

*Note*

*In order to give effect to the Cross-border Justice Act, this law must be applied with the modifications mentioned in section 13 of the Cross-border Justice Act as if this law had been altered in that way.*

*For modifications of this law prescribed by regulation, see Part 3, Division 16 of the Cross-border Justice Regulations.*

**NORTHERN TERRITORY OF AUSTRALIA**

**YOUTH JUSTICE ACT**

As in force at 21 September 2015

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 21 September 2015

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## YOUTH JUSTICE ACT

**An Act providing for justice in relation to youths who have committed or are alleged to have committed offences, and for related matters**

### **Part 1            Preliminary matters**

#### **Division 1        General matters**

##### **1            Short title**

This Act may be cited as the *Youth Justice Act*.

##### **2            Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

##### **3            Objects**

The following are objects of this Act:

- (a) to specify the general principles of justice in respect of youth;
- (b) to provide for the administration of justice in respect of youth;
- (c) to provide how a youth who has committed, or is alleged to have committed, an offence is to be dealt with;
- (d) to ensure that a youth who has committed an offence is made aware of his or her obligations (and rights) under the law and of the consequences of contravening the law;
- (e) to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation;
- (f) to continue in existence the Juvenile Court, established by the repealed Act, as the Youth Justice Court;
- (g) to establish the Youth Justice Advisory Committee.

## **4 Principles**

The following are general principles that must be taken into account in the administration of this Act:

- (a) if a youth commits an offence, he or she must be held accountable and encouraged to accept responsibility for the behaviour;
- (b) the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in socially responsible ways;
- (c) a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time;
- (d) a youth must be dealt with in the criminal law system in a manner consistent with his or her age and maturity and have the same rights and protection before the law as would an adult in similar circumstances;
- (e) a youth should be made aware of his or her obligations under the law and of the consequences of contravening the law;
- (f) a youth who commits an offence should be dealt with in a way that allows him or her to be re-integrated into the community;
- (g) a balanced approach must be taken between the needs of the youth, the rights of any victim of the youth's offence and the interests of the community;
- (h) family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened;
- (i) a youth should not be withdrawn unnecessarily from his or her family environment and there should be no unnecessary interruption of a youth's education or employment;
- (j) a youth's sense of racial, ethnic or cultural identity should be acknowledged and he or she should have the opportunity to maintain it;
- (k) a victim of an offence committed by a youth should be given the opportunity to participate in the process of dealing with the youth for the offence;

- (l) a responsible adult in respect of a youth should be encouraged to fulfil his or her responsibility for the care and supervision of the youth;
- (m) a decision affecting a youth should, as far as practicable, be made and implemented within a time frame appropriate to the youth's sense of time;
- (n) punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;
- (o) if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community;
- (p) programs and services established under this Act for youth should:
  - (i) be culturally appropriate; and
  - (ii) promote their health and self-respect; and
  - (iii) foster their sense of responsibility; and
  - (iv) encourage attitudes and the development of skills that will help them to develop their potential as members of society;
- (q) unless the public interest requires otherwise, criminal proceedings should not be instituted or continued against a youth if there are alternative means of dealing with the matter;
- (r) as far as practicable, proceedings in relation to youth offenders must be conducted separately from proceedings in relation to adult offenders.

## **Division 2 Interpretation matters**

### **5 Interpretation**

- (1) In this Act, unless the contrary intention appears:

***Aboriginal*** means:

- (a) a descendant of the Aboriginal people of Australia; or
- (b) a descendant of the indigenous inhabitants of the Torres Strait Islands.

**Aboriginal customary law** means:

- (a) customary law of the Aboriginal people of Australia; or
- (b) customary law of the indigenous inhabitants of the Torres Strait Islands.

**Aboriginal tradition** means:

- (a) tradition of the Aboriginal people of Australia; or
- (b) tradition of the indigenous inhabitants of the Torres Strait Islands.

**alternative detention order** means an order made under section 83(1)(j).

**buccal swab** means a procedure where a sample of saliva or mouth cells is taken from the inside of a person's cheek by use of a swab.

**charge**, in respect of an offence, includes:

- (a) an information in respect of an indictable offence; and
- (b) a complaint in respect of a summary offence.

**Commissioner** means the Commissioner of Correctional Services.

**Committee** means the Youth Justice Advisory Committee established by Part 13.

**community work order** means an order made under section 83(1)(h).

**correctional officer**, see section 4 of the *Correctional Services Act*.

**Court** means the Youth Justice Court as mentioned in section 45 and, if the context requires, includes:

- (a) the Supreme Court exercising its jurisdiction under this Act; and
- (b) a magistrate conducting a preliminary examination under this Act in accordance with Part V of the *Justices Act*.

**Court of Summary Jurisdiction** includes a justice conducting a preliminary examination under Part V of the *Justices Act*.

**custodial correctional facility**, see section 11(1)(a) of the *Correctional Services Act*.

**detainee** means a youth lawfully detained in a detention centre.

**detention centre** means a youth detention centre approved under section 148.

**Fines Recovery Unit** means the Fines Recovery Unit established under the *Fines and Penalties (Recovery) Act*.

**forensic procedure** means an intimate procedure or non-intimate procedure.

**good behaviour order** means an order made under section 83(1)(f).

**identifying procedure** has the meaning in section 8(2).

**illicit drug or substance** has the meaning in section 9.

**intimate procedure** has the meaning in section 7.

**non-intimate procedure** has the meaning in section 8(1).

**non-parole period**, for a sentence of detention or imprisonment, means a period fixed by the Court during which the youth is not eligible to be released on parole.

**nurse** means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student).

**official visitor** means a person appointed to be an official visitor under section 169.

**parental responsibility** means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

**periodic detention order** means an order made under section 83(1)(k).

**police officer** means a member of the Police Force.

**preliminary examination** means the procedure under Part V of the *Justices Act* relating to indictable offences.

**probation and parole officer** means a person who is a probation and parole officer under section 10.

**proceedings**, in relation to a youth, includes a preliminary examination.

**prosecutor** includes the Director of Public Prosecutions.

**relative** includes a relative according to Aboriginal tradition or contemporary social practice, a spouse and a de facto partner.

**responsible adult**, in respect of a youth, means a person who exercises parental responsibility for the youth, whether the responsibility is exercised in accordance with contemporary social practice, Aboriginal customary law and Aboriginal tradition or in any other way.

**support person** has the meaning in section 35.

**the repealed Act** means the *Juvenile Justice Act* as in force immediately before the date on which this Act commences.

**victim** means:

- (a) a person who suffers harm arising from an offence; or
- (b) if a person dies as a result of the commission of the offence, a person who was a relative of, or who was financially or emotionally dependent on, the deceased person.

**youth** has the meaning in section 6.

- (2) In this Act, if the context requires, **magistrate** includes a Judge of the Supreme Court.
- (2A) In this Act, a reference to the Youth Justice Court conducting a preliminary examination is taken to be a reference to a magistrate dealing with a charge by way of preliminary examination.
- (3) In this Division:

**intimate part of the body** means any of the following:

- (a) the genital area;
- (b) the anal area;
- (c) the buttocks;
- (d) if the youth is a female – the breasts.

**non-intimate part of the body** means a part of the body that is not an intimate part of the body.



## **6 Meaning of *youth***

- (1) In this Act, a youth is:
  - (a) a person under 18 years of age; or
  - (b) in the absence of proof as to age, a person apparently under 18 years of age.
- (2) If the context requires, a youth includes a person who committed an offence as a youth but has since turned 18 years of age.

## **7 Intimate procedures**

For this Act, an intimate procedure includes any of the following:

- (a) an internal or external examination of an intimate part of the body;
- (b) an internal examination of a non-intimate part of the body;
- (c) taking from an intimate part of the body a substance, or a sample of a substance, on or in the body;
- (d) taking a sample of blood (other than by a swab or washing from an external non-intimate part of the body);
- (e) taking a sample of pubic hair;
- (f) taking a sample from an intimate part of the body:
  - (i) by swab or washing; or
  - (ii) by vacuum suction, scraping or lifting by tape;
- (g) taking a dental impression or an impression of a bite mark;
- (h) taking a photograph, or an impression or cast, of a wound to an intimate part of the body;
- (i) taking an X-ray;
- (j) taking a sample of urine.

## **8 Non-intimate procedures**

- (1) For this Act, a non-intimate procedure includes any of the following:
  - (a) taking a sample of saliva or a sample by buccal swab;
  - (b) an external examination of a non-intimate part of the body;

- (c) taking a sample of hair other than pubic hair;
  - (d) taking a sample from an external non-intimate part of the body:
    - (i) by swab or washing; or
    - (ii) by vacuum suction, scraping or lifting by tape;
  - (e) taking a photograph of, or an impression or cast of a wound to, a non-intimate part of the body;
  - (f) an identifying procedure.
- (2) In subsection (1):

***identifying procedure*** means:

- (a) the taking of prints of the hands, fingers, feet or toes; or
- (b) the taking of photographs of the youth that are:
  - (i) of an identifying nature; and
  - (ii) of a non-intimate part of the body.

## **9 Illicit drug or substance**

For this Act, an illicit drug or substance is any of the following:

- (a) a drug or substance, the possession of which is prohibited under a law in force in the Territory;
- (b) a drug or substance for which a prescription is required, if no prescription is in force in relation to the youth:
  - (i) in whose possession the drug or substance is found; or
  - (ii) in whose body the drug or substance is detected;
- (c) in relation to a youth who is detained at a detention centre – a drug or substance, the possession of which is prohibited under the rules of the detention centre;
- (d) in relation to a youth who is the subject of an alternative detention order – a drug or substance, the possession of which is prohibited under the conditions of the order.

### **Division 3 Probation and parole officers**

#### **10 Probation and parole officers**

- (1) A person appointed as a probation and parole officer under the *Correctional Services Act* is a probation and parole officer for this Act.
- (2) The Commissioner is also a probation and parole officer for this Act.
- (3) The functions of a probation and parole officer include the following:
  - (a) preparing reports for the Court as required;
  - (b) supervising youths who are the subject of supervision under a non-custodial order;
  - (c) monitoring the compliance of a youth who is the subject of an alternative detention order with the terms and conditions of the order;
  - (d) other duties as directed by the Commissioner.
- (4) A probation and parole officer may, at any time and without a warrant, enter premises or a place in or at which a youth is, in accordance with an alternative detention order, residing and:
  - (a) search those premises or any building at that place, or the youth, for the purposes of determining whether the youth is in breach of the order; or
  - (b) place, install, inspect or retrieve a monitoring device in or at those premises or that place.
- (5) A probation and parole officer may, at any time, require a youth who is the subject of an alternative detention order to undergo such tests as the probation and parole officer considers appropriate to determine whether the youth is in breach of the order.

### **Part 2 Apprehension and remand**

#### **Division 1 General matters**

#### **12 Application of Part**

This Part applies despite the provisions of any other Act.

### **13 Definitions**

In this Part, unless the contrary intention appears:

**authorised officer** means:

- (a) the Commissioner of Police, a Deputy Commissioner of Police or Assistant Commissioner of Police; or
- (b) a police officer authorised under section 36.

**interview** includes asking questions of a person.

### **14 Register of appropriate support persons**

- (1) The Youth Justice Advisory Committee must establish and maintain a register of persons appropriate to be support persons.
- (2) The register must include persons who are suitable to be support persons for Aboriginal youth.
- (3) The register must not include youths, police officers, probation and parole officers or persons who are employed at a detention centre.

## **Division 2 Police powers and obligations**

### **15 Explanations by police officers**

- (1) If a police officer is required to inform a youth of any matter in relation to an investigation of an offence, whether under this Act or any other law in force in the Territory, the explanation must be made in a language and manner the youth is likely to understand, having regard to the youth's age, maturity, cultural background and English language skills.
- (2) Before a youth is interviewed or searched in connection with the investigation of an offence, a police officer must, unless impracticable, inform the youth of his or her ability to access legal advice and representation.
- (3) Any action taken is not unlawful, and any evidence obtained is not inadmissible, only because of a failure to comply with this section.

### **16 Guidelines in relation to arrest of youths**

- (1) The Commissioner of Police may, by general orders issued under the *Police Administration Act*, issue guidelines, not inconsistent with that Act or this Act, in relation to the arrest of youths and the investigation of offences committed or believed to have been committed by youths.

- (2) The arrest of a youth in relation to an offence, without a warrant but in accordance with the guidelines referred to in subsection (1), is not unlawful only because:
  - (a) an authorised officer does not consent to a prosecution in relation to the matter; or
  - (b) it subsequently appears, or it is found by a court or a jury, that the youth did not commit the offence.
- (3) The arrest of a youth is not unlawful only because the police officer arresting the youth did not do so in accordance with this Act or the guidelines if, at the time of the arrest the officer reasonably believed that the person arrested was not a youth.

#### **17 Authorised officer to be notified**

If the police officer who arrests a youth is not an authorised officer, he or she must, as soon as practicable after the youth is arrested, notify an authorised officer of the arrest.

#### **18 Interview of youth**

- (1) This section applies if a police officer believes on reasonable grounds that a youth has committed or is implicated in the commission of an offence that, if committed by an adult, would be punishable by imprisonment for 12 months or longer.
- (2) The officer must not interview the youth in respect of the offence, or cause the youth to do anything in connection with the investigation of the offence, unless a support person is present while the officer interviews the youth or the youth does the act.
- (3) This section does not affect the power of a police officer, under the *Police Administration Act* or any other Act, to require a youth to give the youth's name and address.
- (4) This section does not affect the operation of Part V or VI of the *Traffic Act* and, subject to Part 6, a youth may be dealt with under those Parts of that Act as if he or she were an adult.

#### **19 Search of youth**

- (1) A police officer must not search the property, person or clothing of a youth as part of an investigation of an offence unless there is a support person present.

- (2) Subsection (1) does not apply if the officer reasonably believes:
  - (a) that a search of the property, person or clothing of the youth needs to be carried out as a matter of urgency; and
  - (b) that a delay to allow a support person to be present would create an unacceptable risk of harm to the youth or another person or the loss or destruction of evidence.
- (3) If the search is conducted without a support person being present, the officer must do so in a manner that preserves the dignity of the youth as best as is practicable.
- (4) The officer must not require a youth to remove any clothing that the youth is wearing unless:
  - (a) the officer has reasonable grounds for believing that the removal and examination of the clothing may afford evidence of the commission of an offence; and
  - (b) the youth is provided with adequate clothing to replace the clothing removed.

## **20 Search must be by person of same gender**

- (1) The person or clothing of a youth must only be searched by a person of the same gender as the youth and the search must be carried out in a place and a manner that allows the youth privacy from persons of the other gender.
- (2) If a police officer of the same gender as the youth is not available within a reasonable time, a person of the appropriate gender who is not a police officer may carry out the search under the direction of a police officer who must take the necessary measures to preserve the youth's privacy and dignity.
- (3) A person who carries out a search of a youth in accordance with subsection (2) has, for the purposes of that search, the same powers and the same protection as a police officer.

## **21 Authorised officer must consent to prosecution**

- (1) A youth must not be charged with an offence without the consent of an authorised officer.
- (2) A document that charges a youth with one or more offences must:
  - (a) indicate that the charges have been consented to by an authorised officer; and

- (b) identify the authorised officer.
- (3) The document is evidence that:
  - (a) the officer named is an authorised officer; and
  - (b) the youth has been charged with the offence or offences with the consent of the authorised officer.
- (4) Subsection (1) does not affect a requirement under any other law to obtain consent to a prosecution.

## **22 Charge to be by summons except in certain cases**

- (1) A police officer must not charge a youth at a police station with an offence unless the officer believes on reasonable grounds that:
  - (a) the youth will not appear in court to answer a summons in relation to the offence; or
  - (b) releasing the youth from custody will be accompanied by a substantial risk of:
    - (i) a continuation or repetition of the offence or another offence by the youth; or
    - (ii) the loss or destruction of evidence relating to the offence; or
    - (iii) harm to the youth.
- (2) If subsection (1)(a) or (b) applies, the officer may, subject to section 21, charge the youth at a police station with the offence and:
  - (a) release the youth on bail; or
  - (b) apply under section 24 for an order that the youth be detained in custody.

## **23 Responsible adults to be informed**

- (1) As soon as practicable after a youth is:
  - (a) arrested in relation to an offence; or
  - (b) charged with an offence,

the police officer who arrested or charged the youth must take all reasonable steps to ensure that a responsible adult in respect of the youth is notified of the arrest or charge.

- (2) The notification must include the time and place when the youth will be brought before the Court or, if summoned, when the youth must appear in court.
- (3) This section applies whether the responsible adult resides in the Territory or not.

## **24 Detention of youth not admitted to bail**

- (1) If a youth has been charged with an offence and is not admitted to bail, a police officer must, as soon as practicable, apply to the Court or a magistrate for an order that the youth be detained at a detention centre or other place approved by the Minister for the purpose.
- (2) A police officer may apply for an order under subsection (1) in person or, if it is not practicable to apply in person, the officer may apply by telephone to a magistrate.
- (3) If the Court or magistrate makes the order, it must:
  - (a) be in writing; and
  - (b) specify the detention centre or other place at which the youth is to be detained.
- (4) The Court or magistrate must give or send a copy of the order to the police officer as soon as practicable.
- (5) The police officer may take the youth to the detention centre or other place under the order despite not having received the copy if he or she is informed of the order by the Court or magistrate by telephone.
- (6) The person in charge of the detention centre or place must detain the youth at the centre or place in accordance with the order or, if the order has been given by telephone, a version of the order signed by the police officer.
- (7) The police officer who charged the youth must take all reasonable steps to ensure that a responsible adult in respect of the youth is notified that the youth has been detained in custody and the place at which the youth is detained.

## **25 Detained youth requiring medical attention**

- (1) This section applies if:
  - (a) a youth is to be detained in accordance with an order under section 24; and



- (b) the youth requires medical attention.
- (2) Instead of being taken to the detention centre or other place specified in the order under section 24, the youth may be taken to a hospital within the meaning of the *Medical Services Act* or a private hospital within the meaning of the *Private Hospitals and Nursing Homes Act* and, if the person in charge of the hospital or private hospital consents, be detained there.
- (3) If there is not a hospital available, the youth must be taken to a community health centre.
- (4) While in the hospital or health centre, the youth remains in the custody of the Police Force.
- (5) On being discharged from the hospital or health centre, the youth must be taken to the specified detention centre or other approved place unless he or she has in the meantime been admitted to bail.

## **26 Separation from adults where practicable**

If a youth is taken from the place at which he or she is detained to a court, or from a court to the place of detention, he or she must, as far as practicable, be kept apart from other persons under detention who are not youths.

## **27 Arrested youth to be brought before Court promptly**

- (1) If a youth is charged with an offence and is not released from custody, he or she must be brought before the Court as soon as practicable and in any case within 7 days after the arrest.
- (2) If the youth is not brought before the Court within 7 days after the arrest, the person in whose custody the youth is being held must immediately release the youth.

## **Division 3 Forensic procedures**

### **28 Interpretation**

- (1) In this Division:

**senior police officer** means a police officer of the rank of Superintendent or a higher rank.

- (2) In this Division, a reference to carrying out a forensic procedure includes causing the procedure to be carried out by another person.

**29      Restriction on carrying out procedure**

A forensic procedure must not be carried out under this Division unless a support person is present while the procedure is carried out.

**30      Intimate procedure**

- (1) An authorised officer or a police officer for the time being in charge of a police station may arrange for a medical practitioner or dentist to carry out an intimate procedure on a youth in the following circumstances:
  - (a) the youth is in lawful custody in respect of an offence;
  - (b) the youth has been charged with an offence;
  - (c) the youth has been summoned to appear in proceedings against him or her for an offence;
  - (d) an authorised officer has consented to proceedings in respect of an offence being brought against the youth by summons.
- (2) The officer may only make the arrangement if he or she believes on reasonable grounds that the procedure may provide evidence relating to the offence or any other offence punishable by imprisonment.
- (3) The intimate procedure must only be carried out with the approval of a magistrate.
- (4) The officer may apply to a magistrate for the approval:
  - (a) in person; or
  - (b) if that is not practicable – by telephone.
- (5) The magistrate may approve an intimate procedure being carried out if, after hearing the officer and the youth to whom the application relates, the magistrate is satisfied that the officer has reasonable grounds for believing that the procedure may provide evidence referred to in subsection (2).
- (6) The approval must:
  - (a) be in writing; and
  - (b) specify the intimate procedure that may be carried out.
- (7) The magistrate must give or send a copy of the approval to the officer as soon as practicable.

