YOUTH JUSTICE BILL (NO.2) 2005

SERIAL NO.10

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Youth Justice Bill (No.2) 2005 is to repeal the *Juvenile Justice Act* and to replace it with a more contemporary statute, arising from a review of the *Juvenile Justice Act.* It is to provide for justice for youth who have committed, or are alleged to have committed, offences and for related matters.

The Bill includes objectives and guiding principles based on national standards and international conventions, the establishment of a Youth Justice Advisory Committee to advise the Minister on the administration and operation of the Act, powers of police in the investigation of offences alleged to have been committed by youth, diversion provisions formerly in the *Police Administration Act,* flexibility in dealing with youth at all stages of the youth justice process from pre-court diversion to when the youth is before the specialist Youth Justice Court to wide ranging and flexible sentencing options, regulation of the Detention Centres and interstate transfer of youth.

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Youth Justice Act 2005*.

Clause 2. Commencement

The Act will commence on the date fixed by the Administrator by notice in the *Gazette*.

Clause 3. Objects

The objects of the Act are to –
(a) specify the general principles of justice in respect of youth to guide the administration of the Act;
(b) provide for the administration of justice in respect of youth;
(c) provide how a youth who has committed, or is alleged to have committed, an offence is be dealt with;
(d) 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) ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation;

(f) continue the specialist youth court in existence; and
(g) establish the Youth Justice Advisory Committee.

Clause 4. Principles

Clause 4 lists the general principles that must be taken into account in the administration of the Act. The principles are based on international conventions and principles in other jurisdictions. The principles are:

(a) a youth who commits an offence 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 that will provide the opportunity to develop in socially responsible ways;

(c) a youth should only be detained 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) youth must be dealt with in the criminal law system in a manner consistent with their age and maturity and have the same rights and protection before the law as would an adult in similar circumstances;

(e) youth should be made aware of their obligations under the law and the consequences of contravening the law;

(f) youth should be dealt with in a way that allows them to be reintegrated 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 family members 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 their responsibility for the care and supervision of the youth, and supported in their efforts to fulfil this responsibility;

(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 so as 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 for youth should –

(i) be culturally appropriate;

(ii) promote their health and self respect;

(iii) foster their sense of responsibility;

(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; and

(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

Clause 5. Interpretation

This clause defines a number of terms used in the Act, namely “Aboriginal”, “Aboriginal customary law”, “Aboriginal tradition”, “alternative detention order”, "buccal swab", "charge", "Committee", "community work order", "Court", "detainee", "detention centre", "Director", "Fines Recovery Unit", “forensic procedure”, “good behaviour order”, "identifying procedure", “illicit drug or substance”, "intimate procedure", "non-intimate procedure", “nurse”, "official visitor", "parental responsibility", “periodic detention order”, "police officer", "preliminary examination", "prison", "probation officer", "proceedings", "prosecutor", "relative", "responsible adult", "support person", "surveillance officer", "the repealed Act", “victim” and "youth". Where the context requires, “magistrate” includes a Judge of the Supreme Court, as “Court” includes the Supreme Court. “Intimate part of the body” and “non-intimate part of the body” are also defined in subclause (3).

Clause 6. Meaning of youth

This clause defines the term “youth”, as used in the Act, as meaning a person under 18 years of age or, if age cannot be proved, a person apparently under 18 years of age and includes a person who committed an offence as a youth but has since turned 18 years of age. This is to ensure that the Youth Justice Court can continue to deal with a youth once they turn 18 years.

Clause 7. Intimate procedures

This clause defines the term “intimate procedure”, being generally a procedure to an intimate part of the body or an intimate procedure to a non-intimate part of the body.

Clause 8. Non-intimate procedures

This clause defines the terms “non-intimate procedure”, being generally a procedure to a non-intimate part of the body, and “identifying procedure”. Subclause (2) defines “identifying procedure”.

Clause 9. Illicit drug or substance

This clause defines an illicit drug or substance, as the term is used in the Act, as a drug or substance prohibited under a law, or for which the youth has no prescription, or is against the rules of a detention centre or the conditions of an alternative detention order.

Such rules or conditions may include a volatile substance (defined in the *Volatile Substance Abuse Prevention Act 2005* as meaning plastic solvent, adhesive cement, cleaning agent, glue, nail polish remover, lighter fluid, petrol or any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant or anaesthetic gas or a substance declared under the Act to be a volatile substance).

Division 3 – Probation officers and surveillance officers

Clause 10. Probation officers

A probation officer is a person appointed as a parole officer under the *Parole of Prisoners Act* and has the functions of preparing reports for Court as required and supervising youths who are the subject of supervision under a non-custodial order and other duties as directed by the Director.

Clause 11. Surveillance officers

The Director of Correctional Services, a probation officer and a person appointed as a surveillance officer under the *Prisons (Correctional Services) Act* are surveillance officers for the purposes of the *Youth Justice Act*, whose functions are to monitor the compliance of a youth under an alternative detention order.

A surveillance officer who is also a probation officer has the power to –

- enter, without a warrant, the youth’s place of residence to check whether the youth is in breach of the order or to place, install, inspect or retrieve a monitoring device there; or
- require the youth to undergo tests (see further clauses 105-108 as to the powers of surveillance officers to conduct tests).

A surveillance officer who is not a probation officer can only exercise such powers at the direction of the Director.

PART 2 – APPREHENSION AND REMAND

Division 1 – General matters

Clause 12. Application of Part

Part 2 applies to the apprehension, investigation and remand of youth despite the provisions of any other Act, such as the *Police Administration Act*. The *Youth Justice Act* is not intended to cover the field however.

Clause 13. Definitions

This clause defines "authorised officer", as the term is used in Part 2, as the Commissioner, a Deputy or an Assistant Commissioner of Police or a police officer authorized under clause 36. The clause also defines "interview" as including asking questions.

Clause 14. Register of appropriate support persons

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

Division 2 – Police powers and obligations

Clause 15. Explanations by police officers

A police officer, required to inform a youth of any matter in relation to an investigation of an offence, must do so in language and manner the youth is likely to understand, having regard to the youth's age, maturity, cultural background and English language skills.
Such matters include –

- person to be informed of the offence for which they are arrested (some exceptions to this);
- person in custody to be informed of right to silence;
- person in custody to be informed of ability to communicate with friend or relative; and
- person to be informed that they are entitled to a copy of an electronically recorded warning &/or Record of Interview containing admissions.

Furthermore, 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 the ability to access legal advice and representation.
However any action taken is not unlawful, and any evidence obtained is not inadmissible, only because of a failure to do so.

Clause 16. Guidelines in relation to arrest of youths

The Commissioner of Police may issue guidelines in relation to the arrest of youth and the investigation of offences committed (or believed to have been committed) by youth and such guidelines are issued by general orders under the *Police Administration Act*.

However, the arrest of a youth is not unlawful only because –

ê it was not done in accordance with the Act or the guidelines if, at the time of the arrest the officer reasonably believed that the person arrested was not a youth; or

ê the arrest was without a warrant but in accordance with the guidelines and -

(a) an authorised officer does not consent to a prosecution in relation to the matter; or

(b) it is subsequently found that the youth did not commit the offence.

Clause 17. Authorised officer to be notified

As soon as practicable after a youth is arrested, the police officer must notify an authorised officer.

Clause 18. Interview of youth

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, is punishable by imprisonment for 12 months or longer), 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.

This provision does not affect -

ê the power of a police officer to require a youth to give the youth's name and address (for example under section 134 of the *Police Administration Act)*; and

ê the operation of Part V (driving under influence of intoxicating liquor or drugs) or Part VI (offences such as dangerous driving and driving unregistered or disqualified) of the *Traffic Act* and, subject to Part 6 on sentencing dispositions of the court, a youth may be dealt with under those Parts of the *Traffic Act* as if he or she were an adult.

Clause 19. Search of youth

A support person must be present when police search the property, person or clothing of a youth as part of an investigation of an offence, unless the search needs to be carried out as a matter of urgency and 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.

In respect of such a search, a youth must not be required to remove any clothing that the youth is wearing unless the police officer has reasonable grounds for believing that the removal and examination of the clothing may afford

evidence of the commission of an offence and the youth is provided with adequate clothing to replace the clothing removed.

Clause 20. Search to be by person of same gender

A person of the same gender as the youth must carry out a search of the person or clothing of youth. Such a search must also be carried out in a place and a manner that allows the youth privacy from persons of the other gender.
If a police officer of the same gender 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 and the necessary measures must be taken to preserve the youth's privacy and dignity. The person who carries out such a search has the same powers and protection as a police officer, for the purposes of the search.

Clause 21. Authorised officer must consent to prosecution

A youth must not be charged with an offence without the consent of an authorised officer and a document that charges a youth must indicate that the charges have been consented to by an authorised officer and identify the authorised officer. The document is evidence that the officer named is an authorised officer and has consented.
This provision does not affect a requirement under any other law to obtain consent to a prosecution.

Clause 22. Charge to be by summons except in certain cases

A youth must not be charged at a police station unless the police officer believes on reasonable grounds that the youth will not appear in court to answer a summons in relation to the offence or that on releasing the youth from custody there will be a substantial risk of –

(i) a continuation or repetition of the offence or another offence by the youth;

(ii) the loss or destruction of evidence relating to the offence; or

(iii) harm to the youth.

If a youth is charged at a police station, the police officer may release the youth on bail or apply to the Youth Justice Court for an order that the youth be detained in custody.

Clause 23. Responsible adults to be informed

As soon as practicable after a youth is arrested or charged, the police officer must ensure that a responsible adult in respect of the youth is notified of the arrest or charge and of the time and place when the youth will be before the Court (if applicable), whether the responsible adult resides in the Territory or not.

Clause 24. Detention of youth not admitted to bail

If a youth is charged and not admitted to bail, a police officer must, as soon as practicable, apply to Court for an order that the youth be detained at a detention centre (or other approved place). Police may apply in person or by telephone to a magistrate.

The order must be in writing and specify the place at which the youth is to be detained and a copy must be given or sent to the police as soon as practicable. The police officer can take the youth to the place of detention despite not having received the order if informed of the order by telephone. A responsible adult in respect of the youth must be notified that the youth has been detained in custody and the place where they are detained.

The person in charge of the detention centre or place must detain the youth at the place in accordance with the order (including, if by telephone order, a version of the order signed by the officer).

Clause 25. Detained youth requiring medical attention

If a youth requires medical attention, instead of being taken to the detention centre, the youth may be taken to a hospital and detained there, if the person in charge of the hospital consents, or to a community health centre. While in hospital or the community health centre, the youth remains in the custody of the Police. On being discharged, the youth must be taken to the specified detention centre or other approved place under the order (unless in the meantime the youth has been admitted to bail).

Clause 26. Separation from adults where practicable

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

Clause 27. Arrested youth to be brought before Court promptly

A youth charged with an offence, who is not released from custody, must be brought before the Court as soon as practicable and in any case within 7 days after the arrest. If this does not occur, the youth must immediately be released.

Division 3 – Forensic procedures

Clause 28. Interpretation

This clause defines "senior police officer", as used in this Division, as meaning a police officer of the rank of

Superintendent or a higher rank. This clause also provides that a reference to carrying out a procedure includes causing the procedure to be carried out by another person.

Clause 29. Restriction on carrying out procedure

A support person must be present while an intimate procedure, an identifying procedure or a non-intimate procedure is being carried out under this Division.

