Serial 10
Youth Justice Bill (No. 2) 2005
Dr Toyne

A BILL
for
AN ACT

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

NORTHERN TERRITORY OF AUSTRALIA

YOUTH JUSTICE ACT

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Act No. [ ] of 2005

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TABLE OF PROVISIONS

Section

NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2005

AN ACT

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

[*Assented to [ ] 2005*]
[*Second reading [ ] 2005*]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

Division 1 – General matters

1. Short title

This Act may be cited as the *Youth Justice Act 2005*.

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(f) to continue in existence the Juvenile Court, established by the repealed Act, as the Youth Justice Court;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;

"Committee" means the Youth Justice Advisory Committee established by Part 13;

"community work order" means an order made under section 83(1)(h);

"Court" means the Juvenile Court, established by the repealed Act and continued in existence as the Youth Justice Court by section 45 and, if the context requires, includes the Supreme Court exercising its jurisdiction under or pursuant to this Act;

"detainee" means a youth lawfully detained in a detention centre;

"detention centre" means a youth detention centre approved under section 148;

"Director" means the Director of Correctional Services appointed under the *Prisons (Correctional Services) Act*;

"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);

"nurse" means a person registered or enrolled under the *Health Practitioners Act* in the category of health care practice of nursing;

"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;

"prison" has the meaning in the *Prisons (Correctional Services) Act*;

"probation officer" has the meaning in 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, including –

(a) in accordance with contemporary social practice; or

(b) if the youth is Aboriginal – in accordance with Aboriginal customary law or Aboriginal tradition;

"support person" has the meaning in section 35;

"surveillance officer" has the meaning in section 11;

"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.

(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 officers and surveillance officers

10. Probation officers

(1) A person appointed as a parole officer under the *Parole of Prisoners Act* is a probation officer for this Act.

(2) The functions of a probation officer include –

(a) preparing reports for the Court as required; and

(b) supervising youths who are the subject of supervision under a non-custodial order; and

(c) other duties as directed by the Director.

11. Surveillance officers

(1) A person appointed as a surveillance officer under the *Prisons (Correctional Services) Act* is a surveillance officer for this Act.

(2) A probation officer, and the Director, are also surveillance officers for this Act.

(3) The functions of a surveillance officer are to monitor the compliance of a youth who is the subject of an alternative detention order with the terms and conditions of the order.

(4) A surveillance officer who is a probation 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 surveillance officer who is a probation officer may, at any time, require a youth who is the subject of an alternative detention order to undergo such tests as the surveillance officer considers appropriate to determine whether the youth is in breach of the order.

(6) A surveillance officer referred to in subsection (1) may, as directed from time to time by the Director, carry out or exercise any of the functions and powers of a surveillance officer who is also a probation officer.

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 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 dentist, or a dental specialist, registered under the *Health Practitioners Act* in the category of health care practice of dentistry.

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 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. Interpretation

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 the youth has left the Territory or his or her whereabouts is unknown.

(4) Subsection (2) also does not apply in the following circumstances:

(a) the offence alleged is a serious offence;

(b) the youth has a history that makes diversion an unsuitable option (including a history of previous diversions or previous convictions).

(5) Subsection (4) does not prevent the officer from diverting a youth despite the circumstances if the officer considers it appropriate in the interests of justice.

(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 an offence prescribed by the Regulations for this section;

"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) If a youth is referred to a diversion program in relation to an offence but fails to satisfactorily complete the program, proceedings may be commenced against the youth for the offence despite that an applicable limitation period has expired.

(2) The proceedings must be commenced before the expiry of the later of –

(a) the applicable limitation period; or

(b) the 3 months immediately after the youth is determined to have failed to complete the diversion program.

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 a youth's performance in any diversion program 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.

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

A Registrar of the Local Court is a Registrar of the Youth Justice Court.

48. Where Youth Justice Court may be held

(1) The Youth Justice Court may sit in the locations 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.

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.

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 that –

(a) a youth who is charged with an offence is or may be a child in need of protection within the meaning of section 21 of the *Care and Protection of Children and Young People Act*; or

(b) there is a risk to the wellbeing of the youth (within the meaning of that Act).

(2) The Court may require the CEO within the meaning of the *Care and Protection of Children and Young People Act* –

(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 youth's circumstances, the CEO must as soon as practicable cause the Court to be given a report on –

(a) those circumstances (including whether or not the youth is a child in need of protection); and

(b) any action that has been taken.

(4) The Court may adjourn the matter to receive the CEO's report and may remand the youth under section 65.

