TASMANIA

YOUTH JUSTICE ACT 1997

No. 81 of 1997

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An Act to provide for the treatment and sanctioning of young persons who have committed offences and for related purposes

[Royal Assent 14 January 1998]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Youth Justice Act 1997*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

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

Aboriginal youth means a youth who is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995*;

Administrator means the Administrator appointed under section 16 of the *Magistrates Court Act 1987*;

amend means one or more of the following:

(a) omitting all or any matter;

(b) inserting matter;

(c) substituting matter;

authorised police officer means a police officer who has been authorised by the Commissioner of Police to administer formal cautions against further offending;

Chief Psychiatrist has the same meaning as in the *Mental Health Act 2013*;

Chief Magistrate means the Chief Magistrate appointed under section 5 of the *Magistrates Court Act 1987*;

Commissioner for Children and Young People means the Commissioner for Children and Young People appointed and holding office under the

Commissioner for Children and Young People Act 2016;

community conference means a community conference convened, or to be convened, under Division 3 of Part 2 or on the order of the Court;

community service means attending, or undertaking, a community service activity;

community service activity means an activity that is approved under section 6A;

community service order means an order made under section 47(1)(g) or 62(4)(b) requiring a youth to perform community service;

compensation order means an order made under section 47(2)(c) requiring a youth to make compensation;

complaint has the same meaning as in the *Justices Act 1959*;

controlled substance has the same meaning as in the *Misuse of Drugs Act 2001*;

Court means the Magistrates Court (Youth Justice Division) established by section 159;

Custodial Inspector means the Custodial Inspector appointed under section 5 of the *Custodial Inspector Act 2016*;

detainee means a person who is being lawfully detained in a detention centre;

detention, in the case of a sentence of detention, means detention in a detention centre;

detention centre means a detention centre established under section 123;

detention centre manager means a person appointed under section 124A;

detention offence means an offence –

(a) specified in section 139; and

(b) specified in section 143 where the offender or alleged offender is a detainee;

detention order means an order made under section 47(1)(h) requiring a youth to be detained in a detention centre;

detention period means the period of detention specified in a detention order;

Director, Monetary Penalties Enforcement Service has the same meaning as in the *Monetary Penalties Enforcement Act 2005*;

district registrar means a district registrar appointed under section 16A of the *Magistrates Court Act 1987*;

drug means –

(a) a scheduled substance within the meaning of the *Poisons Act 1971*; or

(b) a controlled substance within the meaning of the *Misuse of Drugs Act 2001*;

earliest release date means the day immediately following the completion of 50% of the period of detention during which a youth is liable to be detained or 3 months, whichever is the longer;

facilitator means a person holding an appointment as a facilitator under section 167;

family violence offence means a family violence offence within the meaning of the *Family Violence Act 2004*;

fine means a fine imposed under section 47(1)(e);

formal caution means a caution administered under section 10;

goods includes a motor vehicle;

Government Agency has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

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;

indictable offence means an offence that may be prosecuted upon indictment even though it may, in some circumstances, be dealt with summarily;

informal caution means an informal caution given under section 8;

information-sharing entity has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

legal practitioner means an Australian legal practitioner;

legal representative means a legal practitioner who represents a youth or another person;

next release date means the day specified by the Court under section 117(12) as the next release date when making an order cancelling a supervised release order;

nominated adult, in relation to a youth, 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;

mental illness has the same meaning as in the *Mental Health Act 2013*;

offence means any offence other than a prescribed offence;

offence-affected property includes –

(a) property in respect of which an offence was committed; or

(b) property affected in the course of, or in connection with, the commission of an offence;

police investigation means the questioning by police officers of a detainee, or the carrying out by police officers of an investigation in which a detainee participates, in order to determine the

detainee's involvement, if any, in relation to an offence;

prescribed offence means –

(a) in respect of a youth who is less than 14 years old –

(i) an offence under section 158 of the *Criminal Code* (murder); and

(ii) an offence under section 159 of the *Criminal Code* (manslaughter); and

(iii) an offence under section 299 of the *Criminal Code* in relation to an offence referred to in section 158 of the *Criminal Code* (attempted murder); and

(iv) an offence which is prescribed by the regulations to be a prescribed offence for the purposes of this subparagraph; and

(b) in respect of a youth who is 14, 15 or 16 years old –

(i) an offence referred to in paragraph (a); and

(ii) an offence under section 127A of the *Criminal Code* (aggravated sexual assault); and

(iii) an offence under section 185 of the *Criminal Code* (rape); and

(iiia) an offence under section 125A of the *Criminal Code* (persistent sexual abuse of a child [*or* young person]); and

(iv) an offence under section 240(3) of the *Criminal Code* (armed robbery); and

(v) an offence under section 240(4) of the *Criminal Code* (aggravated armed robbery); and

(vi) an offence under section 248(a) of the *Criminal Code* (being found prepared for the commission of a crime under Chapter XXVII of the *Criminal Code* armed with a dangerous or offensive weapon or instrument); and

(via) an offence under section 11A of the *Police Powers (Vehicle Interception) Act 2000*; and

(vii) an offence which is prescribed by the regulations to be a prescribed offence for the purposes of this subparagraph; and

(c) in respect of a youth who is 17 years old –

(i) an offence referred to in paragraph (b); and

(ia) an offence under section 37J of the *Police Offences Act 1935*; and

(ii) an offence under the *Marine Safety (Misuse of Alcohol) Act 2006*, the *Road Safety (Alcohol and Drugs) Act 1970*, the *Traffic Act 1925* or the *Vehicle and Traffic Act 1999* except where proceedings for that offence are, or are to be, determined in conjunction with proceedings for an

offence that is not a prescribed offence; and

(iii) an offence which is prescribed by the regulations to be a prescribed offence for the purposes of this subparagraph;

prescription medicine means a medicine the issue of which is prohibited except in accordance with the prescription of a medical practitioner;

previous offending history includes –

(a) any offence in respect of which a youth has received a formal caution; and

(b) any offence in respect of which a youth has attended a community conference; and

(c) any offence, and any prescribed offence, in respect of which a youth has been found guilty, whether or not the charge for the offence or prescribed offence has been dismissed or a conviction recorded;

prison means a prison within the meaning of the *Corrections Act 1997*;

probation order means an order made under section 47(1)(f) placing a youth on probation;

provide includes cause to be provided;

psychologist means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the psychology profession;

receiving State means the State to which a youth is transferred;

recognised Aboriginal organisation has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

regulations means the regulations made and in force under this Act;

rehabilitation program means a structured treatment program designed to reduce the likelihood of a person who has committed a family violence offence re-offending;

rehabilitation program order means an order to attend and participate in a rehabilitation program and in doing so comply with the reasonable directions of a person employed or engaged to conduct such a program;

release and adjournment order means an order made under section 47(1)(d);

responsible adult, in relation to a youth, means a person who –

(a) is a nominated adult in relation to the youth; or

(b) if there is no nominated adult in relation to the youth, a justice of the peace or a person, or a member of a class of persons, approved by the Secretary;

restitution order means an order under section 47(2)(b) requiring a person to perform one or more of the actions specified in section 95(1);

Secretary means the Secretary of the Department;

secure mental health unit has the same meaning as in the *Mental Health Act 2013*;

sending State means the State from which a youth is transferred;

serve includes cause to be served;

State includes a Territory;

statutory authority means an incorporated or unincorporated body which is established, constituted or continued by or under an Act or under the royal prerogative, being a body which, or of which the governing authority, wholly or

partly comprises a person or persons appointed by the Governor, a Minister of the Crown or another statutory authority;

summons has the same meaning as in the *Justices Act 1959*;

supervised release order means an order made by the Secretary under section 110;

transfer agreement means an agreement between the Minister and a Minister of another State under section 148;

transfer arrangement means an arrangement made under section 149 for the transfer of a youth from Tasmania to another State or to Tasmania from another State;

transfer order means an order made under section 153;

Tribunal means the Tasmanian Civil and Administrative Tribunal;

undertaking to be of good behaviour means an undertaking entered into, or to be entered into, by a youth under section 47(1)(c);

victim, in the case of a victim that is a corporation, Government department, statutory authority or other organisation, includes a representative of that corporation, Government department, statutory authority or other organisation;

watch-house means –

(a) a building or part of a building at a police station used for the confinement of persons under arrest or otherwise lawfully detained in custody; and

(b) a place approved by the Minister under subsection (2);

working day means a Monday, Tuesday, Wednesday, Thursday or Friday except where that day is a statutory holiday as defined in the *Statutory Holidays Act 2000*;

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;

youth justice worker – see section 166A.

(2) The Minister, in writing, may approve a place as a watch-house.

4. Objectives of Act

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 and rehabilitation and, if necessary, is appropriately sanctioned; and

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

(i) minimising the incidence of youth crime; and

(ii) sanctioning 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; and

(i) to ensure that, wherever practicable, a youth who has committed an offence is provided with appropriate opportunities to repair any harm caused by the commission of the offence to the victim of the offence and the community and to reintegrate himself or herself into the community.

5. General principles of youth justice

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

(j) any sanctioning 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;

(f) an Aboriginal youth should be dealt with in a manner that involves his or her cultural community.

5A. Inconsistency with *Mental Health Act 2013*

Where there is an inconsistency between this Act and the *Mental Health Act 2013*, this Act prevails to the extent of that inconsistency.

6. Determining age

(1) In determining the age of a person, a court or police officer –

(a) must act on the best evidence or information that is reasonably available; but

(b) in the absence of any such evidence or information, may estimate the age of the person and act on that estimate.

(2) For the purposes of subsection (1), a statement in a complaint that a person is of a particular age is evidence that the person is that age.

(3) If, in any proceedings before a court, it becomes apparent to that court that the person who is the subject of those proceedings should, by reason of age, be dealt with in some other court, the court may remand that person to appear in the appropriate court.

6A. Activities that may be performed as community service

(1) The Secretary is to approve the types of activity that may be undertaken in the performance of community service, other than community service for the purposes of section 10.

(2) The Commissioner of Police is to approve the types of activity that may be undertaken in the performance of community service for the purposes of section 10.

(3) Without limiting the generality of subsections (1) and (2), the activities that may be approved under those subsections include attendance at –

(a) programs that constitute education or training; or

(b) programs run for the purpose of assisting youths who have committed offences to reintegrate into the community; or

(c) health and personal development programs.

(4) The Secretary, or the Commissioner of Police, may not approve a type of activity under subsection (1) or (2) unless –

(a) he or she is of the opinion that the type of activity is suitable for the performance of community service by youths; and

(b) the type of activity is able to be provided to youths; and

(c) youths undertaking the activity will not be paid for doing so.

PART 2 – DIVERTING YOUTHS FROM COURT SYSTEM

Division 1 – Preliminary

7. Purpose of Part 2

The purpose of this Part is to divert, in an appropriate case, a youth who admits committing an offence from the courts' criminal justice system.

Division 2 – Diversionary procedure by police

8. Informal caution

(1) If a youth admits the commission of an offence and a police officer is of the opinion that the matter does not warrant any formal action under this Act, the officer may informally caution the youth against further offending and proceed no further against the youth.

(2) If a youth is informally cautioned under this section, no further proceedings may be taken against the youth for the offence in relation to which the youth was cautioned.

9. More formal proceedings

(1) If a youth admits the commission of an offence and a police officer is of the opinion that the matter warrants a more formal action under this

Act than an informal caution, the officer may deal with the matter as follows:

(a) the officer may require that the youth be formally cautioned against further offending;

(b) the officer may require the Secretary to convene a community conference to deal with the matter;

(c) the officer may file a complaint for the offence before the Court.

(2) Before a police officer requires that a youth be formally cautioned against further offending or requires the Secretary to convene a community conference –

(a) the officer must explain to the youth –

(i) the nature of the offence and of the circumstances out of which it is alleged to arise; and

(ii) that the youth is entitled to obtain legal advice; and

(iii) that the youth is entitled (whether or not he or she exercises the right to obtain legal advice) to require that the matter be dealt with by the Court; and

(b) if the youth does not require the matter to be dealt with by the Court, the officer must record the admission of the

commission of the offence in written form and request the youth to sign the admission; and

(c) the youth must agree to being formally cautioned or to the convening of a community conference.

(3) Before a police officer requires that a youth be formally cautioned against further offending, if the police officer considers it appropriate in all the circumstances, the police officer must –

(a) ask the victim of the offence whether he or she wishes to be present at the administration of the formal caution; and

(b) where the victim wishes to be present, allow the victim the opportunity to attend the administration of the formal caution; and

(c) where the victim does not wish to be present, ask the victim whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with.

(4) Before a police officer can require the Secretary to convene a community conference, the youth must sign an undertaking to attend the conference.

(5) The following proceedings are to take place, if practicable, in the presence of a guardian or, if a guardian is not available, a responsible adult:

(a) the explanation given to the youth under subsection (2);

(b) the signing of an admission by the youth under subsection (2);

(c) the agreement of the youth under subsection (2) to being formally cautioned or to the convening of a community conference;

(d) the signing of an undertaking by the youth under subsection (4).

(6) A complaint may only be filed under subsection (1)(c) –

(a) if the youth requires that the matter be dealt with by the Court; or

(b) if the police officer is of the opinion that a formal caution should be administered to the youth but the youth does not –

(i) agree to being formally cautioned; or

(ii) sign the formal caution; or

(iii) enter into an undertaking if required to do so under section 10(2); or

(c) if the police officer is of the opinion that a community conference should be convened to deal with the youth but the youth does not –

(i) agree to the convening of a community conference; or

(ii) enter into an undertaking to attend the community conference; or

(d) if, in the opinion of the police officer, the matter cannot be adequately dealt with by the administration of a formal caution or by a community conference in view of the seriousness or the nature of the offence.

10. Formal caution

(1) A formal caution against further offending is to be administered to the youth by an authorised police officer.

(2) If an authorised police officer administers a formal caution against further offending, the officer may also require the youth to enter into one or more of the following undertakings:

(a) an undertaking to pay compensation, in the manner specified in the undertaking, for –

(i) loss of or damage to offence-affected property; and

(ii) injury suffered, expenses incurred or other loss suffered by the victim of the offence; and

(iii) injury suffered, expenses incurred or other loss suffered by any other person by reason of the offence;

(b) an undertaking to make restitution of offence-affected property;

(c) if the youth is 13 or more years old when required to enter into the undertaking, an undertaking to perform a specified period (of not more than 35 hours) of community service consisting of a community service activity which is for the benefit of the victim of the offence or a purpose specified in section 6A(3);

(ca) if the youth is less than 13 years old when required to enter into the undertaking, an undertaking to perform a specified period (of not more than 35 hours) of community service consisting of a community service activity which is for a purpose specified in section 6A(3)(a) or (c);

(d) an undertaking to apologise to the victim of the offence;

(e) an undertaking to do anything else that may be appropriate in the circumstances of the case.

(2A) An undertaking must not be required under subsection (2)(c) or (ca) if the effect would be to require the youth to undertake a number of hours of community service that would, when

combined with the number of hours of community service the youth still has to perform under all community service orders, or all undertakings previously entered into under one of those subsections or section 16(1)(e), total –

(a) more than 70 hours, if the youth is less than 16 years old when required to enter into the undertaking; or

(b) more than 210 hours, if the youth is 16 or more years old when required to enter into the undertaking.

(2B) An undertaking under subsection (2)(c) or (ca) operates cumulatively to every other such undertaking under that subsection or section 16(1)(e).

(3) If a formal caution is to be administered in respect of an offence, the authorised police officer must explain to the youth –

(a) the nature of the caution; and

(b) that the administering of the caution may be treated as evidence of commission of the offence by a police officer, community conference or court if the youth has to be dealt with for a subsequent offence.

(4) A formal caution must –

(a) if practicable, be administered in the presence of –

(i) a guardian; or

(ii) if a guardian is not available, a responsible adult; and

(b) be put in writing; and

(c) contain –

(i) details of the offence; and

(ii) the youth's name; and

(iii) the authorised police officer's name and rank; and

(iv) the name of the place where, and the time when, the caution was administered; and

(v) the names of all other persons present when the caution was administered; and

(vi) details of the nature and effect of the caution; and

(vii) details of all undertakings entered into by the youth under this section; and

(d) be signed by the youth, the authorised police officer and, if reasonably practicable, by the guardian or responsible adult.

(5) Before requiring a youth to enter an undertaking under this section, the authorised police officer

must give the youth, and any guardian or responsible adult present, an opportunity to make representations with respect to the matter.

(6) If a youth enters into an undertaking under this section to apologise to the victim of the offence, the apology must be made in the presence of an adult approved by an authorised police officer.

(7) An undertaking will have a maximum duration of 3 months.

(8) A youth who signs a formal caution is not liable to be prosecuted for an offence if the youth enters into and substantially fulfils all undertakings the authorised police officer requires under this section.

(8A) For the purposes of subsection (8), a youth who has failed to substantially fulfil an undertaking is to be taken to have substantially fulfilled the undertaking if the youth has a reasonable excuse for the failure.

(9) After administering a formal caution, the authorised police officer must –

(a) ask the victim of the offence whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with if the victim was not present and has not been asked those questions previously by a police officer; and

(b) give the victim that information if the victim has indicated to the authorised

police officer or previously to another police officer that he or she does wish to have that information.

(10) A record is to be kept of a formal caution.

(11) In a proceeding under this Act, a document purporting to be a formal caution or a copy of a formal caution is evidence of the matters contained in the document.

11. Caution administered by Aboriginal Elder or representative

(1) If a formal caution is to be administered to an Aboriginal youth, the caution is to be, if practicable, administered by an Elder of an Aboriginal community or a representative of a recognised Aboriginal organisation despite section 10.

(2) A formal caution may only be administered by an Elder of an Aboriginal community or a representative of a recognised Aboriginal organisation at the request, and in the presence, of an authorised police officer.

(3) If an Elder of an Aboriginal community or a representative of a recognised Aboriginal organisation administers a formal caution –

(a) section 10 applies as if the Elder or representative were an authorised police officer; and

(b) the caution must contain, in addition to the information specified in section 10(4)(c), the name of the Elder or representative, the name of the Aboriginal community or recognised Aboriginal organisation and the name and rank of the authorised police officer in whose presence the caution was administered.

12. Caution administered by community representative

(1) If a formal caution is to be administered to a youth who is or considers himself or herself to be a member of a religious, ethnic or other community group and the authorised police officer who would, but for this section, administer the formal caution considers it appropriate, the caution may be administered by a representative of that group approved by that authorised police officer despite section 10.

(2) A formal caution may only be administered by a representative of a religious, ethnic or other community group at the request, and in the presence, of an authorised police officer.

(3) If a representative of a religious, ethnic or other community group administers a formal caution –

(a) section 10 applies as if the representative were an authorised police officer; and

(b) the caution must contain, in addition to the information specified in section 10(4)(c), the name of the

representative, the name or other identification of the community group and the name and rank of the authorised police officer in whose presence the caution was administered.

12A. Where undertakings in formal caution not substantially fulfilled

(1) This section applies in relation to a youth in respect of an offence if –

(a) a formal caution is, in accordance with section 9(1)(a), administered to the youth under section 10 in relation to an offence; and

(b) the youth fails, without reasonable excuse, to substantially fulfil an undertaking that he or she was required, when 13 or more years old, to enter into under section 10 in relation to the offence.

(2) If this section applies in relation to a youth in respect of an offence, an authorised police officer –

(a) may decide to take no further action in relation to the offence; or

(b) after consultation with the Secretary, may deal with the youth again under section 9 in relation to the offence.

(3) If a youth fails, without reasonable excuse, to substantially fulfil an undertaking (the ***previous undertaking***) that he or she was required, when 13 or more years old, to enter into under section 10 in relation to the offence and, in accordance with subsection (2)(b), an authorised police officer deals with the youth again under section 9 in relation to the offence –

(a) any undertakings, including the previous undertaking, in relation to the offence cease to be in force; and

(b) the failure to substantially fulfil the previous undertaking is to be taken, for the purpose of the application of section 10(8) to the offence, not to have occurred.

(4) If this section applies in relation to a youth in respect of an offence, a complaint may, despite section 26(1)(a) of the *Justices Act 1959*, be filed in accordance with section 9(1)(c) for the offence even though the complaint is filed after the end of the period of 6 months after the time when the matter of complaint arose, but may only be filed before the end of the relevant period in relation to the undertaking, in respect of the offence, that the youth has failed to substantially fulfil.

(5) For the purposes of subsection (4), the end of the relevant period in relation to an undertaking is –

(a) if a date or period was specified in the undertaking as the date or period by the

expiry of which the undertaking is to be fulfilled, that date or the last day of that period, as the case may be; or

(b) if paragraph (a) does not apply to the undertaking, within 3 months after the undertaking was entered into.

Division 3 – Community conferences

13. Notifying Secretary that community conference required

(1) If a youth enters into an undertaking to attend a community conference, the police officer must notify the Secretary that he or she requires a community conference to be convened and provide the Secretary, whenever possible, with the names and addresses of –

(a) the youth; and

(b) the guardians of the youth; and

(c) any relative of the youth who may, in the opinion of the officer, be able to participate usefully in the community conference; and

(d) any other person who –

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

(ii) in the opinion of the officer, may be able to participate usefully in the community conference; and

(e) any victim of the offence.

(2) The notice requiring the convening of a community conference must specify the details of the offence committed by the youth.

14. Convening of community conference

(1) On receipt of a notice from a police officer that the convening of a community conference is required, the Secretary must assign a facilitator to convene and facilitate the community conference.

(2) The facilitator –

(a) must fix a time and place for the community conference; and

(b) must issue a notice specifying the time and place at which the community conference is to be held; and

(c) must invite the following persons to attend the community conference:

(i) the persons whose names and addresses are provided to the Secretary under section 13(1);

(ia) a youth justice worker;

(ii) if the youth is a member of an Aboriginal community, an Elder or other representative of that community;

(iii) any other person the facilitator, after consulting with the youth and the youth's guardians and family (if available), considers appropriate to attend the community conference; and

(d) must inquire of the victim of the offence whether he or she wishes to be informed of the outcome of the community conference.

(3) The facilitator must provide the police officer who required the community conference or the Commissioner of Police with a copy of the notice specifying the time and place at which the community conference is to be held.

(4) If reasonably practicable, the time fixed for a community conference must be within 3 weeks after the Secretary receives the notice from the police officer requiring the convening of a community conference.

15. Constitution of and attendance at community conference

(1) A community conference consists of –

(a) the facilitator; and

(b) the youth; and

(c) those persons who attend the conference in response to the invitation of the facilitator; and

(d) the police officer who required the community conference or a representative of the Commissioner of Police.

(2) The victim of an offence who attends a community conference is entitled to be accompanied by one or more persons of the victim's choice to provide support and assistance to the victim.

(3) The youth who attends a community conference is entitled to be accompanied by one person of his or her choice to provide support and assistance to the youth.

(4) A person may, with the permission of the facilitator, attend a community conference for the purpose of providing expert advice or information on matters relevant to the conference.

(5) Despite this section, if the facilitator considers that a person attending the community conference is deliberately attempting to disrupt the conference, the facilitator may –

(a) require that person to leave the conference; and

(b) if the person refuses to leave, take such steps as are necessary to remove the person from the conference.

16. Powers of community conference

(1) A community conference may impose one or more of the following sanctions:

(a) administer a caution against further offending;

(b) require the youth to enter into an undertaking to pay compensation for injury suffered by the victim or any other person by reason of the commission of the offence;

(c) require the youth to enter into an undertaking to pay compensation for loss or destruction of, or damage to, offence-affected property;

(d) require the youth to enter into an undertaking to make restitution of offence-affected property;

(e) if the youth is 13 or more years old, require the youth to enter into an undertaking to perform a specified period, not exceeding 70 hours, of community service;

(f) with the agreement of the victim of the offence, require the youth to enter into an undertaking to apologise to the victim;

(g) require the youth to enter into an undertaking to do anything else that may be appropriate in the circumstances of the case.

(2) An undertaking may have a duration not exceeding 12 months.

(3) An undertaking must not be required under subsection (1)(e) if the effect would be to require the youth to undertake a number of hours of community service that would, when combined with the number of hours of community service the youth still has to perform under all community service orders, or all undertakings previously entered into under that subsection or section 10(2)(c), total –

(a) more than 70 hours, if the youth is 13, 14 or 15 years old when required to enter into the undertaking; or

(b) more than 210 hours, if the youth is 16 or more years old when required to enter into the undertaking.

