A DISCUSSION PAPER
TO SEEK INPUT FROM THE PUBLIC

REVIEW OF THE *JUVENILE JUSTICE ACT*

March 2004

Northern Territory Government
Department of Justice

A DISCUSSION PAPER TO SEEK INPUT FROM THE PUBLIC TO THE REVIEW OF THE JUVENILE JUSTICE ACT

The purpose of this Discussion Paper is to seek input from the public to the Review of the *Juvenile Justice Act*. This Discussion Paper is intended to assist individuals and organisations prepare submissions to the review. It outlines:

- the background to the review; and
- the matters about which the Working Party is seeking comment and information.

The paper is not intended to limit comment. The Working Party wishes to receive information and comment on any issues that participants consider relevant.

KEY DATE

Due date for public submissions to the Working Party – 7 May 2004.

FURTHER INFORMATION:

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A. HOW TO MAKE A SUBMISSION

Anyone can make a submission. It can be as short as a letter outlining your views on a few aspects of the review or a more substantial document covering a wide range of issues. Submissions are to be made in written format, letter or e-mail. It would be helpful if you can provide the Working Party with an **electronic copy of your submission** (preferably in Microsoft Word format) either on a 3.5-inch diskette or by e-mail. Contact details should be included in **both** the electronic and hard copies of submissions.

B. BACKGROUND TO THE REVIEW

The *Juvenile Justice Act* commenced in April 1984. It was introduced in conjunction with the *Community Welfare Act* and marked a change in philosophy separating the criminal and welfare jurisdictions relating to young people. Previous legislation had been criticised as outdated in concept and operation. It was said, in the Second Reading Speech by the then Minister for Community Development on 1 September 1983, that consistency of the law in dealing with juvenile offenders could be lost where the dispositions are welfare rather than justice oriented and that the system was not geared to hold juveniles accountable for their actions in such a way that there were predictable consequences for breaking the law. It was further stated that the welfare disposition of removal from the guardianship of parents was an unjustified outcome and that the issue should be the juvenile's own behaviour not the standard of parental care. This review of the *Juvenile Justice Act* does not address this underlying philosophy.

The *Juvenile Justice Act* is currently under the administrative control of the Minister for Justice and Attorney-General. Since its commencement, the Act has been amended on numerous occasions. The Act has not been reviewed since the Juvenile Justice Committee, appointed to oversee the Act in the first years, was replaced with the current Board of Management structure in the late 1980's.

The Act applies to juveniles who have not attained the age of 18 years and provides for:

- the investigation, apprehension, charging and remand of juveniles for criminal offences;
- the establishment of the Juvenile Court and its procedures;
- the sentencing of juvenile offenders;
- the management of juvenile detention centres; and
- the transfer of juvenile offenders between the Territory and States.

Following submissions from the Board of Management (North) in November 2001, the Attorney-General requested a review of the *Juvenile Justice Act*.

In April 2002, the Attorney-General wrote to the Chief Justice, all magistrates, all government agencies that play a role in the criminal justice system, all government agencies delivering services to young people, the Northern Territory Legal Aid Commission (NTLAC), all Aboriginal legal services, the Aboriginal Justice Advocacy

Committee (AJAC), the Aboriginal & Torres Strait Islander Commissioner, the Law Reform Committee, and the Shadow Attorney-General to request input in the review.

Submissions were received from Correctional Services, Health and Community Services, the Office of the DPP, the Police Diversionary Programs Unit, the Chief Magistrate and from NTLAC (following consultation with the North Australian Aboriginal Legal Aid Service). These submissions have been added to previous suggestions about amendments to the Act, received from the Judiciary and the Board of Management (North). Other recipients of the letter requested an opportunity to comment on the discussion paper at a later stage.

The Chairperson of the Youth at Risk Task Force, established by the Ministerial Standing Committee on Crime Prevention, submitted issues for consideration with respect of the review.

A copy of the Terms of Reference is located at Attachment "A".

To ensure that the Working Party conducting the review is fully informed on the community's aspirations for future juvenile justice legislation, public consultation is also part of the review.

The *Community Welfare Act* is also being reviewed at this time. A Discussion Paper has been released and it is envisaged that a discussion bill will be released later in 2004. It is hoped that feedback for both reviews will be considered in drafting new or amending legislation.

C. AREAS OF FOCUS FOR THE REVIEW

The Act needs to provide a sound framework, whereby the courts can sentence young people with sentencing options that are appropriate for the offence and flexible enough to take individual circumstances into consideration. At the same time, the powers for Correctional Services workers need to be clearly spelled out so that they can appropriately supervise the sentences ordered by the court. This includes the supervision of community orders as well as detention orders.

There has, over time, been considerable community discussion of general curfews for youth. The power of magistrates to impose curfews as part of an individual's court order is raised in the Discussion Paper. However, the government have considered the idea of community based / aged based curfews for all youth and have specifically rejected it. Whilst general curfews have a superficial attraction as a method to prevent unlawful activity by young people, the idea fails to recognise that many young people have legitimate needs and rights to be in public areas in the evenings for work, sport and social activities.

Where community supervision is concerned, community corrections workers need to be able to be firm but fair, and take offenders back to the court where this is required – either for a review or for a breach. In the case of detention, workers need to be able to manage the young persons within the policies and procedures of the detention centres. This too, requires sufficient flexibility to manage without fear or favour and within a clear structure of the requirements of youth workers.

This Part provides some suggestions about matters you may wish to raise or discuss in your submission to the Review. However, you should not feel obliged to address all of the issues raised here. This Discussion Paper is not intended to limit comment or provide a template for submissions. Participants are encouraged to provide comments and evidence on any issue they consider relevant to the Terms of Reference for the Review (Attachment "A").

1 LANGUAGE

The *Juvenile Justice Act* is an Act designed for young people. It should reflect current terminology and be written in plain English to ensure it is accessible to all and easy to read, including for young people themselves.

Gender neutral words should be used.

2 TITLE OF LEGISLATION

Section 1 states that the Act may be cited as the *Juvenile Justice Act.*

The word "juvenile" is no longer considered appropriate, although Queensland still has a *Juvenile Justice Act*.

Alternatives in other jurisdictions include the *Young Offenders Act* (in WA and SA), the *Children and Young Persons Act* (Vic), the *Children and Young People Act* (ACT), the *Youth Justice Act* (Tas) and the *Children (Criminal Proceedings) Act* and the *Young Offenders Act* (in NSW).

Should the title be changed? If so, what is the preferred title?

3 OBJECTIVES / PRINCIPLES

The long title of the *Juvenile Justice Act* states that it is:

> "An Act relating to the investigation of offences alleged to have been committed by juveniles, the establishment of the Juvenile Court, the procedures to be adopted in and in relation to proceedings against juvenile offenders, the punishment of juvenile offenders, the transfer of juvenile offenders between the Territory and the States, and for other purposes, with the intention that juveniles be dealt with in the criminal law system in a manner consistent with their age and level of maturity (including their being dealt with, where appropriate, by means of admonition and counselling) and to extend to juveniles the same rights and protections before the law as apply to adults in similar circumstances".

There is a difference of opinion as to whether the long title adequately states the objectives of the legislation or whether there should be a new provision setting out the overriding principles which are to be applied by the Juvenile Court and police and justice agencies in the interpretation and application of the legislation. Such a provision would provide not only guidance to those administering the Act, but would also provide a clear statement to the public as to the purpose of the Act.

Principles suggested include the need to emphasise the rehabilitation of the young person, i.e. the recognition that young offenders are held accountable but any sanctions that are made occur in a way that reflects the need to develop the young person to enable him or her to change offending behaviour (i.e. by referral to programs that provide life skills, education, employment etc) and that uses detention as a last resort.

The following provisions, outlined in the Convention on the Rights of the Child relating to young offenders, could be incorporated into the *Juvenile Justice Act*:

"Recognition of the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society". (Article 40.1 – Convention on the Rights of the Child).

"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." (Article 37(a) - Convention on the Rights of the Child)

"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances." (Article 37(c) - Convention on the Rights of the Child)

"Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action." (Article 37(d) - Convention on the Rights of the Child)

"A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence." (Article 40.4 - Convention on the Rights of the Child).

Other jurisdictions in Australia have set out principles and objectives in their legislation. In some cases, the rights of young people charged with criminal offences have been balanced by the incorporation of the responsibilities of the young person as well as the rights of victims – see section 68 of the ACT *Children and Young People Act* 1999. Some provisions recognise that court/prosecution should be the strongest sanction against a young offender and that other options should first be sought - see section 7(a) and (c) of the NSW *Young Offenders Act*; section 4(d) of the Queensland *Juvenile Justice Act*; section 6 of the WA *Young Offenders Act*.

Relevant provisions from other jurisdictions are reproduced at Attachment "B".

The principles will need to reflect the purpose of the legislation i.e. whether the legislation is to continue to only cover young offenders who go to court for punishment or whether it is to cover the whole juvenile justice system, including young offenders who do not go to court. Care will need to be taken to ensure any statement of principles is not meaningless or contradictory.

Should the Act include a set of principles?

It has been suggested that the following principles, which have been drawn from different models in other jurisdictions, be included in the Act:

> "The object of this Act is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and contributing members of the community and for the opportunity to realise their potential.
>
> Principles are:
>
> a) if a young person does anything that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
>
> b) the young person 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 young person may only be detained in custody for an offence (whether on arrest, in remand or under sentence) as a last resort;
>
> d) a young person should 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 adults in similar circumstances;
>
> e) a young person should be made aware of his or her obligations under the law and of the consequences of breach of the law;
>
> f) on and after conviction, it is a high priority to give a young person the opportunity to re-enter the community;
>
> g) a balanced approach must be taken between the needs of the young person, the rights of any victim of the action that constituted the young persons offence and the interests of the community;
>
> h) family relationships between a young person, their parents and other members of their family should be preserved and strengthened;
>
> i) a young person's sense of racial, ethnic or cultural identity should not be impaired;
>
> j) a victim of an offence committed by a young person should be given the opportunity to participate in the process of dealing with the youth for the offence in a way allowed by the law;
>
> k) a parent of a young person should be encouraged to fulfil the parent's responsibility for the care and supervision of the youth, and supported in the parent's efforts to fulfil this responsibility;
>
> l) a decision affecting a young person should, if practicable, be made and implemented within a time frame appropriate to the youth's sense of time;

m) young persons should be dealt with under this Act in a way that allows them to be reintegrated into the community;

n) punishment of a young person is to 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, young persons of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the young person's community; and

p) programs and services established under this Act for young people should be:

- culturally appropriate;
- promote their health and self respect;
- foster their sense of responsibility; and
- encourage attitudes and the development of skills that will help them to develop their potential as members of society."

The Tasmanian Act also adds the following principles to the more general ones:

- a youth should not be withdrawn unnecessarily from his or her family environment;
- there should be no unnecessary interruption of a youth's education or employment.

The New Zealand "Children Young Person's and their Families Act 1989"includes the principle that "…unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter".

If principles are to be included in the Act, which principles should be included?

4 INTERPRETATION

Section 3 provides for definitions.

With the commencement of the *Sentencing of Juveniles (Miscellaneous Provisions) Act* on 1 June 2000, the age of juveniles was increased from 17 to 18 years as part of the response to mandatory sentencing. "Juvenile" is now defined to mean –

"(a) a child who has not attained the age of 18 years; or

(b) in the absence of proof as to age, a child who apparently has not attained the age of 18 years".

This has had a great impact on numbers and a need for more flexible facilities in Juvenile Detention Centres.

Now that mandatory sentencing has been repealed, it has been suggested that the age limit should revert to 17 years.

The following table sets out the age limits in other jurisdictions:

State	**Legislation and Relevant Section**	**Age Limit**
WA	*Young Offenders Act* - s.3(1)	18 years
SA	*Young Offender Act* - s.4(1)	18 years
Tasmania	*Youth Justice Act* - s.3(1)	18 years
Victoria	*Children and Young Persons Act* - s.3(1)	For criminal purposes, 18 yrs For any other purpose 17 yrs
NSW	*Children (Criminal Proceedings) Act* – s.3(1) *Young Offenders Act* – s.4	18 years 18 years
ACT	*Children and Young People Act* - Dictionary at end of Act	18 years
Qld	*Juvenile Justice Act* – s.5	17 years

Should the age limit be amended from 18 years to 17 years?

There is no definition in the *Juvenile Justice Act* of parent or guardian. The terms are used as follows in the Act, sometimes with the term "or person having the custody of the juvenile":

- A parent or guardian can be present during a police interview of a young person (s25(1)),
- a parent or guardian must be notified of the charge and of the time and place when the matter will be brought before the Court (s30) and that an indictable charge may be dealt with in a summary manner with the consent of the juvenile (s37),
- a parent or guardian or person having the custody of a juvenile must attend court (s42)
- a parent or guardian present in court must receive copies of reports and can cross-examine on it (s49(1)), although a parent, guardian or person having the custody of the juvenile may give or call evidence to rebut the contents of the report (s49(3))
- a parent, guardian or person having the custody of the juvenile must be served with a copy order that identifying information be destroyed (s51)
- a parent or the parents of a juvenile can be ordered to pay an amount towards the cost of detaining the juvenile in the detention centre (s55A)
- the names and addresses of the parents or guardians or persons who, immediately before the detention of the juvenile in the detention centre, had the custody of the juvenile are to be registered (s69(1)(b))

– the place, or intended place, of residence of the parents or guardians of a juvenile is considered when deciding whether to transfer interstate and a parent or guardian can be asked for information (s76).

Other jurisdictions have definitions of either/or parent, guardian, responsible adult with resulting responsibilities. Relevant provisions from other jurisdictions are reproduced at Attachment "C".

The Queensland *Juvenile Justice Act* defines "parent" to mean –

> "(a) a parent or guardian of a child; or
>
> (b) a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence; or
>
> (c) a person who has the day-to-day care and control of a child."

It has also, however, been argued that including definitions may limit the Act.

Are definitions of "parent", "guardian" or "responsible adult" required in the Act and if so what should they cover?

There is currently no definition in the *Juvenile Justice Act* of "person of good repute" (see discussion in respect of section 25 of the Act).

Should any other definitions be amended or included?

5 DIVERSIONARY PROGRAMS

Division 2B of Part VII "Police Powers" of the *Police Administration Act* provide for the "Diversion of juvenile offenders" (see Attachment "D").

It has been suggested that it would be more appropriate if those provisions of the *Police Administration Act* dealing with juvenile pre-court diversion schemes were removed from that Act and placed in the *Juvenile Justice Act*, which deals exclusively with juveniles.

On the other hand, it has also been argued that pre-court diversion should be kept separate and distinct from the Juvenile Court system in the *Juvenile Justice Act.*

Should the juvenile diversion provisions be removed from the Police Administration Act and placed in the Juvenile Justice Act?