- (8) The officer may proceed under the approval despite not having received it if he or she is informed of the approval by the magistrate by telephone.
- (9) A medical practitioner or dentist may carry out the intimate procedure in accordance with the approval.
- (10) A police officer:
- (a) may assist a medical practitioner or dentist to carry out the intimate procedure; and
  - (b) may use reasonable force when assisting the medical practitioner or dentist.
- (11) Before the intimate procedure is carried out, a police officer must inquire whether the youth, or the support person who is with the youth in accordance with section 29, wishes to have a medical practitioner or dentist of his or her own choice present when the procedure is carried out.
- (12) If the youth or support person wishes to have a medical practitioner or dentist of his or her own choice present, the police officer must:
- (a) provide reasonable facilities to enable the youth or person to arrange for the medical practitioner or dentist to be present; and
  - (b) unless it would be impracticable to do so – arrange for the intimate procedure to be carried out at a time when the medical practitioner or dentist can be present.
- (13) A medical practitioner or dentist is not civilly or criminally liable for an act done or omitted to be done in good faith in carrying out an intimate procedure under this section.
- (14) This section does not prevent a medical practitioner or dentist from examining a youth in lawful custody at the request of the youth or treating the youth for an illness or injury.
- (15) In this section:
- dentist** means a person registered under the Health Practitioner Regulation National Law:
- (a) to practise in the dental profession as a dentist (other than as a student); and
  - (b) in the dentists division of that profession.

### **31 Non-intimate procedure**

- (1) A police officer may carry out a non-intimate procedure on a youth in the following circumstances:
  - (a) the youth is suspected by a police officer, on reasonable grounds, of having committed a crime;
  - (b) the youth has been charged with an offence punishable by imprisonment;
  - (c) the youth has been summoned to appear in proceedings against the youth for an offence punishable by imprisonment;
  - (d) an authorised officer has consented to proceedings in respect of an offence punishable by imprisonment being brought against the youth by summons.
- (2) The non-intimate procedure may be carried out:
  - (a) if the approval of a magistrate is obtained; or
  - (b) if the approval of a senior police officer is obtained.
- (3) A senior police officer must not approve the procedure unless he or she is satisfied the youth is 14 years of age or older.
- (4) A police officer may apply to a magistrate or a senior police officer for the approval:
  - (a) in person; or
  - (b) if that is not practicable – by telephone.
- (5) The magistrate or senior police officer may approve a non-intimate procedure being carried out after hearing the police officer and the youth to whom the application relates.
- (6) The approval must:
  - (a) be in writing; and
  - (b) specify the non-intimate procedure that may be carried out.
- (7) The magistrate or senior police officer must give or send a copy of the approval to the police officer as soon as practicable.
- (8) The police officer may proceed under the approval despite not having received it if he or she is informed of the approval by the magistrate or senior police officer by telephone.

- (9) If the non-intimate procedure is the taking of a sample by buccal swab, the police officer must direct the youth to provide the sample.
- (10) If the youth does not comply by providing a sample sufficient to enable an analysis of it to be carried out, the police officer may take the sample.
- (11) The police officer may use reasonable force in carrying out the non-intimate procedure.

### **32 Voluntary non-intimate procedure**

- (1) A senior police officer may carry out a non-intimate procedure on a youth if the youth consents in writing, and a responsible adult in respect of the youth consents in writing, to the procedure being carried out.
- (2) If the procedure is carried out for the purposes of investigating an offence, any information obtained from the procedure:
  - (a) must not be used for investigating any other offence other than a relevant offence; and
  - (b) is inadmissible as evidence in any proceedings other than proceedings for the offence or a relevant offence.
- (3) In this section:

**relevant offence** means a crime that, if committed by an adult, would be punishable by a term of imprisonment of 14 years or more.

### **33 Identifying procedure**

- (1) An authorised officer or a police officer for the time being in charge of a police station may carry out an identifying procedure on a youth in the following circumstances:
  - (a) the youth is in lawful custody in respect of an offence;
  - (b) the youth has been charged with an offence;
  - (c) the youth has been summoned to appear in proceedings against him or her for an offence;
  - (d) an authorised officer has consented to proceedings in respect of an offence being brought against the youth by summons.
- (2) The officer may carry out the procedure if he or she is satisfied that the youth is 14 years of age or older.

- (3) If the officer considers the youth is younger than 14 years, the officer must apply to a magistrate for approval to carry out the identifying procedure.
- (4) The officer may apply:
  - (a) in person; or
  - (b) if that is not practicable – by telephone.
- (5) The magistrate may approve an identifying procedure being carried out after hearing the officer and the youth to whom the application relates.
- (6) The approval must:
  - (a) be in writing; and
  - (b) specify the identifying procedure that may be carried out.
- (7) The magistrate must give or send a copy of the approval to the officer as soon as practicable.
- (8) The officer may proceed under the approval despite not having received it if he or she is informed of the approval by the magistrate by telephone.
- (9) The officer may use reasonable force in carrying out the identifying procedure.

**34            Youth to be provided with copy of report**

- (1) A youth on whom a forensic procedure is carried out under this Division, or the support person with the youth, must be provided with a copy of:
  - (a) if the procedure was carried out by a medical practitioner or dentist – the report in respect of the procedure by the medical practitioner or dentist; and
  - (b) any reports in relation to the testing or analysis of samples obtained from the procedure.
- (2) However, a report does not need to be given to the youth or support person if the sample that was analysed or tested was a sample from a person other than the youth despite that the sample was taken from the body of the youth under the procedure.

## **Division 4            Support persons and authorised officers**

### **35            Support person**

- (1) For this Part, a support person, in relation to a youth, is one of the following:
  - (a) a responsible adult in respect of the youth;
  - (b) a person nominated by the youth;
  - (c) a legal practitioner acting for the youth;
  - (d) a person called upon under subsection (5).
- (2) A person cannot be a support person if he or she is, in the opinion of a police officer dealing with a youth, an accomplice of the youth in the alleged offence or likely to lose, destroy or fabricate evidence relating to the offence.
- (3) A youth cannot be a support person, but nothing prevents a youth who is being dealt with under this Act requesting another particular youth be present as well as a support person.
- (4) Unless in his or her capacity as a responsible adult in respect of the youth, a police officer, a probation and parole officer or a person employed at a detention centre cannot be a support person.
- (5) If a police officer has made reasonable attempts to have a person mentioned in subsection (1)(a), (b) or (c) present but it was not practicable for any such person to be present within 2 hours, the officer may call upon a person from the register maintained under section 14 to be the support person.
- (6) If a youth requests that another particular youth be present as well as a support person, a police officer dealing with the youth must accommodate the request, if practicable, unless:
  - (a) the officer considers that the other youth is an accomplice in the alleged offence or likely to lose, destroy or fabricate evidence relating to the offence; or
  - (b) it would lead to undue delay after the time in which a support person is able to be present.

**36 Authorised officers**

The Commissioner of Police, a Deputy Commissioner of Police or Assistant Commissioner of Police may authorise any of the following police officers to act for this Part:

- (a) an officer of or above the rank of Senior Sergeant;
- (b) an officer who is in charge of a police station;
- (c) an officer who from time to time:
  - (i) holds a specified rank; or
  - (ii) performs specified duties (including duties as the officer in charge of a specified police station).

**Part 3 Diversion of youth****37 Purpose and application of Part**

- (1) The purpose of this Part is to provide a means of diverting youths who are believed on reasonable grounds to have committed offences.
- (2) Except as provided by section 41, this Part does not affect the application in respect of a youth of any law relating to:
  - (a) investigating and collecting evidence of criminal activities and the commission of offences; or
  - (b) questioning, apprehending, detaining, arresting, charging and bailing a suspected offender; or
  - (c) prosecuting a person for an offence.

**38 Definitions**

In this Part:

**divert**, in relation to a youth, means to take an action under section 39.

**offence** does not include:

- (a) an offence in relation to which an infringement notice, within the meaning of section 9 of the *Fines and Penalties (Recovery) Act*, has been issued; or
- (b) an offence against Part V or VI of the *Traffic Act*.



**39 Diversion of youth**

- (1) This section applies if a police officer believes on reasonable grounds that:
  - (a) a person has committed an offence; and
  - (b) the person is a youth or was a youth when the offence was committed.
- (2) The officer must, instead of charging the youth with the offence, do one or more of the following as the officer considers appropriate:
  - (a) give the youth a verbal warning;
  - (b) give the youth a written warning;
  - (c) cause a Youth Justice Conference involving the youth to be convened;
  - (d) refer the youth to a diversion program.
- (3) Subsection (2) does not apply if:
  - (a) the youth has left the Territory or the youth's whereabouts is unknown; or
  - (b) the alleged offence is a serious offence; or
  - (c) the youth has, on 2 previous occasions, been dealt with by Youth Justice Conference or diversion program (or on one of the occasions by Youth Justice Conference and on the other by diversion program); or
  - (d) the youth has some other history that makes diversion an unsuitable option (including a history of previous diversion or previous convictions).
- (4) However, the Commissioner of Police (or the Commissioner's delegate) may authorise or require a police officer to deal with a youth by Youth Justice Conference or by referring the youth to a diversion program despite the fact that the case is covered by subsection (3).
- (6) This section does not prevent the diversion of a youth in relation to an offence despite that he or she has been charged with the offence.

(7) In this section:

**serious offence** means:

- (a) an offence prescribed by regulation; or
- (b) an offence against a law, or a repealed law, of the Territory or another jurisdiction (including a jurisdiction outside Australia) that substantially corresponds to an offence mentioned in paragraph (a).

**Youth Justice Conference** includes:

- (a) a conference with the victim or victims of the offence the youth is believed to have committed; and
- (b) a conference with members of the youth's family.

#### **40 Youth and responsible adult must consent to diversion**

- (1) A police officer must not divert a youth unless the youth and a responsible adult in respect of the youth consent to the youth being diverted.
- (2) If it is not possible or practicable for the police officer to obtain a responsible adult's consent to the youth being diverted, the officer may give the youth a verbal warning despite that the consent of a responsible adult has not been obtained.
- (3) If the youth, or a responsible adult in respect of the youth, does not consent to the youth being diverted, the police officer may charge the youth with the offence that the officer believes on reasonable grounds the youth committed and the youth may be prosecuted for the offence.

#### **41 Effect of diverting youth**

- (1) If a youth is diverted in relation to an offence and the diversion is completed to the satisfaction of a police officer, no criminal investigation or criminal legal proceedings can be commenced or continued against the youth in respect of the offence.
- (2) Any admission made or information given by a youth during the course of diversion in relation to an offence is not admissible in any subsequent criminal or civil proceedings in relation to the offence.
- (3) However, subsection (2) does not prevent the admission of evidence that has been properly obtained in accordance with the *Police Administration Act* and this Act.

**42 Extension of limitation period**

- (1) This section applies if a youth is diverted in relation to an offence but fails to satisfactorily complete a Youth Justice Conference or diversion program.
- (2) Subject to section 21, proceedings may be commenced against the youth for the offence despite that the applicable limitation period has expired.
- (3) The proceedings must be commenced before the later of:
  - (a) the expiry of the applicable limitation period; or
  - (b) 3 months after the diversion is determined to have been unsatisfactory.

**43 Reporting on diversion of youth**

- (1) If a person is found guilty of an offence, information concerning the diversion of the person as a youth for that or any other offence may be produced in the Youth Justice Court for the purpose of determining the sentence to be imposed on the person for the offence.
- (2) However, information and details of the diversion of a youth must not be published, except as aggregated data for statistical purposes where the information does not permit any particular youth to be identified.
- (3) A person who publishes information in contravention of subsection (2) commits an offence.

Maximum penalty:        If the offender is a natural person –  
200 penalty units or imprisonment for  
12 months.

   If the offender is a body corporate –  
1 000 penalty units.

- (4) In this section, a reference to the diversion of a youth includes a reference to dealing with the youth under a scheme for the diversion of youths operating in a State or another Territory that is similar to the scheme operating under this Part.

**44 No review or appeal**

- (1) A decision:
  - (a) to divert or not to divert a youth; or

- (b) that a youth did or did not complete a diversion satisfactorily, cannot be reviewed or appealed against in any court or tribunal.
- (2) Subsection (1) does not affect the power of the Court to refer a youth for assessment under section 64.

## **Part 4                      Youth Justice Court**

### **45                      Continuation and constitution**

- (1) The Juvenile Court established under the repealed Act is continued in existence as the Youth Justice Court.
- (2) Each magistrate is a magistrate of the Youth Justice Court.
- (3) The Youth Justice Court is a court of record and has a seal that must be affixed to all process issued out of the Court.

### **46                      Exercise of jurisdiction**

- (1) The jurisdiction of the Youth Justice Court is exercisable by a magistrate sitting alone.
- (2) The Chief Magistrate may appoint as a Youth Magistrate a magistrate who, in the opinion of the Chief Magistrate, has the knowledge, qualifications, skills and experience in the law and the social or behavioural sciences, and in dealing with youths and their families, as the Chief Magistrate considers appropriate.
- (3) An appointment of a magistrate as a Youth Magistrate does not affect:
  - (a) the terms and conditions of the magistrate's appointment under the *Magistrates Act*; or
  - (b) the ability of a magistrate who is not a Youth Magistrate to exercise the jurisdiction of the Youth Justice Court.

### **47                      Registrar of Youth Justice Court**

- (1) A Registrar of the Local Court is a Registrar of the Youth Justice Court.
- (2) If the Court is required to perform its functions at a place outside the Territory, the Minister may appoint as a Registrar of the Court at the place:
  - (a) a person who holds office as a registrar or deputy registrar of a court of the jurisdiction in which the place is located; or

- (b) another appropriately qualified person.
- (3) The conditions of service (including as to remuneration) of the appointed person are those that the person is entitled to under the law of the other jurisdiction.
- (4) A person appointed under subsection (2)(a) ceases to hold office if the person ceases to hold office as a registrar or deputy registrar of a court of the other jurisdiction.
- (5) With the approval of the Minister, a Registrar of the Court may concurrently hold office as a registrar or deputy registrar of a court of another jurisdiction.
- (6) In this section:  
*remuneration* includes salary, allowances, fees, emoluments and benefits (whether in money or otherwise).

#### **48 Where Youth Justice Court may be held**

- (1) The Youth Justice Court may sit in the locations (including a place outside the Territory) that the Minister directs and in any building approved by the Minister for the holding of the Court.
- (2) The Minister must ensure that the places for the Court to sit:
  - (a) provide adequate and appropriate facilities for the proceedings of the Court; and
  - (b) as far as practicable are separate from the places in which proceedings in relation to adults are being held.
- (3) Despite subsection (1), if the Court considers it is expedient to sit in another place, the Court may sit in that other place.

#### **49 Proceedings to be in open court**

- (1) Subject to subsection (2), proceedings under this Act against a youth must be held in open court.
- (2) If it appears to the Court that justice will be best served by closing the Court, it may order that the Court be closed and that no persons remain in or enter a room or place in which the Court is being held, or remain within the hearing of the Court, without the Court's permission.
- (3) Subsection (2) does not authorise the Court to exclude from the proceedings the youth, a legal practitioner representing the youth or the prosecutor.

- (4) If a magistrate makes an order under subsection (2), a person must not remain in or enter a room or place, or remain within the hearing of the Court, in contravention of the order.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

## **50 Restriction of publication of proceedings**

- (1) The Court may, in an order under section 49 or by a separate order, direct that a report of, or information relating to, proceedings in the Court, or the result of proceedings against a youth before the Court, must not be published.
- (2) A person who publishes a report or information in contravention of a direction under subsection (1) is guilty of an offence.

Maximum penalty: If the offender is a natural person –  
200 penalty units or imprisonment for 12 months.

If the offender is a body corporate –  
1 000 penalty units.

- (3) Despite subsection (2), it is not an offence for a police officer, under an arrangement for the exchange of such information, to send to the Police Force of a State or another Territory information relating to the conviction of a youth for an offence.

## **51 Youth in need of protection**

- (1) This section applies if the Court believes:
- (a) a youth who is charged with an offence is or may be a child in need of protection; or
  - (b) there is a risk to the wellbeing of the youth.
- (2) The Court may require the CEO:
- (a) to investigate the circumstances of the youth; and
  - (b) to take appropriate action to promote the wellbeing of the youth.

- (3) If the Court requires the CEO to investigate the circumstances of the youth, the CEO must, as soon as practicable, give the Court a report on:
- (a) those circumstances (including, for example, whether or not the youth is a child in need of protection); and
  - (b) any action that has been taken in relation to the youth regarding those circumstances.
- (4) The Court may:
- (a) adjourn the matter for the preparation of the report; and
  - (b) remand the youth under section 65.
- (5) In this section:

**CEO**, see section 13 of the *Care and Protection of Children Act*.

**child in need of protection** means a child who is in need of protection as defined in section 20 of the *Care and Protection of Children Act*.

**wellbeing of a youth**, means the wellbeing of a child as defined in section 13 of the *Care and Protection of Children Act*.

## **Part 5 Court proceedings**

### **Division 1 Jurisdiction and proceedings generally**

#### **52 Jurisdiction of Youth Justice Court**

- (1) The following must be dealt with in accordance with this Act by the Youth Justice Court:
- (a) all charges in respect of summary offences or indictable offences allegedly committed by a youth;
  - (b) all applications in the Territory relating to unlawful activity, or alleged unlawful activity, of youths, whether or not that activity took place, or is alleged to have taken place, in the Territory.
- (2) The jurisdiction of the Youth Justice Court in relation to an offence allegedly committed by a youth is not affected only because the alleged offender has subsequently turned 18 years of age.

- (3) Subsection (1) does not limit the jurisdiction of the Supreme Court to deal with a matter involving a youth where an ex officio indictment has been presented to that Court.

### **53 Application of *Justices Act***

- (1) Unless this Act makes specific provision in relation to proceedings, orders or convictions, the *Justices Act*, except for Part IV, Division 2A of that Act, applies as if the Youth Justice Court were the Court of Summary Jurisdiction established by that Act.
- (2) This Act does not affect the powers of a Justice of the Peace to do any of the following in relation to a youth:
- (b) issue a summons;
  - (c) grant, issue or endorse a warrant;
  - (d) grant bail.

### **54 Court to deal with matters summarily except in certain cases**

Subject to sections 54A, 55(4) and 56, all charges before the Youth Justice Court are to be heard and determined summarily.

### **54A Exception if adult offender would be liable to life imprisonment**

- (1) Subsection (2) applies to a charge in respect of an offence allegedly committed by a youth that would be punishable by imprisonment for life if the offence had been committed by an adult.
- (2) The Youth Justice Court must deal with the charge by way of preliminary examination.

### **55 Indictable offence tried summarily if youth consents**

- (1) This section applies if a youth is charged in respect of an indictable offence that is neither of the following:
- (a) an offence mentioned in section 120 of the *Justices Act*;
  - (b) an offence mentioned in section 54A(1).
- (2) The Youth Justice Court must inform the youth and a responsible adult in relation to the youth (if present in court) of the youth's right to consent or not to the charge being heard and determined summarily.
- (3) If the youth consents, the Court must hear and determine the charge summarily.



- (4) If the youth does not consent, the Court must deal with the charge by way of preliminary examination.
- (5) For subsection (2), if no responsible adult in relation to the youth is present in court, the Court:
  - (a) may adjourn the proceeding to enable a responsible adult to be present; and
  - (b) may continue the proceeding after the adjournment even if no responsible adult is present.

#### **56 Court may decline to hear and determine charge summarily**

- (1) If, at any stage of the proceedings (prior to a finding of guilt), the Youth Justice Court considers it is not appropriate to hear and determine summarily a charge in respect of an indictable offence for which the Court has jurisdiction, the Court:
  - (a) may decline to hear and determine the charge summarily; and
  - (b) if it declines – must give its reasons for declining; and
    - (i) if dealing with the charge by way of preliminary examination – must continue by way of preliminary examination; and
    - (ii) otherwise – must continue the proceedings as if the Court had been dealing with the charge by way of preliminary examination.
- (2) For subsection (1), it is immaterial whether or not the youth:
  - (a) has consented under section 55(3) to the charge being heard and determined summarily; or
  - (b) has elected under section 56A(2) to have the charge heard and determined summarily.