(4) An undertaking under subsection (1)(e) operates cumulatively to every other such undertaking under that subsection or section 10(2)(c).

17. Procedure at community conference

(1) The facilitator must ensure that all persons attending a community conference understand its nature, purpose and consequences.

(2) In deciding an appropriate sanction, a community conference is to consider –

(a) the objectives specified in section 4 and the principles specified in section 5; and

(b) the sanctions imposed by courts, community conferences and police officers on youths in respect of similar offences if that information is readily available to the community conference.

(3) If practicable, a community conference should reach a decision on the sanctions to be imposed on a youth by consensus.

(4) A community conference fails to reach a decision unless all the following persons agree to the imposition of a sanction:

(a) the youth;

(b) the police officer or representative of the Commissioner of Police;

(c) if the victim is present at the conference, the victim.

(5) If the facilitator considers it appropriate, the facilitator may adjourn a community conference from time to time and from place to place.

18. Concluding community conference

(1) Before a community conference ends –

(a) a decision of the community conference must be recorded in writing and signed by each of the following persons:

(i) the youth;

(ii) the police officer or representative of the Commissioner of Police;

(iii) if the victim is present at the conference, the victim; and

(b) if a caution is administered to the youth, the caution must be –

(i) administered to the youth by the person the community conference has determined is to do so; and

(ii) recorded in writing and signed by the youth; and

(c) if the youth is required to enter into an undertaking, the undertaking must be recorded in writing and signed by the youth; and

(d) if the youth enters into an undertaking to apologise to the victim of the offence, the police officer or representative of the Commissioner of Police must approve an adult in whose presence the apology is to be made.

(2) The decision must include –

(a) the names of the persons who attended the conference; and

(b) details of the time and place at which the conference was held; and

(c) the name of the person determined by the conference to administer the caution; and

(d) details of any approval given under subsection (1)(d).

19. Procedure after community conference

(1) If a community conference reaches a decision, the facilitator must –

(a) file with the district registrar each undertaking to pay compensation or make restitution entered into by the youth; and

(b) provide the youth and each person who attended the community conference in response to the invitation of the facilitator with a copy of the decision and each undertaking entered into by the youth; and

(c) provide the victim of the offence with a copy of the decision and each undertaking entered into by the youth if the victim was not present at the community conference but has indicated that he or she wishes to be informed of

the outcome of the community conference.

(1A) If an undertaking to pay compensation or make restitution is filed with the district registrar in accordance with subsection (1)(a), the district registrar must –

(a) refer the undertaking to the Director, Monetary Penalties Enforcement Service for collection of the amount of compensation or restitution; and

(b) notify the Director, Monetary Penalties Enforcement Service of the date the undertaking was entered into.

(2) If a youth enters into an undertaking at a community conference to pay compensation or make restitution, payments of compensation or restitution must be made to the Director, Monetary Penalties Enforcement Service who will disburse the compensation or restitution to the victims named in the undertaking.

(3) The Director, Monetary Penalties Enforcement Service must notify the Secretary if the youth does not complete the payment of compensation or the making of restitution as required by an undertaking entered into at a community conference.

(4) If a youth enters into an undertaking at a community conference to apologise to the victim of the offence, the apology must be made in the presence of an adult approved under section 18(1)(d).

(5) If a youth apologises to the victim of the offence in accordance with an undertaking entered into at a community conference, the adult in whose presence the apology is made must notify the Secretary that the apology has been made.

(6) When the youth has fulfilled all undertakings entered into at a community conference, the Secretary must file with the Commissioner of Police a certificate stating that fact.

(7) The Secretary must notify the Commissioner of Police if the youth does not fulfil all undertakings entered into at the community conference.

20. Liability of youth to be prosecuted

(1) A youth is not liable to be prosecuted for an offence in respect of which a community conference was convened if –

(a) the community conference administers a caution against further offending but does not require the youth to enter into an undertaking; or

(b) the youth enters into the undertakings required by the community conference and performs the obligations arising from those undertakings.

(2) A police officer may file a complaint before the Court for an offence in respect of which a community conference is convened if –

(a) the youth fails to attend the community conference; or

(b) the community conference fails to reach a decision; or

(c) the youth fails to enter into an undertaking as required by the community conference; or

(d) the youth fails to perform the obligations arising from undertakings entered into as required by the community conference.

(3) A complaint may be filed under subsection (2) even though a period of limitation relating to the commencement of proceedings for the relevant offence has expired, but the complaint must be filed –

(a) if the youth fails to attend the community conference, not more than 2 months after that failure to attend; or

(b) if the community conference fails to reach a decision, not more than 2 months after the community conference ends; or

(c) if the youth fails to enter into an undertaking as required by the community conference, not more than 2 months after that failure to enter into the undertaking; or

(d) if the youth fails to perform an obligation arising from an undertaking, not more

than 6 months after the end of the period of the undertaking.

Division 4 – Provisions of general application

21. Instructions by Commissioner of Police

In the exercise of their powers under this Part, authorised police officers must comply with any instructions issued by the Commissioner of Police.

22. Confidentiality

(1) A person must not publish any information in respect of any action or proceedings that are to be, are being or have been taken by a police officer, an Elder of an Aboriginal community, a representative of a recognised Aboriginal organisation or a religious, ethnic or other community group or a community conference under this Part against a youth if the information identifies, or may lead to the identification of –

(a) the youth; or

(b) the victim; or

(c) any other person involved in the action or proceedings (otherwise than in a professional capacity as a police officer or a person employed or engaged in the administration of this Act) who has not consented to the publication of the information.

Penalty: Fine not exceeding 100 penalty units.

(2) Subsection (1) does not apply to the provision of information to –

(a) the youth or his or her legal representative; and

(b) a guardian of the youth; and

(c) a person who is present at the administration of an informal caution, a formal caution or at a community conference; and

(d) a victim of the offence; and

(e) a police officer, or a person or a member of an authority responsible for the enforcement of laws in this State, in the course of his or her official functions; and

(ea) a member of the Australian Federal Police, a member of the police force of another State or a Territory or a person or a member of any other authority responsible for the enforcement of laws of the Commonwealth, any other State or a Territory in the course of his or her official functions; and

(f) a person employed or engaged in the administration of this Act in the course of his or her official functions; and

(g) a person undertaking research that does not involve the identification of the youth, the victim or any person referred to in subsection (1)(c) if the research has been approved, in writing, by the Commissioner of Police; and

(h) a person undertaking research that involves the identification of the youth, the victim or any person referred to in subsection (1)(c) if –

(i) all persons to be identified have consented, in writing, to their identity being provided to the researcher; and

(ii) the research has been approved, in writing, by the Commissioner of Police; and

(i) a prescribed person, a person in prescribed circumstances or a person for a prescribed purpose.

(3) Subsection (1) does not apply to the provision of information relating to the administration of a formal caution to –

(a) a court, or a party or legal practitioner acting for a party, in proceedings in which the administration of the formal caution is relevant to a matter in issue; and

(b) persons attending a community conference when determining an

appropriate sanction in respect of an offence committed by the youth after the administration of that formal caution.

(4) Subsection (1) does not apply to the provision of information to a court, or a party or legal practitioner acting for a party, in proceedings in which that information is relevant to a matter in issue if the information relates to –

(a) the decision of a community conference; and

(b) the undertakings entered into by a youth as a result of a community conference; and

(c) the performance or non-performance by the youth of obligations arising from those undertakings; and

(d) the compliance or non-compliance by the youth with a requirement to enter into an undertaking imposed by a community conference.

(4A) Subsection (1) does not apply to the provision of information in relation to a youth –

(a) if the youth, or the youth's guardian, consents in writing to the provision of the information for the purpose of the rehabilitation of the youth or a related purpose; or

(b) between an information-sharing entity and a Government Agency for the

purpose of the rehabilitation of the youth or a related purpose; or

(ba) if the information is provided as part of a Commission established under the *Commissions of Inquiry Act 1995*; or

(c) between an information-sharing entity and the Commissioner for Children and Young People, or between a Government Agency and the Commissioner for Children and Young People.

(4B) Subsection (1) does not apply to the provision of information in relation to a youth –

(a) to a person involved in the action or proceedings, taken in respect of the youth, other than the youth or the victim of the offence; or

(b) to a person seeking to bring an action, whether criminal or civil, if –

(i) the person to whom the information relates is an intended defendant to the action or an alleged perpetrator in respect of the matter to which the action relates; and

(ii) the information is relevant to that action; or

(c) to a person responding, on behalf of the State, to an action, whether criminal or civil and whether proposed or

commenced, against the State if the information is relevant to that action; or

(d) to a person undertaking an employment screening or review process, or disciplinary investigations or proceedings, in respect of the person to whom the information relates if the person to whom the information relates is –

(i) an employee or contractor, or prospective employee or contractor, of the person to whom the information is provided; or

(ii) a volunteer or assistant, or prospective volunteer or assistant, whether paid or unpaid, of an organisation of which the person, to whom the information is provided, is in a position of management or control.

(4C) Subsection (1) does not apply to the provision of information in relation to a youth if the information –

(a) is provided to a person –

(i) seeking to bring an action, whether criminal or civil; or

(ii) responding, on behalf of the State, to an action, whether criminal or civil and whether proposed or commenced; or

(iii) undertaking an employment screening or review process, or disciplinary investigations or proceedings; and

(b) in the case of information provided to a person referred to in paragraph (a)(i) or (ii), the information –

(i) is relevant to the action; and

(ii) does not disclose the identity of, or lead to the identification of, a person other than an intended defendant to the action or an alleged perpetrator in respect of the matter to which the action relates; and

(c) in the case of information provided to a person referred to in paragraph (a)(iii), the information –

(i) is relevant to the employment screening or review process, or disciplinary investigations or proceedings, being undertaken by the person to whom the information is provided; and

(ii) does not disclose the identity of, or lead to the identification of, a person other than the person being screened or reviewed or the subject of those disciplinary investigations or proceedings.

(4D) Information provided under subsection (4B)(c) or (d) is subject to the rules of procedural fairness in respect of the person whose information is so provided.

(4E) A person to whom information is provided under subsection (4B) or (4C) must not use or disclose the information other than –

(a) for the purpose for which the information was so provided to the person; or

(b) as authorised, or required, by law.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

(5) Subsection (1) does not apply in relation to the provision of information as required or allowed under any other provision of this Act.

22A. Forfeiture of articles used in commission of offences

(1) This section applies if –

(a) a youth has admitted committing an offence; and

(b) an article used in connection with, or obtained during or as a result of, the commission of the offence has been seized; and

(c) the matter is dealt with by way of a diversionary procedure.

(2) At the conclusion of the diversionary procedure, a commissioned police officer, by an instrument in writing called a forfeiture declaration, may declare that the seized article is forfeit.

(3) In deciding whether or not to make the forfeiture declaration, the commissioned police officer may have regard to –

(a) the prescribed guidelines, if any; and

(b) any relevant instructions issued under section 21; and

(c) such other matters as the commissioned police officer considers relevant and fair in the circumstances.

(4) However –

(a) the forfeiture declaration must be made if –

(i) the manufacture, use or possession of the seized article is prohibited under a law of the State or the Commonwealth; or

(ii) the seized article would, under a law of the State, be automatically forfeited to the Crown or to an officer or agency of the Crown if the youth were to be convicted or found guilty of the offence by a court; and

(b) the forfeiture declaration must not be made if paragraph (a) does not apply and the seized article is owned by a person other than the youth and the owner had no knowledge of or involvement in the commission of the offence.

(5) If the forfeiture declaration is made and the identity and address of the owner of the seized article have been established (and the owner is a person other than the youth) –

(a) the commissioned police officer is to give the owner a copy of the forfeiture declaration as soon as practicable; and

(b) the owner may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision to make the forfeiture declaration; and

(c) subject to the making of such an application for review and its outcome, the forfeiture declaration takes effect immediately after the appeal period.

(6) If the forfeiture declaration is made but it has not been possible to establish the identity and address of the owner of the seized article despite the making of reasonable inquiries in that regard (or the owner is or appears to be the youth) the forfeiture declaration takes effect as soon as it is made.

(7) If the forfeiture declaration takes effect, the seized article is forfeited to the Crown and may

be disposed of as the Commissioner of Police thinks fit.

(8) For the purposes of this section, the police officer responsible for the diversionary procedure (or another police officer) is to warn the youth of the prospective forfeiture before, or as soon as practicable after, the diversionary procedure begins.

(9) However, a failure to comply with subsection (8) does not affect the operation of other provisions of this section.

(10) For the purposes of this section, a diversionary procedure is taken to have been concluded once (depending on the procedure) –

(a) an informal caution has been administered to the youth under section 8(1); or

(b) a formal caution against further offending has been administered to the youth, put in writing and signed by the youth under section 10(4)(d); or

(c) a copy of the decision of a community conference has been provided to the youth under section 19(1)(b).

(11) In this section –

appeal period means the period within which, under the *Magistrates Court (Administrative Appeals Division) Act*

2001, a person may apply for a review of a decision;

diversionary procedure means a procedure under section 8(1) or section 9(1) or (2);

owner, of an article, means the person who, but for the making of a forfeiture declaration, would be entitled to possession of the article.

PART 3 – ARREST, SEARCH, BAIL AND CUSTODY OF YOUTH

Division 1 – Application

23. Application of general law

Subject to this Act, the law of the State relating to investigation, interrogation, arrest, bail, remand and custody applies to youths, with necessary adaptations and any further adaptations that are set out in this Act or the regulations.

Division 2 – Power of arrest and bail

24. Limit on power to arrest

A police officer may only arrest a youth in relation to an offence if the arresting officer believes the offence is serious enough to warrant an arrest and also believes, on reasonable grounds, that –

(a) the arrest is necessary to prevent a continuation or repetition of the offence or the commission of another offence that, if it were committed by the youth, would be sufficiently serious to warrant the youth being arrested in relation to the commission of that offence; or

(b) the arrest is necessary to facilitate the making of a police family violence order, within the meaning of the *Family Violence Act 2004*, an application for a

family violence order under that Act or an application for a restraint order under Part XA of the *Justices Act 1959*; or

(c) the arrest is necessary to prevent concealment, loss or destruction of evidence relating to the offence; or

(d) the youth is unlikely to appear before the Court in response to a complaint and summons.

24A. Duties of police officer where youth arrested

(1) If a youth is arrested, a reference in the *Criminal Law (Detention and Interrogation) Act 1995* to a friend is to be taken, in relation to the youth, to include a reference to a person who is a responsible adult, within the meaning of this Act, in respect of the youth.

(2) A police officer who arrests a youth must, as soon as practicable –

(a) inform the youth of the youth's right to refuse to answer questions, or to participate in investigations, except where required to do so by or under an Act of the State or of the Commonwealth; and

(b) ensure that, if practicable, the youth's guardian is notified of the arrest.

(3) Subsection (2) does not derogate from any other duties that a police officer who arrests a youth

has under any other law of the State relating to investigation, interrogation, arrest, bail, remand or custody.

24B. Conditions of bail

A court or justice, or a police officer, who intends to admit a youth to bail must have regard to the principles set out in section 5, so far as they may apply to the circumstances of the youth, in deciding whether to impose any conditions on the bail and in determining the conditions that are imposed on the bail.

24C. Breach of condition of bail

(1) In this section –

relevant contravention, in relation to a youth, means a contravention by the youth, without reasonable cause, of any condition of bail that has effect after the release of the youth from custody, other than a contravention consisting of a failure to appear before a justice or a court, as required under section 5 or 7 of the *Bail Act 1994*.

(2) If a relevant contravention by a youth occurs –

(a) sections 5(4) and 9 of the *Bail Act 1994* do not apply in relation to the contravention; and

(b) a court (including the Court) may take the contravention into account in

sentencing the youth for the offence in relation to which the bail to which the contravention relates was granted.

(3) If a youth is arrested under section 5(5A) of the *Bail Act 1994* in respect of a relevant contravention, a reference in section 34(1) or section 34A of the *Justices Act 1959* to a simple offence, or to an offence, respectively, is, in its application to the youth in respect of the arrest, to be taken to include a reference to a relevant contravention.

(4) If a youth is arrested under section 5(5A) or 10 of the *Bail Act 1994* in respect of a relevant contravention, a reference in section 4 of the *Criminal Law (Detention and Interrogation) Act 1995* to an offence, in its application to the youth in respect of the arrest, is to be taken to be a reference to a relevant contravention.

25. How youth is to be dealt with if not granted bail

(1) If a youth is not admitted to bail under section 34 of the *Justices Act 1959* or under section 4 of the *Criminal Law (Detention and Interrogation) Act 1995*, the youth must be detained in a watch-house while waiting to be brought before a justice under section 34A of the *Justices Act 1959*.

(2) If a youth who is less than 19 years old is refused bail by a justice under section 35 of the *Justices Act 1959* but an order is not made under section 47(2) of that Act, the youth must be detained –

(a) in a detention centre if, in the opinion of the Secretary, it is practicable to do so; or

(b) in a prison if, in the opinion of the Secretary, it is not practicable to detain the youth in a detention centre.

(3) If a youth who is less than 19 years old is detained in a prison or watch-house, the person for the time being in charge of the prison or watch-house must take such steps as are reasonably practicable to keep the youth from coming into contact with any adult detained in that place.

(4) If a youth who is 19 or more years old is refused bail by a justice under section 35 of the *Justices Act 1959*, the youth is to be remanded to a prison as if he or she were an adult unless the Secretary determines that the youth is to be remanded to a detention centre.

Division 3 – Searches

25A. Interpretation of Division 3

In this Division –

body cavity search, in relation to a youth, means a search of the rectum or vagina of the youth, but does not include a search of the youth by a scanning device that does not touch the youth;

clothed search, in relation to a youth, means a search (other than a body cavity search)

of the youth that is not an unclothed search;

commissioned police officer has the same meaning as in the *Police Service Act 2003*;

correctional officer has the same meaning as in the *Corrections Act 1997*;

custodial facility means –

(a) a detention centre; and

(b) a prison; and

(c) a reception prison watch-house; and

(d) a police watch-house;

custody officer, in relation to a police watch-house, means the person who is, under section 14 of the *Criminal Law (Detention and Interrogation) Act 1995*, the custody officer in relation to the watch-house;

Director means the Director of Corrective Services appointed under section 5 of the *Corrections Act 1997*;

offence means any offence, including a prescribed offence;

person in charge, in relation to a custodial facility, means –

(a) if the custodial facility is a detention centre – the detention centre manager of the detention centre; or

(b) if the custodial facility is a prison – the Director; or

(c) if the custodial facility is a reception prison watch-house – the Director; or

(d) if the custodial facility is a police watch-house – the custody officer in relation to the police watch-house;

police watch-house means a watch-house within the meaning of paragraph (a) of the definition of *watch-house* in section 3(1);

reception prison watch-house means a watch-house within the meaning of paragraph (b) of the definition of *watch-house* in section 3(1);

relevant authorising officer, in relation to a custodial facility, means –

(a) if the custodial facility is a detention centre – the Secretary or the detention centre manager of the detention centre; or

(b) if the custodial facility is a prison – the Director; or

(c) if the custodial facility is a reception prison watch-house – the Director; or

(d) if the custodial facility is a police watch-house – a commissioned police officer or the custody officer in relation to the watch-house;

relevant instruction, in relation to a custodial facility, means –

(a) if the custodial facility is a detention centre – instructions issued by the Secretary under section 124(2); and

(b) if the custodial facility is a prison – standing orders made by the Director under section 6(3) of the *Corrections Act 1997*; and

(c) if the custodial facility is a reception prison watch-house – standing orders made by the Director under section 6(3) of the *Corrections Act 1997*; and

(d) if the custodial facility is a police watch-house – orders, directions, procedures and instructions issued by the Commissioner of Police under section 7(3) of the *Police Service Act 2003*;

relevant search purpose – see section 25F;

scanning device means –

(a) a hand-held electronic device that detects or displays the presence of an article on or in the body of a person; and

(b) an electronic device, between or under the components of which a person stands, that detects or displays an article on or in the body of the person;

search officer means a person who may, under section 25C, conduct a search of a youth;

transgender has the same meaning as in the *Anti-Discrimination Act 1998*;

transsexual has the same meaning as in the *Anti-Discrimination Act 1998*;

unclothed search, in relation to a youth, means a search of the youth that requires the youth's torso or genitals to be exposed to view or the youth's torso or genitals, clothed only in underwear, to be exposed to view.

25B. Searches to which this Division applies

(1) This Division applies only to a clothed search, or an unclothed search, of a youth who is in custody, that is conducted in a custodial facility.

(2) This Division does not apply to a search under the *Terrorism (Preventative Detention) Act 2005*.

(3) This Division does not apply to, or in relation to, a body cavity search.

(4) Nothing in this Division, including subsection (5), is to be taken to authorise the carrying out of a body cavity search by a person.

(5) In the event of an inconsistency between the application of a provision of this Division and the application, to a search, of a provision of –

(a) another Act; or

(b) an instrument made under an Act –

the provision of this Division applies to the extent of the inconsistency.

25C. Persons who may conduct searches of youths

(1) A search of a youth may only be conducted by the following persons:

(a) the Director;

(b) a correctional officer who is within a class of officers that is specified, in standing orders, made by the Director under section 6(3) of the *Corrections Act 1997*, to be authorised to conduct such a search;

(c) a correctional officer who is ordered by the Director to conduct the search;

(d) the Secretary;

(e) a detention centre manager;

(f) a person who is within a class of persons that is specified, in instructions issued under section 124(2), to be authorised to conduct such a search;

(g) a person who is ordered by the Secretary, or a detention centre manager, to conduct the search;

(h) a police officer.

(2) A search of a youth must be conducted in accordance with –

(a) this Division; and

(b) the requirements, if any, of the relevant instruction in relation to the custodial facility in which the search is conducted, except to the extent that those requirements are inconsistent with the requirements of this Division.

25D. Requirements as to gender of search officer conducting search, &c.

(1) In this section –

person of the required gender, in relation to a youth, means –

(a) if the youth is male or female and paragraph (b) does not apply to the youth, a person who is male or female, respectively; or

(b) if the youth is transsexual, transgender or has variations of sex characteristics –

(i) a person of the gender that the youth requests; or

(ii) if a person of the gender requested is not immediately available, a person who is, at the further request of the youth, male or female.

(2) A search of a youth that does not involve the removal of any clothing being worn by the youth or the touching of the youth is to be conducted as far as is reasonable and practicable by a search officer who is a person of the required gender in relation to the youth.

(3) A search of a youth that involves the removal of any clothing being worn by the youth or the touching of the youth –

(a) is to be conducted by a search officer who is a person of the required gender in relation to the youth; and

(b) is, if the search is an unclothed search and is conducted in the presence of persons other than the youth and the

search officer – to be conducted in the presence only of other persons who are persons of the required gender in relation to the youth.

(4) Subsection (3) does not apply in relation to a youth if the person in charge of the custodial facility in which the search is conducted believes on reasonable grounds that it is not reasonable or practicable for that subsection to apply in relation to the youth because of the urgency with which the search is required in order to address the risk of harm or trauma to the youth or another person.

25E. Conduct of searches

(1) A search officer must not conduct a search of a youth unless the search officer believes on reasonable grounds that –

(a) the search is necessary for a relevant search purpose; and

(b) the type of search, and the manner of search, are proportionate to the circumstances.

(2) A search officer conducting a search of a youth must ensure, as far as practicable, that –

(a) the search is conducted in a manner that –

(i) is, to the extent possible, consistent with retaining the

youth's dignity and self-respect; and

(ii) minimises any trauma, distress or harm that may be caused to the youth by the conduct of the search; and

(b) the search is the least intrusive type of search that is necessary and reasonable to achieve a relevant search purpose for which the search is conducted; and

(c) the search is conducted in the least intrusive manner that is necessary and reasonable to achieve a relevant search purpose for which the search is conducted; and

(d) the search is completed as quickly as is reasonably possible, consistent with achieving a relevant search purpose for which the search is conducted; and

(e) the search is conducted in circumstances that accord reasonable privacy to the youth being searched; and

(f) the search officer does not remove, or require the youth to remove, more clothing than is necessary and reasonable to achieve a relevant search purpose for which the search is conducted; and

(g) if clothing of the youth is seized during the conduct of a search of the youth, the youth is, after the search is completed,

left with, or provided with, adequate clothing to wear.