The Youth at Risk Task Force submission proposed that the existing juvenile diversion system in the Territory be expanded to cover almost the entire field of young people who are charged with offences. The Task Force submits that there is powerful evidence of the ineffectiveness of court orders in turning young offenders away from a criminal career. It argues that, contrary to commonly held views on the effectiveness of severe punishment as a deterrent to future criminal behaviour, the opposite is the case. The Task Force proposed that legislative guidelines be

considered to ensure that diversion occurs in all cases, except for very serious offences and where diversion has been demonstrated to have repeatedly failed.

If the juvenile diversion provisions were to be incorporated in the Juvenile Justice Act, should the existing juvenile diversion system in the Territory be expanded to cover almost the entire field of young people who are charged with offences and should legislative guidelines be considered?

It has been argued that the current provisions of the *Police Administration Act* provide that Police have complete discretion as to whether a juvenile should be diverted or not, as to which diversion option/s should be used and as to whether a juvenile has satisfactorily completed a diversion program or not. There is no review or appeal against the exercise of these discretions (s120P of the *Police Administration Act)*.

In particular, there are serious consequences of an unfavourable exercise of police discretion that the juvenile has not satisfactorily completed a diversion program. Section 120M of the *Police Administration Act* provides that if a person is found guilty of an offence, information concerning the diversion for that or any other offence may be produced in Court for the purpose of determining the sentence to be imposed on the person for the offence.

It has been suggested that section 120M can lead to confessions obtained during the diversion process, without cautions being administered, being available to the Court and that there should be similar protection to confessions and evidence obtained from a juvenile participating in a juvenile diversion program, who is then deemed to have unsatisfactorily completed the program, as appears in section 34(1) of the *Juvenile Justice Act.* Section 34(1) provides that if evidence is obtained where any of the safeguards (such as the requirement to have an independent adult present if the juvenile was being questioned by police, the need for the right to silence to be explained etc) are breached, then the evidence should be excluded from the Court.

On the other hand, it has also been argued that evidence is not obtained during the diversion process and that safeguards already exist, as the Act does not allow for any evidence obtained other than in the interview circumstances required by section 25 or where the Court exercises its discretion under section 34 to admit evidence unlawfully obtained. Furthermore section 120M is limited to diversionary information "for the purpose of determining the sentence".

It has however been argued that information produced by the court pursuant to section 120M should be confined to "positive" information of a successful completion of a pre-court diversionary program. There are difficulties with producing information that a young person was considered unsuitable for the pre-court diversionary program, or refused to participate or did not successfully complete such a program. In such circumstances, the matter starts afresh in the juvenile justice criminal system and there should be no nexus between the pre-court and criminal court processes.

If the juvenile diversion provisions were to be incorporated, are there any changes needed to the wording of the provisions from the Police Administration Act or should they stay the same?

6 BOARDS OF MANAGEMENT

Sections 6 to 13 provide for the establishment of Boards of Management for such places or areas throughout the Territory as the Minister thinks fit, the constitution of the Board, the resignation and dismissal of Board members, the meetings, functions and powers of the Boards, obtaining information from the Minister and the requirement to provide an Annual Report to the Minister to be tabled in the Legislative Assembly.

The current Board of Management structure replaced the Juvenile Justice Committee, appointed to oversee the transition from the *Community Welfare Act* to the *Juvenile Justice Act* in the early years. There are currently two Boards of Management, with one based in Darwin and the other in Alice Springs. Their function is to examine and evaluate juvenile justice programs, examine and evaluate new or proposed programs including diversionary programs, observe and report to the Minister on programs within detention centres and do such other things in relation to the Act as the Minister from time to time directs (section 10).

The Assistant Director of Community Corrections for the region acts as Chairperson to each Board with not more than four community members appointed to each Board by the Minister for three-year terms.

It has been suggested that, although the Boards are working well, they could be improved. The functions of the Boards could be wider and independent of Corrections, more like the Juvenile Justice Advisory Committee (JJAC) of South Australia. Part 7 of the South Australian *Young Offenders Act* (Attachment "E") establishes the Juvenile Justice Advisory Committee. Section 55(1) provides that its functions include monitoring and evaluating the administration and operation of the Act, causing data and statistics to be collected, and advising the Minister on issues relevant to the administration of juvenile justice.

Such an advisory group in the Northern Territory could be a combination of the Inter-Departmental Committee on Youth Policy, organised by the Office of Youth Affairs, and the various youth networks organised by community groups in the NT. These groups would represent young people across the NT and comprise government and community agencies.

It has also been suggested that the Board, or any new advisory group, should include a representative of the Office of Crime Prevention, the Office of Youth Affairs, the Department of Health and Community Services and an ex-offender.

Section 53 of the South Australian *Young Offenders Act* provides that a member of the Juvenile Justice Advisory Committee is entitled to such allowances and expenses as are determined. It has been suggested that the members of the Territory Boards should at least be reimbursed for out-of-pocket expenses.

Is the Board of Management structure still relevant and effective?

If the Board should be retained, could it be improved? In what way?

7 JUVENILE COURT

Part IV establishes the Juvenile Court, the jurisdiction of which is exercised by a magistrate sitting alone.

Section 21 provides that the Juvenile Court "shall sit in such places as the Minister directs and in a building approved or appointed by the Minister for the holding of the Court".

It has been suggested that the Act should provide that such a court should-

- where practicable, be physically separate from adult courts, and where this is not practicable, that the court sit at a time separate to listed adult court time;
- be equipped with facilities appropriate for their purpose (eg conference table format, separate entrance to the building); and
- young people in custody at court (or for that matter generally in police custody) be segregated from adults in custody.

The Youth at Risk Task Force submission also proposed that a youth specific courtroom be developed, although it noted that Darwin would appear to be the only location at this time where this could be effectively introduced due to the need for Court detention facilities and an available Courtroom suitable for these changes.

Should the Act prescribe particular requirements for the Juvenile Court and, if so, what should they be?

The Youth at Risk Task Force submission proposed that consideration be given to establishing a "circle" Court where a magistrate still presides but in a different physical and social setting. The "circle Court" sits in a room (not a traditional courtroom) with each participant sitting around a large table and no person appearing to have paramount authority. The setting of the present Court is intimidating and difficult to understand, particularly for indigenous youth. The Task Force argues that while the idea of the existing court is that the representation of the power of the Court, visible through the formal proceedings and accoutrements of the Court, will impress offenders and compel compliance with orders, the high levels of recidivism of Court convicted offenders shows that outcome is not being achieved.

It may be noted that a trial of "circle sentencing", to be specifically known as "new start community sentencing" by the Kurduju Law and Justice Committee in Central Australia, will take place throughout the next 18 months, targeted at youth and offenders that the community wishes to engage. New start community sentencing is a process of empowering communities in the sentencing process, where appropriate, through the active involvement of elders, family members, victim(s) and offender(s). Discussions for this project are continuing with the Aboriginal Legal Aid Services, the Magistracy and the communities of Ali Curung, Yuendumu and Lajamanu. There are many offences carried out by youth that cause harm to others or damage to property that could be managed in this process, generating a greater recognition by the offender of the consequences and, at the same time, empowering communities in dealing with offenders.

Is the concept of circle sentencing one that should be considered for formal recognition in the Act?

8 COURT PROCEEDINGS

Section 22 provides for proceedings to be held in an open court unless the magistrate is of the view that "the ends of justice will be best served" by closing the Court. Neither a legal practitioner representing the young offender before the Court, the prosecution or the Minister or his delegate can be excluded from Court.

In Victoria and WA also, children's court proceedings are open, with power to order that the court be closed.

This is based on the principle that justice needs to be seen to be done.

Proceedings in other jurisdictions however are not open to the public, although in NSW, Qld, SA and Tasmania there are lists of persons who are entitled to attend (e.g. in NSW, journalists and reporters are entitled to be present unless the Court otherwise directs) and there exists a discretion to exclude any of the listed persons if the court considers it necessary in the interests of justice.

It has been submitted that Juvenile Court proceedings should be closed to the public as under the current legislation any member of the public can wander into the Juvenile Court and gain access to information that is essentially private and may be in the best interests of the community and the alleged offender and his family to keep private. Obtaining an order to close the Court depends on the individual magistrate's discretion.

Should proceedings in the Juvenile Court -

1. *continue to be open to the general public, with the power to order otherwise? or*
2. *be closed courts but with certain people being entitled to attend and the discretion to exclude any or all of those people if the Court deems it to be necessary in the interests of justice?*

9 PUBLICATION OF PROCEEDINGS

Section 23 provides a magistrate with the power to direct that a report of, or information relating to, proceedings before the Juvenile Court is not to be published (except by a person in the performance of their duties under the Act or the Police pursuant to an information exchange arrangement) and makes it an offence if a person contravenes such a direction.

Most jurisdictions place legislative restriction on the publication of criminal proceedings against young persons, restricting the publication of details that may lead to the identification of a young offender.

The Northern Territory is the only jurisdiction where publication is not prohibited unless ordered by the magistrate. The NT News has adopted a policy of generally not publishing the names of young offenders, despite there being no general ban against the publication of names as there is, for example, under section 6 of the *Sexual Offences (Evidence and Procedure) Act.*

It has been suggested that a restriction on publication would be an added protection for the young person, so as to not unfairly disadvantage their future, given that, for

most, offending behaviour subsides in adulthood. However the Court should always have the power to order publication, if necessary. Provision could be made to allow the press/media to seek an order specifically outlining the material for publication and the reason why the public interest would be served by publication.

Should section 23 be amended to restrict the publication of proceedings against young offenders?

If so, what information should be restricted? For example, should there only be a prohibition of the publication of the child's name? Should it include the names of young persons who have completed diversionary programs? Should it extend to publication of the proceedings?

Section 23(2) provides that a person who publishes a report or information, in contravention of a direction by the magistrate not to publish, is guilty of an offence, the penalty for which is $200 or imprisonment for 3 months.

It has been suggested that such a penalty is inadequate.

Is the penalty in section 23(2) appropriate?

With respect to diversionary programs, it has been submitted that publishing any details of a young offender's performance at a pre-court diversionary program under the *Police Administration Act* is inappropriate and should be an offence.

Should it be an offence for a person to publish the name and details of a youth's performance with respect to pre-court diversionary programs?

10 APPREHENSION AND REMAND

Part V of the Act deals with matters relating to interviewing youth, arrests, charges, intimate and non-intimate procedures and remand.

11 POLICE INTERVIEWS

Section 25 deals with the circumstances in which a young person can be interviewed. Police shall not interview a youth unless there is present a parent/guardian, relative, friend or other person acceptable to the young person and who is not involved in any elements of the offence or a lawyer acting for the youth or, if that is not practicable after reasonable steps have been taken, a "person of good repute". The only persons currently disqualified from taking the role of providing support for the youth during a police interview is another youth or another police officer.

This requirement presents difficulties when there is no one available to attend the interview. It is not clear who "a person of good repute" is, and generally they (whoever they are) are difficult to find. It is noted that "a person of good repute" would usually be someone completely unconnected with the juvenile. Consequently, they may not be able to relate to that young person to provide any real support.

In the past, Health and Community Service staff were utilised for this purpose but they no longer have the resources to respond to these requests from police. The practice of using HACS staff also has the potential to result in a conflict of interest if they are dealing with the young person or may, at some future stage, be involved.

Youth workers, employed at the detention centre, are sometimes asked to be present for such interviews. The role of detention centre staff is to be supportive, understanding and helpful but also to provide fair and firm management of youth in detention. It is not considered appropriate that youth workers assist police in this way.

It has also been queried as to whether a School Principal, or other school staff member, is an appropriate person to attend the interview. If the offence has occurred at the school, this may place the young person under some perceived duress/coercion to co-operate in the investigation.

Section 25(1)(c)(iii) allows the young person to nominate another person who is not involved in any elements of the offence. However, in the case of many young Indigenous offenders, it may be that their circumstances, particularly if they are away from their community, mean that they are unable to nominate an adult.

It is noted that the restriction in section 25(1)(c), that the support person cannot be another person under the age of 18 years or a member of the Police, does not apply to a person of good repute. Should those restrictions also apply to a person of good repute under section 25(1)(d) or should for example other young people be able to be involved as a support person? Arguably, it may be preferable for the support person to be someone with whom the young person being interviewed is comfortable rather than an adult stranger.

A register for "persons of good repute" has been suggested. However someone would need to compile such a register and maintain it. Some qualification would need to be specified as to who can be registered as a person of good repute. This could possibly be a role for a Youth Justice Advisory Group, as discussed above. Individuals working with youth and accepted on the register might be willing to engage in this function if the load were shared by many such persons and if they were reimbursed for travel costs.

A scheme along the lines of the Police Cell Visitors Scheme may be appropriate, whereby members of the local community can be approached to act as a nominated adult / person of good repute. Such people should be responsible, reliable, and independent of Police and well regarded within the community, with every effort being made that an Indigenous adult participate in interviews involving an Indigenous youth.

Who should be present at the police interview if the parent/guardian or other person acceptable to the young person cannot be present?

Should detention centre staff be disqualified from being present while police interview the youth?

Should young people be involved as a support person and if so in what ways could they be involved?

Should a scheme similar to the Police Cell Visitors Scheme be investigated or a register of persons of good repute be established? Who should run such a scheme and maintain such a register?

12 OBLIGATION TO EXPLAIN RIGHTS TO JUVENILES

It has been suggested that the legislation should provide an obligation on police to explain all rights to juveniles in a language and manner appropriate to their age, maturity and cultural background, including the right to access free legal advice and representation, and interpreter services.

Should the Juvenile Justice Act include an obligation on police to explain their rights to young offenders?

13 LIMITATION PERIOD

Section 52 of the *Justices Act* provides that a complaint shall be made within six months from the time when the matter of the complaint arose. The six month period commences on the date of the offence, not the date it is reported to police. With the advent of pre-court diversion, six months is sometimes not long enough for an investigation to be undertaken, and diversion commenced and completed. If a diversion is not complied with, or has failed for whatever reason, an option to put a young person before the court must exist.

It has been suggested that the limitation period should be extended to 12 months – or that the six month limitation be extended if a young person is participating in a pre-court diversion program.

On the other hand, it has been argued that the 6-month limit in the *Justices Act* should not be varied or that the *Juvenile Justice Act* take precedence over the *Justices Act* as the limit should continue to apply generally. Investigation and the gathering of evidence can be more difficult after 6 months.

Should the six-month limitation period from the time of the commission of the offence, until the laying of a complaint, be extended for young offenders undergoing diversion?

14 VOLUNTARY PROCEDURES

Section 31 provides for intimate procedures (such as internal/external body examinations and the taking of samples, such as blood or pubic hair) to be undertaken where it is believed on reasonable grounds that the procedure may provide evidence relating to an offence. A magistrate must approve in writing the intimate procedure to be carried out and must specify the procedure, although the officer may proceed with the approval received over the telephone, pending receipt of the written approval.

Section 145 of the *Police Administration Act* provides for consensual/voluntary intimate samples being taken from adults, i.e. if the person consents in writing to it being carried out.