Clause 30. Intimate procedure

This clause provides for an intimate procedure to be carried out on youth by a medical practitioner or dentist. An intimate procedure is defined in clause 7.

An intimate procedure may only be carried out if the youth is in lawful custody in respect of an offence, has been charged or summoned for an offence or an authorised officer has consented to proceedings in respect of an offence being brought against the youth by summons and if the police believe on reasonable grounds that the procedure may provide evidence relating to the offence or any other offence punishable by imprisonment.

Such a procedure can only be carried out however with the approval of a magistrate and police may apply to a magistrate for the approval in person or by telephone. The magistrate, after hearing the police and the youth, may approve the procedure if satisfied that the police have reasonable grounds for believing that the procedure may provide the evidence.

The approval must be in writing and specify the intimate procedure that may be carried out and a copy of the approval must be given or sent to the police as soon as practicable. Police can proceed under the approval despite not having received it if informed of the approval by the magistrate by telephone.

A medical practitioner or dentist may carry out the intimate procedure in accordance with the magistrate's approval and a police officer may assist the medical practitioner or dentist to carry out the procedure and may use reasonable force when doing so. The medical practitioner or dentist carrying out the procedure is protected from any civil or criminal action. The police are protected in accordance with the *Police Administration Act*.

Before carrying out the intimate procedure, the police must ask the youth (and their support person) whether they wish to have a medical practitioner or dentist of their own choice present when the procedure is carried out and if they do so, the police must provide facilities for arrangements to be made for the medical practitioner or dentist to be present and arrange for the procedure to be carried out at a time when the medical practitioner or dentist can be present (unless impracticable).

This provision does not prevent a youth being examined or treated for an illness or injury (on their request) while in lawful custody.

Clause 31. Non-intimate procedure

This clause provides for a non-intimate procedure to be carried out on youth. A non-intimate procedure is defined in clause 8(1).

A non-intimate procedure may be carried out if the youth is suspected by police, on reasonable grounds, of having committed a crime, has been charged or summoned with an offence punishable by imprisonment or an authorised officer has consented to proceedings in respect of such an offence being brought against the youth by summons.

A police officer may carry out the procedure with the approval of -

ê a senior police officer (defined in clause 28(1) as being of the rank of Superintendent or higher) who is satisfied that the youth is 14 years of age or older; or

ê a magistrate, If the youth is under 14 years.

The approval may be applied for in person or by telephone. The magistrate or senior police officer, after hearing the police and the youth, may approve the procedure and the approval must be in writing and specify the non-intimate procedure that may be carried out and a copy of the approval must be given or sent to the police as soon as practicable. Police can proceed with the procedure despite not having received it if informed of the approval by telephone.

If the non-intimate procedure involves taking a sample by buccal swab, the police must in the first instance direct the youth to provide the sample. The officer may take the sample or cause it to be taken, using reasonable force to do so, if the youth does not comply by providing a sample sufficient to enable an analysis of it to be carried out.

Clause 32. Voluntary non-intimate procedure

This clause provides that a non-intimate procedure can be carried out on youth, without the approvals required by the previous clause, if the youth and a responsible adult in respect of the youth both consent in writing to the procedure being carried out.

If the voluntary non-intimate procedure is carried out for the purposes of investigating an offence, any information obtained from the procedure must not be used for investigating any other offence and is inadmissible as evidence in any other proceedings, unless the other offence is a crime that, if committed by an adult, would be punishable by a term of imprisonment of 14 years or more.

Clause 33. Identifying procedure

This clause provides for police to carry out identifying procedures on youth. An identifying procedure, which is also an non-intimate procedure, is defined in clause 8(2) as taking prints of the hands, fingers, feet or toes or photographs (that are of an identifying nature and are of a non-intimate part of the body). An identifying procedure can be carried out on a youth if the youth is in lawful custody in respect of an offence, has been charged or summoned for an offence or an authorised officer has consented to proceedings in respect of an offence being brought against the youth by summons.

An authorised officer or a police officer for the time being in charge of a police station may carry out the procedure if satisfied that the youth is 14 years of age or older.

If the youth is younger than 14 years, the police must apply to a magistrate for approval. The application may be made in person or by telephone. The magistrate, after hearing the police and the youth, may approve the procedure and the approval must be in writing and specify the identifying procedure that may be carried out. A copy of the approval must be given or sent to the police as soon as practicable. Police can proceed with the procedure despite not having received the written approval if informed of the approval by the magistrate by telephone.

Police may use reasonable force in carrying out the identifying procedure.

Clause 34. Youth to be provided with copy of report

A copy of a report prepared -

- by a medical practitioner or dentist who carried out a forensic procedure; or
- in relation to the testing or analysis of samples obtained from a forensic procedure,

must be provided to the youth or the support person present.

However a report which analyses the DNA of another person, although the sample was taken from the youth's body, does not need to be given to the youth (for example a rape victim may not want to receive a report of the analysis of the rapist's semen).

Division 4 – Support persons and authorised officers

Clause 35. Support person

This Part generally requires support persons to be present for a youth when police require a youth to do certain things in connection with the investigation of offences.

A support person for a youth can be a responsible adult (ie a person who exercises parental responsibility for the youth), a person nominated by the youth (for example a relative, a friend or any other person that the youth chooses), a legal practitioner acting for the youth or, if any such person cannot be present within 2 hours, the police officer may call upon a person from the Register established and maintained under clause 14.

A person cannot be a support person however if –

- the police believe the person is an accomplice of the youth or likely to lose, destroy or fabricate evidence relating to the offence; or
- the person is a police officer, a probation officer or employed at a detention centre (except in their capacity as a responsible adult) or is another youth (although such a youth can be present as well as a support person and a request must be accommodated if practicable).

Clause 36. Authorised officers

This clause provides that the Commissioner, a Deputy or an Assistant Commissioner of Police may authorise a police officer of a rank or performing the duties specified in this clause to act as an "authorized officer" under this Part.

PART 3 – DIVERSION OF YOUTH

Clause 37. Purpose and application of Part

Part 3 is to provide a means of diverting youth, who are believed on reasonable grounds to have committed offences, away from the formal youth justice system, eg the court and custody. It does not affect any law relating to –

(a) investigating and collecting evidence of criminal activities and the commission of offences;

(b) questioning, apprehending, detaining, arresting, charging and bailing a suspected offender; and

(c) prosecuting a person for an offence,

except to the extent that if a youth completes diversion to the satisfaction of police, no criminal investigation or proceedings can be commenced or continued against the youth in respect of the offence.

Clause 38. Interpretation

This clause defines the terms "divert" and "offence" as used in Part 3. "Divert" means a verbal or written warning, a Youth Justice Conference, or referring the youth to a diversion program. "Offence" is not to include 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 is an offence against Part V or VI of the *Traffic Act* (the intention being that they be treated as adults for these offences).

Clause 39. Diversion of youth

This clause provides for a presumption in favour of diversion of youth, who are believed on reasonable grounds to have committed offences. In such circumstances, a police officer, must, instead of charging the youth with the offence, divert the youth by doing one or more of the things listed, being to give the youth a verbal or written warning, cause a Youth Justice Conference (defined as a conference with the victim(s) or a conference with the youth's family) to be convened, or refer the youth to a diversion program.

The presumption does not apply however if the youth has left the Territory or whose whereabouts are unknown or if the alleged offence is a serious offence (to be prescribed by Regulations) or the youth has a history that makes diversion an unsuitable option, for example a history of previous diversions or convictions - unless the police

officer considers diversion appropriate in the interests of justice.
Subclause (6) makes it clear that diversion can be considered even if a youth has been charged and referred for reassessment for diversion by the court under clause 64.

Clause 40. Youth and responsible adult must consent to diversion

This clause, which reproduces section 120J of the *Police Administration Act,* provides that the consent of the youth and a responsible adult in respect of the youth must be obtained before diversion can occur - although a verbal warning can be given by police to a youth, despite the consent of a responsible adult not having been obtained, if it is not possible or practicable to obtain the responsible adult's consent.
Where the youth, or a responsible adult, do not consent to diversion, the police officer may charge the youth with an offence and the youth may be prosecuted for the offence.

Clause 41. Effect of diverting youth

Subclause (1), which reproduces section 120K of the *Police Administration Act,* provides that where 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.
Subclauses (2) and (3) provide that 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, for example should diversion not be completed satisfactorily, unless they have been properly obtained, ie in accordance with the *Police Administration Act* and this Act.

Clause 42. Extension of limitation period

Some legislation provides for a certain period of time in which to charge a person with an offence, and after the expiry of such limitation period, action cannot be taken. An example of such a provision is section 52 of the *Justices Act* which generally provides that a complaint must be made within 6 months from the time when the matter of the complaint arose. This clause extends the limitation period if a youth is referred to a diversion program. Thus, if the youth fails to satisfactorily complete the program, proceedings may be commenced despite the applicable limitation period having expired. In such circumstances, however, the proceedings must be commenced within 3 months after the youth is determined to have failed to complete the diversionary program – or within the limitation period whichever is later.

Clause 43. Reporting on diversion of youth

Subclause (1), which reproduces section 120M(1) of the *Police Administration Act* although restricting its operation to the Youth Justice Court, provides that information concerning the diversion of a youth may only be produced in Court for the purpose of determining sentence, after the youth is found guilty of an offence.
Subclauses (2) and (3) make it an offence for a person to publish information and details of a youth's performance in any diversion program, except as aggregated data for statistical purposes and the information does not permit any particular youth to be identified. The penalty is, if the offender is a natural person, 200 penalty units or imprisonment for 12 months, and if the offender is a body corporate, 1 000 penalty units.

Clause 44. No review or appeal

This clause, which is based on section 120P of the *Police Administration Act,* provides that a decision to divert or not to divert a youth or that a youth did or did not complete a diversion satisfactorily, cannot be reviewed or appealed against in any court or tribunal. This clause does not however affect the power of the Youth Justice Court to refer a youth for reassessment for diversion under clause 64.

PART 4 – YOUTH Justice COURT

Clause 45. Continuation and constitution

This clause continues the existence of the Juvenile Court, established under section 14 of the repealed *Juvenile Justice Act*, as the Youth Justice Court. The Youth Justice Court is a court of record and has a seal. Each magistrate is a magistrate of the Youth Justice Court.

Clause 46. Exercise of jurisdiction

A magistrate sitting alone exercises the jurisdiction of the Youth Justice Court. Although any magistrate can exercise the jurisdiction of the Youth Justice Court, the Chief Magistrate may appoint specialist Youth Magistrates if in his opinion, a 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 desirable. Such appointments do not affect the terms and conditions of the magistrate's appointment or the ability of other magistrates (who are not appointed as Youth Magistrates) to exercise the jurisdiction of the Youth Justice Court.

Clause 47. Registrar of Youth Justice Court

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

Clause 48. Where Youth Justice Court may be held

The Minister directs which locations the Youth Justice Court may sit in and which buildings are approved for the holding of the Court. In doing so, the Minister must ensure that the places for the Court to sit provide adequate and appropriate facilities for the proceedings of the Court and, as far as practicable, are separate from the places in which proceedings in relation to adults are being held.

Although generally the Court will sit in buildings at locations approved by the Minister, if the Court considers it is expedient to sit in another place, the Court may sit in that other place. This is to ensure the Court has flexibility to respond to particular circumstances.