(3) In determining for the purposes of subsection (2)(a) the manner in which a search is to be conducted, the search officer conducting the search must consider –

(a) any information that is provided to the search officer by the youth (including as to the search that the youth would prefer) and that is relevant to the determination of the matters referred to in subsection (2)(a)(i) or (ii); and

(b) any information that the search officer has, or that is, on reasonable inquiry by the officer, available to the officer, as to the youth's age, intellectual maturity, sex, sexual or gender identity, religion, disabilities and history.

(4) A search officer conducting a search of a youth –

(a) may, subject to this subsection and subsection (2), use force to conduct the search; and

(b) must not use force to conduct the search unless using force is the only means, in the circumstances, by which the search can reasonably be conducted; and

(c) must ensure, as far as practicable, that if force is used, it is the least amount of force that is reasonable and necessary to enable the search to be conducted.

(5) A search officer must not conduct an unclothed search of a youth in a custodial facility unless the relevant authorising officer in relation to the custodial facility has authorised under subsection (6) the search to be conducted and the search is conducted in accordance with the conditions, if any, specified in the authorisation.

(6) A relevant authorising officer in relation to a custodial facility may, orally or in writing, authorise a search officer to conduct an unclothed search of a youth on the conditions, if any, specified in the authorisation.

(7) A relevant authorising officer must not authorise an unclothed search of a youth to be conducted unless the relevant authorising officer believes on reasonable grounds that –

(a) the search is necessary for a relevant search purpose; and

(b) the type of search, and the manner of search, are proportionate to the circumstances; and

(c) an unclothed search of the youth, despite being the most intrusive type of search, is necessary and reasonable to achieve a relevant search purpose for which the search is to be conducted; and

(d) the search is to be conducted in the least intrusive manner that is necessary and reasonable to achieve a relevant search purpose for which the search is to be conducted.

(8) The surrender by a youth of an article before a search of the youth is conducted must be taken into account in determining whether the search may be conducted under this section.

25F. Relevant search purposes

For the purposes of this Division, a ***relevant search purpose*** is a search of a youth for one or more of the following purposes:

(a) to ensure the safety of the youth or other persons;

(b) to obtain evidence relating to the commission of an offence or to prevent the loss or destruction of evidence in relation to the commission of an offence;

(c) to ascertain whether the youth has possession of a concealed weapon, or other article capable of being used as a weapon, to inflict injury or to assist the youth, or another youth, to escape from custody;

(d) to ascertain whether the youth has possession of drugs or any other things which the youth is prohibited by law from taking into, or having possession of in, the custodial facility in which the youth is situated;

(e) if the search is a clothed search – to remove into safe keeping any articles

belonging to, or in the possession of, the youth.

25G. Determination of least intrusive type and manner of search

(1) For the purposes of this Division, the degree of intrusiveness of the following types of searches is taken to increase in the following order:

(a) a search (which may be a search by way of a scanning device) that involves no touching of a youth or clothing being worn by a youth;

(b) a search that includes minimal touching of a youth or of clothing being worn by a youth;

(c) a search that includes the removal of some clothing being worn by a youth but that is not an unclothed search;

(d) a search that includes touching, that is more than minimal touching, of a youth or of clothing being worn by a youth;

(e) an unclothed search of a youth.

(2) In determining for the purposes of this Division whether a search of a youth is, or is to be, conducted in the least intrusive manner that is necessary and reasonable to achieve a relevant search purpose for which the search is being, or is to be, conducted, the search officer, or

relevant authorising officer, making the determination must have regard to –

(a) the health and safety of the youth; and

(b) any information that the search officer, or the relevant authorising officer, respectively, has, or that is, on reasonable inquiry by the officer, available to the officer, as to –

(i) the youth's age, intellectual maturity, sex, sexual or gender identity, religion, disabilities and history; and

(ii) any other matter that is relevant to the determination.

25H. Information to be given to youth before search conducted

Before a search of a youth is conducted by a search officer, the search officer must –

(a) inform the youth that a search is to be conducted; and

(b) if the search is to be an unclothed search – inform the youth that an unclothed search of the youth is to be conducted; and

(c) inform the youth that the youth may, before the search of the youth occurs, surrender an article that is on the person of the youth; and

(d) give the youth an opportunity, before the search of the youth occurs, to surrender, in circumstances that afford reasonable privacy to the youth, an article that is on the person of the youth.

25I. Seizure of articles found during searches

A search officer who conducts a search of a youth may seize an article found during the search –

(a) that may be evidence relating to the commission of an offence; or

(b) that may prejudice the safety of any person or the safety or good order of a custodial facility; or

(c) to remove the article into safekeeping.

25J. Reporting of use of force

(1) A search officer who has conducted a search of a youth in a custodial facility must, if force used during the conduct of the search is reportable force, provide to the person in charge of the facility a report containing the information, in relation to the search, that is specified, in the relevant instruction in relation to the custodial facility, to be required to be included in such a report.

(2) A person conducting a search of a youth must provide under subsection (1) the report in relation to the search as soon as practicable after

the search is conducted but in any case within 7 days after the search is conducted.

(3) For the purposes of this section, ***reportable force***, in relation to a youth, is –

(a) force used in the course of a search of the youth; and

(b) force used, before the search is conducted, to enable the search to be conducted –

but does not include excluded force in relation to the youth.

(4) For the purposes of this section, each of the following is excluded force in relation to a youth:

(a) touching of the youth that is not for the purpose of restraining the youth so as to enable the search to occur and that is incidental to the conduct of the search;

(b) force, including the application and use of handcuffs or physical restraint, used to ensure that the youth –

(i) remains in custody; or

(ii) moves to a place where the search is to commence, remains in a place where the search has commenced or moves to a place after the search has been conducted –

unless the touching or force is such that the person conducting the search had reasonable grounds to believe, or ought reasonably to have been aware, that the touching or force has caused or may cause an injury to the youth.

(5) Nothing in this section is to be taken to limit a provision of another Act that requires a person to provide a report in relation to a search that is specified in or under another Act.

25K. Register of searches

(1) In this section –

relevant information, in relation to a search, means –

(a) the information prescribed for the purposes of this section; and

(b) details as to the degree of intrusiveness of the search, as determined under section 25G; and

(c) details of reportable force, within the meaning of section 25J, used in the conduct of the search.

(2) The Secretary, Director or Commissioner of Police must establish and maintain a register (a ***search register***) in relation to each custodial facility for which the Secretary, Director or Commissioner of Police, respectively, is responsible.

(3) The search register in relation to a custodial facility must contain the relevant information in relation to each search of a youth that is conducted in the custodial facility.

(4) The Secretary, Director or Commissioner of Police must ensure that a register that the Secretary, Director or the Commissioner of Police, respectively, is required under this section to establish and maintain is available for inspection by any of the following persons:

(a) the Custodial Inspector;

(b) the Ombudsman;

(c) a person approved by the person in charge of the custodial facility;

(d) a prescribed person or body.

25L. Provision of information

(1) The person in charge of a custodial facility must ensure that there is made available, for viewing by a youth who is in custody in the custodial facility, leaflets, posters, or other documents, that set out the obligations of the person in charge of the custodial facility under the other provisions of this section.

(2) The person in charge of a custodial facility must ensure that –

(a) on the request of a youth who is in custody in the facility, the required information in relation to searches, of

youths in custody, conducted in the custodial facility is made available to the youth; and

(b) on the request of a person who is representing a youth who is in custody in the facility, the required information in relation to searches, of youths in custody, conducted in the custodial facility is made available to the person; and

(c) the required information in relation to searches, of youths in custody, conducted in a custodial facility is available for viewing by members of the public on a website in relation to the custodial facility.

(3) For the purposes of this section, the required information in relation to searches, of youths in custody, conducted in a custodial facility is –

(a) information as to the circumstances and manner in which a search of a youth is authorised to be conducted in the custodial facility; and

(b) information as to –

(i) the rights of a youth who is in custody to make a complaint in relation to any search of the youth that is conducted in the custodial facility, if the youth believes the search was not authorised by, or conducted in

accordance with, this Division or any other law; and

(ii) the person to whom such a complaint is to be directed; and

(c) provisions, relating to searches, that are contained in relevant instructions that apply in relation to searches of youths in custody that are conducted in the custodial facility, as those provisions are redacted, if at all, as necessary to ensure the security and good order of the custodial facility.

PART 4 – COURT PROCEEDINGS AGAINST A YOUTH

Division 1 – Commencing proceedings

26. Commencing proceedings

(1) If a youth is to be charged with an offence, proceedings are to be commenced by complaint in accordance with section 27 of the *Justices Act 1959*.

(2) If a complaint and summons is served on a youth in respect of an offence, a copy of the complaint and summons is to be served by the complainant on the guardian, unless one cannot be found after reasonable inquiry, and on the Secretary.

27. Limitation on joint charge

A youth who is under 15 years of age may not be jointly charged with an adult.

27A. Taking plea if joint charge

(1) If a youth is jointly charged with an adult in respect of an offence, the youth is to enter his or her plea to the charge in the court in which the adult is to enter his or her plea.

(2) If a youth is jointly charged with an adult in respect of an offence, the court in which the youth's plea is entered must, after taking that plea and if the proceedings are to be continued in the Court, make an order –

(a) transferring the proceedings to the Court; and

(b) committing the youth to custody or releasing the youth on bail, with or without sureties, to be brought or to appear before the Court.

28. Limitation on power of Court to hear joint charge

(1) The Court is not entitled to hear and determine a charge against a youth if –

(a) the youth is 15 or more years old; and

(b) the youth is charged jointly with an adult; and

(c) the youth and the adult both plead not guilty to the charge.

(2) If a youth is jointly charged with an adult and the adult or the youth, or both, plead guilty to the charge, the Court must hear and determine the charge against the youth unless the prosecutor objects.

(3) If the prosecutor makes an objection under subsection (2), the Court may hear and determine the charge against the youth or determine that the charge is to be transferred to the Supreme Court under Part VII of the *Justices Act 1959*.

29. Duty of Court

(1) The Court has a duty, as far as practicable –

(a) to ensure that the youth before the Court and the guardian, if present, understand –

(i) the nature and purpose of the proceedings; and

(ii) the right of the youth to have legal representation; and

(iii) the rights of the youth in relation to entering a plea and the consequences of entering a plea; and

(iv) the rights of the youth to have a copy of any report, or record of previous offending history, relating to the youth and to comment on any such report or record; and

(v) the right to make, and the importance of making, a plea in mitigation if the youth is guilty of the offence; and

(b) to respect the cultural identity of the youth before the Court.

(2) In any proceedings under this Act, the Court has a duty to take into account the objectives specified in section 4 and the principles specified in section 5.

Division 2 – Confidentiality of proceedings

30. Persons who may be present in Court

(1) Only the following persons may be present at a sitting of the Court:

(a) the youth to whom the proceeding relates;

(b) the legal representative of the youth;

(c) the parents, other members of the youth's family and guardians of the youth;

(d) a responsible adult;

(e) the prosecutor;

(f) a person approved under section 4 or section 8(2)(b)(i) of the *Evidence (Children and Special Witnesses) Act 2001* while the youth or special witness who is being supported by the person remains in the Court;

(g) a witness while giving evidence or permitted by the Court to remain in the Court;

(h) State Service officers and State Service employees employed in the Department;

(i) if the youth is an Aboriginal person and consents to the presence of a representative of an organisation whose principal purpose is the provision of

welfare services to Aboriginal persons, that representative;

(j) the victim;

(k) officers of the Court;

(l) a person engaged in professional study relevant to the operation of the Court or research if the Court permits the person to be present;

(m) a person who, in the Court's opinion, will assist the Court;

(n) any other person if the Court considers that the interests of justice require that person's presence;

(o) an infant or young child who is in the care of an adult present at the sitting.

(2) Subject to sections 4 and 8 of the *Evidence (Children and Special Witnesses) Act 2001*, the Court may exclude a person referred to in subsection (1) from the Court if it considers it necessary to do so in the interests of justice.

31. Restrictions on reporting proceedings

(1) A person must not publish any information in respect of any proceedings that are to be, are being or have been taken in the Court if the information identifies, or may lead to the identification of, a youth who is the subject of or a witness in the proceedings except where –

(a) permission to publish the identity or information has been granted under subsection (2); and

(b) the identity or information is published in accordance with any conditions specified in respect of the permission.

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

(2) The Court may grant a person permission to publish an identity or information subject to any conditions specified by the Court.

(3) A person must not publish in any way any information in respect of the proceedings of the Court if the Court prohibits publication of the information.

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

(4) Subsections (1) and (3) do not apply to the provision of information to –

(a) the youth or his or her legal representative; and

(b) a guardian of the youth; and

(c) a victim of the offence; and

(d) a police officer, or a person or a member of an authority responsible for the enforcement of laws in this State, in the

course of his or her official functions; and

(e) a member of the Australian Federal Police, a member of the police force of another State or a Territory or a person or a member of any other authority responsible for the enforcement of laws of the Commonwealth, any other State or a Territory in the course of his or her official functions; and

(f) a person employed or engaged in the administration of this Act in the course of his or her official functions; and

(g) a person employed or engaged in the administration of the Act against which the offence was committed in the course of his or her official functions; and

(ga) a Commission established under the *Commissions of Inquiry Act 1995* if the information is relevant to the matter in respect of which the Commission was so established; and

(h) a person undertaking research that does not involve the identification of the youth, the victim or any person involved in the proceedings (otherwise than in a professional capacity as a police officer or a person employed or engaged in the administration of this Act) who has not consented, in writing, to the publication of the report if the research has been

approved by the Commissioner of Police or the Secretary; and

(i) a person undertaking research that involves the identification of the youth, the victim or any other person referred to in paragraph (h) if –

(i) all persons to be identified have consented, in writing, to their identity being provided to the researcher; and

(ii) the research has been approved by the Commissioner of Police or the Secretary; and

(j) a prescribed person or a person in prescribed circumstances or for a prescribed purpose.

(5) Subsection (1) does not apply to the provision of information in relation to a youth if the youth, or the youth's guardian, consents in writing to the provision of the information for the purpose of the rehabilitation of the youth or a related purpose.

(6) Subsections (1) and (3) do not apply to the provision of information in relation to a youth –

(a) between an information-sharing entity and a Government Agency for the purpose of the rehabilitation of the youth or a related purpose; or

(b) between an information-sharing entity and the Commissioner for Children and Young People, or between a Government Agency and the Commissioner for Children and Young People.

(7) Subsections (1) and (3) do not apply to the provision of information in relation to a person –

(a) to a person seeking to bring an action, whether criminal or civil, if –

(i) the person to whom the information relates is an intended defendant to the action or an alleged perpetrator in respect of the matter to which the action relates; and

(ii) the information is relevant to that action; or

(b) to a person responding, on behalf of the State, to an action, whether criminal or civil and whether proposed or commenced, against the State if the information is relevant to that action; or

(c) to a person undertaking an employment screening or review process, or disciplinary investigations or proceedings, in respect of the person to whom the information relates if the person to whom the information relates is –

(i) an employee or contractor, or prospective employee or contractor, of the person to whom the information is provided; or

(ii) a volunteer or assistant, or prospective volunteer or assistant, whether paid or unpaid, of an organisation of which the person, to whom the information is provided, is in a position of management or control.

(8) Subsections (1) and (3) do not apply to the provision of information in relation to a youth if the information –

(a) is provided to a person –

(i) seeking to bring an action, whether criminal or civil; or

(ii) responding, on behalf of the State, to an action, whether criminal or civil and whether proposed or commenced; or

(iii) undertaking an employment screening or review process, or disciplinary investigations or proceedings; and

(b) in the case of information provided to a person referred to in paragraph (a)(i) or (ii), the information –

(i) is relevant to the action; and

(ii) does not disclose the identity of, or lead to the identification of, a person other than an intended defendant to the action or an alleged perpetrator in respect of the matter to which the action relates; and

(c) in the case of information provided to a person referred to in paragraph (a)(iii), the information –

(i) is relevant to the employment screening or review process, or disciplinary investigations or proceedings, being undertaken by the person to whom the information is provided; and

(ii) does not disclose the identity of, or lead to the identification of, a person other than the person being screened or reviewed or the subject of those disciplinary investigations or proceedings.

(9) Information provided under subsection (7)(b) or (c) is subject to the rules of procedural fairness in respect of the person whose information is so provided.

(10) A person to whom information is provided under subsection (7) or (8) must not use or disclose the information other than –

(a) for the purpose for which the information was so provided to the person; or

(b) as authorised, or required, by law.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

Division 3 – Proceedings after guilt is established

32. Application of Division 3

This Division applies after a youth is found guilty of an offence.

33. Presentence report

(1) In any proceedings under this Part, the Court may order the Secretary to provide to it a presentence report concerning the youth.

(2) The Court may request that the report contain specified information, assessments and reports relating to the youth or the youth's family or other matters.

(3) The Secretary must cause the presentence report to be prepared and provided to the Court expeditiously and, in any case, within 20 working days.

(4) The limit of 20 days may be extended by the Court.

33AA. Court may request oral presentence report

(1) The Court may order a youth justice worker to provide to the Court a presentence report orally

during a hearing of the Court, if the Court is of the opinion that it is appropriate to do so.

(2) If a presentence report is provided orally by a youth justice worker in accordance with an order under subsection (1) –

(a) sections 33 and 34 do not apply in relation to the report; and

(b) section 35 applies in relation to the report as if the reference in subsection (1) of that section to the author of a presentence report were a reference to the youth justice worker who gave the report.

33A. Court may order rehabilitation program assessment

In any proceedings under this Part in relation to a family violence offence the Court may, in addition to the matters referred to in section 33 –

(a) order a rehabilitation program assessment of a youth; and

(b) direct the youth to submit to that assessment.

34. Disclosure of presentence report

The Secretary must provide a copy of the presentence report and any rehabilitation program assessment as soon as practicable to –

(a) the prosecutor; and

(b) the youth; and

(c) the legal representative of the youth; and

(d) the guardian, unless one cannot be found after reasonable inquiry.

35. Presentence report evidence

(1) The Court may, or at the request of the youth, his or her legal representative or the prosecutor must, require the author of a presentence report and any rehabilitation program assessment, or a person who gave a statement included in the report or assessment, to attend before the Court in the manner indicated by the Court for the purpose of giving more information.

(2) The Court may ask, and allow the youth, his or her legal representative or the prosecutor to ask, questions of a person attending the Court under subsection (1).

36. Disputed presentence report

(1) The youth, his or her legal representative or the prosecutor may dispute the whole or any part of a presentence report or rehabilitation program assessment.

(2) If the whole or any part of a presentence report or rehabilitation program assessment is disputed before sentencing is to take place, the Court must not take the report or assessment or part in dispute into consideration when determining

sentence unless the person who raised the dispute has been given the opportunity –

(a) to lead evidence on the disputed matters; and

(b) to cross-examine the author of the report or assessment on its contents.

36A. Victim impact statements

(1) In this section –

immediate family, in respect of a deceased victim, includes –

(a) the spouse or partner, within the meaning of the *Relationships Act 2003*, of the deceased victim; and

(b) a parent, guardian or step-parent of the deceased victim; and

(c) a child or stepchild of the deceased victim; and

(d) a brother, sister, stepbrother or stepsister of the deceased victim;

indictable offence means –

(a) an offence that is punishable on indictment even though in some instances it may be dealt with summarily; or

(b) any other offence that is prescribed for the purposes of this definition;

victim, in respect of an offence, means –

(a) a person who has suffered injury, loss or damage as a direct consequence of the offence; and

(b) a member of the immediate family of a deceased victim of the offence.

(2) If the Court finds a youth guilty of an indictable offence, a victim of that offence may provide to the Court a written statement that –

(a) gives particulars of any injury, loss or damage suffered by the victim as a direct consequence of the offence; and

(b) describes the effects on the victim of the commission of the offence.

(3) If the Court finds a youth guilty of an indictable offence, the Court may, if it considers it appropriate to do so, allow a person, other than the victim of that offence, to provide to the Court, in the place of a statement under subsection (2), a written statement that –

(a) gives particulars of the injury, loss or damage suffered by the victim as a direct consequence of the offence; and

(b) describes the effects on the victim of the commission of the offence.

(4) A statement referred to in subsection (2) or (3) must comply with, and be provided in accordance with, applicable Rules of Court or rules made under subsection (6).

(5) If the Court finds a youth guilty of an indictable offence, the Court must allow –

(a) the victim; or

(b) a person who has provided a statement under subsection (3); or

(c) another person nominated by the victim or a person referred to in paragraph (b) –

to read the victim's statement to the Court, if the victim or the person referred to in paragraph (b) has asked to do so at the time of providing the statement to the Court.

(6) For the purposes of this section –

(a) Rules of Court may be made under section 12 of the *Criminal Code Act 1924*; and

(b) rules of court may be made under section 144 of the *Justices Act 1959*.

Division 4 – Court-ordered community conferences

37. Court may order community conference

(1) Instead of proceeding to sentence a youth under section 47, the Court may –

(a) order the Secretary to convene a community conference; and

(b) order the youth to attend a community conference.

(2) An order under subsection (1)(a) may specify persons who are to be invited to attend the community conference.

(3) The district registrar is to provide the Secretary with a copy of an order made under subsection (1)(a).

38. Convening of community conference

(1) Except to the extent that the Court orders otherwise, section 14, other than subsection (2)(c), applies in relation to a community conference to be convened on the order of the Court –

(a) as if the references in that section to the notice from a police officer were references to the order of the Court; and

(b) with necessary modifications.

(2) The facilitator must invite the following persons to a community conference to be convened on the order of the Court:

(a) the guardians of the youth;

(b) the persons specified in the order;

(c) any relatives of the youth or other persons who the facilitator, after consulting with the youth and the youth's guardians and family (if available), considers appropriate to attend the community conference;

(d) any other person who –

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

(ii) in the opinion of the facilitator, may be able to participate usefully in the community conference;

(da) a youth justice worker;

(e) if the youth is a member of an Aboriginal community, an Elder or other representative of that community;

(f) any victim of the offence.

39. Constitution of, attendance and procedure at, powers of and finalising of community conference

Sections 15, 16, 17 and 18 apply, with any necessary modifications, in relation to a community conference convened on the order of the Court.

40. Procedure after successful community conference

Section 19 applies, with any necessary modifications, in relation to the procedure after a successful community conference convened on the order of the Court.

40A. Additional requirements for court-ordered community conference

(1) If a community conference convened on the order of the Court reaches a decision that did not require the youth to enter into an undertaking, the facilitator must file with the district registrar a copy of the decision.

(2) If a youth fulfils all undertakings entered into at a community conference convened on the order of the Court, the Secretary, as soon as practicable, must file with the district registrar a certificate stating that fact.

41. Dismissal of charge

(1) The charge against a youth in respect of which a community conference was convened on the order of the Court is dismissed –

(a) on the filing with the Court under section 40A(1) of a copy of the decision of the community conference; or

(b) on the filing with the Court under section 40A(2) of a certificate stating that the youth has fulfilled all undertakings entered into; or

(c) at the end of the prescribed period, if a report has not been filed with the Court under section 43 in respect of a contravention of an undertaking before the end of that period.

(2) If a charge is dismissed under this section, the district registrar must amend the records of the Court accordingly.

(3) In this section,

prescribed period means the period of 60 days commencing on the day by which all undertakings entered into by the youth at the community conference are to be fulfilled.

42. Procedure after unsuccessful community conference

(1) If the youth fails to attend a community conference convened on the order of the Court or that community conference fails to reach a decision, the facilitator must –

(a) file with the Court a report –

(i) stating that fact; and

(ii) in the case of a failure to reach a decision, stating the reasons, in the facilitator's opinion, for that failure; and

(b) provide a copy of the report to –

(i) the youth; and

(ii) the prosecutor of the charge in respect of which the community conference was convened; and

(iii) each person who attended the community conference in response to the invitation of the facilitator; and

(iv) the victim of the offence.

(2) On receipt of a report under subsection (1), the Court must proceed to make an order under section 47.