The *Police Administration Act* also allows for the taking of a voluntary non-intimate procedure. Section 145B(3) allows for such a procedure to be carried out on a juvenile provided the consent of the juvenile is obtained in writing (145B(2)) and also the consent of a parent/guardian is obtained in writing. The issue of informed consent has been raised, particularly if the juvenile is of an age or incapacitated (for any reason) so as to be unable to provide effective consent in writing. A police example provided was a situation related to the need to obtain elimination samples from a two-year-old child. Any such sample obtained would be contrary to the current *Juvenile Justice Act* and may be inadmissible as evidence.

It has been suggested that specific provision for voluntary intimate and non-intimate samples needs to be included in the *Juvenile Justice Act.*

Should there be provision for voluntary intimate procedures to be carried out on juveniles with the consent of the juvenile and of the parent/guardian?

Should there be provision for voluntary non-intimate procedures to be carried out on juveniles with the consent of the juvenile and of the parent/guardian?

If so, how can the legislation ensure that consent of the young person is informed consent?

Should the legislation provide that if the child's consent is not available, then that of the parent/guardian would suffice? Should such circumstances be limited to procedures for the purposes of elimination from inquiries?

15 NON-INTIMATE PROCEDURES

Section 31B (and also section 145A of the *Police Administration Act*) provides for non-intimate procedures (such as the taking of saliva, prints of fingers, feet or hands and the taking of a photograph) to be carried out on young persons suspected of committing crimes or in lawful custody, including the use of reasonable force to carry out such procedures (section 31B(11)).

There is no authority to remove a young person suspected of committing a crime to a controlled place, such as a police station, for the taking of such a sample. A situation could arise where police are required to use reasonable force at a person's home and the police are concerned that this may put at risk the safety of all concerned.

It has been suggested that the Act be amended to provide that, if the taking of a non-intimate sample has been authorised by the appropriate authority, then a young person may be taken into custody for the purposes of proceeding to the nearest police station for the taking of a sample and for no other purpose and must be released immediately after the procedure is completed. This is analogous to the power to arrest for breath analysis (section 23(7) of the *Traffic Act*).

A procedure would also be needed in such circumstances to return the young person home.

On the other hand, it has been argued that the police should not have the power to take a young person into custody for the convenience of police and that such a power is unwarranted.

Alternatively, a power for a magistrate to issue a summons has been suggested. However it has been argued that issuing a summons is an unwieldy and ineffective process.

Should section 31B be amended to provide the authority for police to remove a young person, suspected of committing a crime and where a non-intimate procedure has been approved, to a controlled place, such as a police station, for the taking of such a sample?

Pursuant to section 31B(2) and (3) of the *Juvenile Justice Act*, the approval of a magistrate, or of a member of the Police Force of the rank of Superintendent or a higher rank (if the youth is 14 years of age or older), must be obtained before a non-intimate procedure is carried out.

The approval of a magistrate can be applied for by telephone and, although the magistrate's approval must be in writing, the officer can proceed under the approval despite not having received it if informed of it by the magistrate by telephone.

However, there is no similar provision with respect to the approval of a superintendent nor that an officer can proceed without having received the actual written approval.

While this does not present a problem for police during office hours, it does after hours. Police can proceed with the verbal approval of a magistrate for a juvenile under 14 but for a juvenile over 14, if they approach a superintendent, the officer must apply in person and wait until they have the approval in writing.

Should section 31B be amended to provide that the approval of a superintendent (or higher rank) can be applied for by telephone and that this verbal approval is sufficient to proceed, with written approval to follow, similar to the arrangements for approval by a magistrate?

16 SEARCHES

There is an expectation from schools and the community in general that police should have the authority to address issues, such as drugs and weapon related matters, on school premises. Police advise that the number of incidents in schools involving the possession and sale of dangerous drugs by juveniles and assaults involving weapons is on the increase.

However, under section 120C(c) of the *Police Administration Act,* police can only "stop and search, and detain for the purposes of a search a person in a public place if the member has reasonable grounds to suspect that the person has in his or her possession, or is in any way conveying, a dangerous drug". Therefore police can only search for a dangerous drug without a warrant where the person is in a public place. There is some doubt as to whether or not a school is a public place. Police

can obtain a search warrant or use section 119 (search in emergencies) to overcome these problems.

However it has been suggested that, for the purposes of section 120C only, a school should be deemed to be a public place.

Similarly, under section 19 of the *Weapons Control Act,* police can only search a person for "a prohibited weapon, controlled weapon, offensive weapon or body armour", without warrant, if the person is in a public place and the member has reasonable grounds to suspect that the person is carrying, or has in his or her possession, such a weapon and the member informs the person of the grounds for his or her suspicion.

Should the Juvenile Justice Act, or some other Act, be amended to ensure that a school, for limited purposes, such as a search under s120C of the Police Administration Act or s19 of the Weapons Control Act, is a "public place"?

Police have been advised that section 25(1) of the *Juvenile Justice Act* requires a parent or guardian to be present when police are conducting a search of a juvenile, ie where a member of the Police Force believes, on reasonable grounds, that a juvenile has committed a certain offence, or is implicated in the commission of such an offence, the member "…shall not interview the juvenile in respect of an offence or cause the juvenile to do anything in connection with the investigation of an offence…" unless a person within the meaning of section 25 is present. The Police consider this requirement to be often impracticable especially when a juvenile is apprehended in the street.

Should the Juvenile Justice Act, or some other Act, be amended to ensure that a search of a juvenile is not delayed by a requirement to have a parent or guardian present?

17 RELEASE OF JUVENILE INTO CARE

Part V addresses arrest and investigation but not release (other than on bail). There is no mechanism for the release of the young person into someone else's care if the parent/guardian cannot be located or if, on returning them to the family home, there is either no one there or the situation at that time makes it not safe to leave them there. Possibly a nominated place of safety is required. This would assist police to discharge their duty of care, so that care is effectively passed to an appropriate person.

Should the Juvenile Justice Act provide for the release of young persons into interim care?

Who would be appropriate persons for that purpose?

18 POLICE CONVEYING JUVENILES HOME

The Police are concerned about their responsibility for young people on the streets late at night. It seems to be becoming more prevalent for young people, including those under ten years of age, to be out late at night. There appears to be an expectation from the community in general that police should do something about these young people. However the police have no authority to do so. There is no mechanism to take a young person anywhere if they are not under arrest, unless they consent. Issues of informed consent therefore arise as does the question of duress.

The concern is not young persons out at 9 or 10 o'clock at night, but rather 2 or 3 o'clock in the morning. It has been argued that these young people are either at risk from themselves or others purely because of the time of day.

It has been suggested that a definition could be included in the *Juvenile Justice Act* of a "child at risk" (not in "need of care" which is covered by the *Community Welfare Act*), either based on offending or age or time of day. Some mechanism could then be used to protect the police, Night Patrol and other similar agencies if they act in good faith by collecting these children and taking them home.

A further difficulty can arise when, on returning the child to the family home, it is not considered safe to leave them there or no one is home and their parent/guardians cannot be located.

It is a question as to whether such issues may more appropriately be dealt with under the welfare jurisdiction rather than under the *Juvenile Justice Act,* as there is no offending behaviour, or whether, because of police involvement, it should be dealt with as a criminal justice issue.

It is noted that there is a Youth Night Patrol operating in Darwin and the "Safe Families Project", which has expressed an interest in circle sentencing (ie sentencing by a community group), in Alice Springs.

The Youth Night Patrol provides a mobile program staffed by youth workers who are out on the streets at night. Protocols have been established with Police, Education and Family and Children's Services to cater for young people who may need varying types of care. It is supported by a base in the northern suburbs of Darwin which acts as a contact, information and referral point for the workers and for young people and their families. A number of safe house options for young people in need of urgent care or accommodation have been identified, including families who will act as crisis foster carers, Anglicare who will care for children up to 15 years of age and the Casey House Youth Refuge for young people over the age of 15.

Part 3 of the NSW *Children (Protection and Parental Responsibility) Act* 1997 authorises a police officer to remove a child from a public place in an operational area where the officer believes on reasonable grounds that the child is under the age of 16 years, that the child is not under the supervision or control of a responsible adult and that the child is in the public place in circumstances that place the child at risk. A child is at risk if in danger of being physically harmed or injured, or in danger of abuse (including assault and sexual assault, ill treatment and exposure to behaviour that may cause psychological harm to the person), or about to commit an offence. A police officer may use reasonable force for the purpose of removing the

child and escorting the child home or to a place of care and for those purposes may request the child's name and age, and his/her parents' or carers' residential address.

Should the Juvenile Justice Act or some other Act provide the authority for children "at risk" to be taken to a safe place?

19 AGE OF CRIMINAL RESPONSIBILITY

Offending by children under ten years also seems to be an issue of concern in some communities.

Section 38 of the *Criminal Code* provides that -

> "(1) A person under the age of 10 years is excused from criminal responsibility for an act, omission or event.
>
> (2) A person under the age of 14 years is excused from criminal responsibility for an act, omission or event unless it is proved that at the time of doing the act, making the omission or causing the event he had capacity to know that he ought not to do the act, make the omission or cause the event."

The Terms of Reference raise the issue as to 'whether appropriate dispositions for offenders under the age of criminal responsibility (10 years of age) need to be developed within the Juvenile Justice framework or whether the existing framework created by the *Community Welfare Act* is adequate to deal with this problem".

Section 4(2) of the *Community Welfare Act* (see Attachment "F") defines a child "in need of care" as including where -

> "(d) he is not subject to effective control and is engaging in conduct which constitutes a serious danger to his health or safety; or
>
> (e) being excused from criminal responsibility under section 38 of the *Criminal Code* he has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community measured by commonly accepted community standards as to warrant appropriate action under this Act for the maintenance of those standards."

Therefore a child under 10 years, who may have been caught committing an offence but who cannot be held criminally responsible for the act, may not necessarily fall within the definition of a child "in need of care" under the *Community Welfare Act*. The *Community Welfare Act* is necessarily focused on the welfare of the child and whether the child is at risk of serious harm unless an alternative care environment is provided or the conduct is of such a nature as to harm the community. Section 42(2)(e) applies only to persistent conduct and would not have application to a single incident of offending conduct, no matter how serious that conduct may be.

The *Juvenile Justice Act* on the other hand deals with youths who have reached the age of criminal responsibility.

It would appear that there is a gap in the existing legislation with neither the *Juvenile Justice Act* nor the *Community Welfare Act* covering certain offending behaviour by children under ten years.

This is an issue that impinges on every service provider in the field. That is, in the areas of family services, education, crime prevention, housing, mental health, substance abuse, corrections, youth affairs, vocational education, community councils, town and city councils and the community at large.

Is the existing framework created by the Community Welfare Act adequate to deal with this problem?

Do appropriate dispositions for offenders under the age of criminal responsibility (10 years of age) need to be developed within the Juvenile Justice framework?

20 REFERRAL TO SUPREME COURT

Part VI provides for the jurisdiction of, and proceedings, in the Juvenile Court. The Juvenile Court can hear a wide range of cases. It must hear minor or summary offences. More serious offences (ie those which if committed by an adult are punishable by imprisonment for 12 months or longer) are to be heard and determined in the Juvenile Court if the juvenile consents and the Court agrees. The Juvenile Court cannot hear crimes for which the maximum penalty is life imprisonment (for example murder, manslaughter, and serious sexual offences) and those matters are heard in the Supreme Court.

Section 36 provides that where a juvenile is charged before the Juvenile Court with an offence, which the Court is not empowered to hear and determine in a summary manner, or the Court is so empowered but decides not to hear and determine the matter in a summary manner, the Court shall, subject to this Act, deal with the charge in accordance with the provisions of the *Justices Act* relating to indictable offences. Furthermore, section 38 provides that the Juvenile Court may decline jurisdiction where the juvenile is charged with an indictable offence that the Court is empowered to deal with in a summary manner, if it is of the opinion that the evidence has established a prima facie case against the juvenile in respect of an indictable offence.

It has been suggested that the procedure for referring matters under the *Justices Act* to the Supreme Court for hearing or sentence is cumbersome and that there should be a simple provision in the *Juvenile Justice Act* to enable the Juvenile Court to refer matters to the Supreme Court for decisions on issues of law and/or for sentencing.

Should the Juvenile Justice Act provide for the Juvenile Court to refer matters to the Supreme Court for decisions on issues of law and/or for sentencing?

21 ATTENDANCE OF PARENTS

Section 42(2) provides the Court with the power to issue a warrant to bring before it a parent/guardian or person with custody of the young person appearing before the Court, who has failed to attend the Court without reasonable excuse.

It has been suggested that this provision include the option of issuing a summons, while still leaving the option of issuing a warrant in cases where that is necessary.

The Court may use a summons more readily than a warrant, to achieve the result of ensuring the attendance of parents.

Should section 42(2) be extended to include the option of issuing a summons?

22 COURT REPORTS

The *Juvenile Justice Act* provides for reports in various sections –

- **Section 44** provides that the Court must require a report on the circumstances of the young person where it finds a charge proven against the young person and is considering imposing a sentence of detention or imprisonment in respect of the offence charged, unless the Court is satisfied that it has all the information necessary to enable an appropriate sentence to be determined without requiring a report to be provided (section 44(1A)).
- **Section 47** provides that the Court may require a report on the mental condition of the young person before it, if it has reason to suspect that his/her mental condition is such as to affect his criminal responsibility.
- **Section 48** provides that the Court may, in its discretion, after an offence has been proved, seek submissions or reports in relation to the juvenile.
- **Section 49** deals with copies of reports received by the Court.
- **Section 49A** provides for victim impact statements and victim reports.
- **Section 52** provides for the Court to order welfare reports on the circumstances of the young person (including whether or not they are a child in need of care) and on any action taken under the *Community Welfare Act*.

It has been suggested that there be a separate Division dedicated to reports, similar to Division 2 of Part 6 of the *Sentencing Act* (see Attachment "G"). Division 2 of the *Sentencing Act* contains provisions that a court -

- shall, before imposing a sentence on an offender that requires the offender to be under the supervision of a probation officer, have regard to a report of the Director as to the suitability of the offender to be under supervision (section 103)
- may, before passing sentence on an offender, receive such information as it thinks fit to enable it to impose the proper sentence (section 104(1)) including pre-sentence reports (section 105) containing certain information (section 106)
- may, before making an order for restitution or compensation receive such information as it thinks fit to enable it to make the proper order (section 104(2))
- may receive victim impact statements and victim reports under section 106B.

It has also been argued that Division 2 of Part 6 of the *Sentencing Act* does not contain all provisions relevant to reports and that to put them all together would be

messy and create confusion. For example, mental health reports are under section 78 of the *Sentencing Act* and community work order reports are under section 35.

Should there be a Division dedicated to reports similar to Division 2 of Part 6 of the Sentencing Act?