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 of a summary or indictable nature against a youth who is alleged to have committed an offence;

(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.

53. Application of *Justices Act*

(1) Unless this Act makes specific provision in relation to proceedings, orders or convictions, the *Justices 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:

(a) take an information or complaint;

(b) issue a summons;

(c) grant, issue or endorse a warrant;

(d) grant bail.

54. Indictable offences to be tried summarily except in certain cases

(1) The Youth Justice Court must hear summarily all charges of a summary or indictable nature unless the offence, if committed by an adult, would be punishable by imprisonment for life.

(2) However, if –

(a) the offence, if committed by an adult, would require the consent of the defendant to be heard summarily; and

(b) the youth does not consent,

the Court must proceed to deal with the matter by way of preliminary examination.

(3) The Youth Justice Court must also deal with a charge that, if committed by an adult, would be punishable by imprisonment for life by way of preliminary examination.

55. Youth may consent to indictable offence being tried summarily

(1) This section applies if a youth is charged with an indictable offence that, if committed by an adult, would require the consent of the defendant to be heard summarily.

(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 matter being heard summarily.

(3) If a responsible adult in relation to the youth is not present, the Court may adjourn the proceeding to enable a responsible adult to be present.

(4) If a proceeding is adjourned to enable a responsible adult to be present, the Court may continue the proceeding after the adjournment despite that a responsible adult is not present.

(5) If the youth consents and the Court is of the opinion that it is appropriate to deal with the matter summarily, the Court must proceed to hear the matter summarily.

(6) If the youth consents but the Court is of the opinion that it is not appropriate to deal with the matter summarily, the Court must proceed to deal with the matter by way of preliminary examination.

56. Youth may elect to be tried summarily

(1) This section applies if the Youth Justice Court is conducting a preliminary examination in respect of a youth in accordance with section 54(2).

(2) The youth may, at any time before or during the preliminary examination, elect to have the matter heard summarily.

(3) If the Court is of the opinion that it is appropriate to deal with the matter summarily, the youth must enter a plea and the matter must be continued as a summary hearing.

(4) If the Court is of the opinion that it is not appropriate to deal with the matter summarily, the Court may decline to hear the matter summarily and the matter must be continued as a preliminary examination.

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 54(2) or 55(6); 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, that Court may accept the guilty plea and refer the youth to the Supreme Court for sentencing.

58. Pleas in summary hearing

(1) If a matter is to be heard 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 matter began as a preliminary examination but the youth elects under section 56(2) to have the matter heard summarily – at the continuation of the matter as a summary trial.

(2) If the youth pleads guilty to a charge, 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 prison or detention centre as ordered by the Court.

(3) Unless the youth is committed for trial in the Supreme Court, an order for detention or imprisonment of the youth must not, except with his or her consent, be for a period of more than 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 164 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.

(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 convicted 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) In this section –

"non-parole period" means a period fixed under subsection (1) during which the youth is not eligible to be released on parole.

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 Director, 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) If –

(a) a youth is 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 to a further term of detention or imprisonment in respect of which the Court proposes to fix a non-parole period,

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 Director and that the youth reports to a person nominated by the Director, 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 Director, 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 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 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 Director.

(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 Director in writing.

(6) If the time and place are not specified in the order, the Director 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 officer; and

(b) must participate in the project to the satisfaction of a probation officer or the project supervisor; and

(c) must, while participating in the project, comply with any reasonable directions of a probation officer or the project supervisor; and

(d) must inform a probation 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 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. Committee may approve projects

(1) A community work advisory committee established under the *Prisons (Correctional Services) Act* 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.

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 Director a report.

(3) The Director 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 Director must take into account the views of those members of the community who, in the opinion of the Director, 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 Director or a surveillance officer; and

(b) wear or have attached a monitoring device in accordance with the directions of the Director, 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 Director.

(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 Director.

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 surveillance 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 surveillance 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 surveillance 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 surveillance 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 surveillance 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 Director 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 surveillance 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 surveillance 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 Director 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 prison 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 prison; 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 prison (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 prison (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 prison (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 Director or the superintendent of the detention centre or the officer in charge of the prison (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 Director.

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. Director can vary times

(1) The Director 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 Director considers sufficient.

(2) Leave of absence may be granted either before or after the detention period to which it relates.

(3) If the Director 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 Director 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 prison (as the case may be) may refuse to admit a detainee to the centre or prison 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 Director 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 Director, 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

(1) 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.