43. Failure to fulfil undertaking

(1) If a youth fails to fulfil an undertaking entered into at a community conference convened on the order of the Court, the Secretary must –

(a) file with the Court a report –

(i) stating that fact and specifying whether the youth has taken any action towards fulfilling that undertaking and the

circumstances of the contravention; and

(ii) specifying whether the youth has fulfilled any other undertaking entered into at the community conference; and

(iii) specifying any action the youth has taken towards fulfilling any other undertaking entered into at the community conference; and

(b) provide a copy of the report to –

(i) the youth; and

(ii) the prosecutor of the charge in respect of which the community conference was convened; and

(iii) each person who attended the community conference in response to the invitation of the facilitator; and

(iv) the victim of the offence.

(2) On receipt of a report under subsection (1), the Court must proceed to make an order under section 47.

44. Requiring community conference facilitator to attend Court

(1) The Court may require the facilitator to attend before the Court in the manner indicated by the

Court for the purpose of giving more information.

(2) The Court may ask, and allow the youth, the complainant or a legal representative to ask, questions of a facilitator.

45. Confidentiality of community conference

(1) A person must not publish any information in respect of any action or proceedings that are to be, are being or have been taken against a youth by a community conference convened on the order of the Court if the information identifies, or may lead to the identification of –

(a) the youth; or

(b) the victim; or

(c) any other person involved in the action or proceedings (otherwise than in a professional capacity or as a person employed or engaged in the administration of this Act) who has not consented to the publication of the information.

Penalty: Fine not exceeding 100 penalty units.

(2) Subsection (1) does not apply to the provision of information to –

(a) the youth or his or her legal representative; and

(aa) a guardian of the youth; and

(b) a person who is present at the community conference; and

(ba) a victim of the offence; and

(c) a police officer, or a person or a member of an authority responsible for the enforcement of laws in this State, in the course of his or her official functions; and

(ca) a member of the Australian Federal Police, a member of the police force of another State or a Territory or a person or a member of any other authority responsible for the enforcement of laws of the Commonwealth, any other State or a Territory in the course of his or her official functions; and

(d) a person employed or engaged in the administration of this Act in the course of his or her official functions; and

(e) a person undertaking research that does not involve the identification of the youth, the victim or any person referred to in subsection (1)(c) if the research has been approved by the Commissioner of Police or the Secretary; and

(f) a person undertaking research that involves the identification of the youth, the victim or any person referred to in subsection (1)(c) if –

(i) all persons to be identified have consented to their identity being provided to the researcher; and

(ii) the research has been approved by the Commissioner of Police or the Secretary; and

(g) a prescribed person, a person in prescribed circumstances or a person for a prescribed purpose.

(3) Subsection (1) does not apply to the provision of information to a court, or a party or legal practitioner acting for a party, in proceedings in which that information is relevant to a matter in issue if the information relates to –

(a) the decision of a community conference; and

(b) the undertakings entered into by a youth as a result of a community conference; and

(c) the performance or non-performance by the youth of obligations arising from those undertakings; and

(d) the compliance or non-compliance by the youth with a requirement to enter into an undertaking imposed by a community conference.

(3A) Subsection (1) does not apply to the provision of information in relation to a youth –

(a) if the youth, or the youth's guardian, consents in writing to the provision of the information for the purpose of the rehabilitation of the youth or a related purpose; or

(b) between an information-sharing entity and a Government Agency for the purpose of the rehabilitation of the youth or a related purpose; or

(c) between an information-sharing entity and the Commissioner for Children and Young People, or between a Government Agency and the Commissioner for Children and Young People.

(4) Subsection (1) does not apply in relation to the provision of information as required or allowed under any other provision of this Act.

Division 5 – Sentences

46. Application and interpretation of certain sentence provisions

(1) If, in this or any other Act, a penalty including imprisonment is specified in respect of an offence against this or any other Act and a youth is found guilty of the offence, that reference to imprisonment is taken to be a reference to detention.

(2) When determining a sentence, the Court –

(a) must disregard a requirement under any other Act that an amount of money or term of imprisonment must be the minimum penalty for the offence; and

(b) must regard a requirement under any other Act that an amount of money or term of imprisonment, or both, must be the only penalty for the offence as providing instead that the amount or term, or both, are the maximum penalties for the offence; and

(c) must comply with a requirement under any other Act that a loss of a licence or other penalty, other than an amount of money or term of imprisonment, must be imposed as a penalty for the offence.

(3) A requirement under this or any other Act that an amount of money or term of imprisonment, or both, are the only penalties for an offence does not prevent the Court from making any order it considers appropriate under section 47(1) or (2) instead of, or in addition to, those penalties.

47. Sentences and other orders that may be imposed

(1) If a youth is found guilty of an offence, the Court may do one or more of the following:

(a) dismiss the charge and impose no further sentence;

(b) dismiss the charge and reprimand the youth;

(c) dismiss the charge and require the youth to enter into an undertaking to be of good behaviour;

(d) release the youth and adjourn the proceedings on conditions;

(e) impose a fine;

(f) make a probation order;

(g) order that the youth perform community service;

(h) make a detention order;

(ha) make an order it is permitted to make in accordance with section 161A;

(i) in the case of a family violence offence, make a rehabilitation program order;

(j) adjourn the proceedings, grant bail to the youth under the *Bail Act 1994* and defer, in accordance with Division 7A, sentencing the youth until a date specified in the order.

(1A) Proceedings in relation to an offence may not be adjourned under subsection (1)(j) for a period of more than 12 months from the date of the finding of guilt in respect of the offence.

(1B) Subsection (1)(j) does not limit the power of the Court to adjourn proceedings, grant bail in relation to a period of adjournment or defer sentencing a youth otherwise than under subsection (1)(j).

(2) In addition to imposing a sentence under subsection (1), the Court may make one or more of the following orders:

(a) a suspended detention order;

(b) a restitution order;

(c) a compensation order;

(d) subject to this Act, any other order a court may make under another Act in respect of the offence of which the youth is found guilty.

(3) If the Court considers it appropriate that the youth pay an amount by way of compensation and an amount by way of fine but the youth has insufficient resources to pay both amounts, the Court must give preference to ordering the youth to pay the compensation amount.

(3A) In weighing up the matters to be taken into account in determining which orders to make under subsections (1) and (2) in relation to a youth, the Court must ensure that the matter of the rehabilitation of the youth is given more weight than is given to any other individual matter.

(4) In determining what orders to make under subsections (1) and (2), the Court must have regard to all the circumstances of the case, including –

(a) the nature of the offence; and

(b) the youth's age and any sentences or sanctions previously imposed on the youth by any court or a community conference; and

(c) the impact any orders made will have on the youth's chances of finding or retaining employment or attending education and training.

48. Limitations on imposing sentences

(1) The Court must not impose a sentence that is more severe than would be imposed on an adult who committed the same offence.

(2) The Court must not impose a sentence referred to in section 47(1)(f), (g) or (h) unless it has first obtained a presentence report.

(3) The Court must not impose a sentence referred to in section 47(1)(i) unless it has first obtained a rehabilitation program assessment.

49. Recording conviction

(1) If the Court imposes a sentence under subsection (1) of section 47 that does not include a sentence under section 47(1)(e), (f), (g), (h), (ha) or (i), a conviction is not to be recorded.

(2) If the Court imposes a sentence under section 47(1)(e), (f), (g), (h), (ha) or (i), the Court may order that a conviction is or is not to be recorded.

(3) If the Court imposes a sentence consisting of or including a period of detention and does not make a suspended detention order suspending the whole of the period of detention, a conviction must be recorded.

(4) In determining whether or not to record a conviction, the Court must have regard to all the circumstances of the case, including –

(a) the nature of the offence; and

(b) the youth's age; and

(c) any sentences or sanctions previously imposed on the youth by any court or community conference and any formal cautions previously administered to the youth; and

(d) the impact the recording of a conviction will have on the youth's chances of rehabilitation generally or finding or retaining employment.

(4A) In determining whether or not to record a conviction, the Court must ensure that the matter of the rehabilitation of the youth is given more weight than is given to any other individual matter.

(5) Except as otherwise provided by this or any other Act, a finding of guilty without the recording of a conviction is not taken to be a conviction for any purpose.

(6) A finding of guilty without the recording of a conviction bars a subsequent proceeding against the youth for the same offence as if a conviction had been recorded.

49A. Court may impose single, general or mixed sentence

(1) If a youth has been found guilty of more than one offence specified in one or more complaints, the Court may impose on the youth –

(a) one sentence for all of those offences; or

(b) a separate sentence for each of those offences; or

(c) one sentence for a group of those offences determined by the Court and –

(i) one sentence for all of the remaining offences; or

(ii) a separate sentence for each of the remaining offences; or

(iii) a separate sentence for each other group of the offences remaining as the court determines and a separate sentence for each offence remaining, if any, as is not within any such group.

(2) In imposing a single sentence on a youth for more than one offence, the Court must not impose a penalty exceeding the sum of the maximum penalties that could otherwise have

been imposed under this Part if each of those offences had been sentenced separately.

50. Youth entitled to explanation of Court order

(1) On imposing a sentence under section 47, the Court must take steps to ensure that the youth and the guardian, if present, understand –

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

(b) the consequences (if any) that may follow if the youth fails to comply with the requirements of the order.

(2) The steps the Court may take under subsection (1) may include –

(a) directly explaining the matters in the Court; or

(b) having some appropriate person give the explanation; or

(c) having an interpreter, or other person able to communicate effectively with the youth and the guardian, give the explanation; or

(d) causing an explanatory note in English or another language to be supplied to the youth and the guardian.

Division 6 – Undertakings to be of good behaviour

51. Undertaking to be of good behaviour

(1) An undertaking to be of good behaviour is an undertaking by the youth to do or to refrain from doing the acts specified in the order that requires the youth to enter into the undertaking.

(2) An undertaking to be of good behaviour has the duration, not exceeding 6 months, specified in the order that requires the youth to enter into the undertaking.

52. Limitation on requiring undertaking to be of good behaviour

The Court must not require a youth to enter into an undertaking to be of good behaviour unless the youth agrees to enter into the undertaking.

53. Contravention of undertaking to be of good behaviour

The Court must not take any action if a youth contravenes an undertaking to be of good behaviour.

Division 7 – Release and adjournment orders

54. Release and adjournment order

If the Court decides to make a release and adjournment order, the Court may –

(a) adjourn the proceedings by that order for a period not exceeding 12 months; and

(b) make the order subject to conditions specified in the order which are reasonable in the circumstances.

54A. Discharge of release and adjournment order

A youth is discharged from a release and adjournment order in relation to an offence when the period of adjournment under the order expires, unless –

(a) the Court revokes the order; or

(b) after the youth is released, the Court makes another order under section 47 in relation to the offence.

55. Review of release and adjournment order

(1) A youth who is released under a release and adjournment order or a prescribed person may apply to the Court for an order under subsection (4) if –

(a) the circumstances of the youth have changed since the release and adjournment order was made; or

(b) the youth is unable to comply with a condition to which the release and adjournment order is subject.

(2) A copy of the application and notice of the time and place of the hearing of the application must be served by the applicant not less than 7 days before the hearing on –

(a) the Commissioner of Police, if the application is made by or on behalf of the youth; or

(b) the youth, and a guardian unless one cannot be found after reasonable inquiry, if the application is made by or on behalf of the prescribed person.

(3) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear at the hearing of the application of a prescribed person; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) At the hearing of an application, the Court may do one or more of the following:

(a) continue the release and adjournment order as it is;

(b) extend the period of the adjournment under the release and adjournment order;

(c) remove or amend the conditions to which the release and adjournment order is subject;

(d) revoke the release and adjournment order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(5) If the period of an adjournment under a release and adjournment order is extended under subsection (4), the Court must not extend that period so that the adjournment continues for more than 12 months in total.

(6) The Court must not make an order under subsection (4) unless the youth is present before the Court.

56. Contravention of release and adjournment order

(1) A prescribed person may apply to the Court for an order under subsection (4) if it appears to the prescribed person that a youth has contravened a condition to which a release and adjournment order is subject.

(2) A copy of the application and notice of the time and place of the hearing of the application must be served by the applicant not less than 7 days before the hearing on –

(a) the youth; and

(b) a guardian unless one cannot be found after reasonable inquiry.

(2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

(a) subsection (2) does not apply in relation to the application; and

(b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

(a) an application to the Court may be made orally under subsection (1); and

(b) subsection (2) does not apply in relation to the application.

(3) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) If the Court is satisfied that a youth has contravened a condition to which a release and adjournment order is subject, the Court may do one or more of the following:

(a) continue the release and adjournment order as it is;

(b) extend the period of the adjournment under the release and adjournment order;

(c) remove or amend the conditions to which the release and adjournment order is subject;

(d) revoke the release and adjournment order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(5) If the period of an adjournment under a release and adjournment order is extended under subsection (4), the Court must not extend that period so that the adjournment continues for more than 12 months in total.

(6) If an application under subsection (1) is made but not determined before the period of the adjournment under a release and adjournment order has ended, the adjournment continues until the application is determined.

(6A) Even though an application made under subsection (1) in relation to a release and adjournment order is not heard or determined before the order expires, the Court may –

(a) hear and determine the application; and

(b) if it is satisfied that the youth has contravened the release and adjournment order or a special condition to which the release and adjournment order is subject, make an order under subsection (4) –

as if the release and adjournment order were in force.

(7) The Court must not make an order under subsection (4) unless the youth is present before the Court.

Division 7A – Deferral of sentencing

56A. When sentence may be deferred under section 47(1)(j)

(1) The Court may adjourn proceedings in relation to a youth under section 47(1)(j) so as to defer, in accordance with this Division, sentencing the youth.

(2) The Court may defer, in accordance with this Division, sentencing a youth –

(a) for the purpose of assessing the youth's capacity, and prospects, for rehabilitation; or

(b) for the purpose of allowing the youth to demonstrate that rehabilitation has taken place; or

(c) for the purpose of assessing the youth's capacity, and prospects, for participating in an intervention plan; or

(d) for the purpose of allowing the youth to participate in an intervention plan; or

(e) for any other purpose that the Court thinks appropriate in the circumstances.

(3) The Court may only defer, in accordance with this Division, sentencing a youth for an offence if –

(a) the youth is not serving a term of detention or imprisonment for another offence; and

(b) the Court is satisfied it may admit the youth to bail; and

(c) the Court defers sentencing the youth for all the offences for which the Court may sentence the youth, whether or not the offences are punishable by detention or imprisonment.

(4) For the purposes of this Division, an ***intervention plan*** is a plan that specifies the activities or programs that a youth is to be expected to undertake while on bail granted to the youth for the purposes of section 47(1)(j).

(5) The sentencing of a youth may be deferred in accordance with this Division whether or not the Court considers that the seriousness of the offence justifies a sentence of detention or imprisonment.

56B. Grant of bail and review

(1) Bail granted to a youth for the purposes of section 47(1)(j) in relation to an offence has effect for the period for which the sentence in relation to the offence is deferred, unless the bail is revoked earlier.

(2) Without limiting the conditions that may be imposed in accordance with section 7 of the *Bail Act 1994* on the grant of bail to a youth, the

conditions on which bail is granted to a youth for the purposes of section 47(1)(j) –

(a) may include conditions requiring the youth to comply with an intervention plan referred to in section 56A; and

(b) may include a condition that the youth appear before the Court on a date or dates, specified in the conditions of bail, that are earlier than the date to which the sentencing has been deferred, so as to enable the Court to consider the extent to which the youth is complying with any conditions of the bail; and

(c) may include any other conditions that the Court considers appropriate for a purpose referred to in section 56A(2).

(3) If a youth to whom bail has been granted for the purposes of section 47(1)(j) appears before the Court, the Court may amend the conditions of the bail by varying, adding to or substituting any of the conditions.

(4) In determining whether, under this section, to amend a condition of bail, the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the conditions of the bail granted to the youth in respect of the offence.

56C. Amendment of date of order deferring sentencing of youth

(1) The Court may amend an order made under section 47(1)(j) in relation to a youth by altering the date to which the sentencing of the youth for the offence is deferred.

(2) The date, referred to in subsection (1), that is specified in an order under section 47(1)(j) in relation to a youth may be altered under subsection (1) –

(a) to an earlier date than the date specified in the order; or

(b) to a later date than the date specified in the order.

(3) A later date to which an order may be altered must not extend the period of the order so that the total period of the order continues for more than 12 months from the date of the finding of guilt in respect of which the order was made.

(4) In determining whether, under this section, to amend the date of an order, the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the conditions of the bail granted to the youth in respect of the offence.

(5) The Court must not, under this section, amend an order in relation to a youth unless the youth is before the Court.

56D. When order deferring sentence may be revoked

(1) The Court may revoke an order made under section 47(1)(j) in relation to a youth in respect of an offence and proceed to sentence the youth under section 47 in respect of the offence only if –

(a) the Court is of the opinion that the purposes, specified in section 56A(2), for which the sentencing of the youth was deferred are unlikely to be fulfilled; or

(b) the youth requests the revocation of the order.

(2) The Court must not, under this section, revoke an order in relation to a youth unless the youth is before the Court.

Division 8 – Fines

57. Amount of fine

(1) In this section,

maximum fine means the maximum fine which may be imposed on an adult under another Act for the same offence.

(2) The Court must not impose a fine in respect of a single offence that exceeds –

(a) if the youth is less than 15 years old, 2 penalty units or the maximum fine, whichever is lower; or

(b) if the youth is 15 or 16 years old, 5 penalty units or the maximum fine, whichever is lower; or

(c) if the youth is 17 years old or more, the maximum fine.

(3) The Court must not impose fines in respect of 2 or more offences the total of which exceeds –

(a) if the youth is less than 15 years old, 5 penalty units or the total of the maximum fines for those offences, whichever is lower; or

(b) if the youth is 15 or 16 years old, 10 penalty units or the total of the maximum fines for those offences, whichever is lower; or

(c) if the youth is 17 years old or more, the total of the maximum fines for those offences.

58. Financial circumstances of youth to be considered

The Court must take into consideration the financial circumstances of the youth when determining the amount of a fine to be imposed on the youth if the youth is present before the Court.

59. Time for payment or payment by instalments

(1) If the Court requires a youth to pay a fine, the Court must also order –

(a) that the fine be paid immediately; or

(b) that the fine be paid within the period specified in the order; or

(c) that the fine be paid by instalments as specified in the order.

(2) If the Court fails to make an order under subsection (1), the Court is taken to have made an order requiring payment of the fine within 28 days after the youth is ordered to pay the fine.

60. Alteration of time for, or method of, paying fine

(1) A youth who is required to pay a fine may apply to the Court before the end of the period within which the fine is to be paid for –

(a) further time in which to pay the fine; or

(b) an amendment of the order which required the payment of the fine to allow the fine to be paid by instalments; or

(c) an amendment of the order which required payment of the fine by instalments; or

(d) an order that the youth perform community service instead of paying the outstanding amount of the fine.

(2) On the hearing of the application, the Court may make such orders as it considers appropriate.

61. Failure to pay fine or instalment

(1) If a youth fails to pay an instalment of a fine by the day on which it is due, on that day the amount of the fine outstanding becomes due and payable.

(2) If a youth fails to pay a fine or an instalment of a fine by the day on which it is due, the district registrar may –

(a) require the youth to attend before the Court; or

(b) take proceedings for the recovery of the outstanding amount of the fine under the *Magistrates Court (Civil Division) Act 1992*.

(3) Even though the district registrar has, under subsection (2)(b), commenced proceedings for the recovery of a fine under the *Magistrates Court (Civil Division) Act 1992*, the district registrar may also under subsection (2)(a) require the youth to attend before the Court in respect of the failure of the youth to pay that fine or an instalment of that fine if the district registrar considers it appropriate to do so.

62. Court proceeding for failure to pay fine

(1) If the district registrar decides to take action under section 61(2)(a), he or she must –

(a) serve a notice on the youth requiring the youth to attend before the Court at the time and place specified in the notice; and

(b) serve a copy of that notice on a guardian unless one cannot be found after reasonable inquiry.

(2) A notice or a copy of a notice served under subsection (1) is to be served not less than 7 days before the hearing.

(3) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear before the Court as required by a notice served under subsection (1); or

(b) reasonable efforts have been made to serve a notice on the youth under subsection (1) but have been unsuccessful.

(4) If the Court is satisfied that a youth has failed to pay a fine or an instalment of a fine by the day on which it is due, the Court may do one or more of the following:

(a) amend the order that was made under section 59 as the Court considers appropriate;

(b) order the youth to perform community service instead of paying the outstanding amount of the fine;

(c) order the district registrar to take proceedings for the recovery of the outstanding amount of the fine under the *Magistrates Court (Civil Division) Act 1992*;

(d) revoke the order made under section 47 requiring the youth to pay the fine and, where appropriate, any other order made under that section and make another order under that section in respect of the offence.

(5) The Court must not make an order under subsection (4) unless the youth is present before the Court.

(6) If the district registrar issues a notice for the purposes of requiring a youth to attend before the Court in respect of a failure to pay a fine or an instalment of a fine –

(a) the district registrar may not under section 61(2)(b) commence proceedings to recover the outstanding amount of the fine under the *Magistrates Court (Civil Division) Act 1992*; and

(b) any such proceedings already commenced may not be continued unless the Court makes an order under subsection (4)(c) requiring the district registrar to take proceedings for the recovery of the outstanding amount of the fine under that Act.

63. Community service instead of fine

(1) If the Court makes an order under section 60(1)(d) or section 62(4)(b) requiring a youth to perform community service instead of paying the outstanding amount of a fine, the order must require the performance of community service for the longer of the following periods:

(a) one hour for each $20 or part of $20 of the fine outstanding but not exceeding the maximum hours specified in section 72;

(b) 3 hours.

(2) Division 10 of this Part applies, with necessary adaptations, to an order under section 60(1)(d) or section 62(4)(b) requiring the performance of community service instead of paying the outstanding amount of a fine as if the order were a community service order.

(3) If an order is made under section 60(1)(d) or section 62(4)(b), the youth may pay the whole or part of the outstanding amount of the fine in respect of which the order was made and the number of hours of community service the youth is required to perform is reduced by the proportion that the amount paid bears to that outstanding amount (ignoring any fraction or part of an hour).

64. Proceedings under *Magistrates Court (Civil Division) Act 1992* to recover fine

A fine is taken to be a judgment of the Magistrates Court (Civil Division) that is enforceable under the *Magistrates Court (Civil Division) Act 1992* if –

(a) the Court makes an order under section 62(4)(c) requiring the district registrar to take proceedings for the recovery of the outstanding amount of the fine under that Act; or

(b) the district registrar under section 61(2)(b) determines to take proceedings for the recovery of the fine under that Act.

Division 9 – Probation

65. Probation order

(1) A probation order is an order that –

(a) the youth must report to a youth justice worker at the place specified in the order within 2 working days after the order is made; and

(b) during the period of probation the youth must report to the assigned youth justice worker as required by the youth justice worker; and

(c) during the period of probation the youth must receive visits from the assigned

youth justice worker as required by the youth justice worker; and

(d) during the period of probation the youth must not commit another offence, including a prescribed offence, which if committed by an adult could be punishable by imprisonment; and

(e) during the period of probation the youth must not leave the State without the written permission of the Secretary; and

(f) the youth must notify the assigned youth justice worker of any change during the period of probation of residence, employment or school, or other educational or training establishment, before, or within a reasonable period after, the change; and

(g) during the period of probation the youth must obey the reasonable and lawful instructions of the assigned youth justice worker.

(2) A probation order is subject to special conditions which are specified in the order and reasonable in the circumstances.

(3) A special condition may apply during the whole or any part of the period of probation as specified in the probation order.

(4) Without limiting the special conditions that may be imposed, special conditions may include one or more of the following conditions:

(a) the youth must attend school;

(b) the youth must attend educational, personal, health and other programs specified in the order;

(c) the youth must attend educational, personal, health and other programs as directed by the assigned youth justice worker;

(d) the youth must abstain from drinking alcohol;

(e) the youth must abstain from using controlled substances;

(ea) the youth must, as directed by the Secretary, submit to testing for controlled substances or alcohol;

(f) the youth must reside at a specified address;

(g) the youth must not leave his or her place of residence between specified hours on specified days;

(h) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as specified in the order;

(i) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as directed by the assigned youth justice worker.