#### **56A Youth may elect to be tried summarily**

- (1) Subsection (2) applies if the Youth Justice Court is dealing by way of preliminary examination with a charge in respect of an indictable offence that is not an offence of the type mentioned in section 54A(1).
- (2) The youth may, at any time before or during the preliminary examination, elect to have the charge heard and determined summarily.

### **56B Youth and adult charged – joint preliminary examination**

- (1) This section applies if:
  - (a) a youth and an adult are charged with offences founded on the same facts; and
  - (b) under this Act the charge against the youth is to be dealt with by way of preliminary examination; and
  - (c) under the *Justices Act* the charge against the adult is to be dealt with by way of preliminary examination under that Act.
- (2) If this section applies, the 2 preliminary examinations may be conducted by a Magistrate as a joint preliminary examination.
- (3) When conducting a joint preliminary examination:
  - (a) for the charge against the youth – the Magistrate constitutes the Youth Justice Court and must deal with the matter under this Act; and
  - (b) for the charge against the adult – the Magistrate acts in his or her capacity as a Justice and must deal with the matter under the *Justices Act*.
- (4) A Magistrate conducting a joint preliminary examination may, at any stage, disjoin the examinations and deal with the defendants separately if satisfied it would be in the interests of justice to do so.
- (5) When a joint preliminary examination is conducted, the examination:
  - (a) in so far as it relates to the youth, is a preliminary examination under this Act; and
  - (b) in so far as it relates to the adult, is a preliminary examination under the *Justices Act*.

### **57 Referral to Supreme Court for sentencing**

- (1) Subsection (2) applies if:
  - (a) the Youth Justice Court is conducting a preliminary examination in respect of a youth in accordance with section 55(4) or 56 ; and
  - (b) at any stage of the proceedings the youth indicates that he or she wishes to plead guilty.

- (2) If the Youth Justice Court considers it appropriate, the Court may accept the guilty plea and do either of the following:
  - (a) sentence the youth;
  - (b) refer the youth to the Supreme Court for sentencing.

## **58 Pleas in summary hearing**

- (1) If a charge in respect of an offence is to be heard and determined summarily in the Youth Justice Court, the youth who is charged with an offence must enter a plea:
  - (a) at the commencement of the hearing; or
  - (b) if the proceeding began as a preliminary examination but the youth elects under section 56A to have the charge heard and determined summarily – on the continuation of the proceeding as a summary trial.
- (2) If the youth pleads guilty to a charge in respect of an offence, the Court may, at any stage of the proceedings, if it is of the opinion that the youth may not be guilty of the offence charged, order that the plea of guilty be withdrawn and a plea of not guilty be entered.
- (3) If the Court makes an order under subsection (2), the youth is not entitled to plead *autrefois* convict by reason of his or her initial plea of guilty.
- (4) A youth may change his or her plea from not guilty to guilty at any stage of proceedings.
- (5) Subsection (4) does not apply in relation to a plea entered under subsection (2).

## **59 Exclusion of evidence unlawfully obtained**

- (1) In proceedings against a youth in respect of an offence, the Court may order that evidence in relation to the youth is not admissible if satisfied the evidence was obtained:
  - (a) in contravention of this Act; or
  - (b) as a consequence of a contravention of or a failure to comply with this Act.
- (2) However, the Court may admit the evidence if satisfied that admission of the evidence would specifically and substantially benefit the public interest without unduly prejudicing the rights of any person.

- (3) The Court must have regard to the following matters when deciding whether or not to admit the evidence:
  - (a) the seriousness of the offence, the difficulty of detecting the offender, the need to apprehend the offender urgently and the need to preserve evidence of the facts;
  - (b) the nature and seriousness of the contravention or failure;
  - (c) the extent to which the evidence might have been lawfully obtained;
  - (d) any other matters the Court considers relevant.
- (4) This section is in addition to, and does not derogate from, any other law or rule under which a court may refuse to admit evidence.

**60 Points of law may be reserved for consideration of Supreme Court**

- (1) The Youth Justice Court may reserve a question of law arising from or in relation to proceedings against a youth for an offence and may state a special case or cases for the opinion of the Supreme Court.
- (2) A question may be reserved at any time during proceedings for the matter in the Youth Justice Court or at any time within one month after the Youth Justice Court has finally determined the matter.
- (3) The Supreme Court must deal with a special case with as little delay as practicable and may do any of the following:
  - (a) amend the special case;
  - (b) send the special case back to the Youth Justice Court for amendment;
  - (c) make any order that it considers appropriate.
- (4) An order under subsection (3)(c) may include an order as to costs of the proceedings in the Supreme Court and in the Court below.
- (5) The Youth Justice Court must deal with the matter having regard to the order of the Supreme Court in relation to the special case or question reserved.

**61 Court must explain proceedings to youth**

- (1) The Court must satisfy itself that a youth who is the subject of proceedings for an offence understands the nature of the proceedings.

- (2) If the youth is not represented by a legal practitioner, the Court must explain to him or her in a language and manner the youth is likely to understand, having regard to the youth's age, maturity, cultural background and English language skills:
  - (a) the nature of the allegations against him or her; and
  - (b) the legal implications of those allegations; and
  - (c) the elements of the offence that must be established by the prosecution.
- (3) An order or finding of the Court cannot be called into question only on the ground of failure to comply with this section if the Court has substantially complied with subsections (1) and (2).

## **62 Legal representation of youth**

If a youth is not legally represented in proceedings for an offence and the Court considers the youth needs legal representation, the Court may require that legal representation be provided to the youth and may adjourn or stay the proceedings until satisfactory arrangements are made for the representation of the youth.

## **63 Responsible adults to attend court**

- (1) A responsible adult in respect of a youth must attend the Court and remain in attendance during proceedings against the youth for an offence.
- (2) Subsection (1) does not apply if the Court is satisfied that it would be unreasonable to require that attendance.
- (3) If a responsible adult fails without reasonable excuse to attend the Court, or remain in attendance during the proceedings, the Court may direct that a warrant or summons be issued to bring the responsible adult before the Court at that or a further hearing.
- (4) The Court may:
  - (a) adjourn the proceedings to allow for the responsible adult to be present; and
  - (b) continue the hearing after the adjournment despite that the responsible adult is not present.

**64 Court may refer youth to diversion**

The Court may, at any stage of proceedings (prior to a finding of guilt) in relation to a youth, with the consent of the prosecution and the youth, adjourn the proceedings and refer the youth to be re-assessed for inclusion in a diversion program, or a Youth Justice Conference, conducted for the purposes of Part 3.

**65 Court may remand youth**

- (1) The Court may, at any stage of proceedings in relation to a youth, remand the youth and, by order:
  - (a) allow the youth to go at large; or
  - (b) release the youth on bail; or
  - (c) release the youth into the care and supervision of any person; or
  - (d) remand the youth in custody.
- (2) If the youth is remanded in custody, he or she can be detained in a detention centre or, if the youth has turned 15 years of age, in either a custodial correctional facility or detention centre as ordered by the Court.
- (3) Unless the youth is committed for trial in the Supreme Court, an order remanding the youth in custody must not, except with his or her consent, be for a period of more than 15 days.

*Note for subsection (3)*

*Subsection (3) does not prevent the Court from making consecutive orders remanding the youth in custody that result in the youth remaining in custody in excess of 15 days.*

- (4) The Court may revoke an order made under subsection (1) and may substitute any other order it can make under that subsection.

**Division 2 Reports and submissions**

**66 Enquiry and examination authorised**

A person who is required to provide the Court with a report in relation to a youth:

- (a) is authorised to make any necessary enquiries; and
- (b) may require the youth to be interviewed and examined by a medical practitioner or other appropriate person.

**67 Report as to mental condition of youth**

- (1) If the Court considers that the mental condition of a youth who is charged with an offence may affect his or her criminal responsibility or ability to understand proceedings, the Court may cause the youth to be examined by an appropriately qualified person.
- (2) The Court may adjourn proceedings in order for the youth to be examined.
- (3) The person who examines the youth must report (whether orally or in writing) to the Court as to the youth's mental condition.

**68 Court may seek submissions or reports**

- (1) If a youth has been found guilty of an offence, the Court may (whether before or after the proceedings are complete) seek submissions or reports in relation to the youth.
- (2) A submission or report may be written or oral.

**69 Court must require pre-sentence report**

- (1) If a youth has been found guilty of an offence and the Court is considering imposing a sentence of detention or imprisonment, the Court must ensure that it is informed as to the circumstances of the youth.
- (2) In order to be informed, the Court must require a pre-sentence report to be provided to it.
- (3) However, if the Court is satisfied that it has the information necessary to determine an appropriate sentence, the Court may dispense with the need for a report.
- (4) The Court may require the report to address specific matters in relation to the youth that the Court wishes to be informed about.

**70 Content of pre-sentence report**

- (1) A pre-sentence report under section 69 may set out all or any of the following matters that are reasonably ascertainable by the author of the report and that appear to him or her to be relevant to the sentencing of the youth:
  - (a) the age of the youth;
  - (b) the social history and background of the youth;
  - (c) the medical and psychiatric history of the youth;

- (d) the youth's educational background;
  - (e) the youth's employment history;
  - (f) the circumstances of the offence of which the youth has been found guilty;
  - (g) the circumstances of other offences of which the youth has been found guilty;
  - (h) any relevant diversion history of the youth;
  - (i) the extent to which the youth is complying with any sentence currently imposed on him or her;
  - (j) the financial circumstances of the youth and his or her family;
  - (k) any special needs of the youth;
  - (l) any courses, programs, treatment, therapy or other assistance that could be available to the youth and from which he or she may benefit;
  - (m) family and community views of the youth's offending behaviour;
  - (n) risk issues in relation to the youth and further offending.
- (2) The author must include in the report any other matter relevant to the sentencing of the youth that the court has directed to be set out in the report.

## **71 Report in certain circumstances**

- (1) If a youth has been found guilty of an offence and the Court is considering imposing on a youth a sentence that includes any of the following, the Court must require a report as to the suitability of the youth for the proposed sentence:
- (a) a sentence that includes supervision;
  - (b) a community work order;
  - (c) alternative detention;
  - (d) periodic detention.
- (2) If the Court is considering a sentence that involves a fine or restitution by financial compensation, the Court must satisfy itself (if necessary by requiring a report) that the sentence is appropriate having regard to the financial circumstances of the youth.



**72 Court may adjourn for report to be prepared**

If the Court has requested a report in relation to a youth, the Court may:

- (a) adjourn the proceedings to enable the report to be prepared; and
- (b) remand the youth in accordance with section 65.

**73 Reports to be made available**

- (1) A copy of every written report in relation to a youth received by the Court under this Division must be given to each of the following:
  - (a) the youth;
  - (b) a responsible adult in respect of the youth who is present in court;
  - (c) the prosecutor.
- (2) However, the Court may order that the report or part of the report must not be given to the youth or to a specified person if the Court is of the opinion that the report contains material that, if disclosed to the youth or another person, may be prejudicial to the welfare of the youth.

**74 Challenge to contents of report**

A person to whom a copy of a report is given may cross-examine the author of the report or the person who carried out an investigation on which the report was based, and the youth reported on or a responsible adult in respect of the youth may give evidence or call witnesses to rebut the contents of the report.

**75 Protection in relation to report**

- (1) This section applies to a person acting in good faith who does any of the following:
  - (a) provides information for the purpose of preparing a report under this Division;
  - (b) prepares the report;
  - (c) gives the report to the Court.

- (2) The person is not civilly or criminally liable, and is not in breach of any professional code of conduct, for:
  - (a) the preparing or giving of the report; or
  - (b) the disclosure of any information in the report.

### **Division 3 Victim impact statements and victim reports**

#### **76 Definitions**

In this Division:

***harm*** includes any of the following:

- (a) physical injury;
- (b) psychological or emotional suffering, including grief;
- (c) contraction or fear of contraction of a sexually transmissible medical condition;
- (d) pregnancy;
- (e) economic loss.

***victim impact statement*** means an oral or written statement prepared for the purposes of this Division and containing details of the harm suffered by a victim of an offence arising from the offence.

***victim report*** means an oral or written statement prepared by the prosecutor for the purposes of this Division and containing details of the harm suffered by a victim of an offence arising from the offence.

#### **77 Court must consider victim impact statement or victim report**

- (1) Before the Court sentences a youth for an offence, the Court must permit the prosecutor to present a victim impact statement or victim report in relation to each victim of the offence.
- (2) The Court must consider each victim impact statement and each victim report presented before determining the sentence to be imposed in relation to the offence.
- (3) The Court must not draw any inference in favour of a youth (or against a victim) because a victim impact statement or victim report is not presented to the Court.

## **78 Victim impact statements**

- (1) The prosecutor must present a victim impact statement if the victim consents to its presentation.
- (2) If the victim is incapable, because of age or physical or mental disability, of giving consent to the presentation of a victim impact statement, the victim impact statement may be prepared by a person who, in the opinion of the Court, has a sufficiently close relationship with the victim.
- (3) A victim impact statement may, with the permission of the Court, be presented by a person other than the prosecutor.
- (4) A written victim impact statement must be signed and a copy must be given to the youth.
- (5) If a victim impact statement is to be presented orally, a written or oral summary of the statement must be given to the youth.
- (6) A legal practitioner representing the youth or, with the leave of the Court, the youth, may cross-examine:
  - (a) the person who signed a written victim impact statement; or
  - (b) the person (not being the prosecutor) presenting the statement orally,about the contents of the statement.

## **79 Victim reports**

- (1) The prosecutor must present a victim report if:
  - (a) a victim does not consent to the presentation of a victim impact statement in relation to him or her; and
  - (b) the details of the harm suffered by the victim arising from the offence are reasonably ascertainable; and
  - (c) the victim has been informed of the contents of the victim report and does not object to its presentation.
- (2) If the victim is incapable, because of age or physical or mental disability, of giving consent to the presentation of a victim report, the victim report may be presented if a person who, in the opinion of the Court, has a sufficiently close relationship with the victim has been informed of the contents of the report and does not object to its presentation.

- (3) A victim report may also be presented if:
  - (a) the victim cannot be located after reasonable attempts have been made by the prosecutor; and
  - (b) the details of the harm suffered by the victim arising from the offence are reasonably ascertainable.
- (4) A victim report need not be presented to the Court if the details of the harm are already before the Court as evidence or as part of a report prepared in relation to the youth.
- (5) A copy of a written victim report must be given to the youth.
- (6) If a victim report is to be presented orally, a written or oral summary of the report must be given to the youth.

**80            Other matters may be addressed**

- (1) A victim impact statement or victim report may contain details of the harm caused to the victim arising from another offence:
  - (a) for which the youth has already been sentenced, or will be sentenced in the proceedings then before the Court; or
  - (b) which has already been taken into account in a sentence, or which may be taken into account in the proceedings then before the Court.
- (2) A victim impact statement or victim report may contain a statement as to the victim's wishes in respect of the sentence of the Court for the offence.

**Part 6            Disposition by Court**

**Division 1        General principles**

**81            Principles and considerations to be applied to youth offenders**

- (1) When sentencing a youth who has been found guilty of an offence, the Court must have regard to:
  - (a) the principles applying generally for disposing of charges of offences, except as those principles are modified by this Act; and
  - (b) the general principles of youth justice set out in section 4.

- (2) The Court must consider any information about the youth or the offence that may assist the Court to decide how to dispose of the matter, and in particular must consider:
  - (a) the nature and seriousness of the offence; and
  - (b) any history of offences previously committed by the youth; and
  - (c) the youth's cultural background; and
  - (d) the age and maturity of the youth; and
  - (e) any previous order in relation to an offence that still applies to the youth, and any further order that is liable to be imposed if the youth has not complied with the terms of the previous order; and
  - (f) the extent to which any person was affected as a victim of the offence.
- (3) The Court must dispose of the matter in a way that is in proportion to the seriousness of the offence.
- (4) The Court must have regard to the fact that the rehabilitation of a youth may be facilitated by:
  - (a) the participation of the youth's family; and
  - (b) giving the youth opportunities to engage in educational programs and in employment,but the absence of such participation or opportunities must not result in the youth being dealt with more severely for the offence.
- (5) The Court must take into account whether the youth has taken steps to make amends with any of the victims of the offence.
- (6) The Court must impose a sentence of detention or imprisonment on a youth only as a last resort, and a sentence of imprisonment only if there is no appropriate alternative.

## **82            Powers of Supreme Court in sentencing**

- (1) If a youth is found guilty before the Supreme Court of an offence, the Supreme Court may do any of the following:
  - (a) exercise, in addition to its powers, the powers of the Youth Justice Court;

- (b) order that the youth be detained in a detention centre or imprisoned for a period not exceeding the period of imprisonment for which such an offence would be punishable if committed by an adult;
  - (c) remit the case to the Youth Justice Court.
- (2) If the Supreme Court makes an order under subsection (1)(b), it may also make any order in relation to that detention or imprisonment that it could make in relation to a sentence of imprisonment under the *Sentencing Act*.
- (3) If the Supreme Court finds a youth guilty of murder, the Supreme Court may, despite section 157(2) of the Criminal Code, sentence the youth to life imprisonment or a shorter period of detention or imprisonment as it considers appropriate.

## **Division 2            Sentencing options**

### **83            Orders Court may make**

- (1) If the Court finds a charge proven against a youth it may, whether or not it proceeds to conviction, do one or more of the following:
- (a) dismiss the charge for the offence;
  - (b) discharge the youth without penalty;
  - (c) adjourn the matter for a period not exceeding 6 months and, if during that period the youth does not commit a further offence, discharge the youth without penalty;
  - (d) adjourn the matter to a specified date not more than 12 months from the date of the finding of guilt, and grant bail to the youth in accordance with the *Bail Act*:
    - (i) for the purpose of assessing the youth's capacity and prospects for rehabilitation; or
    - (ii) for the purpose of allowing the youth to demonstrate that rehabilitation has taken place; or
    - (iii) for any other purpose the Court considers appropriate in the circumstances;
  - (e) order the youth to participate in a program approved by the Minister, as specified in the order, and adjourn the matter for that purpose (see Division 3);

- (f) order that the youth be released on his or her giving such security as the Court considers appropriate that he or she will:
    - (i) appear before the Court if called on to do so during the period, not exceeding 2 years, specified in the order; and
    - (ii) be of good behaviour for the period of the order; and
    - (iii) observe any conditions imposed by the Court (see Division 4);
  - (g) fine the youth not more than the maximum penalty that may be imposed under the relevant law in relation to the offence (see Division 5);
  - (h) make a community work order that the youth participate in an approved project for the number of hours, not exceeding 480 hours, specified in the order (see Division 6);
  - (i) order that the youth serve a term of detention or imprisonment that is suspended wholly or partly (see Division 7);
  - (j) order that the youth serve a term of detention or imprisonment that is suspended on the youth entering into an alternative detention order (see Division 8);
  - (k) order that the youth serve a term of detention or imprisonment that is to be served periodically under a periodic detention order (see Division 9);
  - (l) order that the youth serve a term of detention or imprisonment;
  - (m) make any other order in respect of the youth that another court could make if the youth were an adult convicted of that offence other than a community based order or community custody order under the *Sentencing Act*.
- (2) If the Court orders that the youth serve a term of detention or imprisonment, the term must not exceed the lesser of:
- (a) the maximum period that may be imposed under the relevant law in relation to the offence; or
  - (b) for a youth who is:
    - (i) 15 years of age or more – 2 years; or
    - (ii) less than 15 years of age – 12 months.

- (3) The Court must not order the imprisonment of a youth who is less than 15 years of age.
- (4) If the Supreme Court remits a case to the Youth Justice Court under section 82(1)(c), the Youth Justice Court must deal with the youth as if the youth had been found guilty of the offence in that Court.
- (5) This section does not limit the power of the Supreme Court to impose on a youth a sentence it could otherwise impose on him or her.

**84            Court may order pre-sentencing conference**

- (1) The Court may, when determining the appropriate sentence for a youth who has been found guilty of an offence, adjourn the proceedings and order the youth to participate in a pre-sentencing conference.
- (2) A pre-sentencing conference may be with any of the victims of the offence the youth is charged with, community representatives, members of the youth's family or any other persons as the Court considers appropriate.
- (3) The Court may:
  - (a) direct that the conference be convened at a specified time and place; and
  - (b) appoint a person who is appropriately qualified as the convenor of the conference.
- (4) The convenor must report to the Court as to the outcome of the conference.