(2) If, while a youth is serving a sentence of detention or imprisonment, a further sentence of detention or imprisonment is imposed, service of the earlier sentence is, if necessary, suspended in order that the sentences may be served in the order referred to in subsection (1).

131. Further sentence when 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 committed while a parole order under the *Parole of Prisoners Act* is or was in force in relation to the youth; and

(b) the parole order is, by reason of that sentence, taken to have been revoked under that Act.

(2) The Court must order the youth to be detained or imprisoned for the term that the youth had not served at the time when released from detention under the parole order.

(3) The term of detention or imprisonment to be served in accordance with subsection (2) commences at the expiration of the term of detention or imprisonment to which the youth is sentenced for the later offence.

132. Application of *Parole of Prisoners Act*

The *Parole of Prisoners 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 youth has been found guilty of an offence by a court but the court does not record a conviction, no evidence or mention of that offence may be made to, or the offence be taken into account by, a court other than the Youth Justice Court.

(2) Subsection (1) 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 prison).

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 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 Director 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 Director.

(8) If an application is made by the Director 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 Director 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 Director 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 Director, not exceeding 72 hours.

154. Temporary removal of detainee to prison

(1) If the superintendent of a detention centre is of the opinion that –

(a) an emergency situation exists; and

(b) a detainee should be temporarily transferred to a prison to protect the safety of another person,

the superintendent may apply by telephone to a magistrate for approval to transfer the detainee.

(2) Subsection (1) applies only in relation to a detainee who is 15 years of age or older.

(3) If the magistrate approves the transfer, the superintendent may arrange for the detainee to be transferred from the detention centre to a prison.

(4) The approval must be in writing and the magistrate must send a copy of the approval to the superintendent as soon as practicable.

(5) The superintendent may proceed under the telephone advice of the magistrate's approval despite that the written approval has not been received.

(6) If the written approval has not been received, the superintendent must sign a version of the approval as authority for the person in charge of the prison to take the detainee into his or her custody.

(7) The period of transfer of the detainee must not exceed 24 hours.

(8) However, the superintendent may apply to a magistrate for an extension of the period of transfer.

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

(1) 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 Director for section 165(b).

(2) A police officer or a prison officer within the meaning of the *Prisons (Correctional Services) Act*, if called upon by the superintendent of a detention centre to assist in an emergency situation or in preventing an emergency situation from arising, is taken to have been delegated the powers of the superintendent necessary to perform the superintendent's functions under section 151(3)(c).

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 Director 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 Director 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 Director 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 appointed under the *Ombudsman (Northern Territory) Act*; or

(c) the Children's Commissioner appointed under the *Care and Protection of Children and Young People Act*.

Division 4 – Miscellaneous matters

164. Detainee turning adult

(1) A detainee who turns 18 years of age while serving a sentence of detention in a detention centre must, within 28 days after turning that age, be transferred to a prison to serve the remainder of the sentence.

(2) If a detainee is transferred to a prison 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 the him or her.

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 Director.

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 escaped 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 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.

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).

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 Director, the official visitor must also report in relation to that matter to the Director.

(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 Director, 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 Director may, after consulting with the medical practitioner, order the detainee to undergo a medical examination or treatment that the Director considers necessary.

(3) The detainee must be given, where practicable, the right to a second medical opinion.

(4) An order by the Director 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. Director 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 Director on medical advice, be detrimental to the health of the detainee to delay.

(2) The Director 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 Director; 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 Director if a detainee at the centre is seriously ill or dies.

(2) If the Director is notified of a detainee's illness or death, the Director 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 Director must immediately notify the coroner of the death of a detainee.

PART 11 – INTERSTATE TRANSFER OF DETAINEES AND YOUTHS UNDER SUPERVISION

181. Interpretation

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 the subject of a direction given under section 21 of the *Prisons (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.

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.

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.

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.

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.

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 officer;

(d) a surveillance officer.

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).

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, probation officer or surveillance officer.

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 Director 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 Director; 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.

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 Director; or

(b) a superintendent of a detention centre; or

(c) a probation officer; or

(d) a surveillance 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.

(4) No proceedings may be commenced in relation to an act done or omitted to be done by the person under this Act more than 6 months after the act was done or the omission occurred.

216. Delegation by Minister or Director

The Minister or Director 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 probation officers and 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 probation officers and 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 –

(i) regulating the conduct of youths who are subject to alternative detention orders; and

(ii) prescribing the duties of surveillance officers; and

(iii) providing for the health and safety of surveillance officers;

(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.

(3) The Regulations may authorise the Director 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.

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SCHEDULE

Section 219

REPEALED ACTS

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