Section 106 of the *Sentencing Act* (see Attachment "G") sets out the information that the pre-sentence report should address, namely age, social history and background, medical and psychiatric history, offender's educational background, employment history, the circumstances of other offences of which the offender has been found guilty and which are known to the court, the extent to which the offender is complying with a sentence currently imposed on the offender, financial circumstances, any special needs, any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which the offender may benefit.

It has been suggested that a similar provision should be included in the *Juvenile Justice Act.*

Should there be a provision in the Juvenile Justice Act setting out the information that should be covered in the pre-sentence report?

Requests or orders for reports can lead to delays, as it takes time to prepare a detailed report. A pre-sentence report will generally require 6 weeks to prepare. A pre-sentence report is mandatory, if the court is considering imposing a sentence of detention or imprisonment, unless the Court is satisfied that it has all the information necessary to enable an appropriate sentence to be determined without requiring a report to be provided (section 44(1A)). It has been argued that this is too high a threshold for the Magistrate to be able to say that he/she could be so satisfied. It has been submitted that too many reports are prepared that essentially repeat the same information and cause unnecessary delays in sentencing.

On the other hand, it has been submitted that pre-sentence reports should always be required where the Court finds a charge proven against a young offender and that such reports should address the reasons for offending and the action to be taken to prevent further offending. A thorough assessment process would ensure that sentencing options can be structured around the needs of the community, the requirement to change offending behaviour and the interests of the juvenile and their family. Such assessments are a feature of specialist courts and prepared by an arm of the court, eg Drug Courts.

In limited circumstances, an agency may be able to provide a verbal report to prevent delays, particularly where the Court has the benefit of a recent report and an update might suffice. Reports pursuant to sections 47 and 48 of the *Juvenile Justice Act* (see above) may be written or oral.

Should section 44 be amended to only require reports when the magistrate orders them?

Should a report pursuant to s44 be able to be provided orally? If so, should the circumstances in which an oral report may be given be specified?

23 GUILTY PLEAS

Section 45 provides for pleas of guilty or not guilty to be entered at the commencement of a hearing (unless being tried in the Supreme Court). A guilty plea may be withdrawn and a not guilty plea entered if the Court is of the opinion that the young offender, having pleaded guilty, may not be guilty of the offence charged.

It has been submitted that the Act should provide for a guilty plea to be entered after a committal, thus enabling the offender to be sentenced by the Juvenile Court or referred, if appropriate, to the Supreme Court.

Should the Act make provision for a guilty plea to be entered after a committal?

24 REMAND

Alleged offenders appearing in court may either be bailed and released into the community or remanded in custody. Section 46 provides for the powers of the Juvenile Court to remand a young person.

Section 46(1)(d)(ii) provides that a young person may be remanded in custody for a period not exceeding 28 days. There have been some difficulties with the courts adjourning matters beyond 28 days which have led to practical problems for the detention centre.

Problems have also been identified with the inconvenience to young people and the expense associated with escorting a young person to court for the purpose only of an adjournment to comply with the 28-day remand period.

It has been suggested that section 22 of the *Bail Act* protects the young person's interests better than section 46(1)(d) of the *Juvenile Justice Act* and that the young person should have the option to consent to a longer adjournment than 28 days.

Section 22 of the *Bail Act* provides that where an accused person is refused bail by a justice in respect of an offence, an adjournment of the hearing by the justice shall, except with the consent of the accused person, be for a period not exceeding 15 clear days.

Should section 22 of the Bail Act apply to young people?

Or should the 28-day remand period be longer or allow for the consent of the young person to a longer period?

Section 46(2) provides that a juvenile shall not be remanded in custody unless, in the opinion of the Court –

(a) the juvenile is likely to abscond; or

(b) it is necessary for the protection of the juvenile, the general public, or any person or property, that the juvenile be remanded in custody.

It is said that magistrates use these two criteria for determining bail rather than the criteria laid out in the *Bail Act*. However the *Bail Act* is the sole determinant of bail. Section 24 of the *Bail Act* sets out the criteria to be considered in bail applications and includes –

- the probability of whether or not the person will appear in court (s24(a)) and
- the protection and welfare of the community (s24(c)) including the likelihood of the person interfering with evidence, witnesses or jurors (s24(c)(ii)) and, where the offence is alleged to have been committed against or in respect of a juvenile within the meaning of the *Juvenile Justice Act,* the likelihood of injury or danger being caused to the juvenile (s24(c)(iv)).

Section 46(2) is therefore unnecessary and interferes with the operation of the *Bail Act*. It has been suggested that s46(2) should be deleted leaving the criteria in the *Bail Act* to apply to young people.

Should section 46(2) be deleted?

It has also been suggested that there should be an obligation on the Court to only detain young people in remand as a matter of last resort under sections 32 and 46, i.e. where the circumstances of the offence and the young person warrant detention. This is particularly important in the remand context where the young person has not been convicted of an offence.

Should there be an obligation on the Court to only detain young people on remand as a matter of last resort?

25 MENTAL CONDITION OF YOUNG OFFENDERS

Section 47 provides that the Court may, if it has reason to suspect that the mental condition of a juvenile brought before it is such as to affect his criminal responsibility, cause the juvenile to be examined by a properly qualified person, and may accept as evidence the written or oral report (whether on oath or otherwise) of that person as to the juvenile's mental condition.

The question has been raised whether mental health-related issues are adequately dealt with in the *Juvenile Justice Act*.

Does the Juvenile Justice Act adequately deal with young people whose offending is a result of mental health problems?

Does the Act adequately provide for the disposition of young people with mental health problems?

26 VICTIM IMPACT STATEMENTS AND VICTIM REPORTS

Section 49A provides for victim impact statements (VIS) and victim reports. The recent recommendations from the Crime Victims Advisory Committee (CVAC)

include minor amendments to the *Sentencing Act* which, if approved, could be replicated in this Act.

The CVAC recommendations are that:

- The definition of "victim" in section 106A of the *Sentencing Act* be amended to include secondary victims;
- Any amendment made to the definition of "victim" be wide enough to include individuals, such as school principals, storekeepers, and Council members and that these individuals be encouraged by police and prosecution services to present a VIS;
- The Act be amended to permit bodies other than natural persons to submit victim impact statements; and
- Amendments to the legislation include the provision for offenders to be able to view the VIS but not obtain a copy.

Should the CVAC recommendations for the Sentencing Act also be included in the Juvenile Justice Act?

27 JUVENILE IN NEED OF CARE

Section 52 provides that, if the Court believes that a young person, against whom proceedings for an offence are brought, may be in need of care or whose welfare may be endangered, it can require the Minister responsible under the *Community Welfare Act* to investigate the circumstances of the young person, to take appropriate action to ensure the proper care of and attention to the young person's welfare and to provide a report to the Juvenile Court on the circumstances of the young person and the action, if any, that has been taken. Such action may involve an application being made pursuant to the *Community Welfare Act* that a child be found to be in need of care.

Section 73 of the ACT *Children and Young People Act* 1999 similarly provides that a court may order a public servant whose duties relate to the welfare of children and young people in the Territory to give the court a report about the child or young person. Section 132 of the Victorian *Children and Young Persons Act* 1989 provides that, if a child is a defendant in a criminal proceeding and the Childrens Court considers that there is prima facie evidence that grounds exist for the making of a protection application, the Court may refer the protective matter to the Secretary for investigation and the Secretary must report on the matter to the Court.

On the other hand, in NSW s33 of the *Children (Criminal Proceedings) Act 1987* provides that the Children's Court shall not have regard to the question of whether the child is a child in need of care and protection under the *Children and Young Persons (Care and Protection) Act 1998* when deciding which penalty it should impose after finding a child guilty of an offence. It has been submitted that the NT provision is rarely used at present and that the Minister responsible for the *Community Welfare Act* rarely becomes involved in matters that are seen as the responsibility of Juvenile Justice, i.e. once a child is charged with a criminal offence. It has also been suggested that closer links are needed between the "correctional"

system under the *Juvenile Justice Act* and the "welfare" system under the *Community Welfare Act*. Whilst resources to give effect to the legislation are not necessarily available to be utilised for all but the most urgent cases, practical solutions, outside a legislative framework, may not only be more effective but preferable to deal with situations where young people could benefit from additional support, such as –

- Cooperation between all service delivery agencies dealing with young people, such as Police, FACS, Corrections, Health, Education, Local Government, Housing, Centrelink and women's and/or youth refuges. Agreed protocols could allow the agency that becomes first involved with the family to take the "lead role".

- Collaborative case work would provide multi-agency family support planning where the "lead" agency refers a family or where a family self refers.

There are a number of initiatives currently looking at these issues:

- The Department of Health and Community Services are conducting a review of the *Community Welfare Act*.

- A working group set up in January 2003 developed protocols and procedures between Police and Family and Children Services of the Department of Health and Community Services for those situations where police pick up youth at risk and it is not possible to return the child home.

- The Youth at Risk Task Force submission proposed that section 52 include the development of a plan for the remediation of the offence and restoration of community harmony through a process of "family conferencing" involving all relevant stakeholders in the life of the child. Such a process is similar to that being advocated to be included in the *Community Welfare Act*.

Are any amendments necessary to section 52, and if so what amendments?

28 SENTENCING PRINCIPLES

The Act does not clearly articulate current sentencing philosophy and policy underlying justice for young people. It has been submitted that there should be a section containing sentencing guidelines that complements Part 2 of the *Sentencing Act* "General Principles". Part 2 of the *Sentencing Act* is reproduced at Attachment "H".

Should there be a section containing sentencing guidelines?

29 SENTENCING OPTIONS

Section 53 provides a range of sentencing options that are available to the Juvenile Court. Numerous amendments over the years have resulted in the section becoming difficult to read.

It has also been submitted that the Act should provide as many sentencing options as possible.

Should there be a separate division for sentencing with separate sections that clearly set out all sentencing options?

It has been suggested that the sentencing options should be reordered to ensure that the options are set out in order of seriousness of penalty to emphasise the importance of the Court considering the least intrusive option for the young offender first and the most serious option last.

Should the options be set out in order of penalty?

The current options of discharge without penalty (section 53(1)(a)) and Division 2 with respect to community work orders have not been raised as presenting any concerns.

29.1 NO-FURTHER TROUBLE ORDER

Section 53(1)(b) provides that the Court may adjourn a matter for not more than six months and, if the youth does not commit further offences, may be discharged without penalty. This could be referred to as a 'no-further trouble order'.

Such an order would allow the court to direct the youth to stay out of trouble for a certain period. At the end of successful completion, the court would be able to order that no conviction be recorded.

It has been suggested that 'no-further trouble orders' have conditions attached for the young offender to complete during the period, instead of ordering a young offender to complete a program while on bail. Sometimes the youth cannot complete the program, including for reasons beyond his or her control, and, as there is no monitoring, there is no way to return the matter before the court before the end of the order. This can mean that the young offender continues to offend until the next scheduled court appearance.

If the conditions were required to be supervised, such as the attendance at therapeutic or educational programs, the young person could be returned to the court before its expiration and the young offender encouraged to complete the program. Other possibilities could be canvassed to ensure compliance with the court's intention.

Should there be an option as set out – either a no-further trouble order with conditions or bail with supervision?

29.2 FINE

Section 53(1)(c) provides that the Court may fine the young offender not more than the maximum penalty that may be imposed under the relevant law in relation to the offence or $500.00, whichever is the lesser amount.

The current maximum fine is $500.00 which presents a problem for offences like 'drive uninsured' under the *Traffic Act*, where the minimum penalty is more than $500.00 for second or subsequent offenders (i.e. for repeat 'drive uninsured' offenders).

It has been suggested that there be no limit on the amount of the fine that can be imposed and that it be left to the ordinary sentencing principles to prevent abuse.

Should there be a maximum amount of the fine and if so what amount should it be?

29.3 RESTITUTION

Section 55 provides that the Court may "make an order for restitution by way of monetary compensation or performance of service in respect of compensation for an offence". The maximum amount for monetary compensation is $5,000 (s55(3)).

Should the maximum amount for restitution be increased?

29.4 GOOD-BEHAVIOUR BONDS

Section 53(1)(d) provides that the Court may order the offender to be of good behaviour for a period subject to one or more of the conditions listed.

Greater flexibility could be provided in sentencing by allowing the Court to impose any condition it thinks fit, including but not limited to the examples stated in section 53(1)(d) and including no conditions.

Diversionary programs could be a standard condition on an order. This would ensure that diversionary programs were always considered as an option and that Corrections can supervise, monitor, encourage, support, vary or breach, if need be, a youth while engaged in completing the program before the matter has been finalised in court.

Should there be greater flexibility with good behaviour bond orders?

Should diversionary programs be a condition of a good behaviour bond?

Section 53(1)(d) and (f) provide for good behaviour bonds and periods of probation for a maximum period of 2 years. It has been submitted that, particularly for very young offenders, there should be limitations placed on the period of time that bonds and probation periods are to run, for example, where the offender is under 15 years of age, the bond or probation period should be limited to a period of 6 months. Currently, if an offender commits a further offence towards the end of a 2 year bond,

they are not only sentenced for the further offence, they are also re-sentenced for the original offence and a breach of the order is recorded on their prior criminal history. The overall effect is to create an extensive criminal history that conveys an impression of a repeat offender which may not be the case.

Should the maximum period of good behaviour bonds and probation be changed and reflect the age of the offender?

29.5 DIVERSIONARY PROGRAMS

Section 53(1)(ea) provides that the Court may order the offender to participate in a program approved by the Minister and adjourn the matter for that purpose.

If an offender fails to complete such a program, then the Court must revoke the order and deal with the offender for the offence for which he or she was sentenced originally (section 53(12)). It has been suggested that there should be provision for the Court to take into account the extent to which the offender had completed the program in re-sentencing the juvenile - consistent with other provisions, for example, section 53(4D) dealing with breaches of probation.

Should the extent to which the offender had completed the diversionary program be taken into account?

It has been suggested that any or all of the diversionary programs available pre-court, including conferencing, should also be available as a sentencing option for the courts. However it has also been suggested that only programs that address offending behaviour should be a sentencing option and that some pre-court diversions, for example verbal warnings, are not appropriate. At the same time, it has been argued that pre-court diversionary programs should be kept out of the criminal court process.

As discussed above, it has also been suggested that diversionary programs should become a condition of good behaviour bonds or probation orders so that action can be taken on breaches.

Should courts have all diversionary programs as a separate option for sentence?

Or should diversionary programs be a condition of good behaviour bonds or probation orders?

29.6 PROBATION

Section 53(1)(ea) provides that the Court may place the offender under probation for a maximum of 2 years and subject to one or more of the specified conditions.

It was noted in the case of *M (A Juvenile) v Waldron* (1988) 56 NTR 1 that there is no implication in the word “probation” that the offender be of good behaviour. If the commission of an offence during the period of probation does not involve a breach of one of the conditions of probation, the offender is not in breach of his probation.

Is any amendment required with respect to probation?

29.7 CURFEWS

Curfews can be included in court orders as the Act currently stands by way of a condition of a supervised order or supervised bail.