Clause 49. Proceedings to be in open court

Proceedings in the Youth Justice Court against a youth are to be held in open court, unless the magistrate (before whom proceedings are taken) orders that the Court be closed and that no persons remain in or enter the courtroom or remain within the hearing of the Court, without the magistrate's permission. The magistrate can make such an order, if it appears to him/her that justice will be best served by so doing. Such an order cannot however exclude from the Court the prosecutor or a legal practitioner representing the youth.

It is an offence for a person to remain in or within the hearing of the Court, or enter the Court in contravention of an order (the penalty for which is a maximum 200 penalty units or imprisonment for 12 months).

Clause 50. Restriction of publication of proceedings

A magistrate may also order that a report of, or information relating to, proceedings in the Youth Justice Court, or the result of proceedings against a youth, must not be published.

It is an offence for a person to publish a report or information in contravention of such an order (the penalty for which is a maximum 200 penalty units or imprisonment for 12 months, if the offender is a natural person, or 1 000 penalty units, if the offender is a body corporate).

Interstate arrangements for the exchange of information between Police Forces of the States and Territories are exempted.

Clause 51. Youth in need of protection

If the Youth Justice Court believes that a youth who is charged with an offence is or may be a child in need of protection (within the meaning of the *Care and Protection of Children and Young People Act*) or that there is a risk to the wellbeing of the youth (within the meaning of the *Care and Protection of Children and Young People Act*),

the Youth Justice Court may require the CEO (within the meaning of the *Care and Protection of Children and Young People Act)* to investigate the circumstances of the youth and to take appropriate action to promote the youth's wellbeing.

If the CEO is required by the Youth Justice Court to investigate, the CEO must as soon as practicable, cause a report on the circumstances of the youth (including whether or not the youth is a child in need of protection) and any action that has been taken, to be given to the Youth Justice Court. The Youth Justice Court may adjourn a matter to receive the CEO's report and may remand the youth.

PART 5 – COURT PROCEEDINGS

Division 1– Jurisdiction and proceedings generally

Clause 52. Jurisdiction of Youth Justice Court

The Youth Justice Court must deal, in accordance with the Act, with all charges of a summary or indictable nature against a youth, who is alleged to have committed an offence, and all applications relating to unlawful activity of a youth (wherever that activity is alleged to have taken place).

The jurisdiction of the Youth Justice Court is not affected by the alleged offender subsequently turning 18 years of age.

Clause 53. Application of *Justices Act*

Unless the Act specifically provides otherwise, the *Justices Act* applies as if the Youth Justice Court were the Court of Summary Jurisdiction established by that Act.

The Act does not affect the powers of a Justice of the Peace to take an information or complaint, issue a summons, grant, issue or endorse a warrant or grant bail, in relation to a youth.

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

This clause is to ensure that generally all charges against a youth (of a summary or an indictable nature) are heard summarily by the Youth Justice Court unless the offence, if committed by an adult, is punishable by imprisonment for life. If dealing with an offence which, if committed by an adult, is punishable by imprisonment for life, the Court must conduct a preliminary examination.

Also, if the offence, if committed by an adult, would require the consent of the defendant to be heard in a summary manner and the defendant youth does not consent, the Court must conduct a preliminary examination.

Clause 55. Youth may consent to indictable offence being tried summarily

If the youth has the right to consent or not to a matter being heard summarily, the Court must inform the accused youth and a responsible adult in relation to the youth (if present in court) of that right. If a responsible adult in relation to the youth is not present, the Court may adjourn the hearing to enable a responsible adult to be present but the Court may continue a hearing, which had been adjourned for that reason, despite the responsible adult in relation to the youth not being present at the time of continuation.

If the youth consents and the Court is of the opinion that -

ê it is appropriate to deal with the matter summarily, the Court must proceed to hear the matter summarily; or

ê it is not appropriate to deal with the matter summarily, the Court must proceed to deal with the matter by way of preliminary examination.

Clause 56. Youth may elect to be tried summarily

A youth against whom a charge is being heard by way of a preliminary examination (because he or she did not consent to the matter being heard summarily), may, at any time before or during the preliminary examination, elect to have the matter heard summarily and, if the Youth Justice Court agrees to hear the matter summarily, the youth must enter a plea and the matter continues as a summary hearing. If, however, 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.

Clause 57. Referral to Supreme Court for sentencing

If at any time during a preliminary examination under clauses 54(2) or 55(6) (ie where the youth did not consent to the matter being heard summarily or the youth consented but the Court was of the view that it is not appropriate to proceed with a matter summarily), the youth indicates that he/she wishes to plead guilty, the Youth Justice Court, if it considers it appropriate, may accept the guilty plea and refer the youth to the Supreme Court for sentencing.

Clause 58. Pleas in summary hearing

A youth, charged with an offence which is to be heard summarily in the Youth Justice Court, must enter a plea of guilty or not guilty to the charge –

(a) at the commencement of the hearing (whereas a youth who is not being tried summarily but a preliminary examination is to be conducted does not plead at that stage of proceedings); or

(b) if the matter began as a preliminary examination but the youth elects under section 56 to have the matter heard summarily – at the continuation of the matter as a summary trial.

The Court may, at any stage of the proceedings, order that a plea of guilty be withdrawn and a plea of not guilty be entered, if of the opinion that the youth may not be guilty of the offence charged.

If the Court orders that a guilty plea be withdrawn and a not guilty plea be entered, the youth cannot plead autrefois convict by reason of the initial guilty plea.

A youth who pleads not guilty may change his or her plea to guilty at any stage of proceedings.

Clause 59. Exclusion of evidence unlawfully obtained

The Court may order that evidence in relation to a youth is not admissible if the Court is satisfied that the evidence was obtained in contravention of, or as a consequence of a contravention or failure to comply with, the Act.

However, the Court may admit the evidence if the Court is satisfied that admission of the evidence would specifically and substantially benefit the public interest without unduly prejudicing the rights of any person.

In deciding whether or not to admit the evidence, the Court must have regard to:

(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; and

(d) any other matters the Court considers relevant.

This clause is in addition to, and does not derogate from, any other law or rule under which a Court may refuse to admit evidence.

Clause 60. Points of law may be reserved for consideration of Supreme Court

The Youth Justice Court may reserve a question of law arising from or in relation to proceedings (defined to include a preliminary examination) against a youth for an offence and may state a special case for the opinion of the Supreme Court, at any time during proceedings in the Youth Justice Court or at any time within one month after the Youth Justice Court has finally determined the matter.

The Supreme Court must deal with a special case with as little delay as practicable and may amend the special case or send it back for amendment or make any order (including an order as to costs of the proceedings in the Supreme Court and in the Court below) that it thinks fit.

The Youth Justice Court must deal with the matter in accordance with the Supreme Court's decision.

Clause 61. Court must explain proceedings to youth

The Court must satisfy itself that a youth, who is the subject of proceedings for an offence, understands the nature of the proceedings. 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, the nature of the allegations against him or her, the legal implications of those allegations and the elements of the offence that must be established by the prosecution.
No order or finding of the Court can be called into question on the ground of failure to comply with this section, provided the Court substantially complied.

Clause 62. Legal representation of youth

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

Clause 63. Responsible adults to attend court

This clause requires a responsible adult in respect of a youth (the subject of proceedings for an offence) to attend Court and remain in attendance throughout the proceedings, unless the Court is satisfied that it would be unreasonable to require that attendance. Who the appropriate responsible adult is, and whether it is reasonable that they attend Court, is a matter for the Court.
If a responsible adult fails without reasonable excuse to attend Court, or remain throughout the proceedings, the Court may direct that a warrant or summons be issued to bring the person before the Court at that or a further hearing. The Court may adjourn the proceedings to allow for the person to be present. However the Court may proceed with the adjourned hearing, even though the responsible adult is not present at the time of continuation.

Clause 64. Court may refer youth to diversion

This clause provides that the Court may, at any stage of proceedings prior to a finding of guilt, with the consent of the prosecution and the youth (but not necessarily that of the responsible adult), adjourn proceedings and refer a youth to be reassessed for inclusion in a diversionary program or Youth Justice Conference under Part 3.

Clause 65. Court may remand youth

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;

(b) release the youth on bail in accordance with the *Bail Act;*

(c) release the youth into the care and supervision of any person; or

(d) remand the youth in custody. A youth remanded in custody can be detained in a detention centre or, if he or

she is 15 years of age or over, in either a prison or detention centre as ordered by the Court. Such an order can only be for a period not exceeding 15 days, unless with the consent of the youth or the youth is committed for trial in the Supreme Court (in which case it will be until released or delivered in due course of law).

The Court may revoke any order made and substitute any other order it could make.

Division 2 – Reports and submissions

Clause 66. Enquiry and examination authorised

This clause provides that a person, who is required to provide the Court with a report in relation to a youth, is authorised to make any necessary enquiries and may require the youth to be interviewed and examined by a medical practitioner or other appropriate person.

Clause 67. Report as to mental condition of youth

The Court may adjourn proceedings, if it 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, in order that an appropriately qualified person examines the youth and reports (whether orally or in writing) to the Court as to the youth's mental condition.

Clause 68. Court may seek submissions or reports

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. Such submissions or reports may be written or oral. This clause is intended to be wide and flexible.

Clause 69. Court must require pre-sentence report

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 be informed as to the circumstances of the youth and, in order to do so, the Court must require a pre-sentence report be provided, unless the Court is satisfied that it has the information necessary to determine an appropriate sentence. If so satisfied, the Court may dispense with the need for a report. The Court may order that the report address specific matters in relation to the youth.

Clause 70. Content of pre-sentence report

This clause lists the matters that may be covered in a pre-sentence report, namely -

(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.

The report must include any matter that the Court has directed be set out in the report.

Clause 71. Report in certain circumstances

If a youth has been found guilty of an offence and the Court is considering imposing on a youth a sentence that includes supervision, a community work order, alternative detention or periodic detention, the Court must require a report as to the suitability of the youth for the proposed sentence.

If the Court is considering ordering 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.

Clause 72. Court may adjourn for report to be prepared

If the Court has requested a report in relation to a youth, the Court may adjourn the proceedings to enable the report to be prepared; and remand the youth.

Clause 73. Reports to be made available

A copy of every written report must be given to the youth, to a responsible adult in respect of the youth who is

present in court and to the prosecutor, except to the extent that may be ordered by the Court. The Court may order that the report or part of the report not be given to a specified person if of the opinion that the report contains material that may be prejudicial to the welfare of the youth, if disclosed.

Clause 74. Challenge to contents of report

A person who receives a copy of a report (ie youth, a responsible adult if present and the prosecutor) may cross-examine the author of the report (or the person who carried out an investigation on which the report was based). The youth (or the responsible adult in respect of the youth) may give evidence or call witnesses to rebut the contents of the report.

Clause 75. Protection in relation to report

A person acting in good faith who provides information for the purpose of preparing a report under this Division, or who prepares the report or who gives the report to the Court, is not civilly or criminally liable, and is not in breach of any professional code of conduct, for the preparing or giving of the report or the disclosure of any information in the report.

Division 3 - Victim impact statements and victim reports

Clause 76. Definitions

This clause defines the terms "harm", "victim impact statement" and "victim report" used in this Division.