66. Period of probation order

Probation is to be for the period specified in the order not exceeding –

(a) 2 years, if the offence giving rise to the probation may be punishable by imprisonment for a term of 2 or more years when committed by an adult; or

(b) 12 months in any other case.

67. Review of probation order

(1) A youth or the Secretary may apply to the Court for an order under subsection (4) if –

(a) the circumstances of the youth have changed since the making of the probation order; or

(b) the youth is being detained in a detention centre or is otherwise unable to comply with the probation order; or

(c) the youth is no longer willing to comply with the probation order.

(2) A copy of the application and notice of the time and place of the hearing of the application must be served by the applicant not less than 7 days before the hearing on –

(a) the Secretary, if the application is made by or on behalf of the youth; or

(b) the youth, and the guardian unless one cannot be found after reasonable inquiry, if the application is made by the Secretary.

(3) The Court may issue a warrant to arrest a youth if –

(a) the youth fails to appear at the hearing of the application of the Secretary; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) At the hearing of an application, the Court may do one or more of the following:

(a) discharge the probation order;

(b) continue the probation order as it is;

(c) amend the period during which the probation order has effect;

(d) amend the special conditions to which the probation order is subject;

(e) revoke the probation order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(5) If the period during which a probation order has effect is extended under subsection (4)(c), the Court must not extend that period so that it continues for more than the relevant period specified in section 66.

(6) In determining what order to make under subsection (4), the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the conditions and special conditions to which the probation order is subject.

(7) The Court must not make an order under subsection (4) unless the youth is present before the Court.

68. Contravention of probation order

(1) A prescribed person may apply to the Court for an order under subsection (4) if it appears to the prescribed person that a youth has contravened a probation order or a special condition to which a probation order is subject.

(2) A copy of the application and notice of the time and place of the hearing of the application is to be served by the applicant not less than 7 days before the hearing on –

(a) the youth; and

(b) a guardian unless one cannot be found after reasonable inquiry.

(2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

(a) subsection (2) does not apply in relation to the application; and

(b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

(a) an application to the Court may be made orally under subsection (1); and

(b) subsection (2) does not apply in relation to the application.

(3) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) If the Court is satisfied that a youth has contravened the probation order or a special condition to which the probation order is subject, the Court may do one or more of the following:

(a) continue the probation order as it is;

(b) amend the period during which the probation order has effect;

(c) amend the special conditions to which the probation order is subject;

(d) revoke the probation order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(5) If the period during which a probation order has effect is extended under subsection (4)(b), the Court must not extend that period so that it continues for more than the relevant period specified in section 66.

(5A) Even though an application made under subsection (1) in relation to a probation order is not heard or determined before the order expires, the Court may –

(a) hear and determine the application; and

(b) if it is satisfied that a youth has contravened the probation order or a special condition to which the probation order is subject, make an order under subsection (4) –

as if the order were in force.

(6) In determining what order to make under subsection (4), the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the probation order and the special conditions to which the probation order is subject.

(7) The Court must not make an order under subsection (4) unless the youth is present before the Court.

Division 10 – Community service orders

69. Community service order

(1) A community service order is an order that –

(a) the youth must report to the person and place specified in the order within the period specified in the order; and

(b) the youth must perform, in a satisfactory way for the number of hours specified in the order, the community service activity that the assigned youth justice worker directs the youth to perform; and

(c) while performing a community service activity the youth must comply with reasonable directions given by the assigned youth justice worker; and

(d) the youth must notify the assigned youth justice worker of any change of residence before, or within 2 working days after, the change; and

(e) the youth must comply with reasonable directions given by the assigned youth justice worker directing the youth to perform community service activities.

(2) A community service order is subject to the special conditions that are reasonable in the circumstances and are specified in the order.

(3) A special condition may apply during the whole or any part of the period for which the order is to be in force.

(4) Without limiting the special conditions that may be specified in the order, special conditions may include one or more of the following conditions:

(a) the youth must attend school;

(b) the youth must attend educational, personal, health and other programs specified in the order;

(c) the youth must attend educational, personal, health and other programs as directed by the assigned youth justice worker;

(d) the youth must abstain from drinking alcohol;

(e) the youth must abstain from using controlled substances;

(f) the youth must, as directed by the Secretary, submit to testing for controlled substances or alcohol;

(g) the youth must reside at a specified address;

(h) the youth must not leave his or her place of residence between specified hours on specified days;

(i) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as specified in the order;

(j) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as directed by the assigned youth justice worker.

70. Preconditions for making community service order

The Court may make a community service order only if –

(a) the youth is 13 years old or more; and

(b) the youth indicates a willingness to comply with the order; and

(c) the presentence report states that the youth is a suitable person to perform community service and that there are appropriate community service activities available in which the youth could participate.

(d) . . . . . .

71. Multiple community service orders

The Court –

(a) may make 2 or more community service orders against a youth in respect of 2 or more offences; and

(b) may make a community service order against a youth who is already subject to an existing community service order.

72. Limitation on number of hours of community service

(1) The total number of hours of community service to be performed by a youth under one or more community service orders must not, at any time, be more than –

(a) 70 hours, if the youth is 13, 14 or 15 years old; or

(b) 210 hours, if the youth is 16 years old or more.

(2) The total number of hours of community service to be performed is calculated –

(a) by adding the hours specified in each of one or more community service orders made by the Court when imposing sentences against the youth; and

(b) if the youth is already subject to an existing community service order, by adding the number of hours obtained under paragraph (a) to the number of hours of community service that the youth has still to perform to comply with

the existing community service order; and

(c) if the youth is subject to any undertaking to perform community service, by adding the number of hours obtained under paragraph (a) or, if paragraph (b) applies, that paragraph, to the number of hours that the youth has still to perform to comply with the undertaking.

(3) To the extent that the total number of hours of community service to be performed exceeds the maximum specified in subsection (1), the order or orders made by the Court are of no effect.

(4) Every community service order made against a youth operates cumulatively to every other community service order made against the youth unless the Court directs otherwise.

73. Community service to be performed within limited period

A youth against whom a community service order is made must perform the number of hours of community service specified in the order –

(a) within the period of 12 months after the date of the order; or

(b) within any extended period that the Court may order under section 76 or 77.

74**.** . . . . . .

75. Obligations and powers of assigned youth justice worker

In giving directions to a youth in relation to the youth's performance of community service, the assigned youth justice worker must –

(a) avoid, if practicable –

(i) conflicts with the religious and cultural beliefs and practices of the youth or his or her parent; and

(ii) interference with the youth's attendance at a place of employment or a school or other educational or training establishment; and

(b) take all steps necessary to ensure that the youth, if practicable, is kept apart from any adult under sentence for an offence while performing the community service.

76. Review of community service order, &c.

(1) A youth or the Secretary may apply to the Court for an order under subsection (4) if –

(a) the circumstances of the youth have changed since the making of the community service order; or

(b) the youth is being detained in a detention centre or is otherwise unable to comply with the community service order; or

(c) the youth is no longer willing to comply with the community service order.

(2) A copy of the application and notice of the time and place of the hearing of the application must be served by the applicant not less than 7 days before the hearing on –

(a) the Secretary, if the application is made by or on behalf of the youth; or

(b) the youth, and the guardian unless one cannot be found after reasonable inquiry, if the application is made by the Secretary.

(3) The Court may issue a warrant to arrest a youth if –

(a) the youth fails to appear at the hearing of the application of the Secretary; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) At the hearing of the application, the Court may do one or more of the following:

(a) discharge the community service order;

(b) continue the community service order as it is;

(c) extend the period within which the community service is required to be performed under the community service order;

(d) reduce (without restriction) or increase the number of hours of community service which the youth is required to perform under the community service order;

(da) amend the special conditions to which the community service order is subject;

(e) revoke the community service order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(5) The Court may increase the number of hours of community service a youth is required to perform under subsection (4)(d) only if the youth expresses a willingness to comply with the community service order as so amended.

(6) If the number of hours of community service that the youth is required to perform is increased under subsection (4)(d), the Court must not increase the hours so that the youth is required to perform in total more hours of community service than the relevant maximum number of hours specified in section 72.

(7) In determining what order to make under subsection (4), the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the

community service order and the special conditions to which that order is subject.

(8) The Court must not make an order under subsection (4) unless the youth is present before the Court.

77. Contravention of community service order

(1) The Secretary may apply to the Court for an order under subsection (5) if it appears to the Secretary that a youth has contravened a community service order.

(2) An application must be made within 6 months after the youth contravenes the community service order.

(3) A copy of the application and notice of the time and place of the hearing of the application is to be served not less than 7 days before the hearing by the applicant on –

(a) the youth; and

(b) a guardian unless one cannot be found after reasonable inquiry.

(3A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

(a) subsection (3) does not apply in relation to the application; and

(b) the Court may issue a warrant to arrest the youth.

(3B) If the youth is before the Court –

(a) an application to the Court may be made orally under subsection (1); and

(b) subsection (3) does not apply in relation to the application.

(4) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(5) If the Court is satisfied that a youth has contravened a community service order, the Court may do one or more of the following:

(a) on the undertaking of the youth to comply with the order, continue the order as it is;

(b) extend the period within which the community service is required to be performed under the order;

(c) increase the number of hours of community service that the youth is required to perform under the order;

(ca) amend the special conditions to which the community service order is subject;

(d) revoke the order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(6) The Court may increase the number of hours of community service a youth is required to perform under subsection (5)(c) only if the youth expresses a willingness to comply with the community service order as so amended.

(7) If the number of hours of community service that the youth is required to perform is increased under subsection (5)(c), the Court must not increase the number of hours so that the youth is required to perform more hours of community service than the relevant maximum number of hours specified in section 72.

(8) In determining what order to make under subsection (5), the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the community service order.

(9) The Court must not make an order under subsection (5) unless the youth is present before the Court.

(10) For the purposes of this section, a community service order continues in force until the application under this section is heard and determined.

78. Ending of community service order

A community service order remains in force until the first of the following occurs:

(a) the youth has performed community service in accordance with the order for the number of hours specified in the order;

(b) the order is discharged under section 76(4);

(c) the period within which the community service is required to be performed under section 73 expires;

(d) the order is revoked under section 76(4) or 77(5).

Division 11 – Detention orders

79. Detention order

A detention order is an order that a youth serve the period of detention specified in the order in a detention centre.

80. Preconditions for making detention order

The Court may only make a detention order if the Court –

(a) has considered all other available sentences; and

(b) is satisfied that no other sentence is appropriate in the circumstances of the case.

81. Period of detention

A period of detention –

(a) must not be imposed if an adult who committed the same offence could not be sentenced to imprisonment; and

(b) must not exceed 2 years.

82. Warrant for detention

(1) On making a detention order against a youth, the Court must issue a warrant –

(a) directing the Secretary, a police officer or another person to take the youth into custody; and

(b) requiring that the youth be delivered to a detention centre.

(2) Subsection (1) does not apply if the Court on making a detention order against a youth also makes a suspended detention order in respect of the whole period of detention.

83. Commencement of detention

(1) A period of detention commences on the day the Court makes the detention order except where –

(a) the Court makes an order under section 85(1); or

(b) the youth has been held in custody pending the determination of proceedings for an offence; or

(c) the order specifies otherwise.

(2) If the Court makes an order under section 85(1), the period of detention commences on the earliest release date or next release date in respect of any other period of detention that is relevant under that section.

(3) On and from the commencement of a period of detention served in a detention centre until the youth is released under the supervised release order, the youth is taken to be in the custody of the Secretary.

84. Detention orders ordinarily concurrent

If, at the time the Court makes a detention order against a youth for an offence, the youth is serving or has been sentenced to serve a period of detention for another offence, the period of detention under the detention order must be served concurrently with the other period of detention, unless other provision is made under section 85 or another Act.

85. Court may order detention period to be cumulative

(1) If, at the time the Court makes a detention order against a youth for an offence, the youth is

serving or has been sentenced to serve a period of detention for another offence, the Court may order the period of detention under the detention order to take effect on the earliest release date or next release date in respect of that other period of detention.

(2) Subsection (1) applies even if the other period of detention has to be served concurrently or cumulatively with a period of detention for an offence other than the one for which the Court makes the detention order.

86. Limitation on cumulative orders

(1) If the Court makes an order under section 85(1), the total time that a youth, at the time of making that order, can be required to be detained in a detention centre must not exceed 2 years.

(2) If the Court makes an order under section 85(1) requiring a period of detention to take effect on the earliest release date or next release date in respect of another period of detention, any time for which the youth has been detained in respect of that other period of detention before the order under that section is made is not to be counted for the purposes of calculating the total time that a youth can be detained.

(3) To the extent that the total time to be spent in detention under 2 or more detention orders by reason of an order under section 85(1) exceeds the maximum allowed, the orders are of no effect.

87. Period of escape or release pending appeal not counted as detention

If a youth who is serving a period of detention under a detention order –

(a) is released from custody pending an appeal against the detention order (including an application for a review of sentence); or

(b) escapes from custody –

the period for which the youth is absent from custody during the release or escape is not to be counted as part of the period of detention.

88. Multiple orders of detention and imprisonment against person as adult and youth

(1) Sections 84, 85, 86 and 87 extend to a case where at the time the Court makes a detention order against a youth, the youth is serving or has been sentenced to serve a term of imprisonment in a prison as if a reference in those sections to a period of detention included a reference to the term of imprisonment.

(2) If a youth is liable to serve a term of imprisonment in a prison concurrently with a period of detention –

(a) the period must be served as a term of imprisonment in a prison; and

(b) the period of deprivation of liberty under the term of imprisonment must be

counted as part of the period of detention; and

(c) any period of deprivation of liberty served in the detention centre –

(i) is a period of detention served; and

(ii) must be counted as part of the term of imprisonment in the prison.

89. Period of custody on remand to be treated as detention on sentence

(1) In this section, a reference to a period of custody includes a reference to part of a period of custody.

(2) In making a detention order in relation to an offence or a group of offences (the ***relevant detention order***), the Court must take into account any period during which the youth was held in custody on remand in relation to proceedings for, or arising from, that offence or group of offences unless that period has been taken into account by the Court, or another court, in relation to the making of another detention order or the imposition of a term of imprisonment under the *Sentencing Act 1997*.

(3) If in making a relevant detention order the Court takes into account a period of custody referred to in subsection (2), the Court must order that the period of detention under the relevant detention

order is to commence on a day earlier than the day on which it is imposed, being such day as the Court considers appropriate in the circumstances.

89A. Detention order to specify earliest release date

In making a detention order, the Court must calculate, and specify in the detention order, the earliest release date.

Division 12 – Suspended detention orders

90. Suspended detention order

(1) A suspended detention order is an order suspending the whole or part of a sentence of a period of detention imposed by a detention order.

(2) The Court may make a suspended detention order if it is satisfied that it is appropriate to do so.

(3) A suspended detention order is subject to the following conditions:

(a) during the period specified in the order, the youth must not commit another offence which if committed by an adult could be punishable by imprisonment;

(b) during the period of suspension the youth must report to the assigned youth justice worker as required by the youth justice worker;

(c) during the period of suspension the youth must receive visits from the assigned youth justice worker as required by the youth justice worker;

(d) the youth must notify the assigned youth justice worker of any change during the period of suspension of residence, employment or school, or other educational or training establishment, before, or within 2 working days after, the change;

(e) during the period of suspension the youth must obey the reasonable and lawful instructions of the assigned youth justice worker;

(f) the youth must attend educational, personal, health and other programs as directed by the assigned youth justice worker;

(g) the youth must, as directed by the Secretary, submit to testing for controlled substances or alcohol;

(h) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as directed by the assigned youth justice worker.

(4) A suspended detention order is also subject to any special conditions specified in the order which are reasonable in the circumstances.

(5) A special condition may apply during the whole or any part of the period of suspension as specified in the suspended detention order.

(6) Without limiting the special conditions that may be imposed, special conditions may include one or more of the following conditions:

(a) the youth must report to the person and place specified in the order within 2 working days after the order is made;

(b - c) . . . . . .

(d) during the period of suspension the youth must not leave the State without the written permission of the Secretary;

(e - f) . . . . . .

(g) the youth must not unreasonably miss school;

(h) the youth must attend educational, personal, health and other programs specified in the order;

(i) . . . . . .

(j) the youth must abstain from drinking alcohol;

(k) the youth must abstain from using controlled substances;

(l) the youth must reside at a specified address;

(m) the youth must not leave his or her place of residence between specified hours on specified days.

(n - o) . . . . . .

91. Period of suspension

(1) If the Court makes a suspended detention order, the Court must specify in the order the period during which the order has effect.

(2) The period specified in a suspended detention order as the period during which the order has effect must not exceed –

(a) 12 months, if the youth is less than 16 years old; or

(b) 2 years, if the youth is 16 years old or more.

92. Effect of suspended detention order

If the Court makes a suspended detention order, the youth only has to serve the period, or that part of the period, of detention that has been suspended if ordered to do so under section 94.

93. Review of suspended detention order

(1) A youth or the Secretary may apply to the Court for an order under subsection (4) if –

(a) the circumstances of the youth have changed since the making of the suspended detention order; or

(b) the youth is being detained in a detention centre or is otherwise unable to comply with a condition or special condition to which the suspended detention order is subject; or

(c) the youth is no longer willing to comply with a condition or special condition to which the suspended detention order is subject.

(2) A copy of the application and notice of the time and place of the hearing of the application must be served by the applicant not less than 7 days before the hearing on –

(a) the Secretary, if the application is made by or on behalf of the youth; or

(b) the youth, and the guardian unless one cannot be found after reasonable inquiry, if the application is made by the Secretary.

(3) The Court may issue a warrant to arrest a youth if –

(a) the youth fails to appear at the hearing of the application of the Secretary; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) At the hearing of an application, the Court may do one or more of the following:

(a) continue the suspended detention order as it is;

(b) amend the suspended detention order by amending the period during which that order has effect or in any other manner;

(c) amend the special conditions to which the suspended detention order is subject;

(d) revoke the suspended detention order;

(e) restore the whole or any part of that amount of the sentence that was suspended by the suspended detention order and order the youth to serve the restored sentence;

(f) revoke the suspended detention order and the detention order to which it relates and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(5) If a suspended detention order is amended under subsection (4)(b), the Court must not extend the period of suspension so that the total period of suspension continues for more than the period specified in section 91(2).

(5A) Even though an application made under subsection (1) in relation to a suspended

detention order is not heard or determined before the order expires, the Court may –

(a) hear and determine the application; and

(b) if it is satisfied that a youth has contravened the suspended detention order or a special condition to which the suspended detention order is subject, make an order under subsection (4) –

as if the suspended detention order were in force.

(6) In determining what order to make under subsection (4), the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the suspended detention order and the conditions to which the suspended detention order is subject.

(7) The Court must not make an order under subsection (4) unless the youth is present before the Court.

94. Contravention of suspended detention order

(1) The prescribed person may apply to the Court for an order under subsection (4) if it appears to the Secretary that a youth has contravened a condition or special condition to which a suspended detention order is subject.

(2) A copy of the application and notice of the time and place of the hearing of the application is to be served by the applicant not less than 7 days before the hearing on –

(a) the youth; and

(b) a guardian unless one cannot be found after reasonable inquiry.

(2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

(a) subsection (2) does not apply in relation to the application; and

(b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

(a) an application to the Court may be made orally under subsection (1); and

(b) subsection (2) does not apply in relation to the application.

(3) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) If the Court is satisfied that a youth has contravened a condition or special condition to which a suspended detention order is subject, the Court may do one or more of the following:

(a) continue the suspended detention order as it is;

(b) amend the suspended detention order by amending the period during which that order has effect or in any other manner;

(c) amend the special conditions to which the suspended detention order is subject;

(d) revoke the suspended detention order;

(e) restore the whole or part of that amount of the sentence of detention that was suspended by the suspended detention order and order the youth to serve the restored sentence.

(5) If the Court amends a suspended detention order under subsection (4)(b) by extending the suspension by a further period, section 91(2) does not apply to the further period.

(6) The further period is not to exceed –

(i) 12 months, if the youth was less than 16 years old at the time when he or she contravened the condition or special condition to which the suspended detention order is subject; or

(ii) 2 years, if the youth was 16 years old or more at that time.

(7) In determining what order to make under subsection (4), the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the conditions and special conditions to which the suspended detention order is subject.

(8) The Court must not make an order under subsection (4) unless the youth is present before the Court.

Division 13 – Restitution

95. Restitution order

(1) A restitution order is an order containing one or more of the following requirements:

(a) that a person who has possession or control of stolen goods restore them to the person entitled to them;

(b) that the youth deliver to another person goods that are the proceeds of any disposal or realisation of the whole or part of –

(i) stolen goods; or

(ii) goods obtained by the disposal or realisation of the whole or part of the stolen goods;

(c) that an amount not exceeding the value of stolen goods be paid to another person out of money taken from the youth's possession on his or her arrest.

(2) If –

(a) the Court makes a restitution order containing a requirement referred to in subsection (1)(a); and

(b) it appears to the Court that the person against whom the order is made bought the stolen goods in good faith from the youth or lent money in good faith on the security of the stolen goods to the youth –

the Court may, on the application of the purchaser or lender, order that an amount not exceeding the purchase price or the amount lent be paid to the purchaser or lender out of money taken from the youth's possession on his or her arrest.

(3) A restitution order containing a requirement referred to in subsection (1)(b) or (c) may be made only in favour of a person who, if the stolen goods were in the youth's possession, would be entitled to recover them from the youth.

(4) The Court may make a restitution order containing both of the requirements referred to in subsection (1)(a) and (b) only if the total of the value of the goods delivered to the person in whose favour the order is made and the amount paid to that person under the order is not more than the value of the stolen goods.

(5) A restitution order may be made by the Court –

(a) on its own motion; or

(b) on the application of –

(i) the person in whose favour the order is sought; or

(ii) the prosecutor on that person's behalf.

(6) An application under subsection (5)(b) is to be made as soon as practicable after the youth is found guilty of an offence.

96. Preconditions for restitution order

(1) The Court may make a restitution order only if it is satisfied by evidence presented to the Court that –

(a) goods have been stolen; and

(b) a youth has been found guilty of an offence connected with the theft of the goods.

(2) For the purposes of subsection (1), evidence presented to the Court includes –

(a) evidence given at the hearing of the charge; and

(b) written statements or admissions made for use, and admissible, as evidence at the hearing of the charge; and

(c) depositions taken at committal proceedings relating to the charge; and

(d) written statements or admissions used as evidence in committal proceedings relating to the charge; and

(e) admissions made by or on behalf of any person in connection with the proposed making of the restitution order.

97. Enforcement of restitution order

A restitution order is taken to be a judgment of the Magistrates Court (Civil Division) is enforceable under the *Magistrates Court (Civil Division) Act 1992*.

Division 14 – Compensation

98. Compensation order

(1) A compensation order is an order requiring the youth to pay compensation to another person in respect of one or more of the following matters:

(a) injury suffered, expenses incurred or loss suffered by the other person;

(b) loss or destruction of, or damage to, offence-affected property.

(2) Division 8, other than section 57, applies in respect of a compensation order, with necessary adaptations, as if the compensation order were an order under section 47(1)(e) requiring the youth to pay a fine.

(3) A compensation order may be made by the Court –

(a) on its own motion; or

(b) on the application of –

(i) the person in whose favour the order is sought; or

(ii) the prosecutor on that person's behalf.

(4) An application under subsection (3)(b) is to be made as soon as practicable after the youth is found guilty of an offence.

(5) Rules of evidence do not apply to an application for a compensation order in respect of loss or damage to property.

99. Preconditions for compensation order

(1) The Court may only make a compensation order if it is satisfied by evidence presented to the Court that –

(a) a youth has been found guilty of an offence; and

(b) a person has suffered injury or loss or destruction of, or damage to, offence-affected property as a result of the offence.

(2) For the purposes of subsection (1), evidence presented to the Court includes –

(a) evidence given at the hearing of the charge; and

(b) written statements or admissions made for use, and admissible, as evidence on the hearing of the charge; and

(c) depositions taken at committal proceedings relating to the charge; and

(d) written statements or admissions used as evidence in committal proceedings relating to the charge; and

(e) admissions made by or on behalf of any person in connection with the proposed making of the compensation order.