Some people consider curfews a good way of controlling children between dusk and dawn. Policing or supervising curfews is less attractive for those who enforce the arrangements, as it is resource intensive. The appropriateness of curfews for some young people needs to be assessed. Sometimes it may be unrealistic for young people to stay in the house when there are problems.

Is any amendment required with respect to curfews?

29.8 HOME DETENTION

Home detention is currently not an option for young offenders.

Despite different circumstances for different youth, there is a view that youth, because they do not have control over their living arrangements, should not be exposed to a surveillance regime that penalises the family more than the youth.

However, sometimes a 16 or 17 year old has family responsibilities and may benefit from the option of home detention.

It has been suggested that home detention should be an option available on sentencing, even if it is only used rarely. A thorough assessment would be required as it will only work in some family situations. However it is an option which puts the responsibility back into the family and community.

It has been argued that a home detention option for young people may have to be less stringent than the adult version, particularly where it concerns breaches. That is, a breach under the *Sentencing Act* means that a person has to serve the whole period of imprisonment in lieu of which the home detention was ordered. It has been suggested that it might be more appropriate to take the part of home detention that has been completed up until the breach into account when re-sentencing a young offender.

"Home" should be defined broadly and communities could be encouraged to establish "homes" or "centres" as alternatives to detention.

Should home detention be a sentencing option for a young offender?

If so, would a much more thorough assessment process be necessary than the current assessment for adults?

29.9 PERIOD OF DETENTION / IMPRISONMENT

Section 53(1)(g) provides that the Court may order that an offender be detained at a detention centre or imprisoned for a period of 12 months, or the period not exceeding

the maximum period that may be imposed under the relevant law in relation to the offence, whichever is the lesser.

It has been submitted that the length of sentences that magistrates can impose for any one offence needs to increase and that a number of sentences for detention or imprisonment should be allowed to accumulate and be aggregated beyond the current 12-month limit.

It has been argued that the Juvenile Court is a "specialist court" and through regular contact has a better idea of the appropriate range and levels of comparative culpability. The Court has more knowledge of the types of services and facilities available to youth and the way the Community Corrections Office interacts with young offenders. It does not make sense to limit the scope of the Court.

It has also been argued that age is a factor in sentencing by the court and ceilings should be left to the magistrates in the exercise of their sentencing discretion.

Should the current period of detention or imprisonment be extended beyond the current 12-month limit?

29.10 DETENTION

It has also been submitted that detention of a child is a serious step and should be only used as a matter of last resort where no other option is appropriate and a non-custodial sentence would be inappropriate. Section 23 of the SA *Young Offenders Act* provides that:

> ”A sentence of detention must not be imposed for an offence unless the Court is satisfied that, because of the gravity or circumstances of the offence, or because the offence is part of a pattern of repeated offending, a sentence of a non-custodial nature would be inadequate”.

Should a provision similar to section 23 of the SA Act be included?

Section 53(6) provides that where the Court sentences a juvenile to a period of detention in a detention centre during which period the juvenile will attain the age of 18 years, the juvenile shall be transferred to a prison within 28 days to serve the remainder of the sentence.

It has been suggested that there should be discretion in the Superintendent of the detention centre for the juvenile to remain in detention past that time.

Should an offender who will attain the age of 18 years during their sentence be able to remain in the detention centre?

29.11 IMPRISONMENT

Section 53(1)(g) further provides that the Court may order imprisonment of an offender but only if the offender has attained the age of 15 years.

It has been suggested that the option of sentencing an offender to a period of imprisonment should be limited to a narrow set of circumstances, such as where detention is inappropriate for either the safety of the offender involved or other detainees in the detention centre and that evidence from the Superintendent of the detention centre should be required before such an order is made.

It has also been suggested that the power of magistrates to sentence offenders to imprisonment should be removed. It is rarely used and arguably should not be used for juveniles. It is noted that serious offences, such as murder, would be dealt with by the Supreme Court which would retain the power to imprison a young offender.

In circumstances where the juvenile detention regime is not adequate to manage the behaviour of a detainee – for example the detainee becomes extremely violent and immediate containment of the detainee is necessary – there should be power for the detainee to be transferred to separate confinement within a prison for a maximum period. There are appropriate programs in prison that can help the detainee. This is in contrast to the situation in the detention centre where, if a detainee is isolated under the power in section 66(2), there are no programs or assistance.

Such an emergency transfer to prison could be with the authority (e.g. by telephone) of a magistrate. Alternatively the detainee could be transferred immediately provided the matter is brought before the court within 24 hours. Reconsideration of the sentence under section 61, which has been used in the past, is too slow.

Should the power to imprison offenders over 15 years be removed?

If so, should there be a provision in the Act that allows the detention centre to transfer a youth to a prison in an emergency? If so, by whose authority should it be done?

29.12 PERIODIC DETENTION

Section 53(5) provides that a period of detention or imprisonment may be served continuously or periodically at the discretion of the Court.

Periodic detention can be used to order weekend detention over a period. However, there is no simple way for magistrates to order periodic detention on one warrant and there is no provision to arrest the offender if they do not present themselves. This means that the Court has to do a warrant for each weekend in the overall period. The Act is silent on the length of the order, which orders can co-exist and the court's powers in case of breach. The question has also been raised as to who monitors or breaches it. Normally, a warrant is attached to a person and the warrant goes from the JP to police in the cells who take the youth to Don Dale Centre. This warrant for periodic detention gives no one the authority to collect a person who does not present, nor is there power for someone to enforce the order.

Should the Act be amended to clarify these issues on periodic detention?

Are there any other sentencing options that should be considered?

29.13 VARIATION

Section 53(4) provides that good behaviour bond orders, probation orders and suspended sentences can be varied or revoked.

It has been suggested that there should be a similar provision to vary other sentencing orders, such as community service orders and fines, if the circumstances of the offender change and it is no longer possible to comply with the sentence.

Should the power to vary or revoke orders be extended to all sentencing options?

30 *SENTENCING ACT*

Currently, section 4 of the *Sentencing Act* excludes the provisions of that Act from the sentencing of a young offender where the Court deals with the young offender under the *Juvenile Justice Act.*

It has been argued that the provisions of the *Sentencing Act* should be made applicable to young offenders so as to extend to them the same rights and protection before the law as apply under the *Sentencing Act* to adults in similar circumstances (*Bynder -v- Gokel* (1998) 125 NTR 1). In the case of *Gokel*, it was held that the Juvenile Court could not backdate any sentence of imprisonment (since covered by s.53AN of the *Juvenile Justice Act*), nor that it could order an aggregate period of imprisonment nor for terms to be served cumulatively.

Justice Mildren in a recent case concluded his sentencing remarks in *R v LLH* (SCC 20106249) on 31 October 2002 with the following comments:

> "HIS HONOUR: I draw once again to the attention of the legislature the problem which section 4 of the *Sentencing Act* has created, as interpreted by the Court of Criminal Appeal in the case of *Brown and Ebatarinja v R* (1997) 6 NTLR 94 and by the decision of the Full Court in *Binder v Gokel* (1998) 8 NTLR 91. I respectfully suggest that section 4 of the *Sentencing Act* be amended to delete any reference to the Supreme Court."

It has been submitted however that the magistrates should also have the power to aggregate sentences (being one sentence in respect of a number of similar offences) and to order cumulative sentences (where there are a number of different types of offences eg property offence and offence against the person) and that such power should be in the *Juvenile Justice Act*.

It has also been suggested that the *Juvenile Justice Act* should include a provision similar to section 112 of the *Sentencing Act* which provides for fixing sentencing errors without having to institute an appeal. Section 112 is a useful section saving time, trouble, and effort for everyone.

Should the Juvenile Justice Act incorporate provisions of the Sentencing Act? For example, aggregate periods, cumulative sentences and correcting errors?

31 RELEASE

It has been reported that young people are sometimes released from detention or custody but are not returned into the custody of their parents or guardians.

It has been suggested that the Act should include a clearly stated responsibility that juveniles are to be returned to the custody of their parents/guardians after their period of detention/custody is completed.

A problem could arise however if the parent/guardian cannot be located or is unwilling to take responsibility for the child.

At this stage, 40% of the detainees are 17 years and over and in fact some may have spouses and children and may have lived independently for some years. It has been suggested that this is a case management issue and has to be flexible depending on the youth's situation and needs. Some youths are better off not going back to their parents. When organising repatriation, arrangements are made through the local Community Corrections office.

Should detainees be returned to the custody of their parents/guardians after their period of detention?

32 PAYMENT OF FINES

Section 54 provides for further time to pay where a juvenile has been ordered to pay a fine.

There is now a procedure under the *Fines and Penalties (Recovery) Act* for the payment of a fine. It would appear that this section was overlooked when the above Act came into operation. Regulations 8, 9 and 10 and Forms 5, 6 and 7 of the Juvenile Justice Regulations should also be deleted.

Should section 54 of the Act and the relevant regulations be repealed?

33 PARENTS TO PAY

Section 55A provides that the Court may order that the parents of a young offender pay an amount towards the cost of detaining the offender in the detention centre, which amount shall not exceed $100 per week, for each week during which the offender is so detained.

It has been argued that many parents do not have the means to do this and that the provision is not used. It has further been argued that it would never be appropriate to use such a provision - in that, if a parent's neglect has contributed to a child's offending, then this should be a matter for the welfare provisions of the *Community Welfare Act.* If a parent's encouragement has contributed to a child's offending, then there are provisions in the Criminal Code relating to aiding and abetting an offence which should apply.

Should section 55A be repealed or amended in some way?

On the other hand, it has also been suggested that this responsibility could be expanded to include wider parental responsibility, i.e. making parents responsible for night time location, school attendance and compensation, as well as the present provisions for the cost of detention.

However, such matters are covered in other legislation. Section 29 of the *Education Act* currently provides that generally it is an offence for a parent not to ensure that their child attends school. Section 29A of the *Law Reform (Miscellaneous Provisions) Act* further provides that a parent is jointly and severally liable with the child for damage the child intentionally causes to property, where the child was ordinarily resident with that parent and not in full time employment.

It may be argued that the *Juvenile Justice Act* is not the appropriate place for general parental responsibility.

Should the Act make provision for general parental responsibility?

34 ENFORCEMENT OF ORDERS

Section 55B provides for the enforcement of an order that directs the payment of the cost of detention made under section 55A. Sections 27 to 30 inclusive of the *Sentencing Act* have been repealed and the provisions of the *Fines and Penalties (Recovery) Act* now cover the payment of sums of money.

If this provision is to remain, it needs amendment to refer to the *Fines and Penalties (Recovery) Act*.

Should section 55B be deleted?

35 OFFENDER'S NAME

Section 56 provides for the release of the name and address of an offender if the case has been heard in closed court.

A person, eg the victim, where they intend to commence proceedings for loss or damage as a result of an offence by the offender, may apply to the Clerk of the Court for the convicted offender's name and address and the Clerk must supply it.

It has been suggested that there are no safeguards in this procedure for the offender, i.e. to ensure that the real purpose for obtaining the address is to commence genuine proceedings and not for example to allow a victim to seek out the offender and his/her family.

The Juvenile Court rarely orders that a case be heard in closed court and it has also been suggested that, as such safeguards would be difficult to achieve in a practical sense, section 56 should be repealed and the matter of compensation left to an order for restitution.

Should section 56 be repealed or amended?

36 EXPLANATION OF ORDERS

It has been suggested that the legislation needs to provide for an appropriate explanation to be given to the young offender of orders made by the Court - similar to that which the Court must provide to the young offender about the proceedings pursuant to section 41 and similar to that which the court provides to adults.

Section 41 of the *Juvenile Justice Act* provides that "where a juvenile …is not represented by a legal practitioner, the Court shall explain to him as simply as practicable in a language that he understands, the nature of the allegations against him, the legal implications of those allegations and the elements of the offence that must be established by the prosecution".

Section 102 of the *Sentencing Act* provides that where a court proposes to make an order which has attached to it conditions to which an offender is required to consent or which requires an offender to give an undertaking, it shall, before making the order, explain or cause to be explained to the offender, in language likely to be readily understood by the offender –

(a) the purpose and effect of the proposed order;

(b) the consequences that may follow if the offender fails without reasonable excuse to comply with the proposed order;

(c) where the proposed order requires the offender to undertake a program referred to in section 100, the benefits and detriments of the program, including the medical risks and benefits of any drugs used in the program; and

(d) the manner in which the proposed order may be varied.

Young people, like adults, should be informed of the details of their sentence and what the practical consequences of the sentence are.

It has also been suggested that such a provision should include the Court taking into account the offenders' literacy levels i.e. to establish whether an interpreter is needed and their maturity.

Should the Act be amended to include a provision that the Court must explain to the young offender any order it makes?

37 RECONSIDERATION OF SENTENCE

Section 61 provides for the court to reconsider a finding made that a charge against a juvenile is proven, or an order made against or in relation to the juvenile or a parent or the parents of the juvenile in consequence of such a finding.

An application for reconsideration may be made, at any time, under section 61(2) by "(a) the juvenile; (b) the parent or parents of the juvenile; or (c) the Minister, on behalf of the juvenile".

It has been suggested that section 61(2)(c) be amended to enable the Director to make application for reconsideration on breach of an order or on a change of circumstances etc. by omitting the words "on behalf of the juvenile" or replacing "the Minister, on behalf of the juvenile" with "the Director".

Should section 61(2)(c) be amended to allow the Director to apply for reconsideration?

38 JUVENILE DETENTION CENTRES

Part VIII deals with establishments approved by the Minister to be juvenile detention centres. The Don Dale Juvenile Detention Centre and the Wildman River Wilderness Work Camp in the Top End and the Alice Springs Juvenile Holding Centre in Central Australia are currently approved centres under the Act.

39 EXPLANATION OF PROCEDURES FOR DETENTION CENTRE

Regulation 27(1) of the Juvenile Justice (Detention Centre) Regulations requires a detainee to follow all instructions given to him or her by the Superintendent or a member of staff and to obey the rules, if any, of the detention centre and all written instructions addressed generally to detainees.

It has been suggested that the legislation needs to provide that an appropriate explanation be given to a detainee of the rules and instructions of the detention centre and the rights of the detainee, including the complaints procedures, in a language and manner appropriate to their age and taking into account their literacy levels. Such an explanation could be given by way of an orientation session on arrival at the centre and conducted through an interpreter, where necessary.

Should the Juvenile Justice Act include a provision that the detention centre must give an appropriate explanation to a young detainee on arrival?

40 POWERS AND FUNCTIONS OF SUPERINTENDENT

Section 64 provides for the appointment and functions of the superintendent of a detention centre. The superintendent is "responsible, so far as practicable, for the physical, psychological and emotional welfare of juveniles detained in the detention centre" (section 64(2)). For those purposes, the superintendent "shall –

(a) promote programmes to assist and organize activities of detainees to enhance their well-being;

(b) encourage the social development and improvement of the welfare of detainees;

(c) maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre whether as detainees or otherwise;

(d) be responsible for the maintenance and efficient conduct of the detention centre; and

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

The superintendent has such powers as are necessary for the performance of his functions (section 65(1)).