Clause 77. Court must consider victim impact statement or victim report

Before sentencing a youth for an offence, the Court must allow the prosecutor to present a victim impact statement or a victim report to the Court, in relation to each victim, and the Court must consider each statement and report before determining the sentence to be imposed in relation to the offence. Inferences must not be drawn because a statement or report is not presented to the Court.

Clause 78. Victim impact statements

The prosecutor must present a victim impact statement (defined as an oral or written statement containing details of the harm suffered by a victim arising from the offence) if the victim consents to its presentation, but if the victim is incapable of consenting, the statement may be prepared by a person with a sufficiently close relationship with the

victim.

The statement may be presented by a person other than the prosecutor, with the permission of the Court.

A victim impact statement may be presented orally or in writing. If written, it must be signed and a copy given to the youth. If it is to be presented orally, a written or oral summary of the statement must be given to the youth.

The person who signs a written statement or the person presenting an oral statement (not being the prosecutor) may be cross-examined about the contents of the statement by the youth's legal practitioner. The youth can only cross-examine with leave of the Court.

Clause 79. Victim reports

The prosecutor must present a victim report (defined as an oral or written statement prepared by the prosecutor and containing details of the harm suffered by a victim arising from the offence) if a victim does not consent to a victim impact statement and details of the harm suffered by the victim are reasonably ascertainable and the victim has been informed of the contents of the victim report and does not object. If the victim is incapable of consenting, the report may be presented if a person with a sufficiently close relationship with the victim has been informed of the contents and does not object to its presentation.

A victim report may also be presented when the victim cannot be located after reasonable attempts made to locate them and details of the harm suffered by the victim are reasonably ascertainable. However, if the details of harm are already before the Court, as evidence or as part of a report prepared in relation to the youth, a victim report need not be presented.

A copy of a written victim report must be given to the youth but if it is to be presented orally, a written or oral summary must be given to the youth.

Clause 80. Other matters may be addressed

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.

A victim impact statement or victim report may include the victim's wishes in respect of the sentence.

PART 6 – DISPOSITION BY COURT

Division 1 – General principles

Clause 81. Principles and considerations to be applied to youth offenders

This clause provides for sentencing principles the Court must consider when sentencing a youth offender who has been found guilty of an offence committed as a youth. The Court must have regard to the principles applying generally for disposing of charges of offences, except as modified by this Act and the general principles of youth justice set out in clause 4.

The Court must also 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 the nature and seriousness of the offence, any history of offences previously committed, the youth's cultural background, the age and maturity of the youth, previous orders that still apply to the youth and any further order that is liable to be imposed if the youth has not complied with the terms of a previous order and the extent to which any person was affected as a victim of the offence.

The Court must dispose of the matter in a way that is in proportion to the seriousness of the offence.

The Court is to have regard to the fact that the rehabilitation of a young offender may be facilitated by the participation of their family and giving the youth opportunities to engage in educational programs and in employment, but the absence of such participation or opportunities is not to result in the youth being dealt with more severely for the offence.

The Court must take into account whether the youth has taken steps to make amends with the victim of the offence.

The Court must impose a sentence of detention or imprisonment on a youth only as a last resort, and a sentence of imprisonment only when there is no appropriate alternative.

Clause 82. Powers of Supreme Court in sentencing

If a youth is found guilty before the Supreme Court of an offence, the Supreme Court may exercise, in addition to its powers under the *Sentencing Act*, the powers of the Youth Justice Court under the *Youth Justice Act* (or both); or it may order that the youth be detained in a detention centre for a period not exceeding the period of imprisonment for which such an offence would be punishable if committed by an adult and in making such an order may make any order it could have under the *Sentencing Act*; or it may remit the case to the Youth Justice Court.

If the Supreme Court finds a youth guilty of murder, the Supreme Court, despite section 164 of the Criminal Code (which provides for a mandatory penalty of imprisonment for life for the crime of murder, subject to the fixing of a non-parole period in accordance with section 53A of the *Sentencing Act)*, may sentence the youth to a shorter period of detention or imprisonment as it thinks fit.

Division 2 – Sentencing options

Clause 83. Orders Court may make

This clause is intended to provide clarity and flexibility with respect to the dispositions available to the Court when it finds a charge proven against a youth and the options are listed in order of seriousness.

Whether or not the Court proceeds to conviction, it may make one or more of the following orders:
(a) dismiss the charge;
(b) discharge the youth without penalty;
(c) adjourn the matter for up to 6 months and, if during that period the youth does not commit a further offence, discharge the youth without penalty (known as a 'no-further-trouble order');
(d) adjourn the matter for up to 12 months and grant bail in accordance with the *Bail Act* for the purpose of assessing the youth's capacity and prospects for rehabilitation or for allowing the youth to demonstrate that rehabilitation has taken place, or for any other purpose the Court considers appropriate in the circumstances;
(e) order the youth to participate in an approved program and adjourn the matter for that purpose (known as 'post-court diversion') (see further Division 3);
(f) order that the youth be released on a good behaviour bond for up to 2 years on such conditions, if any, imposed by the court. This order is based on the good behaviour bond orders in the *Sentencing Act* and replaces the current good behaviour order and the probation order in section 53(1)(d) and (f) (respectively) in the *Juvenile Justice Act* (see further Division 4);
(g) fine the youth (see further Division 5);
(h) make a community work order for up to 480 hours (see further Division 6);

(i)-(l) order that the youth serve a term of detention or imprisonment. A term of detention or imprisonment may be –

· suspended, wholly or partly (see further Division 7);
· suspended on the youth entering into an alternative detention order (see further Division 8). This is a new option based on home detention orders in the *Sentencing Act* but intended to have wider application, particularly in remote communities; or
· served periodically (see further Division 9); or

(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.

A term of detention or imprisonment must not exceed 12 months for a youth who is less than 15 years of age, or 2 years, for a youth who is 15 years of age or more.

The Court must not order the imprisonment of a youth who is less than 15 years of age.
If the Supreme Court remits a case to the Youth Justice Court under clause 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.

The power of the Supreme Court to impose a sentence it could otherwise impose is not to be limited by this clause.

Clause 84. Court may order pre-sentencing conference

If a youth has been found guilty of an offence and the Court is considering an appropriate sentence, the Court may adjourn the proceedings and order the youth to participate in a pre-sentencing conference.

Such a conference may be with the victim(s), community representatives, members of the youth's family or any other persons as the Court considers appropriate.

The Court may direct that the conference be convened at a specified time and place and may appoint a person who is appropriately qualified as the convener of the conference. The convener must report to the Court as to the outcome of the conference.

It is intended that the Police Diversion Unit and the Community Justice Centre will generally conduct such conferences.

Clause 85. Non-parole period

If the Court sentences a youth to a term of detention or imprisonment which is longer than 12 months, 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. This is consistent with the *Sentencing Act* for adults and based on section 53 of the *Sentencing Act*.

If an aggregate period of detention or imprisonment is ordered in respect of more than one offence, the non-parole period is in respect of the aggregate period.

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

A failure of the Court to fix a non-parole period does not invalidate the sentence but the Court may, on the application of the Director, a prosecutor, the youth or a person on behalf of the youth, fix a non-parole period in accordance with the previous clause in any manner in which the Court might have done so at the time of sentencing.

This clause is based on section 56 of the *Sentencing Act.*

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

This clause provides for the Court to fix a new non-parole period where the Court sentences the youth to a further term before the end of the non-parole period the youth is currently serving.

This clause is based on section 57 of the *Sentencing Act.*

Clause 88. Court may disqualify youth from holding driving licence

In addition to any other order the Court may make if a youth is found guilty of an offence, whether or not a conviction is recorded, it may disqualify the youth from holding a licence to drive if the Court is satisfied, having regard to all the facts and circumstances before it, that the youth is not a fit and proper person to hold such a licence.

The Court may vary or revoke the order at any time, on the application of the disqualified youth (or on their

behalf), if the Court is satisfied that it is just and expedient to do so.

This clause is in addition to the powers given 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. An order under this clause has the same force and effect as an order under the *Traffic Act.*

Clause 89. Restitution

The Court may order restitution by way of monetary compensation or, with the consent of the youth and the victim, performance of service as compensation for an offence. The Court must have regard to the amount of loss or damage suffered as a result of the offence and the ability of the youth to comply with the order. However, an order for monetary compensation must not exceed $5,000 and must be paid to the Fines Recovery Unit for distribution in accordance with the order. The *Fines and Penalties (Recovery) Act* applies in relation to an amount payable under this clause.

If the Court orders performance of service as compensation, it must specify the monetary value of the compensation in the order. The value of service performed is determined in accordance with the Regulations and the youth must perform the service until the monetary value of the compensation has been satisfied.

An order under this clause 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

Clause 90. Matters relating to approved programs

If the Court makes an order under clause 83(1)(e) that a youth participate in an approved program (a program is approved by the Minister by notice in the Gazette) and the Court is satisfied that the youth has satisfactorily completed the program, the Court may make an order discharging the youth without penalty.

If the Court is satisfied that the youth has failed to satisfactorily complete the program, the Court must revoke the order (if it is still in force) and deal with the youth for the relevant offence(s) in any manner it could deal with the youth if it had just found the youth guilty. In so dealing with the youth, the Court must take into account the extent to which the youth had complied with the order or conditions or continuing obligation and 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.

Clause 122 deals with the situation where the youth offends during the period of adjournment and it is not found out until after the Court makes an order discharging the youth without penalty.

Division 4 – Good behaviour orders

Clause 91. Making good behaviour order

These orders are based on similar orders in the *Sentencing Act* and replace the current orders to be of good behaviour under section 53(1)(d) of the *Juvenile Justice Act* and probation orders under section 53(1)(f).

If the Court orders the youth to be released on bond to be of good behaviour under clause 83(1)(f), the Court may impose such conditions (or no conditions) as it sees fit. Such conditions, to be specified in the order, may include that the youth reside with a particular person or at a particular place, that the youth obey the reasonable directions of a person, that the youth refrain from activities or from associating with certain persons, that the youth be under the supervision of the Director and report to a nominated person at the place and times determined by that person and/or any other condition the Court thinks fit.

If the Court makes a good behaviour order, the youth must sign the order to signify acceptance of the terms before leaving the precincts of the Court and a copy of the order must be given to the youth, a responsible adult in respect of the youth (if in attendance at the Court) and to the Director, if the order includes supervision.

Part of a good behaviour order requires the youth to appear before the court if called on to do so and the Court may do so by order (an application for such an order may be made in the absence of the youth) or by notice issued by the Registrar, which must be served on the youth at least 4 days before the time specified to appear.

Division 5 – Fines

Clause 92. Imposition of fine

A fine ordered to be paid by the Court under clause 83(1)(g) would usually be enforced under the *Fines and Penalties (Recovery) Act* however the Court may order detention or imprisonment in default, if the youth does not pay the fine within 28 days. This clause sets out the procedures if the Court were to order detention or imprisonment in default, such as the issue of a warrant of commitment and how long before the fine is taken to be satisfied.

Subclause (7) provides that, unless the Court orders otherwise, a youth is to serve a period of detention or imprisonment concurrently with another period of detention or imprisonment ordered by the Court but cumulatively if that other period of detention or imprisonment is also for default of payment of a fine or sum of money.

Division 6 – Community work orders

Clause 93. Application and purpose of community work orders

This clause provides that Division 6 applies to community work orders made under clause 83(1)(h) and that 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.