**85            Non-parole period**

- (1) If the Court sentences a youth to a term of detention or imprisonment longer than 12 months that is not suspended in whole or part, the Court must fix a non-parole period unless the Court considers that the nature of the offence, the past history of the youth or the circumstances of the particular case make the fixing of such a period inappropriate.
- (2) If the sentence is in respect of more than one offence, the non-parole period fixed under subsection (1) is in respect of the aggregate period of detention or imprisonment that the youth is liable to serve under all the sentences imposed.



- (3) Subject to section 87, if the Court sentences a youth to a term of detention or imprisonment of 12 months or less, or a term that is suspended in whole or part, the Court may not fix a non-parole period.

**86            Fixing non-parole period otherwise than at time of sentencing**

- (1) This section applies if the Court fails to fix a non-parole period under section 85.
- (2) The failure does not invalidate the sentence.
- (3) On application by the Commissioner, a prosecutor, the youth or a person on behalf of the youth, the Court may fix a non-parole period in accordance with section 85 in any manner in which the Court might have done so at the time of sentencing.

**87            Fixing new non-parole period in respect of multiple sentences**

- (1) This section applies if:
- (a) a youth has been sentenced to be detained or imprisoned for an offence and a non-parole period has been fixed in respect of the sentence; and
  - (b) before the end of the non-parole period the youth is sentenced by the Court to a further term of detention or imprisonment.
- (1A) The Court must fix a new single non-parole period in respect of all the sentences the youth is to serve or complete.
- (2) The new single non-parole period fixed at the time of the imposition of the further sentence:
- (a) supersedes any previous non-parole period that the youth is to serve or complete; and
  - (b) must not be such as to render the youth eligible to be released on parole earlier than would have been the case if the further sentence had not been imposed.

**88            Court may disqualify youth from holding driving licence**

- (1) The Court may, in addition to any other order it may make if a youth is found guilty of an offence, make an order disqualifying the youth from holding a licence to drive a motor vehicle:
- (a) as from a day or time specified in the order; and
  - (b) for a period specified in the order or until further order.

- (2) The Court may make the order if satisfied that, having regard to all the facts and circumstances before it, the youth is not a fit and proper person to hold such a licence.
- (3) The Court may make the order if the charge is proved, whether or not a conviction is recorded.
- (4) The order has the same force and effect as an order under the *Traffic Act*.
- (5) The Court may, at any time on application by or on behalf of the youth disqualified under the order, vary or revoke the order if the Court is satisfied it is just and expedient to do so.
- (6) This section is in addition to any powers of a court under the *Traffic Act* or any other Act to make an order disqualifying a person from holding a licence to drive a motor vehicle.

## **89            Restitution**

- (1) The Court may, in addition to any other order it may make in relation to a youth who is found guilty of an offence, make an order for:
  - (a) restitution by way of monetary compensation; or
  - (b) with the consent of the youth and the victim, performance of service as compensation for an offence.
- (2) In making the order, the Court must have regard to:
  - (a) the amount of loss or damage suffered as a result of the offence; and
  - (b) the ability of the youth to comply with the order.
- (3) An order under subsection (1) for monetary compensation must not exceed \$5 000.
- (4) Monetary compensation under this section must be paid to the Fines Recovery Unit for distribution in accordance with the order.
- (5) The *Fines and Penalties (Recovery) Act* applies in relation to an amount payable under this section.
- (6) If the Court orders performance of service as compensation:
  - (a) the monetary value of the compensation must be specified in the order; and

- (b) the value of the service performed is to be determined in accordance with the Regulations; and
  - (c) the youth must perform the service until the monetary value of the compensation has been satisfied.
- (7) An order under this section does not preclude any other action or proceedings for damages by a person who suffered loss or damages as a result of an offence.

### **Division 3 Approved programs**

#### **90 Matters relating to approved programs**

- (1) This section applies in relation to an order under section 83(1)(e).
- (2) The Minister may, by notice in the *Gazette*, approve a program for this section.
- (3) If the Court is satisfied that the youth has satisfactorily completed the program, the Court may make an order discharging the youth without penalty.
- (4) If the Court is satisfied that the youth has failed to satisfactorily complete the program, the Court must:
  - (a) revoke the order (if it is still in force); and
  - (b) deal with the youth for the relevant offence or offences in any manner in which the Court could deal with the youth if it had just found the youth guilty of the offence or those offences.
- (5) In determining how to deal with the youth under subsection (4)(b), the Court must take into account the extent to which the youth had complied with the order or conditions or continuing obligation.
- (6) In dealing with a youth under this section, the Court must not impose on the youth a penalty greater than the maximum penalty it could have imposed on him or her in respect of the original offence.

### **Division 4 Good behaviour orders**

#### **91 Making good behaviour order**

- (1) This section applies if the Court makes a good behaviour order.

- (2) A good behaviour order in respect of a youth may impose any of the following conditions on the youth as the Court considers appropriate:
  - (a) that the youth reside with a particular person, or at a particular place, specified in the order;
  - (b) that the youth obey the reasonable directions of a person specified in the order;
  - (c) that the youth refrain from the activities, or from associating with persons, specified in the order;
  - (d) that the youth be under the supervision of the Commissioner and that the youth reports to a person nominated by the Commissioner, at the place and times as determined by that person, during the period of the order;
  - (e) any other condition the Court considers appropriate.
- (3) If the Court makes a good behaviour order in respect of a youth, the youth must sign the order to signify acceptance of the terms before leaving the precincts of the Court.
- (4) A copy of a good behaviour order must be:
  - (a) given to the youth; and
  - (b) given to a responsible adult in respect of the youth, if in attendance at the Court; and
  - (c) sent to the Commissioner, if the order entails supervision.
- (5) A youth who is the subject of a good behaviour order may, by order of the Court or by notice issued by the Registrar, be called upon during the period specified in the order to appear before the Court.
- (6) An order or notice under subsection (5) must be served on the youth not less than 4 days before the time specified in the notice for the appearance.
- (7) An application for an order under subsection (5) may be made in the absence of the youth.

## **Division 5            Fines**

### **92            Imposition of fine**

- (1) This section applies if the Court imposes a fine under section 83(1)(g).

- (2) The fine may be enforced under the *Fines and Penalties (Recovery) Act* unless the Court orders detention or imprisonment in default in accordance with subsection (3).
- (3) The Court may order that if the fine is not paid within 28 days the youth must be detained at a detention centre or imprisoned until his or her liability to pay the fine is discharged.
- (4) If the Court makes an order under subsection (3) and the youth does not pay the fine within 28 days, the Court may issue a warrant of commitment in respect of the youth specifying the period of detention or imprisonment to be one day for each amount (or part of that amount) prescribed for the purposes of section 88 of the *Fines and Penalties (Recovery) Act* that comprises the fine.
- (5) If the youth serves the total period of detention or imprisonment under a warrant under subsection (4), the fine is taken to be satisfied.
- (6) If the youth serves part of the period of detention or imprisonment under a warrant under subsection (4), the fine is taken to be partially satisfied by the amount calculated at the rate prescribed for the purposes of section 88 of the *Fines and Penalties (Recovery) Act* for each day actually served.
- (7) Unless otherwise ordered by the Court, any period of detention or imprisonment that the youth has to serve as a result of an order under subsection (3) must be served:
  - (a) cumulatively on any incomplete sentence or sentences of detention or imprisonment imposed on the youth for the default of a payment of a fine or sum of money; and
  - (b) concurrently with any incomplete sentence or sentences of detention or imprisonment imposed on the youth other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

## **Division 6            Community work orders**

### **93            Application and purpose of community work orders**

- (1) This Division applies in relation to a community work order.
- (2) The purpose of a community work order is to reflect the public interest in ensuring that a youth who commits an offence makes amends to the community by performing work that is of benefit to the community.

**94 Making community work order**

- (1) The Court may make a community work order in relation to a youth if:
  - (a) the youth consents to the making of the order and to the terms of the order; and
  - (b) the Court is satisfied there is an approved project suitable for the youth to participate in; and
  - (c) a probation and parole officer advises the Court that arrangements have been or will be made for the youth to participate in the approved project; and
  - (d) the Court is satisfied that the youth is a suitable person to participate in the approved project.
- (2) For subsection (1)(d), the Court must require a report from a probation and parole officer as to the youth's circumstances and any other matter the Court specifies.
- (3) If the Court makes a community work order, the youth must sign the order to signify acceptance of the terms of the order before leaving the precincts of the Court.
- (4) If the Court makes a community work order, it must ensure that a copy of the order is:
  - (a) given to the youth; and
  - (b) given to a responsible adult in respect of the youth, if in attendance at the Court; and
  - (c) sent to the Commissioner.
- (5) A community work order may require the youth to present himself or herself:
  - (a) at a place and to a person; and
  - (b) within a time,  
specified in the order or as directed by the Commissioner in writing.
- (6) If the time and place are not specified in the order, the Commissioner must cause a written direction to be given to the youth as soon as practicable after the order is made.

- (7) If the community work order:
- (a) is in respect of 2 or more offences; or
  - (b) is in addition to one or more other community work orders in force in respect of the youth,
- the total number of hours to be worked under the order, or orders as the case may be, must not exceed 480 hours.

## **95 Duties of youth in carrying out community work order**

- (1) A youth who is the subject of a community work order:
- (a) must participate, for the number of hours specified in the order, in an approved project as directed by a probation and parole officer; and
  - (b) must participate in the project to the satisfaction of a probation and parole officer or the project supervisor; and
  - (c) must, while participating in the project, comply with any reasonable directions of a probation and parole officer or the project supervisor; and
  - (d) must inform a probation and parole officer of any change in his or her residential address within 48 hours after the change; and
  - (e) must not commit an offence while the order is in force.
- (2) Unless the youth consents, he or she must not be required to participate in an approved project under a community work order for more than 8 hours (exclusive of time allowed for meals) in any one day.

## **96 Breach of community work order**

- (1) A youth who is the subject of a community work order breaches the order if he or she:
- (a) fails to comply with a term or condition of the order; or
  - (b) fails to carry out his or her obligations under section 95; or
  - (c) disturbs or interferes with any other person participating in or doing anything under a community work order; or
  - (d) assaults, threatens, insults or uses abusive language to a probation and parole officer or the project supervisor; or

- (e) changes his or her address to avoid his or her obligations under this Act.
- (2) If the community work order that is breached is in addition to one or more other community work orders in force in respect of the youth, any time spent participating in approved projects under the orders is taken to have been spent in the projects in the succession in which the orders were made, and the youth is taken to be in breach of all the orders that remain unsatisfied.

**97 Commissioner may approve projects**

- (1) The Commissioner may approve a rehabilitation project or work, or both, as a project to be participated in under a community work order.
- (2) An approved project must have a person nominated to be the project supervisor.

**Division 7 Suspended sentences**

**98 Making order to suspend sentence**

- (1) This section applies in relation to an order under section 83(1)(i).
- (2) The Court may suspend all or part of a sentence of detention or imprisonment on the conditions it considers appropriate.
- (3) If the Court suspends all or part of a sentence, it must specify a period, not exceeding 2 years, during which the youth must not commit any further offences.
- (4) The period in subsection (3) begins:
  - (a) if the whole of the sentence is suspended – on the date of the order; and
  - (b) if part of the sentence is suspended – on the date specified in the order.

**98A Procedural matters**

- (1) If the Court makes an order suspending the sentence imposed on a youth, the youth must sign the order to signify acceptance of the terms before leaving the precincts of the Court.
- (2) If the Court makes an order suspending the sentence imposed on a youth, it must ensure that a copy of the order is:
  - (a) given to the youth; and



- (b) given to a responsible adult in respect of the youth, if in attendance at the Court; and
- (c) sent to the Commissioner.

## **Division 8 Alternative detention orders**

### **99 Application**

This Division applies in relation to an alternative detention order.

### **100 Making alternative detention order**

- (1) The Court may suspend the sentence imposed on a youth if the youth enters into an alternative detention order and the Court is satisfied it is desirable to do so in the circumstances.
- (2) The Court must specify in the order the premises or place (which may include a restricted area) at which the youth is to reside or remain and the period, not exceeding 12 months, that the order is to remain in force.
- (3) The Court must not make the order unless the youth consents to the making of the order and to the terms of the order.

### **101 Circumstances in which alternative detention order may be made**

- (1) The Court can only make an alternative detention order if it is satisfied that:
  - (a) suitable arrangements are available for the youth to reside at the premises or place specified in the report; and
  - (b) the premises or place specified in the report is suitable for the purposes of the order; and
  - (c) the making of the order is not likely to inconvenience or put at risk other persons living in those premises or at that place or the community generally; and
  - (d) the youth is a suitable person for alternative detention.
- (2) In order to be satisfied as to those matters, the Court must require from the Commissioner a report.
- (3) The Commissioner must prepare and provide to the Court a report addressing the matters referred to in subsection (1) and any other matters specified by the Court.

- (4) In preparing the report, the Commissioner must take into account the views of those members of the community who, in the opinion of the Commissioner, may be affected by the making of the order.

### **102 Conditions of order**

- (1) An alternative detention order may be subject to the terms and conditions the Court considers appropriate including, but not limited to, that the youth:
- (a) not leave the premises or place specified in the order except at the times and for the periods as prescribed or as otherwise permitted by the Commissioner or a probation and parole officer; and
  - (b) wear or have attached a monitoring device in accordance with the directions of the Commissioner, and allow the placing, or installation in, and retrieval from, the premises or place specified in the order of a machine, equipment or device necessary for the efficient operation of the monitoring device; and
  - (c) obey the reasonable directions of the Commissioner.
- (2) The Regulations may prescribe conditions with which a youth who is subject to an alternative detention order must comply.

### **103 Procedural matters**

- (1) If the Court makes an alternative detention order, the youth must sign the order to signify acceptance of the terms before leaving the precincts of the Court.
- (2) If the Court makes an alternative detention order, it must ensure that a copy of the order is:
- (a) given to the youth; and
  - (b) given to a responsible adult in respect of the youth, if in attendance at the Court; and
  - (c) sent to the Commissioner.

### **104 If more than one alternative detention order made**

- (1) If the Court makes an alternative detention order in respect of 2 or more offences, the aggregate period the order is to remain in force must not exceed 12 months.

- (2) If one or more other alternative detention orders are in force in respect of the youth, the Court must not make a further alternative detention order that results in the aggregate periods of the orders exceeding 12 months.

#### **105        Tests for alcohol or illicit drugs**

- (1) A probation and parole officer or police officer may, at any time, require a youth who is subject to an alternative detention order to submit to a test to determine whether there is alcohol or any illicit drug or substance present in the youth's body.
- (2) A probation and parole officer or police officer may, at any time and without a warrant, enter the premises or place at which the youth is required under the order to reside for the purposes of administering a test under subsection (1).

#### **106        Breath test**

- (1) A probation and parole officer or police officer may, under section 105, require a youth to provide a sample of his or her breath for a breath test.
- (2) A youth who fails to supply a sufficient sample of his or her breath is taken not to have complied with the requirement under subsection (1).

#### **107        Breath analysis**

- (1) If it appears from a breath test under section 106, or from the observations of a probation and parole officer or police officer, that there may be alcohol present in the youth's body, the officer may require the youth to provide a sample of his or her breath for a breath analysis.
- (2) The officer may take the youth to a police station or other place for the purpose of carrying out a breath analysis.
- (3) A breath analysis must be carried out by a person authorised to carry out a breath analysis under the *Traffic Act* and must be done using an instrument approved for that purpose under that Act.
- (4) A youth who, without reasonable excuse, fails to supply a sufficient sample of his or her breath for analysis is taken not to have complied with the requirement under subsection (1).
- (5) A certificate signed by the person who carries out the breath analysis is evidence that there was present in the youth's body the concentration of alcohol indicated on the certificate.

**108 Blood or urine sample**

- (1) If:
- (a) it appears from a breath test under section 106, or from the observations of a probation and parole officer or a police officer, that the youth may be under the influence of alcohol or an illicit drug or substance; or
  - (b) there is a medical reason the youth cannot provide a sufficient sample of breath for analysis under section 107,

the officer may require the youth to provide a sample of his or her blood or urine for analysis.

- (2) Only a medical practitioner or nurse can take a sample of the youth's blood and the officer may take the youth to a medical practitioner or nurse for the purpose of obtaining the sample.
- (3) If a sample of blood or urine is obtained under subsection (1), approximately half of the sample must be given to the youth to enable him or her to obtain an independent analysis if he or she wishes.
- (4) A certificate by an analyst approved by the Commissioner is evidence that there was present in the youth's body alcohol or a drug or substance that is specified in the certificate.

**109 Other evidence**

The Court may receive evidence other than the results of a breath test or breath, blood or urine analysis to establish that a youth had consumed alcohol or used an illicit drug or substance in breach of an alternative detention order.

**110 Breach of alternative detention order**

A youth breaches an alternative detention order if he or she:

- (a) fails to reside in or remain at the premises or place specified in the order; or
- (b) fails to comply with a term or condition of the order; or
- (c) wilfully destroys, damages or removes, or attempts to destroy, damage or remove, any part of a monitoring device or any associated machine, equipment or device; or

- (d) fails to comply with a lawful request of a probation and parole officer or police officer to undergo a breath test or breath analysis or provide a blood or urine sample; or
- (e) disturbs or interferes with another person residing in the premises or at the place specified in the order; or
- (f) assaults, threatens, insults or uses abusive language to a probation and parole officer; or
- (g) contravenes or fails to comply with a condition prescribed under section 102(2).

## **Division 9      Periodic detention orders**

### **111      Application**

This Division applies in relation to a periodic detention order.

### **112      Making periodic detention order**

- (1) The Court may make a periodic detention order in respect of a youth if:
  - (a) the youth consents to the making of the order and to the terms of the order; and
  - (b) the Court is satisfied there are appropriate facilities available; and
  - (c) the Court is satisfied that the youth is a suitable person for periodic detention.
- (2) For subsection (1)(c), the Court must require a report from the Commissioner as to the youth's circumstances and any other matter the Court specifies.

### **113      Order must specify number of detention periods**

A periodic detention order must specify:

- (a) the number of periods of detention or imprisonment the youth must serve; and
- (b) the length of each period of detention or imprisonment; and
- (c) the detention centre or custodial correctional facility at which the youth must serve the sentence; and

- (d) the date and time at which the youth must first report to the detention centre or custodial correctional facility; and
- (e) the day of the week and the time at which the youth must subsequently report during the term of the sentence.

#### **114 Conditions of order**

- (1) A periodic detention order is subject to the following conditions:
  - (a) the youth must report to the relevant detention centre or custodial correctional facility (as the case may be) on the day or date and at the time specified in the order;
  - (b) the youth must not commit an offence while the order is in force;
  - (c) the youth must notify the superintendent of the detention centre, or the officer in charge of the custodial correctional facility (as the case may be), within 48 hours of being charged with an offence, in the Territory or elsewhere, while the order is in force;
  - (d) the youth must notify the superintendent of the detention centre, or the officer in charge of the custodial correctional facility (as the case may be), of any change in his or her address, while the order is in force, within 48 hours after the change;
  - (e) while the order is in force, the youth must obey all lawful instructions and directions of the Commissioner or the superintendent of the detention centre or the officer in charge of the custodial correctional facility (as the case may be);
  - (f) any other conditions the Court considers appropriate.
- (2) For subsection (1)(e), lawful instructions and directions includes instructions or directions in relation to participation in any program or activity.

#### **115 Procedural matters**

- (1) If the Court makes a periodic detention order, the youth must sign the order to signify acceptance of the terms before leaving the precincts of the Court.
- (2) If the Court makes a periodic detention order, it must ensure that a copy of the order is:
  - (a) given to the youth; and

- (b) given to a responsible adult in respect of the youth, if in attendance at the Court; and
- (c) sent to the Commissioner.

**116 Order remains in force until served or cancelled**

A periodic detention order remains in force until:

- (a) the relevant detention periods required to be served under the order, or any detention periods by which the order has been extended under section 119, have been served; or
- (b) the order has been cancelled or revoked.

**117 Warrant of commitment covers all periods**

The Court must issue a warrant of commitment in respect of the youth that is taken to apply to all detention periods to be served under the periodic detention order.

**118 Youth in lawful custody**

The youth is taken to be in lawful custody while serving each period of detention under the order.

**119 Commissioner can vary times**

- (1) The Commissioner may grant a detainee leave of absence from a period of detention:
  - (a) for health reasons; or
  - (b) on compassionate grounds; or
  - (c) for any other reason the Commissioner considers sufficient.
- (2) Leave of absence may be granted either before or after the detention period to which it relates.
- (3) If the Commissioner refuses to grant leave of absence to a detainee in relation to one or more detention periods, the detainee may apply to the Youth Justice Court and the Court may, if it considers it appropriate, direct that leave of absence be granted in respect of all or any of those detention periods.
- (4) An application under subsection (3) must be made within 21 days after the refusal.