It has been suggested that the functions of the superintendent mean that the superintendent is a de facto guardian of detainees and that this should be clarified by expressly deeming that the superintendent is the guardian of detainees while in the detention centre. There are concerns that a suitable person, such as the superintendent (or the Director) should clearly have the power to give parental consent to matters like participation in anger management or risk taking programs, e.g. abseiling, particularly if the parent/guardian cannot be located and it is considered to be in the detainee's best interests to participate.

On the other hand, the fact that a young person is in detention should not usurp the role of the parent or guardian.

Should the Act deem the superintendent (or the Director) to be the guardian of detainees while in the detention centre?

41 DISCIPLINE

Section 66 provides for the powers of the superintendent to maintain discipline at a detention centre. Section 91 provides for offences relating to detainees in detention centres. Section 98(1)(f) provides for regulations maintaining order within a detention centre, including the manner of dealing with the misconduct of detainees and regulation 29(1) of the Juvenile Justice (Detention Centres) Regulations provides that "a member of staff must manage incidents of misbehaviour in the manner he or she considers most appropriate, having regard to all the circumstances, the interests of the detainee or detainees involved and the rules, if any, of the detention centre".

It has been suggested that provision should be made for the right of the detainee to be heard in respect of matters of misbehaviour or discipline, as they can feel aggrieved if they have not been given the opportunity to tell "their side of the story".

Should the Act or Regulations include the right of a detainee to be heard?

42 DETENTION CENTRES ANNUAL REPORTS

Section 68 provides that the superintendent of a detention centre shall furnish an annual report to the Minister on the operation of the detention centre.

It has been suggested that such reports should go to the Chief Executive of the Agency to include in the Agency's Annual Report, rather than to the Minister, either via the CEO or directly.

On the other hand, the responsibilities of the superintendent in running the detention centre are prescribed by legislation and the superintendent should be answerable to the Minister who appoints him.

Should section 68 be amended or should the superintendent continue to be required to do an annual report to the Minister?

43 TESTING FOR DRUGS OR ALCOHOL

Section 70A provides that the superintendent of a juvenile detention centre can require a detainee to provide a blood breath or urine sample to determine whether there is present in the detainee's body any drug or alcohol.

It has been argued that there are currently inconsistencies between requirements upon arrest and while in a detention centre regarding rights to conduct "intimate procedures" on juveniles, for example, to obtain a urine sample. Section 31 of the *Juvenile Justice Act* provides that an intimate procedure can only be conducted where there are reasonable grounds that the procedure may provide evidence relating to an offence and only after the approval of the magistrate.

However, there is no requirement under section 70A of the *Juvenile Justice Act* that the superintendent have any particular belief that, for example the juvenile has consumed alcohol, nor is there any obligation to seek approval from a Magistrate for this purpose, before a superintendent has any power to use reasonable force to extract such a sample.

On the other hand, it could be argued that, once sentenced to detention, the young offender is in a different position to when he is only a part of the investigation stage.

It has further been argued that discretion should not be restricted in the management of a detention centre, where random testing is an important management tool particularly in respect of its duty of care to all detainees and staff.

Should there be a requirement that the superintendent have a reasonable belief that a detainee has drugs or alcohol present in the detainee's body before directing that tests be carried out?

Should there be an obligation to seek a Magistrate's approval?

44 OFFICIAL VISITORS

Section 71 provides for at least three official visitors, for each detention centre, to be appointed by the Minister for three years. Their functions are to "inquire into the treatment, behaviour and conditions of detainees in the detention centre for which the official visitor is appointed" and report in writing, as soon as practicable after each visit, to the Director or the Minister (**section 72**).

Half of the members of the Board of Management (North) are also appointed official visitors, for both the Don Dale Juvenile Detention Centre and the Wildman River Wilderness Work Camp. There are 3 other official visitors appointed.

From time to time, there have been difficulties with attracting sufficient people to be appointed as official visitors and with the scheduling of visits, as a detention centre is to be visited by an official visitor at least once every month (**section 73**). The location of the centre at Wildman River for example makes this a time consuming proposition, although an official visitor may be reimbursed for their time and expenses. Section 71(5) provides that an official visitor shall receive such remuneration, allowances and expenses, at such rates, as the Minister determines. Most official visitors do not actually claim any monies.

The Official Visitor scheme for prisons, as organised through Correctional Services, was criticised by the Ombudsman. Such criticisms could be relevant to the Official Visitor scheme for detention centres and it has been suggested that an independent body should run the scheme and that official visitors should reflect a diverse range of people, including someone with particular expertise in youth advocacy. As a result of criticism, the Policy Unit of the Department of Justice now administers the Official Visitor schemes for both prisons and detention centres.

Alternatively, it has been suggested that, in view of the Ombudsman and legal aid agencies, there is no longer any need for such an outdated scheme. It is noted however that juveniles may be loathe to approach institutions such as the Ombudsman's office or lawyers or other staff from a legal aid agency.

Should the Official Visitor scheme be kept? If so, do the provisions relating to official visitors need to be changed?

45 COMPLAINTS

The Act does not currently provide for a complaints procedure for detainees, other than by way of regulations (section 98(1)(f)). Regulation 33 of the Juvenile Justice (Detention Centres) Regulations provides for written complaints by detainees with a grievance to be made to the Superintendent, who must deal with the complaint as soon as possible. The Policy and Procedures Manual sets out a procedure which includes talking to detention centre staff, including the Superintendent, a legal practitioner, the Police or the Ombudsman, depending on the nature of the complaint. Detainees can also complain to official visitors. It has been suggested that the Act should include a general provision providing for a complaint procedure along the lines of section 215 of the Queensland *Juvenile Justice Act* which provides as follows:

> "215 Complaints generally
>
> (1) A child or parent of a child detained in a detention centre may complain about a matter that affects the child.
>
> (2) The chief executive must issue written instructions on how a complaint may be made and dealt with, which may include the direction of the complaint to a community visitor or other appropriate authority.
>
> (3) Despite subsection (2), a child is entitled to complain directly to a community visitor.
>
> (4) The chief executive need not deal with a complaint that the chief executive reasonably believes to be trivial or made only to cause annoyance.
>
> (5) The chief executive must tell the child how the complaint will be dealt with.
>
> (6) This section does not limit the powers of a community visitor."

It has been suggested that provision should be made for the right of the detainee to be heard in respect of grievances or complaints.

Should the Act include a provision for a complaints procedure?

Should the Act or Regulations include the right of a detainee to be heard?

46 MEDICAL TREATMENT

Part IXA provides for access to and the provision of medical treatment for young offenders in detention centres.

It has been queried whether the superintendent has sufficient authority to consent to medical treatment when there is a serious medical issue.

Section 74E(1) provides for the detainee to be examined or treated, although the detainee refuses to consent, in the following circumstances:

> "Where, in the opinion of a medical practitioner, the life or health of a juvenile detained in a detention centre is likely to be endangered or seriously affected by the refusal of the juvenile to undergo a medical examination or to submit to medical treatment, or any other juvenile or person is likely to be endangered or seriously affected by that juvenile's refusal, that juvenile shall submit, provided where practicable he has the right to a second medical opinion, to such medical examination or treatment as may be ordered by the Director, after the Director has consulted with the medical practitioner."

Section 74E does not, however, address the issue of the incapacity of the detainee to consent to the medical examination or treatment, as opposed to a refusal to consent.

Section 134 of the Tasmanian *Youth Justice Act* provides (and section 212 of the Queensland *Juvenile Justice Act* is in almost identical terms) that the Secretary "is authorised to give consent to any medical, treatment of a detainee if –

(a) the counselling or treatment requires the consent of a guardian of the detainee; and

(b) the Secretary is unable after reasonable inquiry to ascertain the whereabouts of a guardian of the detainee; and

(c) it would be detrimental to the detainee's health to delay the counselling or treatment until the guardian's consent can be obtained."

Should section 74E be amended to cover the parent's consent after reasonable inquiry has been made?

47 ARREST ON BREACH

Section 89 provides that if a member of the Police Force has reason to believe that a juvenile has breached a condition imposed on the juvenile under section 53(1)(d), (f), (h) or (j) or (3), the member may, without warrant, arrest the juvenile and, as soon as practicable, bring him before the Court.

However, it has been said that police should have an information rather than arresting a juvenile without a warrant. The warrant process however can be a lengthy process. The provision exists to deal with those circumstances where a person is in breach of their conditional liberty and immediate action can then be taken, and the matter dealt with in a timely manner, rather than the breach continuing.

Should section 89 be amended?

48 OFFENCE PROVEN BUT NO CONVICTION

Section 90 provides that where a juvenile has, whether before or after the commencement of the *Juvenile Justice Act*, been found by a court to have committed an offence but no conviction was recorded by the court, no evidence or mention of that offence may be made to, or the offence be taken into account by, a court other than the Juvenile Court.

It has been queried however what should happen when the young offender breaches a juvenile bond by appearing in court for further offences. Prosecutions cannot mention the breach if the offence was proven but no conviction recorded.

Also when the juvenile turns adult and commits offences with a juvenile record and that record is a no-conviction bond, the prosecution cannot allege it as it is a no conviction.

Should section 90 be amended?

49 DETENTION CENTRE OFFENCES

Section 91 provides for offences relating to detainees in detention centres.

Should this section be moved to Part VIII "Juvenile Detention Centres"?

50 LIABILITY

Section 97 restricts the liability of the Minister, a Chief Executive Officer, or an employee "as defined in the *Public Sector Employment and Training* Act" for any act purportedly done for the purpose of carrying out the provisions of the Act, provided they acted in good faith and with reasonable care or more than 6 months have elapsed.

It has been suggested that section 97 should also specify the Director and superintendent of a detention centre.

The reference to the "*Public Sector Employment and Training* Act" in section 97(1) should be amended to the "*Public Sector Employment and Management Act".*

Should section 97 be amended?

51 STRIP SEARCHES

Section 98(1)(f) provides that regulations may prescribe for the maintaining of order within a detention centre, including the conduct of searches. Regulation 32(3) of the Juvenile Justice (Detention Centres) Regulations provides that a "detainee must not be stripped of his or her clothing and searched except in accordance with an order of the Superintendent".

It has been suggested that the power to conduct strip searches should be in the Act and not in the regulations.

It has also been suggested that, similarly for testing under section 70A, the power should not be exercised unless the superintendent has reasonable grounds to suspect that a strip search is necessary. A routine strip search every time a detainee returns to the detention centre from the outside community can be counter productive to, for example, work experience programs.

On the other hand, it has also been argued that the discretion to randomly strip search is a necessary management tool in order to maintain a safe and secure environment at a detention centre.

It has further been suggested that workers should be indemnified from liability providing searches are conducted in accordance with prescribed procedures. However, **section 97** provides for the restriction of liability against the Minister, CEO or employee for an act done for the purpose of carrying out the provisions of the Act provided they acted in good faith and with reasonable care.

Should the Juvenile Justice Act cover strip searches?

52 ATTACHMENT "A" – TERMS OF REFERENCE

Review the *Juvenile Justice Act*, including:

a) ensuring that the provisions of the Act provide for a full range of dispositional options for sentencing juveniles to ensure flexibility in dealing with juvenile offences;

b) provision for clear sentencing guidelines that articulate current sentencing philosophy on young people in the justice system;

c) consider whether a legislative basis for the juvenile diversion program should be included in the Act;

d) address the need for any legislative change raised by recommendations made under the proposed Strategic Plan for Juvenile Detention;

e) whether appropriate dispositions for offenders under the age of criminal responsibility (10 years of age) need to be developed within the Juvenile Justice framework or whether the existing framework created by the *Community Welfare Act* is adequate to deal with this problem;

f) ensuring that the Act complies with national standards and international conventions on detention of juveniles.

In conducting the Review, due regard must be had to the NT Government's commitment to address the over-representation of indigenous offenders in the criminal justice system.

53 ATTACHMENT "B" – PRINCIPLES

53.1 ACT CHILDREN AND YOUNG PEOPLE ACT 1999:

"68. If a decision is to be made under this Part in relation to a young person or young offender, the decision-maker must make the decision in accordance with the following principles:

i) if a young person does anything that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;

j) the young person 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;

k) a young person may only be detained in custody for an offence (whether on arrest, in remand or under sentence) as a last resort;

l) young offenders should 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 adults in similar circumstances;

m) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;

n) a balanced approach must be taken between the needs of the young offender, the rights of any victim of the action that constituted the young offender's offence and the interests of the community."

53.2 SA YOUNG OFFENDERS ACT 1993:

"Objects and statutory policies

3.(1) The object of this Act is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential.

(2) The powers conferred by this Act are to be directed towards that object with proper regard to the following statutory policies:

(a) a youth should be made aware of his or her obligations under the law and of the consequences of breach of the law;

(c) the community, and individual members of it, must be adequately protected against violent or wrongful acts.

(2a) In imposing sanctions on a youth for illegal conduct

(a) regard should be had to the deterrent effect any proposed sanction may have on the youth; and

(b) if the sanctions are imposed by a court on a youth who is being dealt with as an adult, regard should also be had to the deterrent effect any proposed sanction may have on other youths.

(3) Effect is to be given to the following statutory policies so far as the circumstances of the individual case allow:

(a) compensation and restitution should be provided, where appropriate, for victims of offences committed by youths;

(b) family relationships between a youth, the youth's parents and other members of the youth's family should be preserved and strengthened;

(c) a youth should not be withdrawn unnecessarily from the youth's family environment;

(d) there should be no unnecessary interruption of a youth's education or employment;

(e) a youth's sense of racial, ethnic or cultural identity should not be impaired.

53.3 QUEENSLAND JUVENILE JUSTICE ACT 1992

"4 PRINCIPLES OF JUVENILE JUSTICE

The general principles underlying the operation of this Act ("general principles of juvenile justice") are that—

(a) the community must be protected from offences; and

(b) because a child tends to be vulnerable in dealings with a person in authority a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child; and

(c) a child—

(i) should be detained in custody for an offence (whether on arrest or sentence) only as a last resort; and

(ii) if detained in custody—should only be held in a facility suitable for children; and

(d) if a child commits an offence—the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started; and

(e) if a proceeding is started against a child for an offence—

(i) the proceeding should be conducted in a fair and just way; and

(ii) the child should be given the opportunity to participate in and understand the proceeding; and

(f) a child who commits an offence should be—

(i) held accountable and encouraged to accept responsibility for the offending behaviour; and

(ii) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and

(iii) dealt with in a way that strengthens the child's family; and

(g) a victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law; and

(h) a parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility; and

(i) a decision affecting a child should, if practicable, be made and implemented within a time frame appropriate to the child's sense of time; and

(j) the age, maturity and, where appropriate, cultural background of a child are relevant considerations in a decision made in relation to the child under this Act.