Clause 94. Making community work order

The Court may make a community work order (that the youth participate in an approved project for a certain number of hours) if the youth consents to both the making and the terms of the order, if the Court is satisfied there is an approved project suitable for the youth to participate in, if a probation officer advises the Court that arrangements have been or will be made for the youth to participate in the approved project and if the Court is satisfied that the youth is a suitable person to participate in the approved project.

In order to be satisfied that the youth is a suitable person for this type of order, the Court must require a report from a probation officer as to the youth's circumstances and any other matter the Court specifies.

A probation officer has the meaning in clause 10.

The youth must sign the community work order to signify acceptance of the terms before leaving the precincts of the Court and a copy of the order must be given to the youth, a responsible adult in respect of the youth (if in attendance at court) and the Director.

A community work order may require the youth to present himself or herself at a place, to a person and within a time specified in the order or as directed by the Director in writing and, unless the information is 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.

If the community work order is in respect of 2 or more offences, or is in addition to one or more other community work orders, the total number of hours to be worked must not exceed 480.

Clause 95. Duties of youth in carrying out community work order

A youth who is the subject of a community work order must participate, for the number of hours specified in the order, in an approved project as directed by a probation officer, and to the satisfaction of a probation officer or project supervisor (person nominated in accordance with clause 97(2)). The youth must, while participating in the project, comply with any reasonable direction of a probation officer or a project supervisor and must inform a probation officer of a change in his or her residential address within 48 hours after the change. The youth must not commit an offence while the order is in force.

Unless the youth consents, he or she must not be required to participate in a community work order for more than 8 hours (exclusive of time allowed for meals) in any one day.

Clause 96. Breach of community work order

A youth who is the subject of a community work order breaches the order if he or she fails to comply with a term or condition of the order, fails to carry out his or her obligations under the previous clause (including the obligation not to commit an offence), disturbs or interferes with any other person participating in or doing anything under a community work order, assaults, threatens, insults or uses abusive language to a probation officer or a project supervisor, or changes his or her address to avoid their obligations.

If the community work order that is breached is in addition to other community work orders, any time spent participating in approved projects under the orders is taken to have been spent in the projects in the succession (or sequence) in which the community work orders were made, and the youth is taken to be in breach of all the orders that remain unsatisfied.

Clause 97. Committee may approve projects

Projects to be participated in under a community work order are rehabilitation projects or work approved by the Community Work Advisory Committee established under the *Prisons (Correctional Services) Act*.

An approved project must have a person nominated as the project supervisor.

Division 7 – Suspended sentences

Clause 98. Making order to suspend sentence

The Court may suspend all or part of a sentence of detention or imprisonment by order under clause 83(1)(i) on the conditions it thinks fit and it must specify a period, not exceeding 2 years, during which the youth must not commit any further offences.

The period of a suspended sentence begins on the date of the order or, if only a part of the sentence is suspended, on the date specified in the order.

Division 8 – Alternative detention orders

Clause 99. Application

Division 8 applies in relation to alternative detention orders made under clause 83(1)(j).

Clause 100. Making alternative detention order

A Court may suspend a sentence of detention or imprisonment and make an alternative detention order if it is satisfied that it is desirable to do so in the circumstances. The Court can only make the order if the youth consents to the making and the terms of the order.

The Court must specify in the order the premises or place at which the youth is to reside or remain and the period, not exceeding 12 months, that the order is to remain in force.

Clause 101. Circumstances in which alternative detention order may be made

The Court can only make an alternative detention order if it is satisfied that suitable arrangements are available for the youth to reside at specified premises or place, that the place is suitable for the purposes of an alternative detention order, that the making of the alternative detention 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 that the youth is a suitable person for an alternative detention order.

In order to satisfy itself as to those matters, the Court must require a report from the Director, addressing those matters and any other matters specified by the Court. 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.

Clause 102. Conditions of order

An alternative detention order may be subject to such terms and conditions as the Court thinks fit, including that the youth not leave the premises or place specified, except at the times and for the periods permitted, that the youth wear or have attached a monitoring device and allow the placing / installation / retrieval of equipment necessary for the efficient operation of the monitoring device, that the youth obey the reasonable directions of the Director and any conditions prescribed by the Regulations.

Clause 103. Procedural matters

The youth must sign an alternative detention order to signify acceptance of the terms before leaving the precincts of the Court and a copy must be given to the youth, a responsible adult in respect of the youth (if in attendance at the Court) and the Director.

Clause 104. If more than one alternative detention order made

This clause ensures that the total time under alternative detention order cannot exceed 12 months.

If the Court makes an alternative detention order in respect of 2 or more offences, the aggregate period of the order must not exceed 12 months. 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.

Clause 105. Tests for alcohol or illicit drugs

A surveillance officer (which has the meaning in clause 11) or a police officer may require a youth on an alternative detention order to submit to an alcohol or illicit drug/substance test at any time and may enter the premises, without a warrant, in order to administer such a test.

Clause 106. Breath test

In particular, a surveillance officer or police officer may require a youth to provide a sample of his or her breath for a breath test and if the youth fails to supply a sufficient sample, the youth is taken not to have complied with the requirement.

Clause 107. Breath analysis

A surveillance officer or police officer may require the youth to provide a sample of his or her breath for a breath analysis, if they believe there may be alcohol present in the youth's body, either from a breath test or their own observations. A breath analysis can only be carried out by an authorised person under the *Traffic* Act, with an approved instrument, and the youth can be taken to a police station or other place for the purpose of carrying out the breath analysis. 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.

A youth who, without reasonable excuse, fails to supply a sufficient sample for analysis is taken not to have complied with the requirement.

Clause 108. Blood or urine sample

A surveillance officer or police officer may require the youth to provide a sample of his or her blood or urine for analysis, if it appears that the youth may be under the influence of alcohol or an illicit drug or substance as a result of the breath test or observations or there is a medical reason the youth cannot provide a sufficient sample of breath for analysis.

A sample of blood can only be taken by a medical practitioner or nurse and the officer may take the youth to such a medical practitioner or nurse for the purpose of obtaining a sample of the youth's blood.

Approximately half of the sample of blood or urine obtained must be given to the youth to enable him or her to obtain an independent analysis if he or she wishes.
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.

Clause 109. Other evidence

The Court may receive evidence other than the results of a breath test or a 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.

Clause 110. Breach of alternative detention order

A youth breaches an alternative detention order if he or she fails to reside in or remain at the premises or place specified in the order, fails to comply with a term or condition of the order, wilfully destroys, damages or removes (or attempts to destroy, damage or remove) any part of a monitoring device or any associated equipment, fails to comply with a lawful request of a surveillance officer or police officer to undergo a breath test, breath analysis or blood or urine test, disturbs or interferes with any other person residing in the premises or at the place specified in the order, assaults, threatens, insults or uses abusive language to a surveillance officer, or commits a breach of a prescribed condition under the Regulations. A youth will also breach an alternative detention order if he or she commits an offence against a law in force in the Territory or elsewhere while he or she is subject to the order (see clause 121(1)(b)).

Division 9 – Periodic detention orders

Clause 111. Application

Division 9 applies in relation to periodic detention orders made under clause 83(1)(k).

Clause 112. Making periodic detention order

The Court may order that a sentence of detention or imprisonment is to be served periodically if the youth consents to the making and terms of such an order and if the Court is satisfied that there are appropriate facilities available and that the youth is a suitable person for periodic detention. In order for the Court to be satisfied that the youth is a suitable person for periodic detention, it must require a report from the Director as to the youth's circumstances and any other matter the Court specifies.

Clause 113. Order must specify number of detention periods

This clause provides for what must be specified in a periodic detention order. A periodic detention order must specify the number of periods of detention or imprisonment the youth must serve, the length of each period, the detention centre or prison at which the youth must serve the sentence, the date and time at which the youth must first report, and the day of the week and the time at which the youth must subsequently report to the detention centre or prison during the term of the sentence.

Clause 114. Conditions of order

A periodic detention order is subject to the conditions set out in this clause, namely that the youth must -
(a) report to the relevant detention centre or prison on the day or date and at the time specified in the order;
(b) not commit an offence while the order is in force;
(c) notify the superintendent (or the officer in charge of a prison) of being charged with an offence, in the Territory or elsewhere;
(d) notify the superintendent (or officer in charge) of any change in address;
(e) obey all lawful instructions and directions of the Director, the superintendent or the officer in charge, including as to participation in programs and activities; and
(f) any other conditions the Court thinks fit.

Clause 115. Procedural matters

The youth must sign a periodic detention order to signify acceptance of the terms before leaving the precincts of the Court and a copy must be given to the youth, a responsible adult in respect of the youth (if in attendance at the Court) and the Director.

Clause 116. Order remains in force until served or cancelled

This clause provides for how long the periodic detention order remains in force, that is until the relevant detention periods required to be served under the order, or any detention periods by which the order has been extended, have been served, or the order has been cancelled or revoked.

Clause 117. Warrant of commitment covers all periods

The warrant of commitment issued by the Court applies to all detention periods to be served under the periodic detention order.

Clause 118. Youth in lawful custody

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

Clause 119. Director can vary times

The Director may grant a detainee leave of absence from a period of detention for health reasons, on compassionate grounds, or for any other reason the Director considers sufficient. Leave of absence may be granted either before or after the detention period to which it relates.

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, within 21 days, for a direction that leave of absence be granted.

If the Court makes such a direction, the Director is taken to have granted leave of absence for each detention period specified by the Court and a detainee who is granted leave of absence from a period of detention is taken to have not served that period of detention for the purposes of the sentence, and must continue to report under the periodic detention order until the specified number of detention periods have been served.

Clause 120. Detainee unfit for detention

The superintendent of a detention centre (or the officer in charge of a prison) may refuse to admit a detainee if he or she believes on reasonable grounds that the detainee is unfit to serve a period of detention because the youth's behaviour is unruly or is otherwise a threat to the good order or security of the centre. A detainee who is refused admission under this clause is taken to have failed to report for detention.

Division 10 – Breach of order and re-offending during adjournment

Clause 121. Breach

A youth breaches an order if he or she fails, without reasonable excuse, to comply with a term or condition of the order or with regulations relating to the order, commits an offence against a law in force in the Territory or elsewhere while subject to the order, or does an act, or omits to do an act, that comprises a breach under another provision of this Act (for example clauses 96 and 110).

The Court may deal with an alleged breach, on application by the Director or prosecutor or of its own motion.

Notice of an application or hearing must be given to the youth and a Justice may issue a warrant for the arrest of the youth if satisfied that the youth is in breach of an order and that the youth may not appear in Court.

If the youth does not attend the hearing, the Court may issue a warrant for the arrest of the youth.

If the Court is satisfied by evidence, on oath or by affidavit, or by the admission of a youth, that the youth is in breach of an order, the Court may, if the order is still in force, confirm, vary or revoke the order and (whether or

not the order is still in force) deal with the youth under clause 83 as if it had just found the youth guilty of the relevant offence(s).

In determining how to deal with the youth, the Court must take into account the extent to which the youth had complied with the order before the application was made and the Court must not impose on the youth a penalty greater than the maximum penalty it could have imposed in respect of the original offence.

