
- (1) *“A person under the age of 10 years is not criminally responsible for any act or omission.*
- (2) *A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had the capacity to know that the person ought not do the act or make the omission.”*

To rebut the presumption of innocence in subsection (2), the prosecution can call any relevant evidence. That includes previous convictions, previous questioning by police, asserting a false alibi, and confessing knowledge of the wrongfulness of the act or omission.

# COMMON LAW DOES NOT APPLY

- In RP v R (2016) 340 ALR 212, the High Court held that for an 11 year old convicted of two counts of rape, on two separate occasions, on his 6 year old brother the prosecution had not rebutted the presumption of *doli incapax* by simply relying on the surrounding circumstances. Those circumstances included the offender using a condom. The offender was in the borderline range of intellectual functioning.
- Under the common law the prosecution had to prove that the offender knew the criminal conduct was seriously wrong, not merely naughty. The High Court held that the prosecution had to produce more evidence than to simply rely on the surrounding circumstances.

# YOUTH JUSTICE ACT 1992

- The Charter of Youth Justice Principles is set out in Schedule 1 of the Act.
- Section 150 sets out the principles of sentencing. It contains a number of factors in subsection (3). Subsection (4) sets out special considerations:
- A child's age is a mitigating factor in deciding whether to impose a penalty, and the nature of the penalty;
- Rehabilitation of a child found guilty of an offence is greatly assisted by the child's family and opportunities to engage in education and employment;
- A child who has no apparent family support or opportunities for education or employment should not receive a more severe sentence as a result;
- The previous principle that a detention order should only be a last resort, and for the shortest time appropriate, has been repealed.

# SENTENCING OPTIONS (s.175 of the Act)

- Reprimand the child;
- Good behaviour order;
- Fine;
- Probation;
- Restorative justice;
- Community service, if the child was 13 at time of offence;
- Intensive supervision order, if child is not yet 13 at time of sentence;
- Detention, up to 1 year if magistrate presides, or 5 years if s.176 does not apply.

# CHILDRENS COURT JUDGE

- A CC Judge has jurisdiction to inquire of and hear and decide all indictable offences charged against a child, other than Supreme Court offences (i.e. murder, manslaughter, attempted murder).
- A CC judge must sit without a jury to try a child for an offence if the child elects for trial by judge alone.

# LIFE & OTHER SIGNIFICANT OFFENCES

- “Relevant offence” means a life offence, or a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, with limited exceptions (s.176)
- Life offences include armed robbery, rape, doing grievous bodily harm with intent to do grievous bodily harm, burglary while armed or in company.
- The court can impose not longer than 3 years probation, and cannot detain the child for longer than 7 years.
- For a life offence, the maximum detention period for a child is 10 years, or up to life if the offence involves the commission of violence against a person and the court considers the offence to be “particularly heinous having regard to all the circumstances”.

# CONVICTIONS

- The court must have regard to all the circumstances of the case, including:
- The nature of the offence;
- 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 and retaining employment.
- (s.184)
- A child offence is not admissible when an adult is before a court unless conviction is recorded. (s.148). However s. 148AA allows the court to receive details of a previous offence, whether a conviction is recorded or not, during the prescribed period of 5 years. S.148AB relates to previous findings of guilt for dangerous driving.



# DETENTION NO LONGER A LAST RESORT

- A pre-sentence report must be obtained before detention can be imposed (s.207)
- Previously a court could only make a detention order against a child if the court had considered all other available sentences; and took into account the desirability of not holding children in detention (s.208). This section has now been repealed by the *Making Queensland Safer Act 2024*.
- The court must state its reasons for imposing detention
- A child must serve 70% of the detention, unless the court considers there are special circumstances, then release from less than 70% to 50%. If the sentence is for an offence to which an adult penalty applied, then the court has a wide discretion when to release the child: s.227

# CONDITIONAL RELEASE ORDER

- A court that makes a detention order may immediately suspend the order and make a conditional release order. (s.220)
- The conditions of the order are set out in s.221
- The period of the order used to be 3 months, but amendments brought in by the previous government have increased that to 6 months.

# BREACH OF COURT ORDERS

- Division 12 of the Act sets out numerous provisions dealing with breaches of court orders. Section 245 deals with breaches of probation orders and community service orders. Section 246 deals with breach of conditional release orders.

# ORDERS AGAINST PARENTS

- Notice to parent of child offender to pay compensation. (s.258)
- Show cause hearing must be held (s.259)

# IDENTITY OF CHILD OFFENDERS

- The court may allow publication of identifying information about a child (s.234)
- The identity of the child can be published if it is in the interests of justice, having regard to:
  - The need to protect the community;
  - The safety or wellbeing of a person other than the child;
  - The impact of publication on the child's rehabilitation; and
  - Any other relevant matter.
- See R v SDK [2020] QCA 269

# STRENGTHENING COMMUNITY SAFETY ACT 2023

- Amendments to YJA:
- S.52AA – Court may impose monitoring device condition;
- s.59AA – Police officers consider alternatives to arrest for bail contraventions;
- ss.150A & 150B – Serious Repeat Offender Declaration;
- s.246A – Court's power on breach of conditional release order made for prescribed offence

# ADULT CRIME ADULT TIME CHANGES

- The new s.175A empowers a court to sentence a child convicted of a significant offence to a period of probation not longer than 3 years, detention of not more than 3 years if the court is constituted by a magistrate, or if the court is constituted by a judge, the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve.
- The significant offences are murder, manslaughter, unlawful striking causing death, acts intended to cause grievous bodily harm, grievous bodily harm, wounding, dangerous driving, unlawful use of motor vehicles, robbery, burglary & unlawful entry of vehicles for committing an indictable offence.

# Criminal Law (Coercive Control & Affirmative Consent) & Other Legislation Amendment Act 2024

- Amendments to s.48AA & s.52A (re Bail)
- Amendment of Schedule 4 (Dictionary) to include definitions for “family relationship” and “informal care relationship”;
- Amendment of s.150 (Sentencing Principles) inserting new principles;
- New s.420, that states that the amendments to s.150 apply to the sentencing of a child whether the conviction happened before or after the commencement of the Act