53.4 WESTERN AUSTRALIA, YOUNG OFFENDERS ACT *1994:*

"6. Objectives

The main objectives of this Act are

(a) to provide for the administration of juvenile justice;

(b) to set out provisions, embodying the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have, committed offences;

(c) to ensure that the legal rights of young persons involved with the criminal justice system are observed;

(d) to enhance and reinforce the roles of responsible adults, families, and communities in ?

(i) minimising the incidence of juvenile crime;

(ii) punishing and managing young persons who have committed offences; and

(iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens;

(e) to integrate young persons who have committed offences into the community; and

(f) to ensure that young persons are dealt with in a manner that is culturally appropriate and which recognises and enhances their cultural identity."

53.5 TASMANIA YOUTH JUSTICE ACT

Objectives of Act

4. The main objectives of this Act are –

(a) to provide for the administration of youth justice; and

(b) to provide how a youth who has committed, or is alleged to have committed, an offence is to be dealt with; and

(c) to specify the general principles of youth justice; and

(d) to ensure that a youth who has committed an offence is made aware of his or her rights and obligations under the law and of the consequences of contravening the law; and

(e) to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation; and

(f) to enhance and reinforce the roles of guardians, families and communities in –

(i) minimising the incidence of youth crime; and

(ii) punishing and managing youths who have committed offences; and

(iii) rehabilitating youths who have committed offences and directing them towards the goal of becoming responsible citizens; and

(g) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that is culturally appropriate and recognises and enhances his or her cultural identity; and

(h) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that takes into account the youth's social and family background and that enhances the youth's capacity to accept personal responsibility for his or her behaviour.

General principles of youth justice

5. (1) The powers conferred by this Act are to be directed towards the objectives mentioned in section 4 with proper regard to the following principles:

(a) that the youth is to be dealt with, either formally or informally, in a way that encourages the youth to accept responsibility for his or her behaviour;

(b) that the youth is not to be treated more severely than an adult would be;

(c) that the community is to be protected from illegal behaviour;

(d) that the victim of the offence is to be given the opportunity to participate in the process of dealing with the youth as allowed by this Act;

(e) guardians are to be encouraged to fulfil their responsibility for the care and supervision of the youth and should be supported in their efforts to fulfil this responsibility;

(f) guardians should be involved in determining the appropriate sanction as allowed by this Act;

(g) detaining a youth in custody should only be used as a last resort and should only be for as short a time as is necessary;

(h) punishment of a youth is to 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;

(i) punishment of a youth is to be appropriate to the age, maturity and cultural identity of the youth;

(j) punishment of a youth is to be appropriate to the previous offending history of the youth.

(2) Effect is to be given to the following principles so far as the circumstances of the individual case allow:

(a) compensation and restitution should be provided, where appropriate, for victims of offences committed by youths;

(b) family relationships between a youth, the youth's parents and other members of the youth's family should be preserved and strengthened;

(c) a youth should not be withdrawn unnecessarily from his or her family environment;

(d) there should be no unnecessary interruption of a youth's education or employment;

(e) a youth's sense of racial, ethnic or cultural identity should not be impaired.

53.6 NSW YOUNG OFFENDERS ACT

3 Objects of Act

The objects of this Act are:

(a) to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and

(b) to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and

(c) to establish and use youth justice conferences to deal with alleged offenders in a way that:

(i) enables a community based negotiated response to offences involving all the affected parties, and

(ii) emphasises restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and

(iii) meets the needs of victims and offenders.

7 Principles of scheme (the scheme to deal with children who commit certain offences through the use of youth justice conferences, cautions and warnings instead of court proceedings)

The principles that are to guide the operation of this Act, and persons exercising functions under this Act, are as follows:

(a) The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act.

(b) The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.

(c) The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.

(d) The principle that criminal proceedings are not to be instituted *against a child* solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group.

(e) The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties.

(f) The principle that parents are to be recognised and included in justice processes involving children and that parents are to be recognised as being primarily responsible for the development of children.

(g) The principle that victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act.

54 ATTACHMENT “C” – DEFINITIONS OF PARENT, GUARDIAN ETC.

54.1 NSW

person responsible for a child means:

(a) a parent of the child, or

(b) a person who has the care of the child (whether or not the person has the custody of the child).

parent of a child includes:

(a) a guardian of the child, and

(b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child.

child means a person who is of or over the age of 10 years and under the age of 18 years.

10 Admission of offences

An admission by a child of an offence is not an admission for the purposes of this Act unless it takes place in the presence of:

(a) a person responsible for the child, or

(b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or

(c) if the child is 16 years or over, an adult chosen by the child, or

(d) a legal practitioner chosen by the child.”

54.2 TASMANIA

"guardian" means –

(a) a parent of a child; and

(b) a person who is the legal guardian of a child; and

(c) a person who has the legal custody of a child; and

(d) any other person who generally acts in the place of a parent of a child and has done so for a significant length of time;

"responsible adult" means an adult who –

(a) has had a close association with the youth or has been counselling, advising or aiding the youth; and

(b) has not been charged with the offence in respect of which the youth has been taken into custody or is not suspected, by a police officer on reasonable grounds, of being directly or indirectly involved in the commission of that offence; and

(c) has been nominated by the youth;

"youth" means a person who is 10 or more years old but less than 18 years old at the time when the offence the person has committed, or is suspected of having committed, occurred;

54.3 SOUTH AUSTRALIA

"youth" means a person of or above the age of 10 years but under the age of 18 years and, in relation to proceedings for an offence or detention in a training centre, includes a person who was under the age of 18 years on the date of the alleged offence;

"guardian", in relation to a youth, means a parent of the youth or a person (other than the Minister) who is the guardian of the youth or has the immediate custody and control of the youth;

"14. (1) The law of the State relating to criminal investigation, arrest, bail, remand and custody before proceedings for an offence are finally determined applies, subject to this Act, to youths with necessary adaptations and any further adaptations and modifications that may be set out in the regulations.

(2) If a youth is arrested on suspicion of having committed an offence, and the youth is to be dealt with under this Act for the offence, the officer responsible for the arrest and custody of the youth must, as soon as practicable after the arrest

(a)explain to the youth the nature of the allegations against him or her; and

(b)inform the youth of his or her right to seek legal representation; and

(c)take all reasonable steps to inform

(i) the guardian of the youth;

(ii) if a guardian is not available an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth,

of the arrest and invite him or her to be present during any interrogation or investigation to which the youth"

54.4 **WESTERN AUSTRALIA**

responsible adult, in relation to a young person, means a parent, guardian, or other person having responsibility for the day to day care of the young person but does not include a person who the regulations may provide is not a responsible adult;

young person means

(a) a person who has not reached the age of 18 years; or

(b) a person to whom this Act applies because of section 4;

8. Responsible adults, role of

While observing the general principles of juvenile justice as required by section 7, a person performing functions under this Act is also to have regard to the principles that

(a) responsible adults have an important responsibility for the behaviour of young persons under their care;

(b) responsible adults should be involved in the disposition, by a court or otherwise, of allegations of offences by the young persons under their care and in their punishment or management as a result of having offended;

(c) a responsible adult should be notified as soon as practicable after a young person is taken into custody or otherwise dealt with under this Act and, if the young person is in custody, should be kept informed as to the whereabouts of the young person; and

(d) in determining the degree of responsibility expected of a responsible adult the age, intellectual and emotional maturity of the young person and the fact that the young person is in employment or is living independently shall be taken into account."

20. Responsible adult to be notified

(1) Before a member of the Police Force asks a young person who has been apprehended for the commission of an offence questions about

(a) that offence or

(b) any other offence that has been, or is suspected to have been committed,

the member of the Police Force is to ensure that a responsible adult has received notice of the intention to question the young person.

(2) Subsection (1) does not apply to questions that the member of the Police Force is expressly authorised to ask by any other written law.

(3) When a member of the Police Force charges a young person who has been apprehended for the commission of an offence with the commission of that or any other offence, if a responsible adult has not already been given notice of the intention to lay the charge the member of the Police Force is to ensure that a responsible adult is given notice of the charge as soon as is reasonably practicable.

(4) The notice is to be given orally (either personally or by telephone) or in writing (either personally or by mail sent to the address of the responsible adult), and is to include particulars as to

(a) the whereabouts of the young person

(b) the nature of any offence for which the young person was apprehended, about which the young person is to be questioned, or with which the young person is to be charged and

(c) where applicable, the process by which the matter is to be brought to court and when and where the court will sit.

(5) The notice is not required to be given if

(a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained or

(b) in the circumstances it would be inappropriate to give a responsible adult notice,

but in either case the chief executive officer is to be advised in writing that the notice was not given and why it was not given.

54.5 QUEENSLAND

"child" means—

(a) a person who has not turned 17 years; or

(b) after a day fixed under section 6 2—a person who has not turned 18 years.

"parent" means—

(a) a parent or guardian of a child; or

(b) a person who has lawful custody of a child other than because of

the child's detention for an offence or pending a proceeding for

an offence; or

(c) a person who has the day-to-day care and control of a child.

9E Another person must be present

(1) In a proceeding for an indictable offence, a court must not admit into evidence against the defendant a statement made or given to a police officer by the defendant when a child, unless the court is satisfied that there was present at the time and place the statement was made or given, a person mentioned in subsection (2).

(2) The person required to be present is—

(a) a parent of the child; or

(b) a legal practitioner acting for the child; or

(c) a person acting for the child who is employed by an agency

whose primary purpose is to provide legal services; or

(d) a justice of the peace other than—

(i) a justice of the peace who is a member of the Queensland Police Service; or

(ii) a justice of the peace (commissioner for declarations); or

(e) an adult nominated by the child.

(3) Subsection (1) does not apply if—

(a) the prosecution satisfies the court that there was proper and sufficient reason for the absence of a person mentioned in subsection (2) at the time the statement was made or given; and

(b) the court considers that, in the particular circumstances, the statement should be admitted into evidence.

(4) This section does not require that a police officer permit or cause to be present when a child makes or gives the statement a person whom the police officer suspects on reasonable grounds—

(a) is an accomplice of the child; or

(b) is, or is likely to become, an accessory after the fact;

in relation to the offence or another offence under investigation.

19 Police officer to consider alternatives to proceeding against child

(1) Subject to section 20, a police officer, before starting a proceeding against a child for an offence, must first consider whether in all the circumstances it would be more appropriate—

(a) to take no action; or

(b) to administer a caution to the child; or

(c) to refer the offence to a community conference; or

(d) to offer the child the opportunity to attend a drug diversion assessment program under the Police Powers and Responsibilities Act 2000, section 211. 31

(2) The circumstances to which the police officer must have regard include—

(a) the circumstances of the alleged offence; and

(b) the child's previous history known to the police officer.

(3) If necessary the police officer must delay starting a proceeding in order to consider the matters mentioned in subsection (2).

Division 2—Arrest

20 Arrest and ex officio indictment power preserved

(1) Sections 19 and 21 do not affect—

(a) the power to charge under the Justices Act 1886, section 42(1A); or

(b) a power to arrest a child for a serious offence; or

(c) a proceeding on an indictment.

(2) Despite sections 19 and 21, a police officer may arrest a child if the police officer believes on reasonable grounds that arrest is necessary—

(a) to prevent a continuation or a repetition of the offence or the commission of another offence; or

(b) to prevent concealment, loss or destruction of evidence relating to the offence.

(3) Despite section 21, a police officer may arrest a child if the arresting police officer believes on reasonable grounds that the child is unlikely to appear before the Children's Court in response to a complaint and summons or an attendance notice.

(4) Sections 19, 21 and 22 do not apply to the arrest of a child by a police officer who believes on reasonable grounds that the child is an adult.

(5) In deciding whether the police officer had the reasonable grounds, a court may have regard to the child's apparent age and the circumstances of the arrest.

21 Restriction on arrest of child

Subject to section 20, a proceeding against a child for an offence must be started by way of—

(a) complaint and summons under the Justices Act 1886; or

(b) attendance notice.

22 Parent and chief executive must be advised of arrest of child

(1) A person who arrests a child must promptly advise of the arrest and whereabouts of the child—

(a) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(b) the chief executive or a person who holds an office within the department nominated by the chief executive for the purpose.

(2) In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

54.6 VICTORIA

"child" means--

(a) in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 17 years but of or above the age of 10 years but does not include any person who is of or above the age of 18 years at the time of being brought before the Court; and (b) in any other case, a person who is under the age of 17 years or, if a protection order, a child protection order within the meaning of Schedule 2 or an interim order within the meaning of that Schedule continues in force in respect of him or her, a person who is under the age of 18 years;

"parent", in relation to a child, includes--

(a) the father and mother of the child; and

(b) the spouse of the father or mother of the child; and

(c) the domestic partner of the father or mother of the child; and

(d) a person who has custody of the child; and

(e) a person whose name is entered as the father of the child in the register of births in the Register maintained by the Registrar of Births, Deaths and Marriages under Part 7 of the Births, Deaths and Marriages Registration Act 1996; and

(f) a person who acknowledges that he is the father of the child by an instrument of the kind described in section 8(2) of the Status of Children Act 1974; and (g) a person in respect of whom a court has made a declaration of, or a finding or order regarding, the paternity of the child;

55 ATTACHMENT "D" – *POLICE ADMINISTRATION ACT*

PART VII – POLICE POWERS

Division 2B – Diversion of juvenile offenders

120F. Definitions

In this Division –

"divert", in relation to a juvenile, means to take an action under section 120H;

"juvenile" means a person who is less than 18 years of age;

"parent" means a parent, guardian or other person who is responsible for the care and custody of a juvenile.

120G. Purpose and application of Division

(1) The purpose of this Division is to provide a means of diverting juveniles who are believed on reasonable grounds to have committed offences.

(2) Except as provided by section 120K, nothing in this Division affects the application in respect of a juvenile of 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 an offence.

120H. Diversion of juvenile

If a member of the Police Force believes, on reasonable grounds, that –

(a) a person has committed an offence; and

(b) the person was a juvenile when the offence was committed,

the member may instead of charging the juvenile with the offence do one or more of the following:

(c) give the juvenile a verbal warning;

(d) give the juvenile a written warning;

(e) give the juvenile a formal caution;

(f) refer the juvenile to a diversionary program.

120J. Juvenile and parent must consent to diversion

(1) Subject to subsection (3), a member of the Police Force must not divert a juvenile unless the juvenile and a parent of the juvenile consent to the juvenile being diverted.

(2) If the juvenile or a parent of the juvenile does not consent to the juvenile being diverted, the member of the Police Force may charge the juvenile with the offence that the juvenile is believed on reasonable grounds to have committed and the juvenile may be prosecuted for the offence.

(3) If it is not possible or practicable for a member of the Police Force to obtain a parent's consent to a juvenile being diverted, the member may give the juvenile a verbal warning despite that the consent of a parent has not been obtained.