Clause 122. Youth offends during adjournment

If the Court made a no further trouble order under clause 83(1)(c) or an order that a youth participate in an approved program under clause 83(1)(e), and after the period of the adjournment the Court discharged the youth without penalty, and the youth is subsequently found guilty of an offence committed during the period of the adjournment, the Court may, in addition to imposing a penalty in respect of the later offence, impose on the youth any penalty that could have been imposed in respect of the former offence.

It is immaterial that the aggregate of both penalties may exceed a limit referred to in clause 83, such as the 12 month limit for detention if the youth is under 15 years of age or the 2 year limit for detention or imprisonment if the youth is 15 years of age or older.

Division 11 – Miscellaneous

Clause 123. Explanation of orders

The Court must explain to a 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, the purpose and effect of any order it makes in relation to the youth, the consequences of non-compliance with the order and the circumstances in which the youth would be taken to have breached the order and that the Court has the power to review the order on the application of the Director or the youth. An order is not invalidated by a failure to comply with this clause.

This clause is based on section 102 of the *Sentencing Act.*

Clause 124. Arrest without warrant if condition breached

If a police officer has reason to believe that a youth has breached a condition imposed under this Part, the officer may, without warrant, arrest the youth and must, as soon as practicable, bring him or her before the Court.

Clause 125. Aggregate sentences of detention or imprisonment

The Court can aggregate sentences if it finds a youth guilty of 2 or more offences arising out of the same incident

or course of conduct. The one term of detention or imprisonment imposed in respect of both or all of those offences must not exceed the maximum term that could be imposed if a separate term were imposed in respect of each offence or a maximum of 2 years, if the youth is 15 years or older, or 12 months if the youth is under 15 years. This clause is based on section 52 of the *Sentencing Act* and exempts violent or sexual offences (within the meaning of the *Sentencing Act)* from the operation of the clause.

Clause 126. Detention or imprisonment to be concurrent unless otherwise ordered

This clause is based on section 50 of the *Sentencing Act* and provides that terms of detention or imprisonment are generally to be served concurrently ie at the same time.

Clause 127. Cumulative orders of detention or imprisonment

The Court can order that terms of detention or imprisonment be served cumulatively, that is the Court may direct that a term of detention or imprisonment for an offence starts from the end of a term of detention or imprisonment which the youth is serving, or has been sentenced to serve.
This clause is based on section 51 of the *Sentencing Act.*

Clause 128. Taking other offences into account

This clause provides that section 107 of the *Sentencing Act* applies to proceedings under the *Youth Justice Act*, such that the Youth Justice Court, before passing sentence in relation to a youth who has been found guilty of an offence, may ask the youth whether he/she admits having committed other offences in respect of which the youth has been charged or committed for trial and wishes them to be taken into account by the Court when passing sentence for the offence of which the youth has been found guilty. The other offences can only be taken into account if the prosecution consent, the prescribed forms have been filed and served and the Court is satisfied that it is proper to do so in all the circumstances.

Clause 129. Sentence of detention or imprisonment may be backdated

If a youth has been in custody after his or her arrest for an offence and 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).

Clause 130. Order of service of sentences of detention or imprisonment

This clause is based on section 59 of the *Sentencing Act* and provides for the order in which several terms of detention or imprisonment, in respect of any of which a non-parole period was fixed, are to be served, ie any term in respect of which a non-parole period was not fixed, then the non-parole period and then, unless and until released on parole, the balance of any term after the end of the non-parole period.
The clause also provides for the suspension of sentences in order that the sentences may be served in the order set out.

Clause 131. Further sentence when detainee on parole

This clause is based on section 64(2) of the *Sentencing Act* and provides that if a youth is sentenced to a term of detention or imprisonment for an offence committed while on parole and the parole order is, by reason of that sentence, taken to have been revoked, the Court must order the youth to be detained or imprisoned for the unserved balance. Such balance is to be served at the expiration of the term of detention or imprisonment for the later offence.

Clause 132. Application of *Parole of Prisoners Act*

This clause provides that the *Parole of Prisoners Act* applies in relation to a youth sentenced with a non-parole period under the *Youth Justice Act*, with the necessary changes to terminology.

Clause 133. Parents liable for costs of detention

If the Court orders a youth to be detained at a detention centre, it may order that the parents pay an amount towards the cost of detaining the youth in the detention centre, not being more than $100 per week (for each week during which the youth is in the detention centre) or $15 per day in respect of periodic detention. The Court can only make such an order if the parents are given an opportunity to be heard and it has taken into account any matters put to it by the parents, the Court is satisfied that the parents failed to exercise reasonable supervision and control of the youth and it is satisfied, after taking into account all the circumstances, that it is reasonable to do so.
The court order must specify the amount that the parents are required to pay and such amounts must be paid to the Fines Recovery Unit. The *Fines and Penalties (Recovery) Act* applies in relation to an order under this clause.

Clause 134. Forfeiture of bail or recognizance

If the Court orders forfeiture of a bail undertaking or monetary recognizance, Part 8 of the *Fines and Penalties (Recovery) Act* applies and payment is to be enforced under that Act, unless the Court orders detention or

imprisonment in default of payment.

This clause sets out the procedures if the Court were to order detention or imprisonment in default, such as the issue of a warrant of commitment and how long before the forfeiture is taken to be satisfied.

Subclause (6) provides that a youth is to serve a period of detention concurrently with another period of detention ordered by the Court but cumulatively if that other period of detention is also for default of payment of a fine or sum of money, unless the Court orders otherwise.

Clause 135. Registrar may disclose name of youth

If a charge against a youth is proven and the proceedings were closed to the public, a person who intends to commence proceedings for loss or damage as a result of the offence may apply to the Registrar for the name and address of the youth and the Registrar must supply it.

Clause 136. Certain findings of guilt not to be mentioned

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, unless the offence was committed after the youth had turned 15 years of age.

Clause 137. Procedure where youth before another Court

If it appears to a court, other than the Youth Justice Court, that the proceeding should have been instituted in the Youth Justice Court, the court may order a stay of proceedings and refer the proceedings for hearing and determination by the Youth Justice Court or it may proceed with the hearing and determination of the proceedings as if it were the Youth Justice Court in accordance with this Act.

Clause 138. Procedure where adult before Youth Justice Court

If it appears to the Youth Justice Court that the proceedings before it should have been instituted in the Court of Summary Jurisdiction, the Youth Justice Court may order a stay of proceedings and refer the proceedings for hearing and determination by the Court of Summary Jurisdiction or proceed with the hearing and determination of those proceedings as if it were the Court of Summary Jurisdiction.

Clause 139. Court has jurisdiction

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

proceedings.

Clause 140. Referred proceedings valid

Proceedings referred to the Youth Justice Court under clause 137 must be dealt with under this Act from the date of referral and the proceedings are not invalid because, prior to the date of the referral, those proceedings did not comply with this Act.

PART 7 – RECONSIDERATION AND REVIEW OF SENTENCES AND APPEALS

Clause 141. Reconsideration of sentence

If the Youth Justice Court finds a youth guilty of a charge and an order is made in relation to the youth or a responsible adult, the youth or someone on behalf of the youth or a responsible adult, may apply at any time to the Youth Justice Court to reconsider the order and the Court may confirm or vary or revoke the order and deal with the youth under clause 83 as if it had just found the youth guilty of the relevant offence(s).

Any order made by the Court under this clause may be appealed to the Supreme Court.

If an application for reconsideration relates to a sentence of detention or imprisonment, the Court may, on application by or on behalf of the youth, release the youth from detention or prison on bail before the Court hears the application for reconsideration.

Clause 142. Review of sentencing orders

This clause provides that the Court may review an order, on an application by the youth, a person on behalf of the youth, the Director or a prosecutor, if satisfied that circumstances 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 that the youth is no longer complying with, or is no longer willing to comply with, an order or a condition or continuing obligation.

On a review, the Court may discharge the order, confirm or vary the order or revoke the order and deal with the youth under clause 83 as if it had just found the youth guilty of the relevant offence(s). In determining how to deal with the youth, 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 and 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.

Specifically in respect of a review of a community work order, the grounds may include that the youth is in custody on a charge for another offence, that the youth's behaviour is such that the carrying out of the terms of the order is impracticable, or that the operation of the order offends other persons.

An order made by the Court on review may be appealed to the Supreme Court.

Notice of the application must to be served on the other parties. If the youth does not attend the hearing of the application, the Court may issue a warrant for the arrest of the youth.

Clause 143. Court may re-open proceeding to correct sentencing errors

This clause is based on section 112 of the *Sentencing Act* and provides that the Court may reopen proceedings (on its own initiative or on application by the youth, a person on behalf of the youth, the Director or a prosecutor) if it has imposed a sentence on a youth that is not in accordance with the law or failed to impose a sentence that the Court legally should have imposed. On reopening proceedings, the Court must give the parties an opportunity to be heard, may impose a sentence in accordance with the law and amend any conviction or order to take into account the sentence imposed. An application may be made within 28 days and an application for leave to make an application out of time can also be made. Any right of appeal is not affected.

Clause 144. Appeal to Supreme Court

An appeal lies to a single Judge of the Supreme Court from a finding of guilt, conviction, order or adjudication made by the Youth Justice Court and the provisions of the *Justices Act* relating to appeals from the Court of Summary Jurisdiction apply, as far as they are applicable, to an appeal, subject to the Supreme Court Rules.
The clauses which require the Court to explain to the youth the proceedings (clause 61) and any orders (clause 123) and which require a responsible adult to attend (clause 63) apply to appeals. (This subclause is based on Rule 6 of the Juvenile Justice (Appeal) Rules (to be repealed)).

Clause 145. Appeal operates as stay

An appeal operates as a stay of proceedings. This clause is based on Rule 7 of the Juvenile Justice (Appeal) Rules (to be repealed).

Clause 146. Single Judge may refer appeal to Full Court

The power of a Judge of the Supreme Court to refer an appeal to be heard by the Full Court of the Supreme Court is not affected.

Clause 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.

PART 8 – YOUTH DETENTION CENTRES

Division 1 – Detention centres

Clause 148. Approval of youth detention centres

This clause provides that the Minister may approve an establishment to be a youth detention centre. Existing approvals of youth detention centres are continued under the transitional provisions.

Clause 149. Admission to detention centre

This clause provides that a youth must not be admitted to a detention centre, except in accordance with the Act. It further seeks to clarify that the taking in of a visitor, member of the detention centre staff, worker, contractor or similar to a detention centre does not come within the meaning of "admitted to" a detention centre.

Clause 150. Explanation of rights and responsibilities

A youth must be given an explanation of the rules of the detention centre and his/her rights and responsibilities as a detainee, 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. The explanation must include information about the consequences of breaching the rules of the detention centre and about the procedure for making a complaint.

Division 2 – Superintendent

Clause 151. Superintendent of detention centre

The Director must appoint a public sector employee to be the superintendent for a detention centre, who is responsible, as far as practicable, for the physical, psychological and emotional welfare of youths detained in the detention centre and for the maintenance and efficient conduct of the detention centre.

The transitional provisions provide for existing appointments of superintendents of youth detention centres to be continued under this Act.

The superintendent must promote programs to assist and organize activities of detainees to enhance their well-being, encourage the social development and improvement of the welfare of detainees, supervise the health of detainees including the provision of medical treatment and may authorize the removal of a detainee to hospital for

medical treatment.

The superintendent must also maintain order and ensure the safe custody and protection of all persons within the precincts of the detention centre.