- (5) If the Court directs that leave of absence be granted, the Commissioner is taken to have granted leave of absence for each detention period specified by the Court.
- (6) A detainee who is granted leave of absence from a period of detention:
  - (a) is not taken to be serving that period of detention for the purposes of his or her sentence; and
  - (b) must continue to report under the periodic detention order until the specified number of detention periods have been served.

#### **120 Detainee unfit for detention**

- (1) The superintendent of a detention centre or the officer in charge of a custodial correctional facility (as the case may be) may refuse to admit a detainee to the centre or facility if he or she believes on reasonable grounds that the detainee is unfit to serve a period of detention because the detainee's behaviour is unruly or is otherwise a threat to the good order or security of the centre.
- (2) A detainee refused admission under subsection (1) is taken to have failed to report for detention.

### **Division 10 Breach of order and re-offending during adjournment**

#### **121 Breach**

- (1) A youth breaches an order if the youth:
  - (a) fails, without reasonable excuse, to comply with a term or condition of the order; or
  - (b) fails to comply with the Regulations relating to the order; or
  - (c) commits an offence against a law in force in the Territory or elsewhere while he or she is subject to the order; or
  - (d) does an act, or omits to do an act, that comprises a breach under another provision of this Act.
- (2) The Court may, on application by the Commissioner or prosecutor or of its own motion, make an order under this section.
- (3) Notice of the application or hearing must be given to the youth.



- (4) A Justice may issue a warrant for the arrest of the youth if satisfied that:
  - (a) the youth is in breach of an order; and
  - (b) the youth may not appear in Court.
- (5) If the youth does not attend the hearing, the Court may issue a warrant for the arrest of the youth.
- (6) If the Court is satisfied by evidence on oath or by affidavit, or by the admission of a youth, that the youth has breached an order, the Court may:
  - (a) if the order is still in force:
    - (i) confirm or vary the order; or
    - (ii) revoke the order and deal with the youth under section 83 as if it had just found him or her guilty of the relevant offence or offences; and
  - (b) if the order is no longer in force – deal with the youth under section 83 as if it had just found him or her guilty of the relevant offence or offences.
- (7) In determining how to deal with the youth under subsection (6), the Court must take into account the extent to which the youth had complied with the order before the application was made.
- (8) In dealing with a youth under this section, the Court must not impose on the youth a penalty greater than the maximum penalty it could have imposed on him or her in respect of the original offence.

## **122 Youth offends during adjournment**

- (1) This section applies if:
  - (a) the Court:
    - (i) finds a charge proven against a youth; and
    - (ii) adjourns the matter under section 83(1)(c) or (e); and
    - (iii) discharges the youth without penalty; and
  - (b) the youth is subsequently found guilty of an offence committed during the period of the adjournment.

- (2) The Court that finds the youth guilty of the offence referred to in subsection (1)(b) may, in addition to imposing a penalty in respect of that offence, impose on the youth any penalty that could have been imposed in respect of the offence to which subsection (1)(a) applies.
- (3) It is immaterial that the aggregate of both penalties may exceed a limit referred to in section 83.

## **Division 11            Miscellaneous matters**

### **123            Explanation of orders**

- (1) If the Court makes an order in relation to a youth, the Court must explain the order to the youth in a language and manner the youth is likely to understand, having regard to the youth's age, maturity, cultural background and English language skills.
- (2) The Court must explain to the youth:
  - (a) the purpose and effect of the order; and
  - (b) the consequences of non-compliance with the order and the circumstances in which the youth would be taken to breach the order; and
  - (c) that the Court has the power to review the order on the application of the Commissioner, the youth or a person on behalf of the youth.
- (3) An order is not invalidated by a failure to comply with subsection (2).

### **124            Arrest without warrant if condition breached**

If a police officer has reason to believe that a youth has breached a condition imposed on the youth under this Part, the officer:

- (a) may arrest the youth without a warrant; and
- (b) must bring him or her before the Court as soon as practicable.

### **125            Aggregate sentences of detention or imprisonment**

- (1) If the Court finds a youth guilty of 2 or more offences arising out of the same incident or course of conduct, the Court may impose one term of detention or imprisonment in respect of both or all of those offences.

- (2) The term of detention or imprisonment must not exceed the lesser of:
- (a) the maximum term that could be imposed if a separate term were imposed in respect of each offence; or
  - (b) for a youth who:
    - (i) has turned 15 years of age – 2 years; or
    - (ii) is under 15 years of age – 12 months.
- (3) Subsection (1) does not apply if one of the offences is a violent offence, or a sexual offence, within the meaning of the *Sentencing Act*.

**126 Detention or imprisonment to be concurrent unless otherwise ordered**

- (1) If a youth:
- (a) is serving, or has been sentenced to serve, a term of detention or imprisonment for an offence; and
  - (b) is sentenced by the Court to serve another term of detention or imprisonment for another offence,
- the later term of detention or imprisonment must be served concurrently with the term of detention or imprisonment for the first offence.
- (2) Subsection (1) does not apply if:
- (a) this Act otherwise provides; or
  - (b) the Court otherwise orders when imposing the later sentence.

**127 Cumulative orders of detention or imprisonment**

- (1) If a youth:
- (a) is serving, or has been sentenced to serve, a term of detention or imprisonment for an offence; and
  - (b) is sentenced to serve another term of detention or imprisonment for another offence,
- the Court may direct the term of detention or imprisonment for the other offence is to start from the end of the term of detention or imprisonment for the first offence or an earlier date.

- (2) Subsection (1) applies whether the term of detention or imprisonment for the first offence is being served concurrently with or cumulatively on the term of detention or imprisonment for another offence.

**128 Taking other offences into account**

Section 107 of the *Sentencing Act* applies in relation to proceedings under this Act as if:

- (a) a reference to a court were a reference to the Youth Justice Court; and
- (b) a reference to a person included a reference to a youth.

**129 Sentence of detention or imprisonment may be backdated**

Despite any other provision of this Act, if:

- (a) a youth has been in custody after his or her arrest for an offence; and
- (b) the youth is convicted of that offence and sentenced to detention or imprisonment,

the Court may order that the detention or imprisonment is taken to have commenced on the day on which the youth was arrested or on any other day between that day and the day on which the Court passes sentence.

**130 Order of service of sentences of detention or imprisonment**

If a youth has been sentenced to several terms of detention or imprisonment in respect of any of which a non-parole period was fixed, the terms are taken to be served in succession as follows:

- (a) any term in respect of which a non-parole period was not fixed;
- (b) the non-parole period;
- (c) unless and until released on parole, the balance of any term after the end of the non-parole period.

**131 Further sentence if detainee on parole**

- (1) This section applies if:
- (a) a youth is sentenced in the Territory to a term of detention or imprisonment for an offence that was committed while a parole order under the *Parole Act* was in force for the youth; and
  - (b) the parole order:
    - (i) was revoked by the Chairperson under section 5 of the *Parole Act* before the youth was sentenced; or
    - (ii) was cancelled by a court under section 6 of the *Parole Act* before the youth was sentenced; or
    - (iii) is taken, under section 5(8) of the *Parole Act*, to have been revoked because of the sentence.
- (2) The Court must also order the youth to be detained or imprisoned for:
- (a) if the parole order was revoked or cancelled as mentioned in subsection (1)(b)(i) or (ii) – the term that the youth had not served when released from detention under the parole order minus the part of the term the youth served after the parole order was revoked or cancelled; or
  - (b) otherwise – the term that the youth had not served when released from detention under the parole order.
- (3) The term of detention or imprisonment to be served in accordance with subsection (2) starts at the end of the term of detention or imprisonment to which the youth is sentenced for the offence mentioned in subsection (1).
- (4) In this section:
- Chairperson**, see section 3(1) of the *Parole Act*.

**132 Application of *Parole Act***

The *Parole Act* applies in relation to a youth sentenced under this Act as if:

- (a) a reference to a prisoner or offender were a reference to a detainee; and

- (b) a reference to imprisonment were a reference to detention;  
and
- (c) a reference to the *Sentencing Act* were a reference to this Act;  
and
- (d) a reference to a court of summary jurisdiction were a  
reference to the Youth Justice Court.

### **133 Parents liable for costs of detention**

- (1) If, under section 83, a youth is ordered by the Court to be detained at a detention centre, the Court may order that a parent or the parents of the youth pay an amount towards the cost of detaining the youth in the detention centre.
- (2) The amount must not exceed:
  - (a) \$100 per week for each week during which the youth is detained in the detention centre; or
  - (b) for periodic detention – \$15 per day for each day the youth is detained in the detention centre.
- (3) If the Court makes an order under subsection (1), it must specify the amount that the parent is, or parents are, required to pay towards the cost of detaining the youth.
- (4) The *Fines and Penalties (Recovery) Act* applies in relation to an amount ordered to be paid under this section and any amount payable must be paid to the Fines Recovery Unit.
- (5) The Court must not make an order under this section in respect of a parent or the parents of a youth unless:
  - (a) the parent is, or parents are, given an opportunity to be heard and it has taken into account any matters put to it by the parent or parents; and
  - (b) it is satisfied that the parent has, or parents have, failed to exercise reasonable supervision and control of the youth; and
  - (c) it is satisfied, after taking into account all the circumstances, that it is reasonable to make the order.

### **134 Forfeiture of bail or recognizance**

- (1) If the Court orders forfeiture of a bail undertaking or monetary recognizance, Part 8 of the *Fines and Penalties (Recovery) Act* applies and payment can be enforced under that Act unless the Court orders detention or imprisonment in default under subsection (2).
- (2) The Court may order that if the forfeited amount is not paid within 28 days, the youth in respect of whom the order is made must be detained at a detention centre or imprisoned until his or her liability to pay the forfeited amount is discharged.
- (3) If the Court makes an order under subsection (2) and the forfeited amount is not paid within 28 days, the Court may issue a warrant of commitment in respect of the youth specifying the period of detention or imprisonment calculated on the basis of the amount forfeited as follows:
  - (a) the period must be one day for each amount (or part of that amount) prescribed for the purposes of section 88 of the *Fines and Penalties (Recovery) Act* that comprises the amount forfeited;
  - (b) the period must not be less than one day;
  - (c) the period must not exceed 3 months.
- (4) If a youth serves the total period of detention or imprisonment under a warrant under subsection (3), the forfeiture is taken to be satisfied.
- (5) If a youth serves part of the period of detention or imprisonment under a warrant under subsection (3), the forfeiture is taken to be partially satisfied by the amount calculated at the rate prescribed for the purposes of section 88 of the *Fines and Penalties (Recovery) Act* for each day actually served.
- (6) Unless otherwise ordered by the Court, any period of detention or imprisonment that the youth has to serve as a result of an order under subsection (2) must be served:
  - (a) cumulatively on any incomplete sentence or sentences of detention or imprisonment imposed on the youth for the default of a payment of a fine or sum of money; and
  - (b) concurrently with any incomplete sentence or sentences of detention or imprisonment imposed on the youth other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed

before or at the same time as that term.

**135 Registrar may disclose name of youth**

- (1) Subsection (2) applies if:
  - (a) a charge against a youth for an offence is proven (whether or not a conviction is recorded); and
  - (b) a person intends to commence proceedings for loss or damage as a result of the offence; and
  - (c) the proceedings under this Act in respect of the youth were closed to the public.
- (2) The person may apply to the Registrar who must supply the person with the name and address of the youth.

**136 Certain findings of guilt not to be mentioned**

- (1) If a court finds a youth guilty of an offence but does not record a conviction, no evidence or mention of the offence may be made to, nor may the offence be taken into account by, a court other than the Youth Justice Court.
- (2) Subsection (1):
  - (a) applies whether the offence was committed, or the finding of guilt made, before or after the commencement of this section; but
  - (b) does not apply if the offence was committed after the youth had turned 15 years of age.

**137 Procedure where youth before another court**

- (1) If, in any proceedings before a court other than the Youth Justice Court, it appears to the court that the proceeding should have been instituted in the Youth Justice Court, the court may:
  - (a) order a stay of the proceedings; or
  - (b) proceed with the hearing and determination of those proceedings in accordance with this Act as if the court were the Youth Justice Court.
- (2) If a court stays proceedings under subsection (1)(a), it must:
  - (a) refer the proceedings for hearing and determination by the Youth Justice Court; and



- (b) do one of the following:
  - (i) allow the youth to go at large;
  - (ii) release the youth on bail;
  - (iii) release the youth into the care and supervision of any person;
  - (iv) remand the youth in custody in a detention centre or other suitable place (that is not a custodial correctional facility).

### **138 Procedure where adult before Youth Justice Court**

- (1) If, in the course of any proceedings before the Youth Justice Court, it appears to the Court that the proceedings should have been instituted in the Court of Summary Jurisdiction, the Youth Justice Court may:
  - (a) order a stay of the proceedings; or
  - (b) proceed with the hearing and determination of those proceedings as if it were the Court of Summary Jurisdiction.
- (2) If the Youth Justice Court stays proceedings under subsection (1), it must:
  - (a) refer the proceedings for hearing and determination by the Court of Summary Jurisdiction; and
  - (b) do one of the following:
    - (i) allow the defendant to go at large;
    - (ii) release the defendant on bail;
    - (iii) remand the defendant in suitable custody.

### **139 Court has jurisdiction**

A court to which proceedings are referred under section 137 or 138 has jurisdiction to hear and determine the proceedings.

## 140 Referred proceedings valid

If proceedings are referred to the Youth Justice Court under section 137:

- (a) the proceedings must be dealt with under this Act from the date of referral, despite that before that date the proceedings or any part of those proceedings did not comply with this Act or that a requirement of this Act had not been complied with; and
- (b) the proceedings are not invalid only because, before the date of the referral, those proceedings did not comply with this Act or a requirement of this Act had not been complied with.

## Part 6A Responsible care and supervision within the family

### Division 1 Preliminary

#### 140A Definitions

In this Part:

**appropriate Agency** means an Agency to which the Minister has assigned the administrative responsibilities of an appropriate Agency under this Part.

**authorised officer** means:

- (a) the person for the time being responsible for administering an appropriate Agency (whether described as the chief executive officer or in some other way); or
- (b) any other person authorised by an appropriate Agency to act on behalf of the Agency under this Part.

**parent**, of a youth, includes a person who is, in relation to the youth, a responsible adult.

**publish** means:

- (a) make accessible on the internet; or
- (b) publish by newspaper, radio or television; or
- (c) publish by any other form of public media.

### **140B      Guiding principles**

- (1) For the purposes of this Part, the best interests of the youth are to be treated as the paramount consideration.
- (2) Agencies with responsibilities related to the welfare of a youth must work together cooperatively and effectively to help parents:
  - (a) safeguard and promote the wellbeing of the youth; and
  - (b) exercise appropriate control over the behaviour of the youth; and
  - (c) comply with any relevant family responsibility agreement or order.

### **140C      How Agency acts for the purposes of this Part**

- (1) An appropriate Agency acts for the purposes of this Part through an authorised officer.
- (2) An appropriate Agency must issue to each of the Agency's authorised officers an identity card certifying the officer's authority to act on behalf of the Agency under this Part.

## **Division 2      Family responsibility agreements**

### **140D      Power to enter into family responsibility agreement**

An appropriate Agency may enter into a family responsibility agreement with a parent, or the parents, of a youth if:

- (a) the youth has demonstrated behavioural problems; and

*Examples*

- 1 *Criminal behaviour.*
- 2 *Persistent truancy.*
- 3 *Anti-social behaviour.*

- (b) the youth's family circumstances may have caused, or contributed to, the behavioural problems; and
- (c) the Agency is of the opinion that the agreement may assist to resolve the problems.

### **140E Family responsibility agreement**

- (1) A family responsibility agreement may provide as follows:
  - (a) it may require a parent to undertake counselling or therapy directed at helping the parent to overcome addictive, destructive or damaging behaviour;
  - (b) it may require a parent to:
    - (i) undertake counselling to provide guidance in the effective discharge of the parent's parental responsibilities; or
    - (ii) join and participate in the activities of an appropriate support group; or
    - (iii) undertake any other relevant course or program of personal development (including, if appropriate, a residential course or program);
  - (c) it may require a parent to exercise proper care and supervision of the youth and, in particular, to take all reasonable steps to ensure that:
    - (i) the youth attends school; and
    - (ii) the youth keeps away from, and avoids contact with, persons named or described in the agreement; and
    - (iii) the youth keeps away from places described in the agreement;
  - (d) it may contain any other provisions, relevant to the effective care and supervision of the youth, that are agreed between the parties.
- (2) A family responsibility agreement remains in force for a term stated in the agreement but the term cannot:
  - (a) exceed 12 months; or
  - (b) extend beyond the date on which the youth turns 18.
- (3) Before entering into a family responsibility agreement, the appropriate Agency must ensure that facilities and services reasonably required by the parent or parents to comply with the agreement are reasonably available to the parent or parents in the relevant region.

**140F Family responsibility agreement not to give rise to enforceable obligations**

A family responsibility agreement does not give rise to enforceable obligations.

**Division 3 Family responsibility orders**

**140G Inquiries into family circumstances**

- (1) The Court may, on application, conduct an inquiry into the family circumstances of a youth:
  - (a) where a parent, or the parents, of the youth have entered into a family responsibility agreement but the youth has continued to exhibit behavioural problems; or
  - (b) where a parent or the parents of the youth have been invited to enter into a family responsibility agreement but have not done so; or
  - (c) where a parent or the parents of the youth have entered into a family responsibility agreement but have not complied with its terms; or
  - (d) where the youth has been charged with an offence or has breached a condition of bail.
- (2) The application:
  - (a) if based on subsection (1)(a), (b) or (c) – must be made by an appropriate Agency; and
  - (b) if based on subsection (1)(d) – must be made by a member of the police force.
- (3) For the purposes of the inquiry:
  - (a) the Court may issue a summons requiring the youth, a parent or parents of the youth, or any other person who may be able to assist the Court in conducting the inquiry, to appear before the court at a specified time and place; and
  - (b) if a person fails to appear as required by the summons, the Court may issue a warrant to have the person arrested and brought before the Court.
- (4) The Chief Magistrate may make rules of Court, or issue practice directions, regulating the practice and procedure of the Court on an inquiry under this Division.

#### **140H General provisions about inquiry**

- (1) The purpose of an inquiry under this Part is to ascertain:
  - (a) whether unstable or otherwise unsatisfactory family circumstances might have caused or contributed to the youth's behavioural problems; and
  - (b) if so, whether the situation is likely to be improved by a family responsibility order.
- (2) The Court is not bound by the rules of evidence in conducting an inquiry under this Part and may inform itself in any way it considers appropriate.

#### **140J Family responsibility orders**

- (1) If, on an inquiry under this Part, the Court forms the opinion that an order under this Part (a **family responsibility order**) is likely to improve the youth's family situation, the Court may make such an order.
- (2) Before the Court makes a family responsibility order, it must consider such of the following matters as may be relevant in the circumstances of the particular case:
  - (a) the circumstances of the youth's family and the likely effect of the order on the family;
  - (b) whether the youth, or a parent of the youth, suffers from a physical or mental disability or condition that causes or contributes to the youth's behavioural problems;
  - (c) the extent the youth's parents have attempted to manage or control the youth's behaviour;
  - (d) whether a parent has unreasonably refused to enter into a family responsibility agreement or, in the case of a parent who has entered into such an agreement, the extent the parent has attempted to comply with the agreement;
  - (e) whether the appropriate Agency has made reasonable attempts to help and encourage the parents to manage the youth's behaviour appropriately and to improve their parenting skills;
  - (f) the extent the appropriate Agency has complied with obligations under a responsible parenting agreement to provide assistance to the youth's parents;

- (g) whether the facilities and services reasonably necessary for the parents to comply with the order will be available to them;
  - (h) the assistance the appropriate Agency and other Agencies are prepared to provide to assist the parents to comply with the order.
- (3) A family responsibility order may provide as follows:
- (a) it may require a parent to undertake counselling or therapy directed at helping the parent to overcome addictive, destructive or damaging behaviour;
  - (b) it may require a parent to:
    - (i) undertake counselling to provide guidance in the effective discharge of the parent's family responsibilities; or
    - (ii) join and participate in the activities of an appropriate support group; or
    - (iii) undertake any other relevant course or program of personal development (including, if appropriate, a residential course or program);
  - (c) it may require a parent to exercise proper care and supervision of the youth and, in particular, to take all reasonable steps to ensure that:
    - (i) the youth attends school; and
    - (ii) the youth keeps away from, and avoids contact with, persons named or described in the order; and
    - (iii) the youth keeps away from places described in the order;
  - (d) it may impose any other requirements, relevant to the effective care and supervision of the youth, that the Court considers justified in the circumstances.
- (4) A family responsibility order:
- (a) cannot be made for a youth under the age of 10 years; and
  - (b) remains in force for a term stated in the order but the term cannot:
    - (i) exceed 12 months; or

- (ii) extend beyond the date on which the youth turns 18.