120K. Effect of diverting juvenile

If a juvenile is diverted and the diversion is completed to the satisfaction of a member of the Police Force, no criminal investigation or criminal legal proceedings may be commenced or continued against the juvenile in respect of the act or omission that constituted the offence in respect of which the diversion was made.

120M. Reporting on diversion of juvenile for sentencing purposes

(1) If a person is found guilty of an offence, information concerning the diversion of the person as a juvenile for that or any other offence may be produced in court for the purpose of determining the sentence to be imposed on the person for the offence.

(2) In subsection (1), a reference to the diversion of a juvenile includes dealing with the juvenile under a scheme for the diversion of juveniles operating in a State or another Territory of the Commonwealth that is similar to the scheme operating under this Division.

120N. Protection of members of Police Force acting in good faith

A member of the Police Force who, in good faith and in the course of his or her duty, decides to divert or not to divert a juvenile is not liable in any civil action arising out of the decision.

120P. No review or appeal except under Act

A decision to divert or not to divert a juvenile or that a juvenile did or did not complete a diversion satisfactorily cannot be reviewed or appealed against except as provided under this Act and is not to be subject to prohibition, mandamus or injunction on any ground in any court or tribunal.

56 ATTACHMENT "E" – PART 7 OF THE *YOUNG OFFENDERS ACT 1993* -

PART 7

THE JUVENILE JUSTICE ADVISORY COMMITTEE

***YOUNG OFFENDERS ACT 1993* - SECT 52.**

Establishment of the *Juvenile Justice Advisory Committee*

(1) The *Juvenile Justice Advisory Committee* is established.

(2) The Advisory Committee consists of six members appointed by the Governor, of whom—

(a) one (who will be designated by the instrument of appointment as the presiding member of the Committee and is to preside at all meetings of the Committee at which he or she is present) will be a person with recognised expertise in the field of juvenile justice; and

(b) one will be a Judge of the Supreme Court or of the District Court who is not a Judge of the Youth Court; and

(c) one will be a person who, in the opinion of the Attorney-General, has wide knowledge of and experience in law enforcement, and who is nominated by the Attorney-General; and

(d) one will be a person who, in the opinion of the Minister, has wide knowledge of and experience in youth affairs, and who is nominated by the Minister; and

(e) one will be a person who is, in the opinion of the Minister, a suitable representative of the interests of the public; and

(f) one will be an Aboriginal person who is, in the opinion of the Minister for Aboriginal Affairs, a suitable representative of the interests of the Aboriginal community, and who is nominated by the Minister for Aboriginal Affairs.

(3) At least one member of the Advisory Committee must be a man and at least one must be a woman.

(4) A member of the Advisory Committee holds office for such term, and on such conditions, as the Governor determines and specifies in the instrument of appointment.

(5) A member of the Advisory Committee is, on the expiration of a term of office, eligible for reappointment.

(6) The Governor may appoint a suitable person to be a deputy of a member of the Advisory Committee and such a person may act as a member of the Advisory Committee in the absence of that member.

Allowances and expenses

53. A member of the Advisory Committee is entitled to such allowances and expenses as the Governor may from time to time determine.

Removal from and vacancies of office

54. (1) The Governor may remove a member of the Advisory Committee from office on the ground of—

(a) mental or physical incapacity; or

(b) dishonourable conduct; or

(c) neglect of duty.

(2) The office of a member of the Advisory Committee becomes vacant if the member—

(a) dies; or

(b) completes a term of office; or

(c) resigns by notice in writing given to the Attorney-General; or

(d) is removed from office by the Governor under subsection (1).

(3) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed to that office in accordance with this Act.

Functions of the Advisory Committee

55. (1) The functions of the Advisory Committee are to—

(a) monitor and evaluate the administration and operation of this Act including the giving of formal cautions by police officers; and

(b) cause such data and statistics in relation to the administration of juvenile justice as it thinks fit, or as the Attorney-General may direct, to be collected; and

(c) perform any other functions assigned by this Act; and

(d) advise the Minister on other issues relevant to the administration of juvenile justice; and

(e) perform such other functions as may be assigned, by regulation, to the Advisory Committee.

(2) The Advisory Committee has full power to perform any act necessary or expedient for the performance of its functions.

Reports

56. (1) The Advisory Committee must, not later than 31 December in each year, report to the Attorney-General on the administration and operation of this Act during the previous financial year.

(2) The report to be presented under subsection (1) by 31 December 1996 must include a comprehensive report on the operation of this Act during the previous 3 years and such proposals as the Advisory Committee considers appropriate for its improvement.

(3) The Advisory Committee must investigate and report to the Attorney-General on any matter relevant to the administration of this Act that has been referred to the Advisory Committee by the Attorney-General for investigation and report.

(4) The Attorney-General must, within six sitting days after receiving a report submitted under this section, cause a copy of the report to be laid before each House of Parliament.

57 ATTACHMENT "F" – *COMMUNITY WELFARE ACT*

4. Interpretation

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

"access" means the contact of a child with a person, by way of a visit by or to that person, including attendance for a period at a place other than the child's habitual residence, or by way of a letter, telephone or other means;

"authorised person" means a person authorised in writing by the Minister to exercise powers and perform functions under this Act;

"child" means a person who has not attained the age of 18 years;

"Court" means the Family Matters Court established by section 24;

"custody", in relation to a child, means the responsibility for the daily care and control of the child, including decisions concerning accommodation, attendance at school, clothing, feeding, transportation, behaviour and urgent or routine health needs of the child;

"guardianship", in relation to a child, means the custody of the child and the responsibility for the long-term welfare of the child, including decisions concerning the education, changes in place of residence, religion, employment and the general health of the child and other rights, powers and duties before the commencement of this Act vested by law or custom in the guardian of a child;

"hospital" means a hospital within the meaning of the *Hospitals and Medical Services Act* or a private hospital within the meaning of the *Private Hospitals and Nursing Homes Act*;

"Juvenile Court" means the Court established by section 14 of the *Juvenile Justice Act*;

"place of safety" means an institution, hospital or other place the occupier of which is willing to receive and have temporary custody of a child;

(2) For the purposes of this Act, a child is in need of care, where –

(a) the parents, guardians or the person having the custody of the child have abandoned him and cannot, after reasonable inquiry, be found;

(b) the parents, guardians or the person having the custody of the child are or is unwilling or unable to maintain the child;

(c) he has suffered maltreatment;

(d) he is not subject to effective control and is engaging in conduct which constitutes a serious danger to his health or safety; or

(e) being excused from criminal responsibility under section 38 of the *Criminal Code* he has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community measured by commonly accepted community standards as to warrant appropriate action under this Act for the maintenance of those standards.

(3) For the purposes of this Act, a child shall be taken to have suffered maltreatment where –

(a) he has suffered a physical injury causing temporary or permanent disfigurement or serious pain or has suffered impairment of a bodily function or the normal reserve or flexibility of a bodily function, inflicted or allowed to be inflicted by a parent, guardian or person having the custody of him or where there is substantial risk of his suffering such an injury or impairment;

(b) he has suffered serious emotional or intellectual impairment evidenced by severe psychological or social malfunctioning measured by the commonly accepted standards of the community to which he belongs, because of his physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he is living or where there is a substantial risk that such surroundings, deprivation or environment will cause such emotional or intellectual impairment;

(c) he has suffered serious physical impairment evidenced by severe bodily malfunctioning, because of his physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he is living or where there is substantial risk that such surroundings, deprivation or environment will cause such impairment;

(d) he has been sexually abused or exploited, or where there is substantial risk of such abuse or exploitation occurring, and his parents, guardians or persons having the custody of him are unable or unwilling to protect him from such abuse or exploitation; or

(e) being a female, she –

(i) has been subjected, or there is substantial risk that she will be subjected, to female genital mutilation, as defined in section 186A of the Criminal Code; or

(ii) has been taken, or there is a substantial risk that she will be taken, from the Territory with the intention of having female genital mutilation performed on her.

58 ATTACHMENT "G" – DIVISION 2 OF THE *SENTENCING ACT*

SENTENCING ACT

Division 2 – Information and Reports before Passing Sentence

Subdivision 1 – Information, Reports, &c.

103. Assessment of offender before certain orders made

(1) A court shall, before imposing a sentence on an offender that requires the offender to be under the supervision of a probation officer, have regard to a report of the Director as to the suitability of the offender to be under supervision.

(2) A report under subsection (1) may be in writing or given orally to the court.

104. Information before passing sentence or making order

(1) A court may, before passing sentence on an offender, receive such information as it thinks fit to enable it to impose the proper sentence.

(2) A court may, before making an order for restitution or compensation under Division 1 of Part 5, receive such information as it thinks fit to enable it to make the proper order.

105. Court may order pre-sentence report

A court may, before passing sentence on an offender, order a pre-sentence report in respect of the offender and adjourn the proceedings to enable the report to be prepared and may admit the offender to bail or remand the offender in custody.

106. Contents of pre-sentence report

(1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her:

(a) the age of the offender;

(b) the social history and background of the offender;

(c) the medical and psychiatric history of the offender;

(d) the offender's educational background;

(e) the offender's employment history;

(f) the circumstances of other offences of which the offender has been found guilty and which are known to the court;

(g) the extent to which the offender is complying with a sentence currently imposed on the offender;

(h) the offender's financial circumstances;

(j) any special needs of the offender;

(k) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which the offender may benefit.

(2) The author of a pre-sentence report shall include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

Subdivision 2 – Victim Impact Statements and Victim Reports

106A. Definitions

In this Subdivision –

"harm" includes –

(a) physical injury;

(b) psychological or emotional suffering, including grief;

(ba) contraction or fear of contraction of a sexually transmissible medical condition;

(c) pregnancy; and

(d) economic loss;

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

"victim" means –

(a) a person who suffers harm arising from an offence; or

(b) where the person referred to in paragraph (a) dies as a result of the commission of the offence, a person who was a relative of, or who was financially or psychologically dependent on, the person;

"victim impact statement" means an oral or written statement prepared for the purposes of section 106B(1) containing details of the harm suffered by a victim of an offence arising from the offence;

"victim report" means an oral or written statement, prepared by the prosecutor for the purposes of section 106B(2), containing details of the harm suffered by a victim of an offence arising from the offence.

106B. Victim impact statements and victim reports

(1) The prosecutor shall present to the court, before it sentences an offender in relation to an offence, a victim impact statement where –

(a) the victim consents to its presentation; or

(b) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – the report has been prepared by a person who, in the opinion of the court, has a sufficiently close relationship with the victim.

(2) The prosecutor shall present to the court, before it sentences an offender in relation to an offence, a victim report in relation to each victim of the offence where –

(a) the victim has not consented to the presentation to the court of a victim impact statement in relation to him or her but has been informed of the contents of the victim report and does not object to its presentation;

(aa) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – a person who, in the opinion of the court, has a sufficiently close relationship with the victim has been informed of the contents of the victim report and does not object to its presentation; or

(b) the victim cannot, after reasonable attempts have been made by the prosecutor, be located,

and there are readily ascertainable details of the harm suffered by the victim arising from the offence that are not already before the court as evidence or as part of a pre-sentence report prepared under section 105 in relation to the offender.

(3) With the permission of the court, a person other than the prosecutor may present a victim impact statement.

(4) Subject to subsections (7) and (8), the court shall consider each victim impact statement and each victim report, if any, in relation to an offence before determining the sentence to be imposed in relation to the offence.

(5) A victim impact statement or a victim report may contain details of the harm caused to the victim of the offence to which the statement or report relates arising from another offence –

(a) for which the offender has already been sentenced, or will be sentenced in the proceedings then before the court; or

(b) which, under section 107, has already been taken into account in a sentence or which may be taken into account under that section in the proceedings then before the court.

(5A) A victim impact statement or victim report may contain a statement as to the victim's wishes in respect of the order that the court may make in relation to the offence referred to in the statement or the report.

(6) A court shall not draw an inference in favour of an offender or against a victim because a victim impact statement or victim report is not presented to the court.

(7) A court shall not take into account a written victim impact statement unless it has been signed.

(8) A court shall not take into account a victim impact statement or a victim report, where the statement or report –

(a) is in writing, unless a copy of the statement or report is provided to the offender; or

(b) is to be presented to the court orally, unless a written or oral summary of the contents of the statement or report is provided to the offender.

(9) A legal practitioner representing the offender or, with the leave of the court, the offender –

(a) where a victim impact statement is in writing, may cross-examine the person who signed the statement; or

(b) where a victim impact statement is presented to the court orally, may cross-examine the person, not being the prosecutor, presenting the statement,

about its contents.

59 ATTACHMENT "H" – PART 2 OF THE *SENTENCING ACT*

Sentencing Act

Part 2 - General Principles

5. Sentencing guidelines

(1) The only purposes for which sentences may be imposed on an offender are –

(a) to punish the offender to an extent or in a way that is just in all the circumstances;

(b) to provide conditions in the court's order that will help the offender to be rehabilitated;

(c) to discourage the offender or other persons from committing the same or a similar offence;

(d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved;

(e) to protect the Territory community from the offender; or

(f) a combination of 2 or more of the purposes referred to in this subsection.

(2) In sentencing an offender, a court shall have regard to –

(a) the maximum and any minimum penalty prescribed for the offence;

(b) the nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim;

(ba) if the offence is a sexual offence –

(i) whether the victim contracted a sexually transmissible medical condition as a result of the offence; and

(ii) whether the offender was aware at the time of the offence that he or she had a medical condition that could be sexually transmitted;

(c) the extent to which the offender is to blame for the offence;

(d) any damage, injury or loss caused by the offender;

(e) the offender's character, age and intellectual capacity;

(f) the presence of any aggravating or mitigating factor concerning the offender;

(fa) [Omitted]

(g) the prevalence of the offence;

(h) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences;

(j) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(k) time spent in custody by the offender for the offence before being sentenced;

(m) sentences imposed on, and served by, the offender in a State or another Territory of the Commonwealth for an offence committed at, or about the same time, as the offence with which the court is dealing;

(n) sentences already imposed on the offender that have not been served;

(p) sentences that the offender is liable to serve because of the revocation of orders made under this or any other Act for contraventions of conditions by the offender;

(q) if the offender is the subject of a community work order, the offender's compliance with the order;

(r) anything else prescribed by this Act to which the court is required to have regard; and

(s) any other relevant circumstance.

(3) For the purposes of subsection (2)(ba) –

(a) a certificate by a medical practitioner that a person has (or had at a stated time) a sexually transmissible medical condition is evidence of the existence of that condition; and

(b) if –

(i) a certificate is tendered that the offender had at the relevant time a sexually transmissible medical condition; and

(ii) evidence is given that the victim contracted the medical condition at a time that is consistent with the medical condition being transmitted from the offender,

the contraction by the victim of the medical condition is to be taken to be a result of the offence.

6. Factors to be considered in determining offender's character

In determining the character of an offender, a court may consider, among other things –

(a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender;

(b) the general reputation of the offender; and

(c) any significant contributions made by the offender to the community.