Clause 152. Powers of superintendent

The superintendent has the powers necessary for the performance of his or her functions. The superintendent has power to approve detainees participating in programs promoted or organised in accordance with clause 151 in place of consent by a parent etc.

The powers and functions of the superintendent are not affected by the fact that the detainee may be outside the precincts or absent from the detention centre.

Clause 153. Discipline

The superintendent must maintain discipline at the detention centre and may use such force as is reasonably necessary in the circumstances. However, reasonably necessary force does not include striking, shaking or other forms of physical violence, enforced dosing with medicine, drug or other substance, compulsion to remain in a constrained or fatiguing position or handcuffing or use of similar devices to restrain normal movement.

If, however, the superintendent is of the opinion that an emergency situation exists and that a detainee should be temporarily restrained to protect them from self harm or to protect the safety of any other person, the superintendent may use handcuffs (or a similar device) to restrain the detainee until satisfied that the emergency situation no longer exists.

The superintendent may isolate a detainee, for a period not exceeding 24 hours (or not exceeding 72 hours with the approval of the Director), to protect the safety of any person or for the good order or security of the detention centre.

Clause 154. Temporary removal of detainee to prison

This clause provides the superintendent with power to remove a detainee to prison in an emergency and with a magistrate's approval.

If the superintendent is of the opinion that an emergency situation exists and that a detainee should be temporarily transferred to a prison to protect the safety of any persons, the superintendent may apply to a magistrate by telephone for approval to transfer the detainee. The detainee must be 15 years of age or older.

The superintendent may arrange for the detainee to be transferred to a prison if a magistrate approves the transfer.

The period of transfer must not exceed 24 hours, but a superintendent may apply for an extension of the period (to a magistrate).

Clause 155. Restraint devices may be used to escort certain detainees

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

Clause 156. Detainee's right to be heard

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. This may be limited or postponed by reasons of practicability or in emergency situations.

Clause 157. Delegation by superintendent

This clause allows the superintendent to delegate his powers and functions to a member of staff of the detention centre, or a person authorised by the Director to have custody and supervision of a detainee while absent from a detention centre in accordance with clause 165(b).

A police officer or prison officer, if called upon by the superintendent to assist in an emergency situation or to prevent an emergency situation arising, is taken to have been delegated the powers of the superintendent necessary to perform the superintendent's functions of maintaining order and ensuring the safe custody and protection of all persons within the detention centre (clause 151(3)(c)).

Clause 158. Register

The superintendent must keep a register, in any form the Director thinks fit, containing specified particulars in relation to every youth detained in the detention centre, including the name, age, place of birth and religion of the youth and the names and addresses of the responsible adults in respect of the youth.

Division 3 - Detainees

Clause 159. Sample by buccal swab

The superintendent may direct a youth who is detained for a crime to provide a sample by buccal swab for analysis by the Commissioner of Police.

The Director may authorize a person to use reasonable force necessary to ensure that a sufficient sample is obtained if the youth does not comply by providing a sample sufficient to enable an analysis of it to be carried out. An

authorised person is not civilly or criminally liable in relation to the use of force or the taking of the sample.
The superintendent must deliver the sample to the Commissioner of Police, as soon as practicable after the sample is obtained.

Clause 160. Detainee may be tested for alcohol or illicit drug

This clause provides that, for the purposes of the management, good order or security of the detention centre, the superintendent may direct that tests be conducted to determine whether there is any alcohol or illicit drug or substance present in the body of a detainee.
If the superintendent directs that a particular detainee be tested, the superintendent must have a reasonable belief that the detainee has or may have alcohol or an illicit drug or substance present in his or her body. However if the test is part of a random or routine procedure, the superintendent does not have to have that particular belief.
The Director may authorise a person to take samples of a detainee's blood, breath or urine for the purposes of this clause but only a medical practitioner or nurse can be authorised to take a sample of a detainee's blood.
A person authorized to take samples, or a member of staff assisting that person, may use force that is reasonably necessary to ensure that a sufficient sample is obtained and that person is not civilly or criminally liable in relation to the use of force or the taking of the sample.

Clause 161. Strip searches

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

Clause 162. At risk detainees

A superintendent must ensure that a detainee considered to be at risk is dealt with as prescribed in the Regulations.

Clause 163. Complaint

This clause provides for a youth or responsible adult in respect of the youth to make a complaint about a matter that affects the youth and for the procedure to be set out in the Regulations. A youth can also make a complaint to an official visitor (appointed under clause 169), the Ombudsman (appointed under the *Ombudsman (NT) Act*) or the Children's Commissioner (appointed under the *Care and Protection of Children and Young People Act*).

Division 4 – Miscellaneous

Clause 164. Detainee turning adult

When a youth serving a sentence of detention in a detention centre turns 18 years of age, he or she must be transferred from the detention centre to a prison, within 28 days after turning 18 years of age, to serve the remainder of the sentence and the order is taken to be a sentence of imprisonment for the period remaining to be served.

The fact that the youth has turned 18 years of age does not otherwise affect an order made in respect of the youth.

Clause 165. Superintendent may permit absence from centre

The superintendent may permit a detainee to be absent from a detention centre, subject to the order of the Court under which the detainee is detained. The superintendent may permit such absence for a period of up to 12 hours for the purposes of educational training or participating in arrangements of a social, recreational or vocational nature or for any period for a purpose approved by the superintendent if the detainee is in the custody and under the supervision of a member of the staff of the detention centre, a police officer, the sheriff within the meaning of the *Sheriff Act* or a person authorised by the Director.

Clause 166. Early release by superintendent

The superintendent may release a detainee from the detention centre up to 48 hours earlier than the youth is entitled if there are genuine compassionate grounds or the early release would facilitate the return of the detainee to his or her intended place of residence.

Clause 167. Arrest of escaped detainee

The superintendent or a person employed at the detention centre may exercise the powers of a police officer to arrest and take into custody a detainee who has escaped from a detention centre and, a person exercising the powers of a police officer, has the obligations of and the same protections as a police officer under the *Police Administration Act*.

Clause 168. Inspection of detention centre

The Minister, or a person authorised by the Minister, may enter and inspect a detention centre at any reasonable time. The superintendent, on the request of the Minister or authorised person, must produce the register for

inspection and give any information in relation to any youth in detention.

It is an offence for persons to hinder or fail to comply with a requirement of the Minister or authorised person (Penalties of 400 penalty units or imprisonment for 2 years for a natural person and 2 000 penalty units for a body corporate).

PART 9 – OFFICIAL VISITORS

Clause 169. Appointment of official visitors

This clause provides that the Minister may appoint a person to be an official visitor for a detention centre and that not less than 3 official visitors must be appointed for each detention centre. An official visitor holds office for 3 years and is eligible for reappointment. An official visitor may resign his or her office by notice in writing to the Minister and receives remuneration, allowances and expenses as determined by the Minister.

The transitional provisions provide for existing appointments of official visitors for a detention centre to be continued under this Act.

Clause 170. Functions of official visitors

An official visitor must inquire into the treatment, behaviour and condition of detainees in the detention centre for which the official visitor is appointed and report in writing to the Minister as soon as practicable after each visit to a detention centre.

Clause 171. Frequency of visits

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

Clause 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 regarding the management, discipline or treatment of detainees.

PART 10 – MEDICAL TREATMENT FOR DETAINEES

Clause 173. Access to medical practitioner

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

Clause 174. Direction of medical practitioner

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

Clause 175. Taking of medical sample

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. Such a sample must be taken as soon as practicable after the detainee is admitted to the detention centre and may be taken at any other time the Director, after consultation with a medical practitioner, directs.

The medical practitioner or nurse, and a member of the staff of the detention centre who is assisting in the taking of the sample, may use force that is reasonably necessary to ensure that a sufficient sample is obtained and such persons are not civilly or criminally liable in relation to the use of force or the taking of the sample.

Clause 176. Detainee may be required to be examined or treated

If a detainee refuses to undergo a medical examination or to submit to medical treatment, and 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, the Director may, after consulting with the medical practitioner, order the detainee to undergo a medical examination or treatment that the Director thinks necessary. However, the detainee is to be given, where practicable, the right to a second medical opinion.

An order by the Director under this clause that a detainee undergo a medical examination or treatment must be in writing and is sufficient authority for that examination or treatment without the consent of any person being required.

Clause 177. Director can give consent

The Director can give consent in place of the parent or guardian (but not of the detainee) where that consent is required for a detainee to receive counseling or medical examination or treatment but where, after reasonable efforts, the parent or guardian cannot be located and it would be detrimental to the health of the detainee to delay.

Clause 178. Removal to hospital

On the order of the Director, a medical practitioner or the Court, 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.
But note that the superintendent can also move a detainee to a hospital pursuant to clause 151(3)(e).

Clause 179. Custody of detainee in hospital

If a detainee is moved to a hospital, the superintendent must make the necessary arrangements with the person in charge of the hospital to ensure the security and good order of the detainee while he or she is in hospital and, while in hospital, the detainee remains in lawful detention. If, upon discharge from the hospital, the detainee's sentence has not expired, he or she must be returned to the detention centre to serve the remainder of the sentence.

Clause 180. Notification of illness or death

The superintendent must immediately notify the Director if a detainee at the detention centre is seriously ill or dies, and the Director must notify the detainee's next of kin, a close relative or legal representative, or any other person the detainee requested to be notified. In case of death, the Director must immediately notify the coroner.

PART 11 – INTERSTATE TRANSFER OF DETAINEES AND YOUTHS UNDER SUPERVISION

Clause 181. Interpretation

This clause defines the terms relevant for this Part, namely "corresponding detention centre", "corresponding Minister", "detainee", "interstate detainee", "State" (which includes the ACT), "superintendent" in relation to a corresponding detention centre and "transfer order".

Clause 182. Application of Part

This Part applies in relation to a detainee or a youth subject to supervision in the Territory who wishes to transfer to a State and an interstate detainee or youth subject to supervision within a State who wishes to transfer to the Territory.

Clause 183. Ministers may agree

The Minister and the corresponding Minister of a State may agree that 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 vice versa, that is a detainee in a detention centre in the Territory may transfer from the Territory to a detention centre in the State.

Clause 184. Transfer from Territory

The Minister may make an order to transfer a detainee from the Territory if of the opinion that it is appropriate in the circumstances for a detainee to serve his or her detention in a State and the corresponding Minister will accept the detainee, having regard to factors such as the intended place of residence of responsible adults or relatives of the detainee, education and employment options of the detainee and medical or other needs of the detainee.

In deciding whether to make an order, the Minister may request information from the detainee or the parents or responsible adults in respect of the detainee.

The Minister must not make a transfer order unless satisfied that the detainee has received independent legal advice and consents to the transfer, and that there is no appeal pending and that the period for lodging an appeal has expired.

However, the Minister may make an order even if the detainee does not consent, if the parent or responsible adult requests the transfer and the Minister is satisfied that it is in the best interests of the detainee.

A decision to make, or not to make, an order is not subject to appeal or review by a court or tribunal.

Clause 185. Transfer from State to Territory

If a corresponding Minister requests the Minister in writing to accept the transfer of an interstate detainee to the Territory, the Minister may agree if he or she is satisfied that there are adequate facilities in the Territory for the transferee to be accepted. In accepting a transfer, the Minister must specify the detention centre to which the interstate detainee is to be delivered.