Division 14A – Failure to undertake rehabilitation program

99A. Contravention of rehabilitation program order

(1) A prescribed person may apply to the Court for an order under subsection (4) if it appears to the prescribed person that a youth has contravened a rehabilitation program order.

(2) A copy of the application and notice of the time and place of the hearing of the application is to be served by the applicant not less than 7 days before the hearing on –

(a) the youth; and

(b) a guardian unless one cannot be found after reasonable inquiry.

(2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

(a) subsection (2) does not apply in relation to the application; and

(b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

(a) an application to the Court may be made orally under subsection (1); and

(b) subsection (2) does not apply in relation to the application.

(3) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(4) If the Court is satisfied that a youth has contravened a rehabilitation program order, the Court may do one or more of the following:

(a) order the youth to resume undertaking the program;

(b) revoke the rehabilitation program order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence.

(5) In determining what order to make under subsection (4), the Court must consider –

(a) any report on the youth provided by the prescribed person; and

(b) the extent to which, and the manner in which, the youth has undertaken the rehabilitation program.

(6) The Court must not make an order under subsection (4) unless the youth is present before the Court.

Division 15 – Miscellaneous

100. Sentence order to be written

The Court must cause the order imposing a sentence to be reduced promptly to writing.

100A. Correction of sentence or order

(1) A sentence passed or an order made by the Court under this Part may be varied or revoked by the Court –

(a) on its own motion initiated within the 3 month period after the sentence was passed or the order was made; or

(b) on an application made within that period by the Secretary, a prescribed person or the affected youth.

(2) The Court must not vary or revoke a sentence or an order under this section unless it has determined that –

(a) the sentence or order is contrary to the law; or

(b) the Court failed to impose a sentence or make an order that was in conformity with the law; or

(c) the sentence or order included an order that was based on, or contained, an error of fact; or

(d) the youth's circumstances were wrongly stated or not accurately presented to the Court and it is in the interests of justice to vary or revoke the sentence or order.

(3) A sentence or an order is not to be varied or revoked under this section except –

(a) by the Court constituted as it was when the sentence was passed or the order made; and

(b) after the Court has given the parties an opportunity to be heard.

(4) Nothing in this section affects the operation of Chapter XLVI of Part IX of the *Criminal Code* or Part XI of the *Justices Act 1959*.

100B. Sentencing by different magistrate

(1) This section applies if, on the trial of an offence under this Act –

(a) a verdict of guilty has been found or a plea of guilty has been received but no judgment, or sentence or order under this Part, has been given, passed or made on it; and

(b) the magistrate who constituted the Court at the trial or when the plea was received goes out of office or it appears probable that, because of incapacitating illness or other serious cause, he or she will be unable to give judgment or pass sentence

or make an order under this Part within a reasonable time.

(2) If this section applies, any other magistrate may –

(a) take all necessary steps preliminary to the giving of judgment, the passing of sentence or the making of an order under this Part; and

(b) give judgment, pass sentence or make an order under this Part.

(3) In all cases where it is possible to do so, the magistrate referred to in subsection (1)(b) is to be consulted before judgment is given, sentence passed or an order made.

(4) Non-compliance with subsection (3) does not affect the validity of the judgment, sentence or order.

(5) The question whether it appears probable that a magistrate will be unable, for the reasons referred to in subsection (1)(b), to give judgment, pass sentence or make an order within a reasonable time is to be decided by the Chief Magistrate and that decision is final.

(6) If, on the trial of an offence –

(a) a verdict of guilty has been found or a plea of guilty has been received; and

(b) all steps preliminary to the giving of judgment or the passing of sentence or

the making of an order under this Part have been taken but no judgment, sentence or order has been given, passed or made –

the Court constituted by any other magistrate may give the judgment, pass the sentence or make the order under this Part determined by the magistrate who constituted the Court at the trial or when the plea was received.

(7) If, at any time before the commencement of the trial of an indictable offence, including one heard summarily, the youth pleads guilty before the Court constituted by a magistrate, any magistrate may take all necessary steps preliminary to the giving of judgment, the passing of sentence or the making of an order under this Part and may give judgment, pass sentence or make an order under this Part.

(8) A judgment given, sentence passed or order made under subsection (2), (6) or (7) has, for all purposes, the same effects and consequences as if it had been given, passed or made by the Court as constituted at the trial or when the plea was received.

101. Copy of certain Court orders to be provided to youth, guardian and Secretary

(1) The district registrar must provide a copy of any order made under section 47 to –

(a) the youth as soon as practicable; and

(b) a guardian unless one cannot be found after reasonable inquiry; and

(c) the Secretary.

(2) Failure to comply with subsection (1) does not affect the validity of the order.

102. Court may order attendance of guardian

(1) If in any proceedings under this Part a guardian is not present at the Court and the Court considers it appropriate to do so, the Court may issue a summons requiring the guardian to appear at the proceedings at the time and place specified in the summons.

(2) If a guardian fails to comply with a summons, the Court may issue a warrant for his or her arrest.

(3) Subsection (2) does not apply if the guardian has provided the Court with a reasonable excuse for failing to comply with the summons.

103. Effect of youth attaining 18 or more years, &c.

(1) If an offence is committed, or suspected to have been committed, by a person who was under 18 years of age at the time of the commission of the offence but is 18 years of age when proceedings are commenced against the person for the offence –

(a) those proceedings must be commenced under this Act; and

(b) if found guilty, the person must be sentenced under this Act as a youth.

(2) If an offence is committed, or suspected to have been committed, by a person who was under 18 years of age at the time of the commission of the offence but who is 19 years of age or more when proceedings are commenced against the person for the offence –

(a) the proceedings must be commenced and determined in the Court; and

(b) if the person is found guilty of the offence, the Court must proceed to sentence the person under this Act as a youth; and

(c) a sentence of detention is taken to be a sentence to serve a term of imprisonment in a prison.

(3) Proceedings arising out of an order made under this Act, a contravention of such an order or a contravention of conditions to which such an order is subject must be commenced and determined under this Act.

104. Adjournment to determine youth protection matters

(1) In this section, "**abused or neglected**" and "**at risk**" have the same meanings as in the *Children, Young Persons and Their Families Act 1997*.

(2) If at any time during proceedings under this Part it appears to the Court that –

(a) a youth is at risk or abused or neglected; or

(b) it would be in the best interests of the youth for an investigation or proceedings to be taken under the *Children, Young Persons and Their Families Act 1997* –

the Court may adjourn the proceedings and make one or more of the following orders:

(c) an order referring the matter to the Secretary;

(d) an order remanding the youth to be placed in some suitable place for the period or until the time specified in the order.

(3) The Court may consider the inability of a person to serve an application under this Part on a guardian as sufficient to support the making of an order under subsection (2).

(4) If an investigation or proceedings are being taken under the *Children, Young Persons and Their Families Act 1997* in respect of a youth, the Court must not impose a sanction or make another order under this Part in respect of that youth until –

(a) all matters under that Act have been determined; and

(b) the Court has received a report on the determination of those matters.

105. Adjournment to determine mental health or disability of youth

(1) In this section –

approved assessment centre has the same meaning as in the *Mental Health Act 2013*;

approved hospital has the same meaning as in the *Mental Health Act 2013*;

disability means a restriction or lack of ability to perform an activity in a normal manner that –

(a) is the result of an absence, loss or abnormality of mental, psychological, intellectual, cognitive, physiological or anatomical structure or function; but

(b) is not a mental illness;

specified means specified in an order under this section that commits a youth to a secure mental health unit.

(2) If at any time during proceedings under this Part it appears to the Court that the youth may be suffering from any mental illness or disability, the Court may adjourn the proceedings for a period not exceeding 7 days and –

(a) if the Court considers that the youth would be granted bail if the adjournment were for some other reason, make an order granting the youth bail on the condition that he or she present himself or herself at a place the Court considers suitable and allow himself or herself to be observed and assessed; or

(b) if the Court considers that the youth would not be granted bail if the adjournment were for some other reason, make an order remanding the youth to be placed in an approved assessment centre, approved hospital, secure mental health unit or other place, as the Court considers suitable, for observation and assessment.

(3) If the Court makes an order under subsection (2)(a) or (b), it is to make an order requiring a suitably qualified person at the place at which the youth is to be observed and assessed to provide the Court with a report on the youth's condition and a recommendation as to the youth's future treatment.

(4) The Court must give any guardian of the youth who is present the opportunity to be heard before making an order under subsection (2)(a) or (b).

(5) The Court may not make an order under subsection (2)(b) that commits a youth who has not attained the age of 18 years to an approved assessment centre or approved hospital unless the Court is satisfied that adequate facilities and staff exist at the approved assessment centre or

approved hospital for the appropriate care and treatment of the youth.

(6) The Court may not make an order under subsection (2)(b) that commits a youth who has not attained the age of 18 years to a secure mental health unit unless the Court has received a report from the Chief Psychiatrist stating that –

(a) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the youth; and

(b) the secure mental health unit is the most appropriate place available to accommodate the youth in the circumstances.

(7) If the Court makes an order under subsection (2)(b) that commits a youth to an approved assessment centre, approved hospital or secure mental health unit –

(a) the Court is to specify in the order that the specified person, or a person of a specified class of person, is to be responsible for taking the youth to the specified approved assessment centre, approved hospital or secure mental health unit; and

(b) the Court may specify in the order that that or another specified person, or a person of that or another specified class of person, is to be responsible for bringing the youth from the approved

assessment centre, approved hospital or secure mental health unit before the Court in connection with the exercise by the Court of its powers under this Act.

(8) A copy of an order under subsection (2)(b) that commits a youth to an approved assessment centre, approved hospital or secure mental health unit and the report of the Chief Psychiatrist under subsection (6) are to accompany the youth to the specified approved assessment centre, approved hospital or secure mental health unit.

(9) While a youth is the responsibility of a person as specified in an order under subsection (2)(b) that commits the youth to a secure mental health unit –

(a) that person has the custody of the youth; and

(b) if the youth is committed to an approved hospital, the youth is taken to be an involuntary patient for the purposes of the application of relevant provisions of the *Mental Health Act 2013*; and

(c) if the youth is committed to a secure mental health unit, the youth is taken to be a forensic patient for the purposes of the application of relevant provisions of the *Mental Health Act 2013*.

(10) The Court may make such orders in relation to the distribution and security of the report provided by a person in accordance with an

order under subsection (3) as it considers necessary or appropriate.

(11) Unless the Court orders otherwise, a person who prepares a report in accordance with an order under subsection (3) must give, as soon as practicable, a copy of his or her report to –

(a) the prosecutor; and

(b) the legal practitioner representing the youth or, if the youth is unrepresented, the youth.

(12) The prosecution or the defence may dispute the whole or any part of a report provided in accordance with an order under subsection (3).

(13) If the whole or any part of the report provided in accordance with an order under subsection (3) is disputed, the Court must not take into consideration the report or part in dispute unless the party disputing the report or part has had the opportunity –

(a) to lead evidence on the disputed matters; and

(b) to cross-examine on the disputed matters the author of the report.

106. Copy of complaint, summons and application to be served on person having legal custody of youth

(1) If a complaint and summons or an application under this Part is to be served on a youth who is in the legal custody of the Secretary or another

person, a copy of the complaint and summons, or of the application and notice of the hearing of the application, is to be served on the Secretary or other person.

(2) If a youth who is in the legal custody of the Secretary or another person makes an application under this Part, the youth must serve a copy of the application and notice of the hearing of the application on the Secretary or other person.

(3) If the Secretary or another person receives a copy of a complaint and summons, or of an application under this Part and notice of the hearing of the application, concerning a youth in his or her legal custody, the Secretary or other person must deliver the youth to the Court for the hearing of the charge or application.

107. Sanctions, &c., available to other courts

(1) In this section,

summary court means a court of summary jurisdiction other than the Magistrates Court (Youth Justice Division).

(2) The Supreme Court, or a summary court, may exercise all the powers of the Magistrates Court (Youth Justice Division) under this Part in addition to, or instead of, any other power it may exercise when sentencing for an offence, including a prescribed offence, a person who was 10 years old or more but less than 18 years old at the time when he or she committed the offence.

(3) If, under subsection (2), the Supreme Court or a summary court makes an order under section 47, the Supreme Court or summary court –

(a) must specify in the order that it is made under this Part; and

(b) may specify in the order whether the responsible Department in relation to this Act or the responsible Department in relation to the *Sentencing Act 1997* is to be responsible for all or any matters relating to the administration of the order.

(4) A failure to comply with subsection (3)(a) does not affect the validity of the order.

(5) If, in making an order referred to in subsection (3), the Supreme Court or summary court does not specify which department is to be responsible for matters relating to the administration of the order, the responsible Department in relation to this Act is responsible for those matters.

107A. Contravention of section 47 order made by other court

(1) In this section –

offence includes prescribed offence;

offender means the person against whom the original order was made;

original order means an order under section 47 made by the Supreme Court, or a summary court, exercising powers under section 107;

summary court means a court of summary jurisdiction other than the Magistrates Court (Youth Justice Division).

(2) If proceedings under this Part are to be brought in respect of the contravention of an original order or the conditions to which an original order is subject, the proceedings are to be brought in the Supreme Court or summary court that made the original order.

(3) In proceedings referred to in subsection (2), the Supreme Court or summary court may –

(a) exercise all the powers of the Magistrates Court (Youth Justice Division) under this Part; or

(b) revoke the contravened order and impose any sentence under the *Sentencing Act 1997* or another law in respect of the original offence that it could have imposed if it had not made the original order.

108. Restrictions on reporting proceedings of other courts

Section 31 applies, with necessary adaptations, to proceedings against a youth in respect of an offence, including a prescribed offence, in the

Supreme Court or a court of summary jurisdiction other than the Magistrates Court (Youth Justice Division).

108A. Sentence, &c., not invalidated by non-compliance with procedural requirements

(1) The failure of the Court –

(a) to cause an order imposing a sentence to be promptly reduced to writing; or

(b) to comply with any other procedural requirement of this Act –

does not invalidate the order or any sentence imposed.

(2) Subsection (1) does not prevent a court on an appeal against a sentence imposed or an order made under section 47 from reviewing a sentence imposed or an order made under section 47 by the Court in circumstances where there has been a failure that is referred to in that subsection.

PART 5 – SUPERVISED RELEASE ORDERS

108B. Application of Part 5

This Part applies in respect of a youth serving a period of detention under a detention order regardless of whether that period of detention, or part of that period of detention, is served in a detention centre, prison or secure mental health unit.

109. Right to be released

(1) A youth serving a period of detention under a detention order must be released from detention under a supervised release order on the earliest release date or, if under section 117 a supervised release order in relation to that detention has been cancelled and the Court has specified a next release date, on the next release date.

(2) If a youth is serving more than one period of detention under one or more detention orders, the youth must be released from detention under a supervised release order on the last occurring of the relevant earliest release dates and relevant next release dates.

110. Supervised release order

(1) The Secretary must make a supervised release order in respect of the release of a youth from detention at the time of, or before, the release of the youth.

(2) A supervised release order may relate to more than one period of detention.

(3) A supervised release order has effect until the end of the detention period in respect of which it is made.

111. Supervised release order subject to conditions

(1) A supervised release order is subject to the condition that the youth must not commit another offence, including a prescribed offence, which if committed by an adult could be punishable by imprisonment.

(1A) A supervised release order is also subject to the conditions that during the period of the order the youth –

(a) must report to the assigned youth justice worker as required by the youth justice worker; and

(b) must comply with any reasonable direction given by the youth justice worker; and

(c) must not move to a different residential address without the approval of the youth justice worker.

(2) A supervised release order is also subject to the special conditions specified in the order which are reasonable in the circumstances.

(3) Without limiting the special conditions which may be specified in a supervised release order,

the order may contain one or more of the following special conditions:

(a) . . . . . .

(b) the youth must be of good behaviour;

(c) the youth must comply with any regulations that regulate the conduct of persons released under supervised release orders.

(d) . . . . . .

(4) When a supervised release order ceases to have effect, the condition and special conditions to which it is subject also cease to have effect.

(5) The Secretary may at any time amend the special conditions to which a supervised release order is subject by notice in writing provided to the youth.

112. Effect of proposed supervised release order to be explained

(1) Before making a supervised release order in respect of a youth, the Secretary must explain, or cause to be explained, to the youth and, if the youth is less than 15 years old, the guardian, in language likely to be understood by the youth and the guardian –

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

(b) the consequences that may follow a contravention of the condition and any

special conditions to which the order is subject; and

(c) the right of the youth to seek the reconsideration of the special conditions to which the order is subject.

(2) If requested to do so, the youth and any guardian who is present when the supervised release order is made are required to sign on a copy of the order a written acknowledgment to the effect that the purpose and effect of the order are understood.

(3) The failure of the youth or guardian, or both, to sign an acknowledgment under subsection (2) does not postpone or otherwise alter the effect of a supervised release order.

113. Supervised release order, &c., to be provided in writing

(1) As soon as practicable after a supervised release order is made, or the special conditions to which a supervised release order is subject are amended, the Secretary must provide a written copy of the order or amended special conditions to –

(a) the youth; and

(b) the guardian unless one cannot be found after reasonable inquiry.

(2) Subsection (1) extends, with necessary adaptations, to any order amending or revoking a supervised release order.

114. Temporary suspension of obligations under supervised release order

(1) If the Secretary is satisfied that a youth in respect of whom a supervised release order is in force would be, or is, unable to comply with a special condition to which the order is subject for a limited time by reason of circumstances beyond the youth's control, the Secretary, by written notice provided to the youth, may suspend the special condition for a time specified in the notice.

(2) The Secretary must provide a copy of a notice under subsection (1) to the guardian unless one cannot be found after reasonable inquiry.

115. Cancellation of obligations after 6 months' release

(1) If a youth has been the subject of a supervised release order for 6 months or longer and the Secretary is satisfied that it would be appropriate to do so, the Secretary may amend the order by cancelling all or any of the special conditions to which the supervised release order is subject.

(2) The cancellation under subsection (1) of all or any conditions does not prevent the Secretary from acting under section 120 and inserting those or other conditions in the supervised release order.

116. Courts to notify Secretary if further offence committed

If a person in respect of whom a supervised release order is in force is found guilty of an offence, including a prescribed offence, by a court, that court must notify the Secretary of the commission of the offence and of the way in which the matter is disposed of by that court.

117. Contravention of supervised release order other than by further offence punishable by detention or imprisonment

(1) In this section –

detention offence means an offence in respect of which a court has imposed a sentence that includes a detention order or sentence of imprisonment;

relevant contravention, in relation to a supervised release order, means a contravention by the youth of a condition to which the supervised release order is subject, otherwise than by the commission of a detention offence.

(2) If it appears to the Secretary that a youth has committed a relevant contravention of a supervised release order, the Secretary –

(a) if the relevant contravention does not consist of the commission of an offence or a prescribed offence, may warn the youth, in writing, that a further

contravention of the supervised release order may result in the Secretary applying to the Court for an order under subsection (9); or

(b) if the relevant contravention does consist of the commission of an offence or a prescribed offence, may issue such a warning to the youth or apply to the Court for an order under subsection (9).

(3) If the Secretary issues a warning to a youth under subsection (2), the Secretary is to provide a copy of the warning to a guardian of the youth unless one cannot be found after reasonable inquiry.

(4) If it appears to the Secretary that a youth has committed a further relevant contravention of a supervised release order after being issued with a warning under subsection (2), the Secretary may apply to the Court for an order under subsection (9).

(5) A copy of the application to the Court made under subsection (2)(b) or subsection (4) and notice of the time and place of the hearing of the application are to be served not less than 7 days before the hearing by the Secretary on –

(a) the youth; and

(b) a guardian of the youth unless one cannot be found after reasonable inquiry.

(6) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

(a) the Court may issue a warrant to arrest the youth; and

(b) if the Court does so, subsection (5)(a) does not apply in relation to the application.

(7) If the youth is before the Court in relation to another matter –

(a) an application under subsection (2)(b) or subsection (4) may be made orally to the Court; and

(b) if the application is so made orally, subsection (5) does not apply.

(8) The Court may issue a warrant to arrest the youth if –

(a) the youth fails to appear at the hearing of an application made under subsection (2)(b) or subsection (4); or

(b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.

(9) If the Court is satisfied that a youth has committed a relevant contravention of the supervised release order, the Court may do one or more of the following:

(a) on the undertaking of the youth to comply with the order, continue the order as it is;

(b) amend the special conditions to which the order is subject;

(c) cancel the order.

(10) In determining what order to make under subsection (9), the Court must consider –

(a) any report on the youth prepared by the Secretary; and

(b) the extent to which, and the manner in which, the youth has complied with the supervised release order.

(11) The Court must not make an order under subsection (9) unless the youth is present before the Court.

(12) If under subsection (9) the Court cancels a supervised release order relating to a youth, the Court must –

(a) specify, in the order, a day it considers appropriate as the next release date; or

(b) order that the youth be detained for the remainder of his or her sentence of detention.

118**.** . . . . . .

119. Contravention of supervised release order by further offence punished by detention or imprisonment

If a court makes a detention order or otherwise imposes a term of imprisonment for an offence, including a prescribed offence, committed by a person in respect of whom a supervised release order is in force, the supervised release order is cancelled.

120. Effect of cancellation of supervised release order

(1) If a supervised release order is cancelled, the Court must issue a warrant directing the Secretary, a police officer or another person to take into custody the youth who is or was subject to the order and return the youth –

(a) if the youth is less than 19 years of age when the order is cancelled, to the custody of the Secretary at the detention centre from which he or she was released under the order; or

(b) if the youth is 19 years of age or more when the order is cancelled, to the custody of the Director of Corrective Services at the prison specified in the warrant.

(2) A supervised release order has no effect after it is cancelled.

(3) Subject to subsection (4), the period commencing when a youth was released under a

supervised release order and ending when the youth is returned to custody under a warrant issued under subsection (1) is counted as time that the youth served in custody under any detention order.

(4) If a supervised release order is cancelled because the youth commits another offence, including a prescribed offence, the time between the commission of that other offence and the return of the youth to custody under a warrant issued under subsection (1) is not counted as time that the youth served in custody under a detention order.

(5) . . . . . .

(6) Cancellation of a supervised release order does not prevent another supervised release order from being made subsequently.

121. Effect of cancellation of supervised release order after youth reaches 19 years

If a supervised release order is cancelled after the youth in respect of whom it was made has attained the age of 19 years –

(a) the youth is to be placed into the custody of the Director of Corrective Services at a prison; and

(b) the relevant detention order is to be taken for all purposes to be a sentence of imprisonment for the period of detention; and

(c) the period served in a detention centre under the detention order is counted as time served in a prison under that sentence of imprisonment; and

(d) any period following the release of the youth under the supervised release order that would, under this Act, be counted as time that the youth served in custody under the detention order if the youth had been less than 19 years of age when the supervised release order was cancelled is counted as time served in a prison under that sentence of imprisonment; and

(e) the supervised release order is taken to be a parole order made under the *Corrections Act 1997*; and

(f) the contravention of the supervised release order is taken to be a contravention of a parole order made under the *Corrections Act 1997*.

122. Effect of satisfying supervised release order

If the supervised release order runs its term without being cancelled, the youth concerned is taken to have served the period of detention to which the order relates.

PART 6 – DETENTION CENTRES

Division 1 – Establishment and management of detention centres

123. Establishment or abolition of detention centre

By notice published in the *Gazette*, the Minister may establish or abolish detention centres, or declare premises to be or not be detention centres, for the detention of –

(a) youths sentenced to a period of detention; and

(b) youths remanded in custody while awaiting the determination of proceedings for an offence; and

(c) persons in the process of being transferred to another State under this Act.

124. Management of detention centre

(1) The Secretary is responsible for the security and management of detention centres and the safe custody and wellbeing of detainees.

(2) The Secretary may issue instructions with respect to –

(a) the management, control, organisation and security of detention centres; and

(b) the management, control, health, treatment and security of detainees; and

(c) programs for detainees; and

(d) contact between detainees and members of the public; and

(da) contact between detainees and police officers; and

(e) educational, recreational and social activities of detainees; and

(f) any other matter connected with the management of detention centres and the management and wellbeing of detainees.

(3) Instructions may –

(a) apply to detention centres generally or to a particular detention centre; and

(b) confer a discretionary authority on a person or class of persons.