**140K Variation or revocation of family responsibility order**

- (1) The Court may, if satisfied that the variation or revocation of a family responsibility order would be consistent with the best interests of the youth, vary or revoke the order accordingly.
- (2) The Court may exercise its powers under this section:
  - (a) on the Court's own initiative; or
  - (b) on application by:
    - (i) a party to the proceedings in which the order was made; or
    - (ii) any other person with a proper interest in the matter.

**140L Explanation of orders**

- (1) If the Court makes a family responsibility order, or an order varying or revoking a family responsibility order, the Court must explain the order to the parents and the youth in a language and manner they are likely to understand, having regard to their respective ages, maturity, cultural background and English language skills.
- (2) The Court must explain:
  - (a) the purpose and effect of the order; and
  - (b) the consequences of non-compliance; and
  - (c) if appropriate, that the Court has power to review the order.
- (3) Failure to explain a family responsibility order as required by this section does not invalidate the order.

**140M Non-compliance with family responsibility order**

- (1) A person who fails, without reasonable excuse, to comply with a family responsibility order commits an offence.

Maximum penalty: 20 penalty units.

- (2) A prosecution for an offence against this section may only be commenced with the approval of the appropriate Agency.
- (3) An appropriate Agency may only approve the prosecution if it has made reasonable attempts to secure compliance with the order without resorting to prosecution but those attempts have failed.



**Division 4      Miscellaneous****140N      Enforcement of fine**

A fine imposed for non-compliance with a family responsibility order may only be enforced:

- (a) by execution against goods that are not necessary for the maintenance of a modest life-style or for earning a livelihood; or
- (b) by a community work order.

**140P      Prohibition on publication of certain information**

A person must not publish information that identifies another as:

- (a) a party to proceedings for a family responsibility order, or as a youth for whom such an order has been, or may be, made; or
- (b) a person named or identified in a family responsibility order.

Maximum penalty:      200 penalty units or imprisonment for  
1 year.

**140Q      Geographical limitation of jurisdiction**

Regulations may be made limiting the exercise of the power to make family responsibility order to particular regions or parts of the Territory.

**140R      Review of this Part**

- (1) The Minister will have a review of this Part carried out.
- (2) The review is to commence around 12 months after the commencement of this Part.
- (3) Within 6 sitting days after receiving the report on the review, the Minister must table the report in the Legislative Assembly.

**Part 7                      Reconsideration and review of sentences and appeals****141              Reconsideration of sentence**

- (1) This section applies if the Court finds a youth guilty of a charge and an order is made in relation to the youth or a responsible adult in respect of the youth.

- (2) The Court may reconsider the order on application by:
  - (a) the youth or a person on behalf of the youth; or
  - (b) if the order is in relation to a responsible adult – the responsible adult.
- (3) An application for reconsideration may be made at any time.
- (4) If an application for reconsideration relates to a sentence of detention or imprisonment, the Court may, upon application by or on behalf of the youth, release the youth on bail before it hears the application for reconsideration.
- (5) The Court must notify the applicant, and all other parties, of the place, date and time for the hearing of the application.
- (6) After the hearing of the application, the Court may:
  - (a) confirm or vary the order; or
  - (b) revoke the order and deal with the youth under section 83 as if it had just found him or her guilty of the relevant offence or offences.
- (7) An appeal lies to the Supreme Court from any order made by the Youth Justice Court under this section.
- (8) The making of an application under this section does not prevent a person making another application under this section.

## **142 Review of sentencing orders**

- (1) This section applies if the Court is satisfied, on an application by the youth, a person on behalf of the youth, the Commissioner or a prosecutor:
  - (a) that circumstances, including those of the youth, have materially changed and as a result the youth will not be able to continue to comply with an order or a condition or continuing obligation; or
  - (b) that the youth is no longer complying with, or is no longer willing to comply with, an order or a condition or continuing obligation.
- (2) The Court may do any of the following:
  - (a) discharge the order;
  - (b) confirm or vary the order;

- (c) revoke the order and deal with the youth under section 83 as if it had just found him or her guilty of the relevant offence or offences.
- (3) In determining how to deal with the youth under subsection (2), the Court must take into account the extent to which the youth had complied with the order or conditions or continuing obligation before the application was made.
- (4) If the order the Court is reviewing is a community work order, the grounds for reviewing such an order include the following:
  - (a) that the youth is in custody on a charge for another offence;
  - (b) that the youth's behaviour is such that the carrying out of the terms of the order is impracticable;
  - (c) that the operation of the order offends other persons.
- (5) In dealing with a youth under this section, the Court must not impose on the youth a penalty greater than the maximum penalty it could have imposed on him or her in respect of the original offence.
- (6) An appeal lies to the Supreme Court from any order made by the Youth Justice Court under subsection (2).
- (7) If an application is made by or on behalf of the youth under this section, the Court must cause notice of the application, and of the time and place fixed for the hearing, to be given to the Commissioner.
- (8) If an application is made by the Commissioner or a prosecutor under this section, notice of the application must be given to the youth.
- (9) If the youth does not attend the hearing of the application, the Court may issue a warrant for the arrest of the youth.

#### **143 Court may re-open proceeding to correct sentencing errors**

- (1) The Court may re-open proceedings if the Court has:
  - (a) imposed a sentence on a youth that is not in accordance with the law; or
  - (b) failed to impose a sentence that the Court legally should have imposed.

- (2) If the Court re-opens proceedings:
  - (a) it must give the parties an opportunity to be heard; and
  - (b) it may impose a sentence that is in accordance with the law; and
  - (c) it may amend any relevant conviction or order to the extent necessary to take into account the sentence imposed under paragraph (b).
- (3) The Court may re-open proceedings:
  - (a) on its own initiative at any time; or
  - (b) on an application by the youth, a person on behalf of the youth, the Commissioner or a prosecutor made not later than 28 days after the day the sentence was imposed.
- (4) An application may be made at any time for leave to apply for a re-opening of proceedings after the expiry of the time referred to in subsection (3)(b).
- (5) Subject to subsection (6), this section does not affect any right of appeal.
- (6) For the purposes of an appeal under any Act against a sentence imposed under subsection (2)(b), the time within which the appeal must be made starts from the day the sentence is imposed under subsection (2)(b).
- (7) This section applies to a sentence imposed, or required to be imposed, whether before or after the commencement of this section.

#### **144 Appeal to Supreme Court**

- (1) An appeal lies to the Supreme Court from a finding of guilt, conviction, order or adjudication made by the Youth Justice Court under:
  - (a) this Act; or
  - (b) any other Act in force in the Territory.
- (2) An appeal under this section must be:
  - (a) made in accordance with the *Supreme Court Rules*; and
  - (b) heard by a single Judge.

- (3) The provisions of the *Justices Act* relating to appeals from the Court of Summary Jurisdiction apply, with the necessary changes, to an appeal under subsection (1).
- (4) Sections 61, 63 and 123 apply in relation to an appeal under this section as though a reference in those sections to the Court were a reference to the Supreme Court.

**145 Appeal operates as stay**

An appeal under section 144 operates as a stay of execution or of proceedings under the finding of guilt, conviction, order or adjudication appealed against.

**146 Single Judge may refer appeal to Full Court**

This Part does not affect the power of a Judge of the Supreme Court to refer an appeal to be heard by the Full Court of the Supreme Court.

**147 Powers of Supreme Court on appeal**

If the Supreme Court hears an appeal against a decision of the Youth Justice Court, it may exercise the same powers and make any order that could be exercised or made by the Youth Justice Court under this Act or any other Act in force in the Territory.

**Part 8 Youth detention centres**

**Division 1 Detention centres**

**148 Approval of youth detention centres**

The Minister may approve an establishment to be a youth detention centre for this Act.

**149 Admission to detention centre**

- (1) A youth must not be admitted to a detention centre except in accordance with this Act.
- (2) In subsection (1):

***admitted to***, in relation to a detention centre, does not include taken in as a visitor, member of the detention centre staff, worker, contractor or similar.

**150 Explanation of rights and responsibilities**

- (1) As soon as practicable after a youth is admitted to a detention centre, he or she must be given an explanation of the rules of the centre and his or her rights and responsibilities as a detainee.
- (2) The explanation must be given in a language and manner the youth is likely to understand, having regard to the youth's age, maturity, cultural background and English language skills.
- (3) Any action taken is not unlawful only because of a failure to comply with this section.
- (4) For subsection (1), an explanation of the rights and responsibilities of a detainee must include:
  - (a) information about the consequences of breaching the rules of the detention centre; and
  - (b) information about the procedure for making a complaint.

**Division 2 Superintendent**

**151 Superintendent of detention centre**

- (1) The Commissioner must appoint an employee, within the meaning of the *Public Sector Employment and Management Act*, to be the superintendent for a detention centre.
- (2) The superintendent of a detention centre is responsible, as far as practicable, for the physical, psychological and emotional welfare of detainees in the detention centre.
- (3) The superintendent of a detention centre:
  - (a) must promote programs to assist and organise activities of detainees to enhance their wellbeing; and
  - (b) must encourage the social development and improvement of the welfare of detainees; and
  - (c) must maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre, whether as detainees or otherwise; and
  - (d) is responsible for the maintenance and efficient conduct of the detention centre; and

- (e) must supervise the health of detainees, including the provision of medical treatment and, where necessary, authorise the removal of a detainee to a hospital for medical treatment.

## **152 Powers of superintendent**

- (1) The superintendent of a detention centre has the powers that are necessary or convenient for the performance of his or her functions.
- (2) The superintendent has power to approve the participation of a detainee in programs conducted in accordance with section 151 in place of consent by a parent or responsible adult in respect of the detainee.
- (3) The powers and functions of the superintendent of a detention centre in relation to a detainee are not altered or diminished by the fact that the detainee may be outside the precincts of, or absent from, the detention centre.

## **153 Discipline**

- (1) The superintendent of a detention centre must maintain discipline at the detention centre.
- (2) For subsection (1), the superintendent may use the force that is reasonably necessary in the circumstances.
- (3) Reasonably necessary force does not include:
  - (a) striking, shaking or other form of physical violence; or
  - (b) enforced dosing with a medicine, drug or other substance; or
  - (c) compulsion to remain in a constrained or fatiguing position; or
  - (d) handcuffing or use of similar devices to restrain normal movement.
- (4) However, if the superintendent is of the opinion that:
  - (a) an emergency situation exists; and
  - (b) a detainee should be temporarily restrained to protect the detainee from self-harm or to protect the safety of another person,

the superintendent may use handcuffs or a similar device to restrain the detainee until the superintendent is satisfied the emergency situation no longer exists.

(5) If the superintendent is of the opinion that a detainee should be isolated from other detainees:

- (a) to protect the safety of another person; or
- (b) for the good order or security of the detention centre,

the superintendent may isolate the detainee for a period not exceeding 24 hours or, with the approval of the Commissioner, not exceeding 72 hours.

#### **154 Use of custodial correctional facility to temporarily accommodate detainees**

(1) This section applies if the superintendent of a detention centre considers it necessary to accommodate a detainee at a custodial correctional facility.

*Examples for subsection (1)*

- 1 *Damage from a natural disaster leads to overcrowding at the detention centre.*
- 2 *In order to maintain order at the detention centre.*

(2) The superintendent of the detention centre may request the Commissioner to accommodate the detainee at a custodial correctional facility for a maximum period of 72 hours.

(3) If necessary, the superintendent can apply to a magistrate for an order to extend the maximum period to 10 days.

(4) If the Commissioner agrees to accommodate the detainee at a custodial correctional facility, this Act applies:

- (a) to the detainee as if he or she were a detainee at a detention centre; and
- (b) to the General Manager of the custodial correctional facility as if he or she were the superintendent of a detention centre; and
- (c) to the correctional officers employed at the custodial correctional facility as if they were members of the staff of a detention centre.

(5) A detainee accommodated in a custodial correctional facility must be kept separate from all prisoners at the facility, including youth prisoners.

(6) Unless there is no practical alternative, detainees under the age of 15 years must not be accommodated in a custodial correctional facility.



**155 Restraint devices may be used to escort certain detainees**

The superintendent of a detention centre may approve handcuffs or a similar device to restrain normal movement to be used when escorting a detainee outside the detention centre.

**156 Detainee's right to be heard**

- (1) The superintendent must ensure that a detainee is given the right to be heard in relation to any disciplinary measures that are to be taken in respect of the detainee.
- (2) The right to be heard may be limited or postponed for reasons of practicality or in emergency situations.

**157 Delegation by superintendent**

The superintendent of a detention centre may delegate in writing any of his or her powers and functions under this Act to:

- (a) a member of the staff of the detention centre; or
- (b) a person authorised by the Commissioner for section 165(b).

**157A Assistance to deal with or prevent emergency**

- (1) This section applies if the superintendent of a detention centre is satisfied that an emergency situation exists or there is a risk of an emergency situation arising.
- (2) The superintendant may request assistance from:
  - (a) the Commissioner or the General Manager of a custodial correctional facility; or
  - (b) the Commissioner of Police.
- (3) The recipient of the request may arrange for correctional officers or police officers to assist the superintendent in dealing with the emergency situation or preventing the emergency situation from arising.
- (4) A correctional officer or police officer mentioned in subsection (3) is taken to have been delegated the superintendent's powers and functions under section 151(3)(c).

**157B Other assistance from correctional officers**

- (1) The superintendant of a detention centre may request operational assistance from the Commissioner.

- (2) On receipt of the request, the Commissioner may arrange for correctional officers to assist the superintendent.
- (3) A correctional officer mentioned in subsection (2) is, for the purpose of providing the assistance, taken to be a member of the staff of the detention centre.

## **158 Register**

- (1) The superintendent of a detention centre must keep a register containing the following particulars in relation to every detainee in the detention centre to the extent the particulars are reasonably ascertainable by the superintendent:
  - (a) the name, age, place of birth and religion (if any) of the detainee;
  - (b) the names and addresses of the responsible adults in respect of the detainee who, immediately before the detention of the detainee in the detention centre, had the custody of the detainee;
  - (c) the date on which the detainee was admitted to, and the date on which he or she was released or transferred from, the detention centre;
  - (d) any other particulars prescribed by the Regulations.
- (2) If a detainee is absent from the detention centre for a period without being discharged from custody, the register must also contain the following information in relation to him or her:
  - (a) the time and date the detainee departed the detention centre;
  - (b) the reason for the absence from the detention centre;
  - (c) the name and address of the person in whose care and custody the detainee was placed for the period of the absence and that person's relationship (if any) to the detainee;
  - (d) the time and date the detainee returned to the detention centre;
  - (e) if different from the person in paragraph (c) – the name and address of the person who delivered the detainee back to the detention centre and that person's relationship (if any) to the detainee.
- (3) A register may be kept in any form and on any medium that the Commissioner considers appropriate.

## **Division 3 Detainees**

### **159 Sample by buccal swab**

- (1) The superintendent of a detention centre may direct a youth who is detained for a crime to provide a sample by buccal swab for analysis by the Commissioner of Police.
- (2) If the youth does not comply by providing a sample sufficient to enable an analysis of it to be carried out, a person authorised under subsection (3) may take the sample or cause it to be taken.
- (3) The Commissioner may authorise a person for this section.
- (4) A person authorised under subsection (3):
  - (a) may use the force that is reasonably necessary to ensure that a sufficient sample is obtained; and
  - (b) is not civilly or criminally liable in relation to the use of force or the taking of the sample.
- (5) As soon as practicable after the sample is obtained, the superintendent must deliver the sample to the Commissioner of Police.

### **160 Detainee may be tested for alcohol or illicit drug**

- (1) The superintendent of a detention centre may, for the purposes of the management, good order or security of the detention centre, direct that tests be conducted to determine whether there is any alcohol or illicit drug or substance present in the body of a particular detainee or any of the detainees.
- (2) The superintendent may only direct that a particular detainee be tested under subsection (1), if the superintendent has a reasonable belief that the detainee has or may have alcohol or an illicit drug or substance present in his or her body.
- (3) However, if the test is conducted as part of a random or routine procedure, subsection (2) does not apply.
- (4) The Commissioner may authorise a person to take samples of a detainee's blood, breath or urine for the purpose of determining whether there is present in the detainee's body any alcohol or illicit drug or substance.
- (5) For subsection (4), only a medical practitioner or nurse can be authorised to take a sample of a detainee's blood.

- (6) A detainee who is to be tested must provide a sufficient sample of his or her blood, breath or urine to a person authorised under subsection (4) to allow the determination of whether there is present in the detainee's body any alcohol or illicit drug or substance.
- (7) A person authorised under subsection (4) and a member of the staff of the detention centre who is assisting the person:
  - (a) may use the force that is reasonably necessary to ensure that a sufficient quantity of the detainee's blood, breath or urine is obtained; and
  - (b) is not civilly or criminally liable in relation to the use of force or the taking of the sample.

### **161 Strip searches**

- (1) If the superintendent of a detention centre believes on reasonable grounds that it is necessary in the interests of the security or good order of the detention centre, the superintendent may direct a detainee to submit to a search of the detainee's clothing and person, including a strip search.
- (2) If the superintendent of a detention centre believes on reasonable grounds that a detainee may have in his or her possession any article that is not permitted, the superintendent may direct the detainee to submit to a search of the detainee's clothing and person, including a strip search.
- (3) A search of a detainee must be conducted in accordance with the Regulations.

### **162 At risk detainees**

The superintendent of a detention centre must ensure that a detainee who is considered to be at risk of self-harm is dealt with in the manner prescribed in the Regulations.

### **163 Complaint**

- (1) A youth who is detained in a detention centre, or a responsible adult in respect of the youth, may complain about a matter that affects the youth.
- (2) The complaint procedure is as set out in the Regulations.

- (3) This section does not affect or limit the rights of a youth under any other complaint procedure, including a complaint to:
  - (a) an official visitor; or
  - (b) the Ombudsman.

#### **Division 4 Miscellaneous matters**

##### **164 Detainee who becomes an adult**

- (1) A detainee who turns 18 years of age while serving a sentence of detention, or on remand in custody, in a detention centre must, within 28 days after turning that age, be transferred to a custodial correctional facility to serve the remainder of the sentence or period of remand.
- (2) If a detainee is transferred to a custodial correctional facility under subsection (1), the order of the Court sentencing the youth to a period of detention in a detention centre is taken to be an order sentencing him or her to a term of imprisonment for the period remaining to be served under the order.
- (3) The fact that the detainee has turned 18 years of age does not otherwise affect an order made under section 83 in respect of him or her.
- (4) The Commissioner may direct that subsection (1) does not apply in relation to a particular youth:
  - (a) whose sentence has 6 months or less remaining to be served; or
  - (b) if the youth is remanded in custody – for a period not exceeding 6 months or for the remainder of the period of remand (whichever is the lesser).
- (5) When deciding whether to give a direction under subsection (4), the Commissioner:
  - (a) must have regard to the interests of other detainees as well as the interests of the particular youth; and
  - (b) may have regard to any other matters the Commissioner considers appropriate.
- (6) A direction under subsection (4) is not subject to appeal or review in any court or tribunal.

**165 Superintendent may permit absence from centre**

The superintendent of a detention centre may, subject to the order of the Court under which the detainee is detained, permit a detainee to be absent from a detention centre:

- (a) for a period not exceeding 12 hours for the purposes of receiving educational training or participating in arrangements of a social, recreational or vocational nature; or
- (b) for any period for a purpose approved by the superintendent if in the custody and under the supervision of:
  - (i) a member of the staff of the detention centre; or
  - (ii) a police officer; or
  - (iii) the sheriff within the meaning of the *Sheriff Act*; or
  - (iv) a person authorised by the Commissioner.