Clause 186. Reports

The Minister may inform himself or herself as he or she thinks fit for the purpose of deciding whether or not to order or to accept a transfer of a detainee. In particular, the Minister may have regard to reports from the superintendent of the relevant detention centres and provide reports from the superintendent to the corresponding Minister of a State in relation to the transfer of a detainee to that State.

Clause 187. Escort for transfer

A transfer order is authority for the superintendent to deliver the detainee into the custody of an escort and

authority for 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.

An escort may be a police officer or a person authorised in writing by the Minister for the purpose.

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.

Clause 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 copy of the transfer order, a copy of the order under which the detainee was detained in the Territory and a report in relation to the transferee. The report is to include 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.

Clause 189. Sentence transferred

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.

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.

Clause 190. Order revoked if transferee escapes

The Minister may revoke a transfer order if the detainee escapes, attempts to escape, or commits any other offence, in the Territory or elsewhere, while in the process of being transferred. A decision to revoke the order is not subject to review or appeal in any court or tribunal.

Clause 191. Territory transferee subject to supervision

A youth whose sentence includes supervision, may apply to the Minister to transfer the supervision to a State. 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 and must ensure that the appropriate supervising authority is notified of the transfer.

When the Minister receives notification that the youth is under supervision in that State, the Territory order of supervision ceases to have effect in the Territory.

Clause 192. Youth subject to supervision in State

Where the Minister has agreed to a transfer from a State to the Territory of a youth who is subject to a period of supervision for an offence in that State, the Minister must advise the corresponding Minister and the appropriate supervising authority in the Territory. Once the youth reports to the Territory supervising authority, the order is taken to have been imposed by the Territory 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

Clause 193. Escaping from detention centre

This clause creates an offence if a detainee escapes or attempts to escape from lawful detention at a detention centre, including escaping or absconding while absent from the detention centre in pursuance of clause 165 or escaping while being transferred to a State in accordance with a transfer order under Part 11.

If a detainee escapes from lawful detention, the term of detention to be served by the detainee does not run during the period the detainee remains at large.

A person found guilty is liable to 6 months detention at a detention centre or imprisonment in addition to the period of detention originally ordered by the Court.

Clause 194. Escape of interstate detainee

This clause creates an offence if an interstate detainee, who is being transferred from a State to a detention centre in the Territory, escapes or attempts to escape from custody while in the Territory.

A person found guilty of this offence is liable to 6 months detention at a detention centre or imprisonment in addition to the period of detention to be served in the Territory, but if the person is found guilty in another jurisdiction of this offence, he or she must not be prosecuted in the Territory for the same offence.

Clause 195. Aiding or abetting escapee

This clause creates an offence for a person to remove a detainee from a detention centre (except in accordance with this Act or any other law in force in the Territory), or to knowingly harbour or aid a detainee who has escaped from lawful detention, or to aid a detainee to escape from lawful detention.

Penalty: 800 penalty units or imprisonment for 4 years.

Clause 196. Loitering

This clause creates an offence if a person loiters or remains in the vicinity of a detention centre after being requested to leave by the superintendent, a member of staff or a police officer, or unlawfully enters or attempts to enter a detention centre.
Penalty: 100 penalty units or imprisonment for 6 months.

Clause 197. Contraband

This clause creates an offence if a person, without the permission of the superintendent of a detention centre, conveys or delivers, or allows to be conveyed or delivered, to a detainee liquor or drugs or any money, letter, document, clothing or other article; or conveys or delivers or receives liquor or drugs or any money, letter, document, clothing or other article out of a detention centre; or leaves liquor or drugs or any 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.

Clause 198. Communication

It is an offence for a person, without the permission of the superintendent of a detention centre, to communicate or attempt to communicate with a detainee in that detention centre.
Penalty: 100 penalty units or imprisonment for 6 months.

Clause 199. Offence to remove youth

It is an offence for 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.
Penalty: 800 penalty units or imprisonment for 4 years.

Clause 200. Obstructing or hindering detention centre staff and other officers

It is an offence for a person to hinder, obstruct, assault or threaten with violence a superintendent or member of the staff of a detention centre, police officer, a probation officer or a surveillance officer in the exercise of powers, or performance of functions or duties, under this Act, or aid or abet another person in so doing.
Penalty: 400 penalty units or imprisonment for 2 years.

Clause 201. Personation

It is an offence for a person to falsely represent himself or herself to be a superintendent of a detention centre, an authorised person (being a person authorised in writing by the Minister or the Director to perform a function under the Act), a probation officer or a surveillance officer.
Penalty: 400 penalty units or imprisonment for 2 years.

PART 13 – YOUTH JUSTICE ADVISORY COMMITTEE

Clause 202. Definition

This clause defines "member", for the purposes of this Part, as a member of the Youth Justice Advisory Committee.

Clause 203. Establishment

The Youth Justice Advisory Committee is established by this clause and comprises government, non-government and community representatives. It is intended that the Committee reflect the composition of the community at large and, as far as practicable, must include members of both sexes, indigenous persons, a member who is under 25 years, an ex-detainee, an official visitor, a person who lives in Alice Springs and one from a remote community. It is noted that some of these places may be difficult to fill.

Clause 204. Functions

The functions of the Committee are:

(a) to monitor and evaluate the administration and operation of the Act;

(b) to advise the Minister on relevant issues, 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 the Act (for example under clause 14 the Committee is to establish and maintain a register of persons to be support persons); and

(e) any other functions as directed by the Minister.

Clause 205. Powers

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

Clause 206. Members

The Committee is to be not less than 8 and not more than12 members. Members are appointed by the Minister and include -

- 5 representatives nominated by government agencies, namely by the Director of Correctional Services, the Commissioner of Police, the Agency responsible for protection of children and young people (currently the Department of Health and Community Services), the Agency responsible for education of youth (currently the Department of Employment, Education and Training) and the Agency responsible for crime prevention (currently the Department of Justice). The government is attempting to work towards cross-government involvement of agencies involved in youth issues and to a coordinated approach to youth justice issues (as opposed to a "silo" approach) by the relevant agencies, which is why these agencies were chosen;
- one person nominated by a peak youth organisation;
- one person nominated by the Law Society Northern Territory; and
- the remainder to be drawn from the community generally, and the aboriginal community in particular.

The Minister is to be satisfied the members have the experience, skills, qualifications or other credentials appropriate for the person to satisfactorily contribute to the Committee's work.

Clause 207. Chairperson

The Chairperson is a member appointed by the members.

Clause 208. Term of office

A member holds office for up to 3 years, as specified in the instrument of appointment. A member is eligible for re-appointment.

Clause 209. Vacation of office

A member vacates his/her office if the term of the appointment expires or the member resigns in writing to the Minister.

Clause 210. Termination of appointment

The Minister may terminate a member’s appointment on the grounds of misconduct or inability to competently perform the duties of office.

The Minister must terminate an appointment if the member does not have the Chairperson’s approval to be absent from 3 consecutive meetings of the committee. Such a termination is to be in writing and a copy is to be given to the member.

A member's appointment automatically terminates on becoming bankrupt etc or if found guilty of an offence punishable by imprisonment for 12 months or more.

Clause 211. Meetings

The Chairperson calls meetings as often as necessary but at least twice a year. The Minister can direct the Chairperson to convene a meeting. The Chairperson presides at all meetings or, in the Chair‘s absence, the members elect an acting Chairperson. Procedure is determined by the committee and the committee must keep records of its meetings.

Clause 212. Quorum

A quorum at a meeting is half the number of members appointed.

Clause 213. Annual report

An annual report is to be given to the Minister on the activities of the committee during the preceding financial year, not later than 30 September. A copy of the report is then tabled in the Legislative Assembly by the Minister within 5 sitting days after receiving it.

PART 14 – MISCELLANEOUS MATTERS

Clause 214. Confidentiality

This clause provides for confidentiality of information that is obtained by a person in exercising a power or performing a function under the Act.

A person who performs or has performed functions or duties under this Act must not record, disclose, publish or produce all or part of any information obtained in exercising a power or performing a function under this Act, including to a court, unless the recording, disclosure, publication or production is part of the exercise of a power, the performance of a function or in the administration of the Act. Police in the performance of their duties are also exempt. Similarly, any disclosure or production that is made to the person to whom the information is related or to another person but with the consent of the person to whom the information is related (whether the consent has been given expressly or by implication) is not contrary to the provisions of this clause.

This clause also provides that the Minister may approve a person to whom the disclosure or production may be made if it is in the public interest to do so, or for the purpose of research, 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. Disclosure or production may also be made to a police officer or a person prescribed by the Regulations.

A person who fails to comply with this clause is guilty of an offence, the penalty for which is 200 penalty units or imprisonment for 12 months, if the offender is a natural person, or 1 000 penalty units, if the offender is a body corporate.

The provisions in this clause also apply 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.

Clause 215. Immunity

This clause provides certain persons (namely the Director, a superintendent of a detention centre, a probation officer, a surveillance officer and an employee within the meaning of the *Public Sector Employment and Management Act* performing functions under this Act) with immunity from civil or criminal action where the act done, or omitted to be done, was in good faith in the exercise of a power, or the performance of a function under the Act.

However, any liability the Territory would have for the acts or omissions is not affected.

Any action taken in relation to an act done or omitted to be done by a person under this Act must be commenced within 6 months after the act was done or the omission occurred.

Clause 216. Delegation by Minister or Director

This clause allows the Minister or Director to delegate any of their powers and functions to any person.

Clause 217. Regulations

This clause provides for the Administrator to make regulations, not inconsistent with this Act, prescribing matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

In particular, the Regulations may provide for:

(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 employed in 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;
(i) alternative detention orders;
(j) criteria and procedures for the register of appropriate support persons;
(k) procedures and other matters in relation to pre-sentencing conferences; and
(l) penalties not exceeding 100 penalty units or imprisonment for 6 months for offences against the Regulations.

The Regulations may authorise the Director or a superintendent of a detention centre to make a determination in relation to the management and operation of a detention centre; the maintaining of order within a detention centre; a grievance or complaint of a detainee; and the health, welfare, safe custody and protection of a detainee.

PART 15 – REPEALS AND TRANSITIONAL MATTERS FOR *YOUTH JUSTICE ACT 2005*

Clause 218. Definition

This clause defines "commencement date", for the purposes of this Part, as the date on which the *Youth Justice Act 2005* commences.

Clause 219. Repeal of Acts

This clause provides for the repeal of the current *Juvenile Justice Act* (being the Acts specified in the Schedule) on commencement of the *Youth Justice Act 2005*.

Clause 220. Saving of approvals and appointments

This clause provides for a detention centre approved under the repealed Act to be taken to have been approved under the new Act.
Similarly, a person who was appointed to be the superintendent of a detention centre or an official visitor under the repealed Act remains the superintendent or an official visitor, as the case may be, under the new Act.

Clause 221. Orders of Juvenile Court

This clause provides that an order made by the Juvenile Court continues in the same terms until the order is discharged or expires. Such an order can be reviewed, varied or revoked under the new Act as if the order had been made under the new Act, but will only be breached in the circumstances set out in the repealed Act for an order of that type.

Clause 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.

Clause 223. Offences committed before commencement of this Act

This clause provides that offences committed before the commencement of this Act must be dealt with under this Act from the commencement. However, a youth who is found guilty of an offence committed before the commencement of this Act is not liable to a greater penalty in respect of that offence than he or she would be if the repealed Act were still in force.