(4) If instructions issued under this section are inconsistent with this Act, this Act prevails and the instructions are of no effect to the extent of the inconsistency.

124A. Appointment of detention centre manager

(1) The Secretary may appoint a State Service officer or State Service employee as detention centre manager in respect of a detention centre.

(2) A detention centre manager may hold that office in conjunction with State Service employment.

Division 2 – Admission to detention centres

125. Where youth is to be detained

(1) The Secretary must determine the detention centre at which –

(a) a youth sentenced to a period of detention; or

(b) a youth remanded in custody while awaiting the determination of proceedings in relation to an offence; or

(c) a person in the process of being transferred to another State –

is to be detained.

(2) The Secretary may cause a detainee to be transferred from a detention centre to another detention centre.

126. Authority for admission to detention centre

A detention centre manager must not admit a person to, or detain a person in, a detention centre unless the manager has in respect of that person –

(a) a warrant requiring that the person be delivered to a detention centre; or

(b) if the person is a youth who has been refused bail by a police officer, a copy of the relevant entry in the charge book for the offence; or

(c) if the person is an offender to whom Part 7 applies, a copy of the transfer arrangement in respect of that person; or

(d) if the person has been sentenced to a term of imprisonment under another Act and that sentence, or part of that sentence, is to be served in a detention centre, evidence of the agreement between the Secretary and the Director of Corrective Services providing for the person to serve that sentence in a detention centre.

127. Explanation of rights and responsibilities on admission to detention centre

On the admission of a youth to a detention centre, the youth must be given an explanation of his or her rights and responsibilities as a resident of the detention centre in a language that he or she understands.

128. Provision of instructions on admission to detention centre

On the admission of a youth to a detention centre, the detention centre manager must provide a copy of any instructions issued under

section 124 that may affect the youth and a copy of this Part to –

(a) the youth; and

(b) the guardian, unless one cannot be found after reasonable inquiry.

Division 3 – Treatment of detainees, &c.

129. Rights of detainee

(1) A detainee is entitled –

(a) to have his or her developmental needs catered for; and

(b) subject to section 135, to receive visits from guardians, relatives, legal practitioners and other persons, including, in the case of a detainee who is an Aboriginal person, persons acting on behalf of the entity known as the Aboriginal Legal Service; and

(c) to have reasonable efforts made to meet his or her medical, religious and cultural needs including, in the case of a detainee who is an Aboriginal person, his or her needs as a member of the Aboriginal community; and

(d) to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment he or she is receiving in the detention centre.

(2) The Secretary must ensure that the rights of a detainee under sections 127 and 128 and this section are not infringed.

130. Leave from detention centre

(1) By written notice provided to a detainee, the Secretary may allow the detainee to take a temporary leave of absence from the detention centre for one or more of the following purposes:

(a) to seek or engage in paid or unpaid employment;

(b) to attend any place for educational or training purposes;

(c) to visit the detainee's family, relatives or friends;

(d) to take part in any sport, recreation, cultural event or entertainment in the community;

(e) to attend any place for medical examination or treatment;

(f) to attend a funeral;

(g) any other purpose that the Secretary considers appropriate.

(2) A leave of absence is to be –

(a) for the period specified in the notice allowing the leave; and

(b) only for the purpose specified in that notice; and

(c) subject to any conditions specified in that notice.

(3) If a detainee contravenes a condition to which a leave of absence is subject, other than a condition with respect to returning to a detention centre, the Secretary may, by written notice provided to the detainee –

(a) vary the conditions to which the leave of absence is subject; or

(b) cancel the leave of absence.

(4) If a detainee is granted leave of absence –

(a) the detainee remains in the legal custody of the Secretary during the period of leave; and

(b) the period of leave counts as part of the detainee's period of detention.

(5) A police officer may arrest a detainee who has been granted leave of absence if the police officer has reasonable grounds for believing that the detainee has failed to return, without reasonable excuse, to the detention centre by the end of the period of that leave of absence.

(6) A police officer may return a detainee arrested under subsection (5) to the detention centre from which the detainee was granted leave of absence.

131. Search of facility and possessions of detainee

(1) In this section,

prohibited articles means weapons, metal articles, alcohol, articles capable of being used as weapons, drugs or any other things which the regulations prohibit from being taken into a detention centre;

thing includes a letter.

(2) The detention centre manager may –

(a) . . . . . .

(b) if in the manager's opinion it is necessary to do so in the interests of the security or good order of the detention centre, cause a detainee to submit to a search of, and the examination of, any thing in his or her possession or control; and

(c) cause any part of the detention centre to be searched and any thing found in it to be examined if there are reasonable grounds for believing that the thing –

(i) is a prohibited article; or

(ii) jeopardises or is likely to jeopardise the security or good order of the centre or the safety of persons in it.

(3) The person carrying out a search under subsection (2) may seize any thing found in the

detention centre, whether in a detainee's possession or not, if that person believes on reasonable grounds that the thing is a prohibited article or is likely to jeopardise the security or good order of the centre or the safety of persons in it.

(4) Any thing seized under subsection (3) must be dealt with in accordance with the regulations or instructions issued under section 124.

(5) If necessary, reasonable force may be used to carry out a search under subsection (2).

132. Prohibited actions

The following actions are prohibited in relation to a detainee while in a detention centre:

(a) the use of isolation, within the meaning of section 133, as a punishment except as provided in that section;

(b) the use of physical force unless it is reasonable and –

(i) is necessary to prevent the detainee from harming himself or herself or anyone else; or

(ii) is necessary to prevent the detainee from damaging property; or

(iii) is necessary for the security of the centre; or

(iv) is otherwise authorised by or under this or any other Act or at common law;

(c) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the detainee as a punishment;

(d) the use of any form of psychological pressure intended to intimidate or humiliate the detainee;

(e) the use of any form of physical or emotional abuse;

(f) the adoption of any kind of discriminatory treatment.

133. Isolation

(1) In this section,

isolation means locking a detainee in a room separate from others and from the normal routine of the detention centre.

(2) A detention centre manager may authorise the isolation of a detainee only –

(a) if –

(i) the detainee's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property; and

(ii) all other reasonable steps have been taken to prevent the detainee from harming himself or herself or any other person or from damaging property but have been unsuccessful; or

(b) in the interests of the security of the centre.

(3) The period of isolation must not contravene any instructions issued under section 124(2).

(4) If necessary, reasonable force may be used to place a detainee in isolation.

(5) A detainee placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes.

(6) The detention centre manager must ensure that the particulars of every use of isolation are recorded in a register established for the purpose.

133A. Secretary may allow police to visit detainee in connection with police investigation

(1) The Secretary may allow a police officer to visit a detainee in a detention centre if satisfied that –

(a) it is for the purposes of a police investigation; and

(b) the detainee has no objection.

(2) The visit is to be on such conditions as to time, duration, termination, supervision, setting,

secrecy or otherwise as the Secretary determines and it is the duty of the police officer and detention centre manager to comply with those conditions.

(3) The Secretary, by any available means, may vary the conditions at any time.

(4) The detainee has the following rights in respect of the visit:

(a) to confer, on request, with a legal representative before it takes place, either in person or by telephone or video link;

(b) to have, on request, a legal representative, a parent or other relative, a guardian or an independent person present;

(c) to refuse to answer any question that may be put to the detainee;

(d) to end the visit at any time.

(5) The visitation of a detainee in a detention centre under and in accordance with this section is lawful notwithstanding the terms of any detention order or the operation of any other law.

133B. Secretary may allow temporary removal of detainee in connection with police investigation

(1) The Secretary may allow a police officer to remove a detainee from a detention centre for a period not exceeding 6 hours if satisfied that –

(a) it is for the purposes of a police investigation; and

(b) police access or further access to the detainee under section 133A would not suffice for those purposes or cannot for any reason take place; and

(c) the detainee has no objection.

(2) The detainee's removal is to be on such conditions as to time, duration, termination, supervision, secrecy, reporting or otherwise as the Secretary thinks fit and it is the duty of the detention centre manager and all police officers to comply with those conditions.

(3) The Secretary, by any available means, may vary the conditions at any time.

(4) The detainee has the following rights in respect of the removal:

(a) to confer, on request, with a legal representative before it takes place, either in person or by telephone or video link;

(b) to be accompanied, on request, by a legal representative, a parent or other relative, a guardian or an independent person;

(c) to refuse to answer any question that may be put to the detainee;

(d) to refuse to participate in any activity related to the police investigation;

(e) to be returned, on request made or signified by any means at any time, to the detention centre.

(5) The removal of a detainee from a detention centre under and in accordance with this section is lawful notwithstanding the terms of any detention order or the operation of any other law.

133C. Court may authorise temporary removal of detainee in connection with police investigation

(1) The Court, on the application of a commissioned police officer, may issue a warrant authorising that commissioned police officer or another police officer to remove a detainee from a detention centre temporarily if the Court is satisfied that –

(a) it is for the purposes of a police investigation; and

(b) police access or further access to the detainee under section 133A would not suffice for those purposes or cannot for any reason take place; and

(c) the removal cannot, for any reason, be effected under section 133B.

(2) If issued, the warrant is authority for the detention centre manager to allow the police officer named in the warrant to remove the detainee from the detention centre, once, for such temporary period and on such terms as the Court specifies in the warrant.

(3) The Court may revoke the warrant at any time before it would otherwise expire.

(4) In determining the terms of the warrant, the Court may have regard to –

(a) the nature of the police investigation; and

(b) the physical and mental condition, and cultural background, of the detainee; and

(c) the principles in section 5; and

(d) such other considerations as the Court thinks fit.

(5) For the purposes of subsection (4)(b), the Court may direct the applicant for the warrant to obtain a report on the detainee from the Secretary and furnish that report to the Court within such time as the Court, by the direction, specifies.

(6) For the avoidance of doubt, a warrant under this section –

(a) is not capable of being applied for or issued by telephone; and

(b) is not to authorise the temporary removal of a detainee from a detention centre on more than one occasion; and

(c) is not conditional on anybody's express or implied consent.

(7) In this section –

temporary means no longer than 12 hours.

133D. Other police powers unaffected

Nothing in section 133A, 133B or 133C is to be taken as preventing or restricting police officers from –

(a) exercising ordinary investigative, enforcement or other powers as regards unlawful conduct by detainees or other persons in detention centres; or

(b) exercising, in respect of detainees, powers under the *Forensic Procedures Act 2000*; or

(c) doing, in respect of detainees or detention centres, anything else that may be authorised by or under other laws or by any court.

134. Secretary may authorise medical treatment, &c.

Despite any other Act or law, the Secretary is authorised to give consent to any medical, dental, psychiatric, psychological or drug counselling or 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.

134A. Removal of detainee to secure mental health unit

(1) In this section –

controlling authority has the same meaning as in the *Mental Health Act 2013*;

disability means a restriction or lack of ability to perform an activity in a normal manner that –

(a) results from an absence, loss or abnormality of mental, psychological, intellectual, cognitive, physiological or anatomical structure or function; but

(b) is not a mental illness;

(2) The Secretary may direct that a detainee who, in the opinion of a medical practitioner or psychologist, appears to be suffering from a mental illness be removed from a detention centre to a secure mental health unit if –

(a) either –

(i) the Secretary determines that it is in the best interests of the detainee, other detainees in the detention centre or the staff of the detention centre for the detainee

to be removed to a secure mental health unit; or

(ii) the detainee has requested that he or she be removed to a secure mental health unit; and

(b) the Secretary has considered the report of the Chief Psychiatrist as to whether –

(i) the detainee is suffering from a mental illness; and

(ii) the admission of the detainee to a secure mental health unit is necessary for his or her care or treatment; and

(iii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the detainee.

(3) The Secretary may direct that a detainee who has a disability be removed from a detention centre to a secure mental health unit if –

(a) the Secretary considers that it is necessary for the detainee's care and treatment or for the protection of other persons; and

(b) the Secretary has considered the report of the Chief Psychiatrist as to whether –

(i) the admission of the detainee to a secure mental health unit is

necessary for his or her care or treatment; and

(ii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the detainee.

(4) A detainee admitted to a secure mental health unit under a direction under subsection (3) may be detained in the secure mental health unit for no longer than the period specified in the direction.

(5) If at any time while a youth admitted to a secure mental health unit under a direction under subsection (2) or (3) is so detained in that unit the Chief Psychiatrist considers that the youth would no longer benefit from being in that unit, the Chief Psychiatrist may require the Secretary to remove the youth from that unit.

(6) The Secretary is to comply with a requirement made under subsection (5).

(7) While a detainee is detained in a secure mental health unit following a direction under subsection (2) or (3), including while the detainee is on authorised leave from that secure mental health unit, that detainee is taken to be serving his or her sentence of detention.

(8) If a detainee is admitted to a secure mental health unit under this section, notification is to be given by the Secretary (Youth Justice) to the Tribunal as soon as practicable.

134B. Appeal against direction under section 134A

(1) A detainee may appeal to the Tribunal in respect of –

(a) the failure to make a direction under section 134A(2) or (3) if the detainee has made a request under section 134A(2)(a)(ii); or

(b) the requirement by the Chief Psychiatrist under section 134A(5).

(2) The commencing of an appeal does not affect the operation of the direction or requirement appealed against.

(3) An appeal is to be heard and determined by the Tribunal within 7 days from receipt of the appeal.

(4) The *Mental Health Act 2013* and the *Tasmanian Civil and Administrative Tribunal Act 2020* apply to the hearing and determination of an appeal, regardless of whether or not the detainee has a mental illness, as if it were a review under those Acts.

135. Refusal of ordinary visitor, &c.

(1) In this section –

visitor does not include a prescribed officer within the meaning of section 135A.

(1A) A detention centre manager may refuse to allow a visitor to enter the detention centre if –

(a) in the manager's opinion, the person's presence in the detention centre would prejudice the security or good order of the detention centre; or

(b) the person does not, on request, give his or her name, address or proof of identity; or

(c) the person refuses to comply with a request made under subsection (3).

(2) A detention centre manager may require a visit to a detention centre to take place in the presence, or under the supervision, of a member of the staff of the detention centre unless the visitor is a legal practitioner representing the detainee.

(3) A detention centre manager may, on reasonable grounds, ask a visitor in or seeking entry to a detention centre to submit anything in the person's possession to a search by the manager or a member of the staff of the detention centre.

(4) If a visitor who has entered a detention centre prejudices the security or order of the centre or refuses to submit to the search mentioned in subsection (3), the detention centre manager may direct the visitor to immediately leave the centre.

(5) If the detention centre manager, or a member of the staff of the detention centre authorised by the manager, considers it necessary for the security or order of the detention centre, he or she may give directions to a visitor to the centre.

(6) A visitor to a detention centre must comply with a direction given under subsection (4) or (5).

(7) A police officer, the detention centre manager or a member of the staff of a detention centre may, using force that is reasonable and necessary, remove from the detention centre a visitor who refuses to leave the centre immediately when directed to leave.

135A. Access to detainee by prescribed officer

(1) In this section –

prescribed officer means a person, or a person of a class of persons, prescribed by the regulations to be a prescribed officer for the purposes of this section.

(2) Except as provided by this section, a prescribed officer is entitled to be allowed access, at any reasonable time, to –

(a) any detention centre for the purpose of performing and exercising his or her functions and powers under a prescribed Act, in relation to the centre; and

(b) any detention centre and any detainee at the centre for the purpose of performing and exercising his or her functions and powers under a prescribed Act, in relation to the detainee.

(3) A detention centre manager and each member of the staff at a detention centre –

(a) must allow a prescribed officer to conduct an interview with a detainee out of the hearing of any other person; and

(b) must not without the approval of the detainee open, copy, remove or read any correspondence –

(i) from the detainee to a prescribed officer; or

(ii) from a prescribed officer to the detainee.

(4) A detention centre manager, and a member of staff at a detention centre, must not read any document brought to the centre by a prescribed officer without the permission of the prescribed officer.

(5) A detention centre manager may –

(a) refuse to allow a prescribed officer to enter the detention centre, or require a prescribed officer to leave the detention centre immediately, if the prescribed officer fails to produce his or her identification and evidence that he or she is a prescribed officer when requested to do so by the detention centre manager; and

(b) direct a prescribed officer to leave the detention centre immediately if, in the manager's opinion, it is necessary for the security of the prescribed officer or the detention centre.

(6) If a detention centre manager considers it necessary for the security of a prescribed officer or the detention centre, the manager or member of staff may give directions to the prescribed officer.

(7) A prescribed officer is to comply with a direction given under this section.

136. Protection of legal practitioner representing detainee

(1) A legal practitioner representing a detainee is entitled to access to the detainee at all reasonable times.

(2) The detention centre manager and each member of the staff at a detention centre –

(a) must allow the legal practitioner to conduct an interview with the detainee out of the hearing of any other person; and

(b) must not without the approval of the detainee open, copy, remove or read any correspondence –

(i) from the detainee to the legal practitioner; or

(ii) from the legal practitioner to the detainee.

Division 4 – Complaints

137. Right to make complaint

A detainee, a member of a detainee's family or a guardian may complain to the Secretary about a matter that affects or is connected with a detainee.

138. Complaint procedure

(1) On receipt of a complaint made under section 137, the Secretary must provide written notice to the complainant and the detainee containing details of the complaint and how the complaint will be dealt with.

(2) The Secretary need not deal with a complaint made under section 137 that the Secretary reasonably believes is trivial or made only to cause annoyance.

(3) A complaint is to be dealt with in accordance with instructions issued under section 124(2).

Division 5 – Offences relating to detention

139. Detention offences

A detainee must not –

(a) be absent from a detention centre without lawful authority; or

(b) assault another person; or

(c) have possession of a weapon or a facsimile of a weapon; or

(d) wilfully damage or destroy property; or

(e) use threatening language or a threatening manner; or

(f) behave in a disorderly or riotous manner; or

(g) do any act or omission of insubordination or misconduct subversive of the order and good management of the detention centre; or

(h) have possession of, or be under the influence of, a drug or a prescription medicine that was not issued for use by the detainee; or

(i) be under the influence of a medicine that was not taken as prescribed or in accordance with the recommended dosage and use; or

(j) without the permission of the Secretary, be in the possession of glue containing toluene or another intoxicant; or

(k) have possession of, or be under the influence of, an alcoholic beverage; or

(l) have possession of any thing prescribed by the regulations for the purposes of this paragraph; or

(m) contravene a condition to which a leave of absence from the detention centre is subject; or

(n) disobey a rule of the detention centre or a direction given by a person having authority to give the direction.

Penalty: Fine not exceeding 5 penalty units or imprisonment for a term not exceeding 6 months, or both.

140. Dealing with detention offence

(1) In this section,

detention offence includes –

(a) an offence under section 107 of the *Criminal Code* in respect of a youth who has been sentenced to serve a period of detention or a detainee –

(i) escaping from the custody of the Secretary or a detention centre; and

(ii) attempting such an escape; and

(b) an offence under section 108(1) of the *Criminal Code* when committed by a detainee.

(2) Before a complaint may be filed in respect of a detention offence which the offender admits committing –

(a) the offence is to be brought to the attention of the Secretary; and

(b) the Secretary, where practicable, must –

(i) confer with the offender, a guardian unless one cannot be found after reasonable inquiry, and any other person whose participation the Secretary considers is likely to be of benefit in determining how to deal with the offence; and

(ii) consider how the offence should be dealt with.

(3) After considering the nature and circumstances of a detention offence which the offender admits committing and, where practicable, holding a conference under subsection (2)(b), the Secretary may do one or more of the following:

(a) suspend further action with respect to the offence on the undertaking of the offender to be of good behaviour for a period not exceeding 2 months;

(b) caution the offender;

(c) order that the earliest release date or next release date be changed to a date which is not more than 3 days later;

(d) cause a complaint to be filed against the offender.

141. Court proceedings for detention offence

(1) A charge for a detention offence and all related proceedings are to be heard and determined as if they were proceedings under Part 4.

(2) If a person is found guilty of a detention offence, the court making that finding may instead of, or in addition to, making an order under section 47 order that the earliest release date or next release date be changed to a date which is not more than 14 days later.

142. Effect of change of earliest release date or next release date

(1) If an order is made under section 140(3)(c) or section 141(2) changing the earliest release date or next release date, the earliest release date or next release date is, for the purposes of this Act, the day specified in the order.

(2) If an order is made under section 140(3)(c) or 141(2) changing the earliest release date or next release date, the Secretary may release a detainee from detention under a supervised release order at any time on or after the original release day and before the end of the new earliest release date or new next release date.

143. Offences in respect of escape of detainee

A person must not directly or indirectly –

(a) withdraw a detainee from a detention centre, or the custody of the Secretary without lawful authority to do so; or

(b) prevent a detainee from returning to a detention centre after a period of leave from the centre; or

(c) counsel or induce a detainee to escape from a detention centre or the custody of the Secretary.

Penalty: If the offender –

(a) is less than 18 years old, a fine not exceeding 5 penalty units or imprisonment for a term not exceeding 6 months, or both; or

(b) is 18 years old or more, a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months, or both.

144. Offences in respect of detention centres

(1) A person must not –

(a) while in a detention centre introduce, or attempt to introduce, into the detention centre or be in possession of –

(i) an alcoholic beverage without the consent of the Secretary; or

(ii) a medicine without the consent of the Secretary; or

(iii) a drug; or

(iv) a weapon without the consent of the Secretary; or

(v) a glue containing toluene or another intoxicant; or

(vi) any other prescribed item or thing; or

(b) enter a detention centre when the detention centre manager has refused to allow the person entry under section 135; or

(c) refuse to leave a detention centre when directed to do so by a detention centre manager under section 135; or

(d) while at a detention centre, contravene a direction with respect to the security or good order of the centre given by the detention centre manager or a member of the staff of the centre who is authorised to give the direction; or

(e) lurk or loiter about or near a detention centre for a purpose referred to in this section.

Penalty: If the offender –

(a) is less than 18 years old, a fine not exceeding 5 penalty units or imprisonment for a term not exceeding 6 months, or both; or

(b) is 18 years old or more, a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months, or both.

(2) Subsection (1) does not apply to a person who is a detainee.

Division 6 – Miscellaneous

145. Child of detainee

The Secretary may allow a child of a detainee to be accommodated in the detention centre subject to any conditions the Secretary considers appropriate.

146. Registration of birth of child of detainee

(1) In this section,

birth record means a document made or issued under the *Births, Deaths and Marriages Registration Act 1999* in relation to the birth of a child or an alteration or addition to such a document or the name of a child.

(2) If a birth record is made or issued relating to a child whose mother or father is a detainee when the child is born –

(a) the birth record is not to state that fact or contain information from which that fact can reasonably be inferred; and

(b) an address that cannot be shown in the birth record by reason of paragraph (a) is to be shown instead as the city or town in which or nearest to which that address is situated.

146A. Treatment of youth in prison and prisoner in detention centre

(1) In this section –

prescribed detention centre means –

(a) a detention centre that is not also a prison; and

(b) a detention centre that is also a prison but whose primary use is as a detention centre for the purposes of detaining youths serving sentences of detention under this Act;

prescribed prison means –

(a) a prison that is not also a detention centre; and

(b) a prison that is also a detention centre but whose primary use is as a prison for the purposes of incarcerating prisoners serving sentences of imprisonment;

prison has the same meaning as in the *Corrections Act 1997*;

prisoner has the same meaning as in the *Corrections Act 1997*.

(2) If a youth is serving a sentence of detention, or part of a sentence of detention, in a prescribed prison, section 83C(3) of the *Corrections Act 1997* applies.

(3) If a prisoner is serving a sentence of imprisonment, or part of a sentence of imprisonment, in a prescribed detention centre, this Part applies as if the prisoner were a detainee serving a sentence of detention unless, and except in so far as, the Secretary determines that the *Corrections Act 1997* is to apply to that prisoner.

146B. Delegation by detention centre manager

A detention centre manager may delegate to any person any of his or her functions or powers under this Part, other than this power of delegation.

PART 7 – INTERSTATE TRANSFER OF CERTAIN OFFENDERS

147. Application of Part 7

This Part applies to an offender who is –

(a) a detainee or a youth in respect of whom a supervised release order is in force; or

(b) a person in another State who –

(i) is less than 19 years old; and

(ii) is subject under the law of that State to a punishment for having committed an offence against the law of that State when less than 18 years old; and

(iii) is being detained in that State in an establishment similar in nature to a detention centre or has been released from such an establishment before the end of the punishment subject to the condition that he or she not commit a further offence.