**166 Early release by superintendent**

- (1) The superintendent of a detention centre may release a detainee from the detention centre earlier than the detainee is entitled to be released in the following circumstances:
  - (a) there are genuine compassionate grounds for the early release;
  - (b) the early release will facilitate the return of the detainee to his or her place of residence or intended residence.
- (2) The detainee must not be released more than 48 hours earlier than he or she would be entitled to be released but for this section.

**167 Arrest of unlawfully absent detainee**

- (1) The superintendent of a detention centre or a member of the staff of the centre may exercise the powers of a police officer to arrest and take into custody a detainee who has escaped, or is otherwise unlawfully absent, from a detention centre.
- (2) A person exercising the powers of a police officer under subsection (1):
  - (a) has the obligations of a police officer under the *Police Administration Act*; and
  - (b) has the same protection as a police officer under that Act.

### **167A Return to custody**

The superintendent of a detention centre or a member of the staff of the centre who arrests a detainee under section 167(1) must, as soon as practicable, take the detainee (or arrange for the detainee to be taken) to:

- (a) the detention centre; or
- (b) another appropriate place.

*Examples for section 167A(b)*

- 1 A police station (if it is not practicable to immediately return the detainee to the detention centre).
- 2 A health care facility (if the detainee is sick or injured).

### **168 Inspection of detention centre**

- (1) The Minister or a person authorised by the Minister may enter and inspect a detention centre at any reasonable time.
- (2) The Minister may, in writing, authorise a person for subsection (1).
- (3) On request by the Minister or an authorised person, the superintendent of a detention centre must:
  - (a) produce for inspection the register kept under section 158; and
  - (b) give the Minister or authorised person any information in relation to any detainee in the detention centre.
- (4) A person must not:
  - (a) hinder the Minister or an authorised person in the exercise of a power under subsection (1); or
  - (b) fail to comply with a requirement under subsection (3).

Maximum penalty: If the offender is a natural person –  
400 penalty units or imprisonment for  
2 years.

If the offender is a body corporate –  
2 000 penalty units.

## **Part 9                      Official visitors**

### **169                      Appointment of official visitors**

- (1) The Minister may appoint a person to be an official visitor for a detention centre.
- (2) Not less than 3 official visitors must be appointed for each detention centre.
- (3) An official visitor holds office for 3 years and is eligible for re-appointment.
- (4) An official visitor may resign his or her office by notice in writing to the Minister.
- (5) An official visitor receives remuneration, allowances and expenses as determined by the Minister.

### **170                      Functions of official visitors**

- (1) An official visitor must inquire into the treatment and behaviour of, and the conditions for, detainees in the detention centre for which the official visitor is appointed.
- (2) An official visitor must, as soon as practicable after each visit to a detention centre, report in writing to the Minister.
- (3) If the Minister has directed that the official visitor report in relation to a specified matter to the Commissioner, the official visitor must also report in relation to that matter to the Commissioner.
- (4) The official visitor must have regard to this Act and the Regulations when he or she prepares a report for this section.

### **171                      Frequency of visits**

A detention centre must be visited by an official visitor appointed for that detention centre at least once every month.

### **172                      Official visitors not to interfere**

An official visitor must not, during or after a visit to a detention centre, interfere with or give instructions to a member of the staff of the detention centre regarding the management, discipline or treatment of detainees.



**Part 10            Medical treatment for detainees****173            Access to medical practitioner**

The superintendent of a detention centre must ensure that a detainee is given access to a medical practitioner, for the purpose of medical consultation and treatment, on request.

**174            Direction of medical practitioner**

The superintendent of a detention centre must comply with the direction of a medical practitioner in relation to the health of a detainee at the centre.

**175            Taking of medical sample**

- (1) A detainee must submit to the taking of a sample of his or her blood or bodily secretion or excretion by a medical practitioner or nurse for the purpose of determining the medical condition of the detainee.
- (2) A sample under subsection (1):
  - (a) must be taken as soon as practicable after the detainee is admitted to the detention centre; and
  - (b) may be taken at any other time the Commissioner, after consultation with a medical practitioner, directs.
- (3) A person taking a sample under subsection (1) and a member of the staff of the detention centre who is assisting the person:
  - (a) may use the force that is reasonably necessary to ensure that a sufficient sample of the detainee's blood or bodily secretion or excretion is obtained; and
  - (b) is not civilly or criminally liable in relation to the use of that force or the taking of the sample.

**176            Detainee may be required to be examined or treated**

- (1) This section applies if:
  - (a) a detainee refuses to undergo a medical examination or to submit to medical treatment; and
  - (b) a medical practitioner considers that the life or health of the detainee, or any other detainee or person, is likely to be endangered or seriously affected as a result of the refusal.

- (2) The Commissioner may, after consulting with the medical practitioner, order the detainee to undergo a medical examination or treatment that the Commissioner considers necessary.
- (3) The detainee must be given, where practicable, the right to a second medical opinion.
- (4) An order by the Commissioner under subsection (2):
  - (a) must be in writing; and
  - (b) is sufficient authority for the examination or treatment without the consent of any person being required.

### **177 Commissioner can give consent**

- (1) Subsection (2) applies if:
  - (a) the consent of a parent or guardian is required for a detainee to receive counselling or a medical examination or treatment; and
  - (b) after reasonable efforts the appropriate person cannot be located; and
  - (c) it would, in the opinion of the Commissioner on medical advice, be detrimental to the health of the detainee to delay.
- (2) The Commissioner can give his or her consent in place of the parent or guardian.

### **178 Removal to hospital**

The superintendent of a detention centre must move a detainee from the detention centre to a hospital, in the event of illness of the detainee, on the order of:

- (a) the Commissioner; or
- (b) a medical practitioner; or
- (c) the Court.

### **179 Custody of detainee in hospital**

- (1) This section applies if a detainee is moved to a hospital under section 151(3)(e) or 178.

- (2) The superintendent of the detention centre from which the detainee was moved must make the necessary arrangements with the person in charge of the hospital to ensure the security and good order of the detainee while the detainee is in hospital.
- (3) While in the hospital, the detainee remains in lawful detention for this Act.
- (4) If the detainee is discharged from the hospital and his or her sentence of detention has not expired, the detainee must be returned to the detention centre to serve the remainder of the sentence.

### **180 Notification of illness or death**

- (1) The superintendent of a detention centre must immediately notify the Commissioner if a detainee at the centre is seriously ill or dies.
- (2) If the Commissioner is notified of a detainee's illness or death, the Commissioner must, without delay, inform the detainee's next of kin, a close relative or legal representative of the detainee, or any other person the detainee requested to be notified.
- (3) The Commissioner must immediately notify the coroner of the death of a detainee.

## **Part 11 Interstate transfer of detainees and youths under supervision**

### **181 Definitions**

In this Part, unless the contrary intention appears:

***corresponding detention centre***, means an establishment in a State in which interstate detainees serve a period of detention.

***corresponding Minister*** means the minister of a State responsible for youths in that State who have had imposed on them a sentence of detention.

***detainee*** includes a youth who has been transferred to a detention centre under section 64 of the *Correctional Services Act*, but does not include an interstate detainee or a youth on remand to stand trial for an offence.

***interstate detainee*** means a youth in a State who is 10 or more years of age and who has had a sentence of detention imposed on him or her.

**State** means a State or another Territory.

**superintendent** in relation to a corresponding detention centre, means the person in charge of the corresponding detention centre.

**transfer order** means an order made under section 184(1) to transfer a detainee to a State.

## **182 Application of Part**

This Part applies in relation to:

- (a) a detainee, or a youth subject to supervision in the Territory, who wishes to transfer to a State; and
- (b) an interstate detainee, or a youth subject to supervision within a State, who wishes to transfer to the Territory.

## **183 Ministers may agree**

The Minister and the corresponding Minister of a State may agree that:

- (a) an interstate detainee may transfer from a detention centre in the State in which he or she was sentenced to a detention centre in the Territory; or
- (b) a detainee may transfer from a detention centre in the Territory to a detention centre in the State.

## **184 Transfer from Territory**

- (1) The Minister may make an order to transfer a detainee if satisfied:
  - (a) it is appropriate in the circumstances for a detainee to serve his or her detention in a State; and
  - (b) the corresponding Minister of the relevant State will accept the detainee.
- (2) The circumstances to which the Minister may have regard for subsection (1) include:
  - (a) the place or intended place of residence of responsible adults in respect of, or relatives of, the detainee; and
  - (b) the present and future education and employment of the detainee; and
  - (c) the medical and other needs of the detainee.

- (3) In deciding whether to make an order under subsection (1) in relation to a detainee, the Minister may request any of the following to give specified information within the period specified in the request:
- (a) the detainee;
  - (b) the parents of the detainee or responsible adults in respect of the detainee.
- (4) The Minister must not make a transfer order in relation to a detainee unless the Minister is satisfied:
- (a) the detainee has received independent legal advice and consents to the transfer; and
  - (b) there is no appeal pending under Part 7 in relation to the detainee and that the period for lodging an appeal has expired.
- (5) The Minister may make a transfer order in relation to a detainee without the detainee's consent if:
- (a) a responsible adult in respect of a detainee requests the Minister to transfer the detainee; and
  - (b) the Minister is satisfied it is in the best interests of the detainee.
- (6) A decision to make, or refuse to make, a transfer order is not subject to appeal or review by a court or tribunal.

### **185 Transfer from State to Territory**

- (1) If a corresponding Minister makes a written request to the Minister to accept the transfer of an interstate detainee to the Territory, the Minister may agree if satisfied there are adequate facilities in the Territory for the transferee to be accepted.
- (2) The Minister must specify the detention centre to which the transferee is to be delivered.

### **186 Reports**

- (1) The Minister may inform himself or herself as he or she considers appropriate for the purpose of deciding whether or not to order the transfer of a detainee to a State or accept the transfer of an interstate detainee to the Territory.

- (2) In particular, the Minister may have regard to reports from the superintendent of a detention centre or a corresponding detention centre.
- (3) The Minister may provide reports from the superintendent of a detention centre to the corresponding Minister of a State in relation to the transfer of a detainee to that State.

**187 Escort for transfer**

- (1) An escort is any one or more of the following:
  - (a) a police officer;
  - (b) a person authorised in writing by the Minister for the purpose.
- (2) A transfer order authorises the escort to hold, take and keep custody of the detainee until he or she is delivered to the specified detention centre in the State.
- (3) A transfer order is authority for the superintendent of a detention centre to deliver the detainee into the custody of an escort.
- (4) An escort who brings an interstate transferee from a State to the Territory is authorised to hold, take and keep custody of the detainee within the Territory for the purpose of delivering him or her to the detention centre specified in the transfer order.

**188 Information to be sent to corresponding Minister**

If a detainee is transferred to a State, the Minister must send to the corresponding Minister of that State:

- (a) a copy of the transfer order; and
- (b) a copy of the order under which the detainee was detained in the Territory; and
- (c) a report in relation to the transferee, including details of the period of detention served, entitlements to a review of the period of detention to be served and a copy of any record relating to the conduct of the transferee while a detainee in the Territory.

**189 Sentence transferred**

- (1) If a detainee transfers from the Territory to a State, the order under which he or she was detained ceases to have effect in the Territory except in relation to the period of detention served in the Territory.

- (2) If an interstate detainee transfers from a State to the Territory, the order under which he or she is detained is taken to have been made by a Territory court.

**190 Order revoked if transferee escapes**

- (1) The Minister may revoke a transfer order if the detainee to whom the order relates escapes or attempts to escape from custody, or commits any other further offence, whether in the Territory or elsewhere, while the detainee is in the process of being transferred.
- (2) A decision under subsection (1) is not subject to review or appeal in any court or tribunal.

**191 Territory transferee subject to supervision**

- (1) A youth who is found guilty in the Territory of an offence and whose sentence includes a period of supervision may apply to the Minister to transfer his or her period of supervision to a State.
- (2) If the Minister is satisfied that the corresponding Minister of the State will undertake the supervision of the youth on similar terms and conditions to those imposed in the Territory, the Minister may approve the transfer.
- (3) The Minister must ensure that the appropriate supervising authority is notified of the transfer.
- (4) When the Minister receives notification from the corresponding Minister that the youth is under supervision in the State, the Territory order of supervision relating to the youth ceases to have effect in the Territory.

**192 Youth subject to supervision in State**

- (1) A corresponding Minister of a State may apply to the Minister for agreement to the transfer from the State to the Territory of a youth who is subject to a period of supervision for an offence.
- (2) If the Minister agrees to the transfer of the youth, the Minister must advise the corresponding Minister and the appropriate supervising authority in the Territory.
- (3) When the youth reports to the Territory supervising authority, the order of supervision from the State is taken to have been imposed by a Territory court and any failure to comply with a term or condition of the order will be dealt with as a breach of a Territory order.

## **Part 12            Offences**

### **193            Escaping from detention centre**

- (1) A detainee must not escape or attempt to escape from lawful detention at a detention centre.
- (2) For subsection (1), escape from lawful detention at a detention centre includes:
  - (a) escaping or absconding while absent from the detention centre pursuant to section 165; or
  - (b) escaping while being transferred to a State in accordance with a transfer order under Part 11.
- (3) If a detainee escapes from lawful detention at a detention centre, the term of detention to be served by the detainee does not run during the period the detainee remains at large.
- (4) A person found guilty of an offence against subsection (1) is liable to detention or imprisonment for 6 months in addition to the period of detention originally ordered by the Court.

### **194            Escape of interstate detainee**

- (1) An interstate detainee who is being transferred from a State to a detention centre in the Territory must not escape or attempt to escape from custody while in the Territory.
- (2) A person found guilty of an offence against subsection (1) is liable to detention or imprisonment for 6 months in addition to the period of detention to be served in the Territory.
- (3) A person found guilty in another jurisdiction of escaping from custody in contravention of subsection (1) must not be prosecuted in the Territory for the same offence.

### **195            Aiding or abetting escapee**

A person must not:

- (a) remove a detainee from a detention centre except in accordance with this Act or another law in force in the Territory; or
- (b) knowingly harbour or aid a detainee who has escaped from lawful detention; or



- (c) aid a detainee to escape from lawful detention.

Maximum penalty: 800 penalty units or imprisonment for 4 years.

**196 Loitering**

A person must not:

- (a) loiter in the vicinity of a detention centre; or
- (b) remain in the vicinity of a detention centre after being requested to leave by the superintendent or a member of the staff of the detention centre or by a police officer; or
- (c) unlawfully enter or attempt to enter a detention centre.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

**197 Contraband**

A person must not, without the permission of the superintendent of a detention centre:

- (a) convey or deliver, or allow to be conveyed or delivered, to a detainee any alcohol, drugs, money, letter, document, clothing or other article; or
- (b) convey or deliver or receive any alcohol, drugs, money, letter, document, clothing or other article out of a detention centre; or
- (c) leave any alcohol, drugs, money, letter, document, clothing or other article with the intention of it being received or found by a detainee.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

**198 Communication**

A person must not, without the permission of the superintendent of a detention centre, communicate or attempt to communicate with a detainee in that detention centre.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

**199 Offence to remove youth**

A person who, without lawful excuse, removes a youth from the care of a person with whom, or from an establishment (other than a detention centre) at which, the youth has been placed under this Act is guilty of an offence.

Maximum penalty: 800 penalty units or imprisonment for 4 years.

**200 Obstructing or hindering detention centre staff and other officers**

(1) A person must not hinder, obstruct, assault or threaten with violence any of the following in the exercise of their powers or performance of their functions or duties under this Act:

- (a) a superintendent or member of the staff of a detention centre;
- (b) a police officer;
- (c) a probation and parole officer.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person must not aid or abet another person in the commission of an offence against subsection (1).

Maximum penalty: 400 penalty units or imprisonment for 2 years.

**201 Personation**

(1) A person must not falsely represent himself or herself to be a superintendent of a detention centre, authorised person or probation and parole officer.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) In subsection (1):

**authorised person** means a person authorised in writing by the Minister or Commissioner to perform a function under this Act.

## Part 13 Youth Justice Advisory Committee

### 202 Definition

In this Part:

**member** means a member of the Youth Justice Advisory Committee.

### 203 Establishment

- (1) There is established the Youth Justice Advisory Committee comprising government, non-government and community representatives.
- (2) The Committee must reflect the composition of the community at large and accordingly, as far as practicable, should consist of the following:
  - (a) equal numbers of male and female members;
  - (b) at least 2 members who are Aboriginals;
  - (c) at least one member who is under the age of 25 years at the time of appointment;
  - (d) at least one member who has formerly been a detainee;
  - (e) one member who is an official visitor within the meaning of Part 9;
  - (f) at least one member who, at the time of appointment, resides in the Alice Springs area;
  - (g) at least one member who, at the time of appointment, resides in a remote community.

### 204 Functions

The functions of the Committee are as follows:

- (a) to monitor and evaluate the administration and operation of this Act;
- (b) to advise the Minister (whether on request by the Minister or otherwise) on issues relevant to the administration of youth justice, including the planning, development, integration and implementation of government policies and programs concerning youth;

- (c) to collect, analyse and provide to the Minister information relating to issues and policies concerning youth justice;
- (d) any other functions imposed by this Act;
- (e) any other functions as directed by the Minister.

## **205 Powers**

The Committee has the powers necessary or convenient to carry out its functions.

## **206 Members**

- (1) The Committee consists of not less than 8 and not more than 12 members appointed by the Minister.
- (2) The members are to be comprised, as far as practicable, of:
  - (a) one person nominated by the Commissioner; and
  - (b) one person nominated by the Commissioner of Police; and
  - (c) one person nominated by the Agency responsible for protection of children and young people; and
  - (d) one person nominated by the Agency responsible for education of youth; and
  - (e) one person nominated by the Agency responsible for crime prevention; and
  - (f) one person nominated by a peak youth organisation; and
  - (g) one person nominated by the Law Society Northern Territory; and
  - (h) the remainder drawn from the community generally, and the Aboriginal community in particular.
- (3) The Minister must be satisfied that each person appointed to be a member has experience, skills, qualifications or other credentials that the Minister considers appropriate for the person to satisfactorily contribute to the Committee's work.

## **207 Chairperson**

The members must appoint one of their number to be the Chairperson.

**208 Term of office**

- (1) A member holds office for:
  - (a) 3 years; or
  - (b) if a lesser period is specified in the instrument of appointment – that period.
- (2) A member is eligible for re-appointment.

**209 Vacation of office**

A member vacates office as a member if:

- (a) his or her term of office expires; or
- (b) the member resigns his or her office in writing to the Minister.

**210 Termination of appointment**

- (1) The Minister may terminate the appointment of a member on the grounds of misconduct or inability to competently perform the duties of office.
- (2) The Minister must terminate the appointment of a member if the member is absent, except on leave of absence granted by the Chairperson, from 3 consecutive meetings of the Committee.
- (3) The termination of an appointment under subsection (1) or (2) must be in writing and a copy must be given to the member.
- (4) A member's appointment terminates on either of the following occurring:
  - (a) the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the member's remuneration for their benefit;
  - (b) the member is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more or is found guilty by a court outside the Territory of an offence which, if committed against a law in force in the Territory, would be punishable by imprisonment for 12 months or more.

**211 Meetings**

- (1) The Chairperson must call meetings of the Committee as often as necessary for the performance of its functions, but so that not more than 6 months elapses between 2 successive meetings.

- (2) The Minister may at any time direct the Chairperson to convene a meeting of the Committee and the Chairperson must convene a meeting accordingly.
- (3) The Chairperson must preside at all meetings at which he or she is present and, in his or her absence, the members present must elect one of their number to act as the Chairperson.
- (4) Subject to this Act, the Committee may determine the procedure to be followed at or in connection with its meetings.
- (5) The Committee must keep records of its meetings.

**212 Quorum**

At a meeting of the Committee, half the number of members appointed constitutes a quorum.

**213 Annual report**

- (1) The Committee must, as soon as practicable after 30 June in each year, and in any event not later than the next following 30 September, give to the Minister a report on the activities of the Committee during the preceding financial year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 5 sitting days of the Assembly after receiving it.

**Part 14 Miscellaneous matters****214 Confidentiality**

- (1) A person who performs or has performed functions or duties under this Act must not:
  - (a) record any information obtained by the person in exercising a power or performing a function under this Act; or
  - (b) disclose such information to a person or body (including a court); or
  - (c) publish all or part of a document obtained by the person in exercising a power or performing a function under this Act; or
  - (d) produce to a court a document or other thing obtained by the person in exercising a power or performing a function under this Act.

- (2) Subsection (1) does not apply in relation to:
- (a) a police officer in the performance of his or her duties; or
  - (b) any recording, disclosure, publication or production that is part of the exercise of a power or the performance of a function under this Act; or
  - (c) any recording, disclosure, publication or production in relation to the administration of this Act; or
  - (d) any disclosure or production that is made to:
    - (i) the person to whom the information, document or thing is related; or
    - (ii) another person with the consent of the person to whom the information, document or thing is related (whether the consent has been given expressly or by implication); or
    - (iii) a person approved by the Minister, where the Minister has certified in writing that the disclosure or production is carried out in the public interest; or
    - (iv) a person approved by the Minister for research to be conducted by the person, where the person has undertaken to preserve the identity of individual persons to whom the information and records relate and the confidentiality of the information; or
    - (v) a police officer; or
    - (vi) a person prescribed by the Regulations.

- (3) A person who fails to comply with subsection (1) is guilty of an offence.

Maximum penalty:      If the offender is a natural person –  
200 penalty units or imprisonment for  
12 months.

   If the offender is a body corporate –  
1 000 penalty units.

- (4) This section applies to a person who receives the information, record, document or thing (whether directly or indirectly) as if the person obtained the information, record, document or thing in the performance of functions or duties under this Act.

**215 Immunity**

- (1) This section applies to a person who is or has been:
  - (a) the Commissioner; or
  - (b) a superintendent of a detention centre; or
  - (c) a probation and parole officer; or
  - (e) an employee, within the meaning of the *Public Sector Employment and Management Act*, performing functions under this Act.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

**215A Prosecutions**

- (1) Proceedings for an offence against this Act may be started only by:
  - (a) the Commissioner; or
  - (b) a person authorised by the Minister.
- (2) The proceedings must be started within 6 months after the date on which the Commissioner first became aware of the commission of the offence.

**215B Civil proceedings**

- (1) Civil proceedings in relation to an act done or omitted to be done by a person under this Act must be started within 6 months after the act was done or omitted to be done.
- (2) However, subsection (1) does not prevent a court exercising its jurisdiction under section 44 of the *Limitation Act*.

**216 Delegation by Minister or Commissioner**

The Minister or Commissioner may delegate in writing to a person any of his or her powers and functions under this Act.



**217 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may provide for any of the following matters:
  - (a) the construction (including provision for the storage and preparation of food), cleanliness, sanitation, lighting, heating, ventilation and safety of detention centres;
  - (b) the maintenance of detention centres in a proper state of repair;
  - (c) the number of youths who may be received in a detention centre, having regard to the available facilities (including medical facilities and other amenities), space and staff of the centre;
  - (d) the operation and management of detention centres;
  - (e) the suitability of persons operating detention centres and of the staff of such centres, and fixing the numbers of such staff;
  - (f) the maintenance of order within a detention centre, including the conduct of searches and the manner of dealing with the misconduct of detainees and any grievances or complaints of detainees;
  - (g) the health, welfare, safe custody and protection of detainees;
  - (h) community work orders, including:
    - (i) prescribing the duties of persons who are subject to community work orders; and
    - (ii) regulating the conduct of persons who are subject to community work orders; and
    - (iii) providing for the health and safety of persons who are subject to community work orders; and
    - (iv) providing for travel and transport arrangements to be made for persons who are subject to community work orders; and

- (v) prescribing what effect an injury to, or the illness of, a person who is subject to a community work order has on the order; and
  - (vi) prescribing the periods to be taken into account when calculating the hours during which work has been carried out under a community work order; and
  - (vii) prescribing the powers and duties of advisory committees and regulating the holding of their meetings and the procedures they are to observe at those meetings;
- (i) alternative detention orders, including regulating the conduct of youths who are subject to the orders;
  - (j) the criteria for persons to be included in the register of support persons under section 14 and procedures in relation to the maintenance of the register;
  - (k) procedures for, and other matters in relation to, pre-sentencing conferences under section 84;
  - (l) penalties not exceeding 100 penalty units or imprisonment for 6 months for offences against the Regulations;
  - (m) probation and parole officers, including:
    - (i) prescribing the duties of the officers; and
    - (ii) providing for the health and safety of the officers.
- (3) The Regulations may authorise the Commissioner or a superintendent of a detention centre to make a determination in relation to:
- (a) the management and operation of a detention centre; or
  - (b) the maintaining of order within a detention centre; or
  - (c) a grievance or complaint of a detainee; or
  - (d) the health, welfare, safe custody and protection of a detainee.

## **Part 15                    Repeals and transitional matters for Youth Justice Act 2005**

### **218            Definition**

In this Part:

**commencement date** means the date on which this Act comes into operation.

### **219            Repeal of Acts**

The Acts specified in the Schedule are repealed.

### **220            Saving of approvals and appointments**

- (1) An establishment that, immediately before the commencement date, was a detention centre under the repealed Act is taken to be a detention centre approved under section 148.
- (2) A person who, immediately before the commencement date, was the superintendent of a detention centre under the repealed Act is taken to be the superintendent of that detention centre appointed under section 151.
- (3) A person who, immediately before the commencement date, was an official visitor under the repealed Act is taken to be an official visitor appointed under section 169.

### **221            Orders of Juvenile Court**

- (1) An order made by the Juvenile Court:
  - (a) continues in the same terms until the order is discharged or expires; and
  - (b) can be reviewed, varied or revoked under this Act as if the order had been made under this Act.
- (2) However, an order made by the Juvenile Court will be breached only in the circumstances set out in the repealed Act for an order of that type.

### **222            Proceedings not completed**

Any proceeding before the Juvenile Court that, immediately before the commencement date, had not been completed may be continued before the Youth Justice Court under this Act.

**223 Offences committed before commencement of this Act**

- (1) This Act applies in relation to an offence committed by a youth before the commencement date.
- (2) However, a youth is not liable to a greater penalty in respect of an offence committed before the commencement date than he or she would be if the repealed Act were still in force.

**Part 16 Provisions for Youth Justice Amendment Act 2010****224 Exercise of jurisdiction under pre-commencement Act**

- (1) The purpose of this section is to validate the exercise of jurisdiction by the Youth Justice Court under the pre-commencement Act in relation to declared charges, or the purported exercise of such jurisdiction.
- (2) The Youth Justice Court is taken to have, and always to have had, jurisdiction under the pre-commencement Act to hear and determine, or decide not to hear, summarily all declared charges.
- (3) In addition to subsection (2), an exercise of jurisdiction in relation to a declared charge by the Youth Justice Court under the pre-commencement Act, or the purported exercise of such jurisdiction, is taken to be, and always to have been, valid and effective for all purposes as if exercised after the commencement of this section.
- (4) Subsections (2) and (3) do not apply to proceedings in relation to a declared charge allegedly committed by a particular youth if:
  - (a) before the commencement, the Supreme Court made a decision about the jurisdiction, or want of jurisdiction, of the Youth Justice Court in relation to the declared charge; and
  - (b) the application of the subsections in relation to the declared charge would be inconsistent with the decision of the Supreme Court.
- (5) In this section:

**declared charge** means a charge in respect of an indictable offence that, if the offence had been committed by an adult:

  - (a) the offence would not be punishable by imprisonment for life; and

- (b) the adult could not consent to the charge being heard and determined summarily.

***exercise of jurisdiction***, in relation to a declared charge, includes any of the following relating to the declared charge:

- (a) instituting, adjourning and continuing a proceeding;
- (b) issuing a warrant, summons or other process;
- (c) making or giving an order, direction, notice, whether by instrument or otherwise;
- (d) making a finding of guilt;
- (e) imposing a sentence;
- (f) doing any other act or thing under an Act.

***pre-commencement Act*** means this Act as in force at any time before the commencement of this section.

## **225 Matter before Supreme Court at commencement**

- (1) This section applies in relation to a matter:
  - (a) that, on the commencement of this section, is before the Supreme Court; and
  - (b) that, after the commencement, the Youth Justice Court has jurisdiction to hear and determine summarily.
- (2) The Supreme Court must consider whether:
  - (a) the Supreme Court should continue to deal with the matter; or
  - (b) the Youth Justice Court should hear and determine the matter summarily.
- (3) If the Supreme Court considers the matter should be heard and determined summarily by the Youth Justice Court, and the youth consents, the Supreme Court:
  - (a) may remit the matter to the Youth Justice Court; and
  - (b) may give any directions about the matter that the Supreme Court considers appropriate for the remission.

## **Part 17 Transitional matters**

### **Division 1 Criminal Code Amendment (Criminal Damage) Act 2011**

#### **226 Transitional matters for Criminal Code Amendment (Criminal Damage) Act 2011**

The amendment made to regulation 3 of the *Youth Justice Regulations* by the *Criminal Code Amendment (Criminal Damage) Act 2011* does not affect the operation of this Act, on and after the commencement of the amendment, to an offence:

- (a) mentioned in regulation 3(a) of the *Youth Justice Regulations* as in force immediately before the commencement of the amendment; and
- (b) was committed or is alleged to have been committed before the commencement of the amendment.

### **Division 2 Justice and Other Legislation Amendment Act 2014**

#### **227 Application of section 131 to offences committed before commencement**

- (1) Section 131, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to a sentence for an offence committed before the commencement of this section (**commencement**) if the sentence is imposed in proceedings in which a court starts hearing sentencing submissions after commencement.
- (2) Section 131, as in force before commencement, continues to apply in relation to a sentence for an offence committed before commencement if the sentence is or was imposed in proceedings in which a court started hearing sentencing submissions before commencement.

### **Division 3 Sentencing Legislation Amendment Act 2015**

#### **228 Application of amendments**

- (1) Section 87, as amended by the amending Act, applies if a youth is sentenced by the Court to a further term of detention or imprisonment after the commencement, even if the offence to which the sentence relates was committed before the commencement.

- (2) Section 130, as in force immediately before the commencement, continues to apply in relation to a sentence, the service of which was suspended under section 130 before the commencement, as if the amending Act had not commenced.
- (3) In this section:

**amending Act** means the *Sentencing Legislation Amendment Act 2015*.

**commencement** means the commencement of the amending Act.

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**Schedule Repealed Acts**

section 219

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<i>Juvenile Justice Act 1983</i>	Act No. 77 of 1983
<i>Juvenile Justice Amendment Act 1987</i>	Act No. 58 of 1987
<i>Juvenile Justice Amendment Act 1990</i>	Act No. 24 of 1990
<i>Juvenile Justice Amendment Act 1991</i>	Act No. 43 of 1991
<i>Juvenile Justice Amendment Act 1992</i>	Act No. 74 of 1992
<i>Juvenile Justice Amendment Act 1993</i>	Act No. 45 of 1993
<i>Juvenile Justice Amendment Act 1995</i>	Act No. 18 of 1995
<i>Juvenile Justice Amendment Act 1996</i>	Act No. 23 of 1996
<i>Juvenile Justice Amendment Act (No. 2) 1996</i>	Act No. 61 of 1996
<i>Juvenile Justice Amendment Act (No. 3) 1996</i>	Act No. 62 of 1996
<i>Juvenile Justice Amendment Act 1998</i>	Act No. 12 of 1998
<i>Juvenile Justice Amendment Act (No. 2) 1998</i>	Act No. 81 of 1998
<i>Juvenile Justice Amendment Act (No. 3) 1998</i>	Act No. 86 of 1998
<i>Juvenile Justice Amendment Act 1999</i>	Act No. 12 of 1999
<i>Juvenile Justice Amendment Act (No. 2) 1999</i>	Act No. 34 of 1999
<i>Juvenile Justice Amendment Act 2000</i>	Act No. 6 of 2000
<i>Juvenile Justice Amendment Act 2001</i>	Act No. 28 of 2001
<i>Juvenile Justice Amendment Act (No. 2) 2001</i>	Act No. 53 of 2001
<i>Juvenile Justice Amendment Act 2002</i>	Act No. 5 of 2002

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2****LIST OF LEGISLATION*****Youth Justice Act 2005 (Act No. 32, 2005)***

Assent date	22 September 2005
Commenced	1 August 2006 ( <i>Gaz</i> G30, 26 July 2006, p 3)

***Criminal Reform Amendment Act (No. 2) 2006 (Act No. 34, 2006)***

Assent date	3 November 2006
Commenced	20 December 2006 ( <i>Gaz</i> G51, 20 December 2006, p 2)

***Justice Legislation Amendment Act (No. 2) 2006 (Act No. 35, 2006)***

Assent date	3 November 2006
Commenced	3 November 2006

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

***Care and Protection of Children Act 2007 (Act No. 37, 2007)***

Assent date	12 December 2007
Commenced	Ch 1 and pts 3.3 and 5.1: 7 May 2008 ( <i>Gaz</i> G18, 7 May 2008, p 4); Ch 2 (exc pt 2.1, div 6 and s 127), Ch 3, pts 3.1 and 3.2 (exc s 187) and Ch 5, pts 5.2 to 5.6: 8 December 2008 ( <i>Gaz</i> G47, 26 November 2008, p 6); rem: nc

***Youth Justice Amendment (Family Responsibility) Act 2008 (Act No. 14, 2008)***

Assent date	23 May 2008
Commenced	ss 3 and 4: 30 May 2008; rem: 1 July 2008 ( <i>Gaz</i> S24, 30 May 2008)

***Cross-border Justice Act 2009 (Act No. 1, 2009)***

Assent date	12 March 2009
Commenced	ss 67(b), 68(2)(e), 106, 108, 114, 116 and pt 15, div 6: 1 December 2009; rem: 1 November 2009 ( <i>Gaz</i> S59, 29 October 2009)

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**Ombudsman Act 2009 (Act No. 5, 2009)**

Assent date 12 March 2009  
Commenced 1 July 2009 (*Gaz G21*, 27 May 2009, p 5)

**Health Practitioner (National Uniform Legislation) Implementation Act 2010 (Act No. 18, 2010)**

Assent date 20 May 2010  
Commenced 1 July 2010 (s 2)

**Youth Justice Amendment Act 2010 (Act No. 26, 2010)**

Assent date 24 August 2010  
Commenced 24 August 2010

**Justice Legislation Amendment (Committals Reform) Act 2010 (Act No. 31, 2010)**

Assent date 9 September 2010  
Commenced 1 April 2011 (*Gaz G13*, 30 March 2011, p 8)

**Criminal Code Amendment (Criminal Damage) Act 2011 (Act No. 5, 2011)**

Assent date 16 March 2011  
Commenced 1 June 2011 (*Gaz S19*, 4 May 2011)

**Justice (Corrections) and Other Legislation Amendment Act 2011 (Act No. 24, 2011)**

Assent date 31 August 2011  
Commenced ss 3, 9 to 11, 15 to 17, 19, 20, 24, 33, 42, schs 1 and 2, sch 4 pt 1 and sch 5: 31 August 2011 (s 2); rem: 27 February 2012 (*Gaz S9*, 21 February 2012)

**Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011 (Act No. 28, 2011)**

Assent date 31 August 2011  
Commenced 21 September 2011 (*Gaz G38*, 21 September 2011, p 4)

**Justice and Other Legislation Amendment Act 2014 (Act No. 11, 2014)**

Assent date 16 April 2014  
Commenced 1 July 2014 (*Gaz S54*, 1 July 2014)

**Correctional Services (Related and Consequential Amendments) Act 2014 (Act No. 27, 2014)**

Assent date 4 September 2014  
Commenced 9 September 2014 (*Gaz S80*, 9 September 2014, p 2)

**Justice Legislation Amendment (Summary Procedure) Act 2015 (Act No. 20, 2015)**

Assent date 6 July 2015  
Commenced 21 September 2015 (*Gaz S92*, 16 September 2015)

**Sentencing Legislation Amendment Act 2015 (Act No. 22, 2015)**

Assent date 6 July 2015  
Commenced 29 July 2015 (*Gaz G30*, 29 July 2015, p 1)

**3 LIST OF AMENDMENTS**

s 5 amd No. 35, 2006, s 45; No. 18, 2010, s 89; No. 26, 2010, s 3; No. 31, 2010, s 25; No. 27, 2014, s 56; No. 22, 2015, s 10

pt 1

div 3 hdg sub No. 27, 2014, s 48

s 10 sub No. 27, 2014, s 48

## ENDNOTES

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s 11	rep No. 27, 2014, s 48
s 14	amd No. 27, 2014, s 56
s 30	amd No. 18, 2010, s 89
s 35	amd No. 27, 2014, s 56
s 39	amd No. 4, 2007, s 2; No. 14, 2008, s 4
s 43	amd No. 28, 2011, s 3
s 47	amd No. 1, 2009, s 158
s 48	amd No. 1, 2009, s 159
ss 49 – 50	amd No. 28, 2011, s 3
s 51	sub No. 37, 2007, s 335
s 52	amd No. 26, 2010, s 4
s 53	amd No. 26, 2010, s 5; No. 20, 2015, s 15
s 54	sub No. 26, 2010, s 6
s 54A	ins No. 26, 2010, s 6
ss 55 – 56	sub No. 26, 2010, s 6
s 56A	ins No. 26, 2010, s 6
s 56B	ins No. 31, 2010, s 26
s 57	amd No. 26, 2010, s 7
s 58	amd No. 26, 2010, s 8
s 65	amd No. 35, 2006, s 46; No. 27, 2014, s 56
s 82	amd No. 34, 2006, s 24
s 83	amd No. 24, 2011, s 41
s 85	amd No. 22, 2015, s 11
s 86	amd No. 27, 2014, s 56
s 87	amd No. 22, 2015, s 12
s 91	amd No. 27, 2014, s 56
ss 94 – 97	amd No. 27, 2014, s 56
s 98A	ins No. 35, 2006, s 47; No. 27, 2014, s 56
ss 101 – 103	amd No. 27, 2014, s 56
ss 105 – 108	amd No. 27, 2014, s 56
s 110	amd No. 27, 2014, s 56
ss 112 – 115	amd No. 27, 2014, s 56
ss 119 – 121	amd No. 27, 2014, s 56
s 123	amd No. 27, 2014, s 56
s 130	amd No. 22, 2015, s 13
s 131	sub No. 11, 2014, s 15
	amd No. 27, 2014, s 56
s 132	amd No. 27, 2014, s 56
s 136	sub No. 35, 2006, s 48
s 137	amd No. 27, 2014, s 56
pt 6A hdg	ins No. 14, 2008, s 5
pt 6A	
div 1 hdg	ins No. 14, 2008, s 5
ss 140A – 140C	ins No. 14, 2008, s 5
pt 6A	
div 2 hdg	ins No. 14, 2008, s 5
ss 140D – 140F	ins No. 14, 2008, s 5
pt 6A	
div 3 hdg	ins No. 14, 2008, s 5
ss 140G – 140M	ins No. 14, 2008, s 5
pt 6A	
div 4 hdg	ins No. 14, 2008, s 5
ss 140N – 140R	ins No. 14, 2008, s 5
ss 142 – 143	amd No. 27, 2014, s 56

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s 151	amd No. 27, 2014, s 56
s 153	amd No. 27, 2014, s 56
s 154	sub No. 27, 2014, s 49
s 157	amd No. 27, 2014, s 50
ss 157A – 157B	ins No. 27, 2014, s 51
ss 158 – 160	amd No. 27, 2014, s 56
s 163	amd No. 5, 2009, s 179
ss 164 – 165	amd No. 27, 2014, s 56
s 167	amd No. 27, 2014, s 52
s 167A	ins No. 27, 2014, s 53
s 168	amd No. 28, 2011, s 3
s 170	amd No. 27, 2014, s 56
ss 175 – 178	amd No. 27, 2014, s 56
ss 180 – 181	amd No. 27, 2014, s 56
ss 195 – 199	amd No. 28, 2011, s 3
ss 200 – 201	amd No. 28, 2011, s 3; No. 27, 2014, s 56
s 206	amd No. 27, 2014, s 56
s 214	amd No. 28, 2011, s 3
s 215	amd No. 27, 2014, s 54
ss 215A – 215B	ins No. 27, 2014, s 55
ss 216 – 217	amd No. 27, 2014, s 56
pt 16 hdg	ins No. 26, 2010, s 9
ss 224 – 225	ins No. 26, 2010, s 9
pt 17 hdg	ins No. 5, 2011, s 9 sub No. 11, 2014, s 16
pt 17	
div 1 hdg	ins No. 11, 2014, s 16
s 226	ins No. 5, 2011, s 9
pt 17	
div 2 hdg	ins No. 11, 2014, s 17
s 227	ins No. 11, 2014, s 17
pt 17	
div 3 hdg	ins No. 22, 2015, s 14
s 228	ins No. 22, 2015, s 14