148. Minister may enter into transfer agreement

The Minister may enter into a transfer agreement with a Minister of another State for the transfer of an offender to whom this Part applies into or out of Tasmania.

149. Secretary may make transfer arrangement

If the Minister enters into a transfer agreement with a Minister of another State, the Secretary may make a transfer arrangement with the Minister of the other State, or with a person authorised by that Minister as provided in the transfer agreement, for the transfer of a particular offender to whom this Part applies –

(a) to that State from Tasmania; or

(b) to Tasmania from that State.

150. Transfer arrangement for transfer out of Tasmania

(1) The Secretary must not make a transfer arrangement for the transfer of an offender from Tasmania to another State unless –

(a) the offender or a guardian of the offender applies for the transfer to be made; and

(b) the Secretary is of the opinion that the transfer is appropriate in all the circumstances, including –

(i) the place or intended place of residence of the guardian; and

(ii) the education, training or employment of the offender; and

(iii) the medical or other needs of the offender; and

(c) the offender has been given independent legal advice as to the effect of the proposed transfer arrangement and consents to it; and

(d) the Secretary is satisfied that there is no appeal pending against an order of a court to which the offender is subject.

(2) For the purposes of deciding whether to make a transfer arrangement transferring an offender from Tasmania to another State, the Secretary may ask the offender, or the guardian of the offender, for any necessary information.

151. Transfer arrangement for transfer to Tasmania

The Secretary must not make a transfer arrangement for the transfer of an offender from another State to Tasmania unless he or she is satisfied that there are adequate facilities in Tasmania for the offender to be accepted and dealt with as provided in the arrangement.

152. Detail to be included in each transfer arrangement

(1) A transfer arrangement for the transfer of an offender to or from Tasmania must –

(a) provide for the acceptance and means of dealing with the offender in the receiving State; and

(b) specify each order of a court of the sending State to which the offender is subject (including an order that is taken

by a previous transfer arrangement with Tasmania or with another State to have been made by a court of the sending State); and

(c) for each order specified under paragraph (b), specify –

(i) the way in which it is to operate in the receiving State, which must be as similar as possible to the way in which it would operate in the sending State if the transfer arrangement were not made; and

(ii) the maximum time for which it is to operate, which must not be longer than the maximum time for which it would operate in the sending State if the transfer arrangement were not made.

(2) A transfer arrangement for the transfer of an offender from Tasmania to another State must provide for the escort under section 153(1)(b) to be authorised in that State to hold, take and keep custody of the offender for the purpose of transferring the youth to the place and the custody specified in the transfer arrangement.

(3) For the purposes of subsection (1),

order of a court includes the release of an offender on parole, a supervised release order or under any law which provides for the early release of a person serving a period of imprisonment or detention.

153. Transfer order made under a transfer arrangement

(1) If the Secretary makes a transfer arrangement for the transfer of an offender from Tasmania to another State, he or she must make a transfer order which –

(a) directs any person who has custody or supervision of the offender to deliver the offender to the custody of the escort; and

(b) authorises the escort to take and keep custody of the offender for the purpose of transferring the offender to the place in the receiving State, and to the custody of the person, specified in the arrangement.

(2) For the purposes of subsection (1) –

(a) a person having the custody or control of an offender includes –

(i) a person in charge of a detention centre; and

(ii) any other person who has custody or supervision of the offender; and

(b) an escort means any one or more of the following:

(i) a person employed in the Department;

(ii) a police officer;

(iii) a person appointed by the Secretary by written instrument to be an escort.

154. Transfer to Tasmania in custody of escort

If under a transfer arrangement for the transfer of an offender to Tasmania an escort authorised under the arrangement brings the offender to Tasmania, the escort is authorised to hold, take and keep custody of the offender while in Tasmania for the purpose of transferring the offender to the place in Tasmania, and to the custody of the person, specified in the arrangement.

155. Reports

(1) For the purpose of forming an opinion or exercising a discretion under this Part, the Secretary may be informed as he or she thinks fit and, in particular, may have regard to reports from any person who has or has had the custody or supervision of an offender in Tasmania or in another State.

(2) Reports of any person who has or has had the custody or supervision of an offender may be sent to a Minister of another State who has entered into a transfer agreement or to a person authorised under a transfer agreement to make a transfer arrangement with the Secretary.

156. Transfer of sentence or order in case of offender to whom this Part applies

If under a transfer arrangement an offender is transferred from Tasmania to another State, then from the time the offender arrives in that other State any sentence imposed on, or order made in relation to, the offender in Tasmania before that time ceases to have effect in Tasmania except in respect of –

(a) any period of detention served by the offender before that time; or

(b) any part of the order carried out in respect of the offender before that time.

157. Sentence, &c., taken to have been imposed in this State

(1) If under a transfer arrangement an offender is transferred to Tasmania from another State, then from the time the offender arrives in Tasmania –

(a) any sentence imposed on, or order made in relation to, the offender by a court of the sending State and specified in the arrangement is taken to have been imposed or made by the court in Tasmania specified in the arrangement; and

(b) any sentence or order –

(i) required, by a previous transfer arrangement with Tasmania or

another State, to be taken to have been imposed or made by a court of the sending State; and

(ii) specified in the current transfer arrangement under which the offender is transferred to Tasmania –

is taken to have been imposed or made by the court in Tasmania specified in the arrangement; and

(c) any direction or order given or made by a court of the sending State concerning the time when anything to be done under an order made by a court of that State commences is, so far as practicable, taken to have been given or made by the court in Tasmania specified in the arrangement.

(2) Except as otherwise provided in this Part, a sentence or order referred to in subsection (1) has effect in Tasmania as specified in the transfer arrangement and the laws of Tasmania apply with necessary adaptations and as if the court taken to have made the order, imposed the sentence or made the direction had power to do so.

158. Revocation of order of transfer by consent

(1) The Secretary may revoke a transfer order for the transfer of an offender from Tasmania to another State at any time before the offender is

delivered in the receiving State into the custody specified in the transfer arrangement if the offender, or his or her guardian, and the Minister or other person in the receiving State with whom the Secretary made the transfer arrangement both consent to the revocation.

(2) If the Secretary revokes a transfer order, he or she must make arrangements for the return of the offender to Tasmania.

PART 8 – MAGISTRATES COURT (YOUTH JUSTICE DIVISION)

159. Establishment of Youth Justice Division of Magistrates Court

There is established a division of the Magistrates Court to be known as the Magistrates Court (Youth Justice Division).

160. Composition of Court

The Court is constituted by a magistrate.

161. Jurisdiction of Court

(1) The Court –

(a) has jurisdiction to hear and determine a charge against a youth for an offence, and to deal with all related matters; and

(b) has jurisdiction to hear and determine proceedings under Part VII of the *Justices Act 1959* where the defendant is a youth; and

(c) has jurisdiction to hear and determine an application for a restraint order, interim restraint order or telephone interim restraint order under Part XA of the *Justices Act 1959* if the only respondent to the application is a person who is less than 18 years old at the time the application is first made; and

(d) has any other jurisdiction conferred by any Act.

(2) If a youth who is 15 years old or more is charged before the Court with an indictable offence that is not a prescribed offence, the Court must ask the youth if he or she is willing to be tried by the Court instead of by jury.

(2A) If a youth referred to in subsection (2) stands mute when asked if he or she is willing to be tried by the Court instead of by jury, the youth is taken to be willing to be tried by the Court.

(2B) If a youth referred to in subsection (2) is willing to be tried by the Court and the youth's guardian, if present, does not object to the youth being so tried, the section creating the offence is taken to have created a simple offence and the Court must proceed to hear and determine the charge.

(3) If a youth referred to in subsection (2) is not willing to be tried by the Court or the youth's guardian objects to the youth being tried by the Court, the Court must proceed under Part VII of the *Justices Act 1959*.

(4) . . . . . .

161A. Court may impose certain sentences under *Sentencing Act 1997*

(1) The Court, in sentencing for an offence a youth who is 18 years old or more, may exercise the powers of a court of petty sessions under the

Sentencing Act 1997 in addition to, or instead of, any other power it may exercise under this Act.

(2) In determining the sentence to impose in accordance with subsection (1) on a youth for an offence, the Court must take into account the age of the youth when he or she committed the offence.

(3) The Court must specify in an order made in accordance with subsection (1) that the order is made in accordance with this section.

(4) A failure to comply with subsection (3) does not affect the validity of the order.

(5) If an order specifies that it is made in accordance with this section, the responsible Department in relation to the *Sentencing Act 1997* is to be responsible for all or any matters relating to the administration of the order.

(6) Proceedings in respect of the contravention of an order made in accordance with subsection (1), or the conditions to which such an order is subject, are to be brought in the Court.

(7) In proceedings referred to in subsection (6), the Court may –

(a) exercise all the powers of a court of petty sessions under the *Sentencing Act 1997* in relation to a contravention of an order, or of the conditions of an order, made under that Act; or

(b) revoke the contravened order and impose any sentence under this Act that it could have made if it had not made the contravened order.

(8) This section applies despite section 103.

162. Time of sittings

The Court may sit at any time, including a Sunday.

163. Proceedings generally

(1) Except where inconsistent with this Act, the *Justices Act 1959* applies to the Court and the commencement, hearing and determination of proceedings relating to any matter in respect of which the Court has jurisdiction.

(2) The Court has and may exercise in respect of any matter within its jurisdiction all its powers and authority as a court of summary jurisdiction under the *Justices Act 1959*.

PART 9 – MISCELLANEOUS

164. Lack of jurisdiction discovered during proceedings

(1) If a court constituted by a magistrate in the course of any proceedings under this Act, the *Justices Act 1959* or the *Criminal Code* finds that it does not have jurisdiction to hear and determine the proceeding by virtue of this Act, the court may –

(a) remove the proceeding to a court of competent jurisdiction; or

(b) where the court of competent jurisdiction may be constituted by a magistrate, continue to hear and determine the proceeding as the court of competent jurisdiction.

(2) In removing a proceeding to a court of competent jurisdiction, the court may –

(a) give directions it considers necessary; and

(b) take or make any procedural action or order the court of competent jurisdiction could take or make.

165. Delegation

(1) The Secretary may delegate any of his or her functions and powers under this Act, other than this power of delegation.

(2) The district registrar may delegate to an officer of the Magistrates Court any of his or her functions and powers under this Act, other than this power of delegation.

(3) The Commissioner of Police may delegate his or her power under section 6A(2).

166. Evidentiary matters

(1) A certificate signed or purporting to be signed by the Secretary is evidence of the matters specified in it if it relates to –

(a) the compliance by a person with –

(i) a probation order; or

(ii) the conditions and special conditions to which a probation order is subject; or

(iii) a community service order; or

(iv) the conditions to which a community service order is subject; or

(v) a suspended detention order; or

(vi) the conditions and special conditions to which a suspended detention order is subject; or

(b) the completion by a youth of undertakings entered into at a community conference; or

(c) whether at a time specified in the certificate a youth was in the custody of the Secretary or was a detainee.

(2) In a proceeding under this Act, it is not necessary to prove –

(a) the appointment, authorisation or employment of the Secretary, the district registrar, a facilitator, a youth justice worker, a police officer or a person employed for the purposes of the Court or the Department; or

(b) the authority of a person to take any action under this Act.

(3) Subsection (2) does not apply if the youth or his or her legal representative has given written notice, not less than 48 hours before the hearing of a proceeding under this Act, that the appointment, employment or authority of a person is required to be proved to the person referred to in that notice.

166A. Youth justice workers

(1) The Secretary may –

(a) appoint a State Service officer or State Service employee employed in the Department to be a youth justice worker for the purposes of this Act; and

(b) with the consent of the Head of another State Service Agency, appoint a State

Service officer or State Service employee employed in that Agency to be a youth justice worker for the purposes of this Act.

(2) A person appointed as a youth justice worker under this section may hold that office in conjunction with State Service employment.

(3) The Secretary may authorise a person who is not a State Service officer or State Service employee to perform the functions and exercise the powers of a youth justice worker for the purposes of this Act.

167. Appointment of facilitators

(1) The Secretary may appoint as facilitators –

(a) State Service officers and State Service employees who are employed for the purposes of the Department; and

(b) persons who are not State Service officers or State Service employees.

(2) The appointment of a facilitator under subsection (1)(b) is for the period, and is subject to the terms and conditions, specified in the instrument of appointment.

167A. Protection against prosecution in relation to certain disclosures of information

(1) A person who discloses, on behalf of an information-sharing entity or a Government

Agency, information to the Custodial Inspector, the Implementation Monitor, within the meaning of the *Child Safety Reform Implementation Monitor Act 2024*, or another information-sharing entity or Government Agency for the purpose of the rehabilitation of a youth or a related purpose –

(a) does not, by reason of that disclosure, incur any criminal, civil or administrative liability; and

(b) is not, by reason of that disclosure –

(i) taken to have breached any rule of law or practice that would otherwise prohibit the person from disclosing the information; or

(ii) taken to have broken any professional or other oath, or breached any professional or other code, standard or guideline of ethics or etiquette that might otherwise bar the person from, or condemn the person for, disclosing the information; or

(iii) liable to condemnation or disciplinary action by any professional body or other person.

(2) Subsection (1) has effect despite the *Personal Information Protection Act 2004* or any other

law relating to the confidentiality or privacy of information.

168. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for fees payable under this Act.

(3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may –

(a) provide that a contravention of a regulation is an offence; and

(b) provide for the imposition in respect of that offence of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

(5) The regulations may authorise any matter or be from time to time determined, applied or regulated by the Secretary, the Chief Magistrate, the Administrator or the district registrar.

169. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Community and Health Services; and

(b) the Department responsible to that Minister in relation to the administration of this Act is the Department of Community and Health Services.

NOTES

The foregoing text of the *Youth Justice Act 1997* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 6 November 2024 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
Youth Justice Act 1997	No. 81 of 1997	1.2.2000
Youth Justice Amendment Act 1999	No. 47 of 1999	1.2.2000 (commenced 27.10.1999)
Youth Justice Amendment Act 2000	No. 3 of 2000	28.4.2000
Vehicle and Traffic (Transitional and Consequential) Act 1999	No. 90 of 1999	14.8.2000
Statutory Holidays (Consequential Amendments) Act 2000	No. 82 of 2000	13.12.2000
State Service (Consequential and Miscellaneous Amendments) Act 2000	No. 86 of 2000	1.5.2001
Misuse of Drugs (Consequential Amendments) Act 2001	No. 95 of 2001	1.6.2002
Evidence (Consequential Amendments) Act 2001	No. 80 of 2001	1.7.2002
Youth Justice Amendment Act 2003	No. 1 of 2003	16.4.2003
Police Service (Consequential Amendments) Act 2003	No. 76 of 2003	1.1.2004
Family Violence Act 2004	No. 67 of 2004	30.3.2005
Aboriginal Lands Amendment Act (No. 2) 2005	No. 25 of 2005	21.7.2005
Mental Health Amendment (Secure Mental Health Unit) Act 2005	No. 72 of 2005	20.2.2006
Justice and Related Legislation (Miscellaneous Amendments) Act 2006	No. 16 of 2006	1.11.2006
Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006	No. 43 of 2006	18.12.2006
Marine Safety (Misuse of Alcohol) Act 2006	No. 25 of 2006	23.12.2006
Youth Justice Amendment Act 2007	No. 49 of 2007	13.12.2007

Act	Number and year	Date of commencement
Legal Profession (Miscellaneous and Consequential Amendments) Act 2007	No. 66 of 2007	31.12.2008
Education and Training (Further Consequential Amendments) Act 2008	No. 45 of 2008	1.1.2009
Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010	No. 3 of 2010	1.7.2010
Mental Health (Transitional and Consequential Provisions) Act 2013	No. 69 of 2013	17.2.2014
Youth Justice (Miscellaneous Amendments) Act 2013	No. 27 of 2013	1.3.2014 (The Act except ss. 18, 19 & 44) 1.9.2014 (s. 18)
Commissioner for Children and Young People Act 2016	No. 2 of 2016	1.7.2016
Youth Justice Amendment Act 2016	No. 23 of 2016	23.8.2016
Custodial Inspector Act 2016	No. 30 of 2016	16.11.2016
Police Powers and Related Legislation (Evasion) Act 2017	No. 20 of 2017	13.9.2017
Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Act 2019	No. 13 of 2019	18.6.2019
Criminal Code Amendment (Sexual Abuse Terminology) Act 2020	No. 8 of 2020	6.4.2020
Justice Miscellaneous (Commissions of Inquiry) Act 2021	No. 4 of 2021	1.3.2021 22.4.2021
Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021	No. 18 of 2021	5.11.2021
Youth Justice Amendment (Searches in Custody) Act 2022	No. 14 of 2022	1.12.2022
Justice Miscellaneous (Removal of Outdated Sex Terminology) Act 2023	No. 19 of 2023	21.9.2023
Mental Health Amendment Act 2023	No. 4 of 2023	25.9.2023
Child Safety Reform Implementation Monitor Act 2024	No. 6 of 2024	6.11.2024
[1]*Youth Justice (Miscellaneous Amendments) Act 2013*	No. 27 of 2013	not commenced (s. 44)

[1]As amended by Act No. 14 of 2022, whereby s. 19 of this amending Act was repealed before it commenced

TABLE OF AMENDMENTS

Provision affected	How affected
The long title	Amended by No. 27 of 2013, s. 4
Section 2	Substituted by No. 47 of 1999, s. 4
Section 3	Amended by No. 90 of 1999, Sched. 1 Substituted by No. 3 of 2000, s. 4 Amended by No. 82 of 2000, Sched. 1, No. 86 of 2000, Sched. 1, No. 95 of 2001, Sched. 2, No. 1 of 2003, s. 4, No. 76 of 2003, Sched. 1, No. 67 of 2004, Sched. 1, No. 25 of 2005, s. 26, No. 25 of 2006, Sched. 2, No. 49 of 2007, s. 4, No. 66 of 2007, Sched. 1, No. 3 of 2010, Sched. 1, No. 27 of 2013, s. 5, No. 69 of 2013, Sched. 1, No. 2 of 2016, Sched. 4, No. 23 of 2016, s. 4, No. 30 of 2016, Sched. 2, No. 20 of 2017, s. 17, No. 13 of 2019, Sched. 1, No. 8 of 2020, s. 13, No. 18 of 2021, s. 395 and No. 4 of 2023, s. 182
Section 4	Amended by No. 27 of 2013, s. 6
Section 5	Amended by No. 27 of 2013, s. 7
Section 5A	Inserted by No. 69 of 2013, Sched. 1
Section 6A	Inserted by No. 27 of 2013, s. 8
Section 10	Amended by No. 27 of 2013, s. 9
Section 11	Amended by No. 27 of 2013, s. 10
Section 12A	Inserted by No. 27 of 2013, s. 11
Section 14	Amended by No. 27 of 2013, s. 12
Section 16	Amended by No. 27 of 2013, s. 13
Section 19	Amended by No. 27 of 2013, s. 14
Division 4 of Part 2	Amended by No. 49 of 2007, s. 5
Section 22	Amended by No. 1 of 2003, s. 5, No. 66 of 2007, Sched. 1, No. 27 of 2013, s. 15, No. 2 of 2016, Sched. 4 and No. 4 of 2021, s. 29
Section 22A	Inserted by No. 49 of 2007, s. 7
Part 3	Amended by No. 27 of 2013, s. 16
Division 1 of Part 3	Heading inserted by No. 14 of 2022, s. 4
Division 2 of Part 3	Heading inserted by No. 14 of 2022, s. 5
Section 24	Amended by No. 67 of 2004, Sched. 1 and No. 27 of 2013, s. 17
Section 24A	Inserted by No. 27 of 2013, s. 18
Section 24B	Inserted by No. 27 of 2013, s. 18
Section 24C	Inserted by No. 27 of 2013, s. 18
Section 25	Amended by No. 1 of 2003, s. 6 and No. 72 of 2005, s. 138
Section 25A of	Inserted by No. 14 of 2022, s. 6

Provision affected	How affected
Part 3	
Section 25B of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25C of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25D of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25D	Amended by No. 19 of 2023, s. 14
Section 25E of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25F of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25G of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25H of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25I of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25J of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25K of Part 3	Inserted by No. 14 of 2022, s. 6
Section 25L of Part 3	Inserted by No. 14 of 2022, s. 6
Section 27A	Inserted by No. 1 of 2003, s. 7
Section 30	Amended by No. 86 of 2000, Sched. 1 and No. 80 of 2001, Sched. 1
Section 31	Amended by No. 1 of 2003, s. 8, No. 66 of 2007, Sched. 1, No. 27 of 2013, s. 20, No. 2 of 2016, Sched. 4 and No. 4 of 2021, s. 30
Section 33AA	Inserted by No. 27 of 2013, s. 21
Section 33A	Inserted by No. 67 of 2004, Sched. 1
Section 34	Amended by No. 67 of 2004, Sched. 1
Section 35	Amended by No. 67 of 2004, Sched. 1
Section 36	Amended by No. 67 of 2004, Sched. 1
Section 36A	Inserted by No. 27 of 2013, s. 22
Section 38	Amended by No. 27 of 2013, s. 23
Section 40A	Inserted by No. 27 of 2013, s. 24
Section 41	Amended by No. 27 of 2013, s. 25
Section 45	Amended by No. 1 of 2003, s. 9, No. 66 of 2007, Sched. 1, No. 27 of 2013, s. 26 and No. 2 of 2016, Sched. 4
Section 47	Amended by No. 67 of 2004, Sched. 1 and No. 27 of 2013, s. 27
Section 48	Amended by No. 67 of 2004, Sched. 1
Section 49	Amended by No. 67 of 2004, Sched. 1 and No. 27 of 2013, s. 28
Section 49A	Inserted by No. 1 of 2003, s. 10 Amended by No. 43 of 2006, s. 70

Provision affected	How affected
Section 54A	Inserted by No. 27 of 2013, s. 29
Section 56	Amended by No. 27 of 2013, s. 30
Section 56A of Part 4	Inserted by No. 27 of 2013, s. 31
Section 56B of Part 4	Inserted by No. 27 of 2013, s. 31
Section 56C of Part 4	Inserted by No. 27 of 2013, s. 31
Section 56D of Part 4	Inserted by No. 27 of 2013, s. 31
Section 57	Amended by No. 1 of 2003, s. 11
Section 64	Amended by No. 1 of 2003, s. 12
Section 65	Amended by No. 45 of 2008, Sched. 1 and No. 27 of 2013, s. 32
Section 68	Amended by No. 27 of 2013, s. 33
Section 69	Amended by No. 27 of 2013, s. 34
Section 70	Amended by No. 27 of 2013, s. 35
Section 72	Amended by No. 27 of 2013, s. 36
Section 74	Repealed by No. 27 of 2013, s. 37
Section 76	Amended by No. 27 of 2013, s. 38
Section 77	Amended by No. 27 of 2013, s. 39
Section 83	Amended by No. 23 of 2016, s. 5
Section 85	Amended by No. 23 of 2016, s. 6
Section 86	Amended by No. 23 of 2016, s. 7
Section 89	Amended by No. 16 of 2006, s. 43 Substituted by No. 23 of 2016, s. 8
Section 89A	Inserted by No. 23 of 2016, s. 8
Section 90	Amended by No. 1 of 2003, s. 13, No. 45 of 2008, Sched. 1 and No. 27 of 2013, s. 40
Section 93	Amended by No. 27 of 2013, s. 41
Section 94	Amended by No. 27 of 2013, s. 42
Section 99A of Part 4	Inserted by No. 67 of 2004, Sched. 1
Section 99A	Amended by No. 27 of 2013, s. 43
Section 100A	Inserted by No. 1 of 2003, s. 14
Section 100B	Inserted by No. 1 of 2003, s. 14
Section 105	Substituted by No. 72 of 2005, s. 139 Amended by No. 27 of 2013, s. 45, No. 69 of 2013, Sched. 1 and No. 4 of 2023, s. 183
Section 107	Substituted by No. 1 of 2003, s. 15
Section 107A	Inserted by No. 1 of 2003, s. 15
Section 108A	Inserted by No. 1 of 2003, s. 16
Section 108B	Inserted by No. 1 of 2003, s. 17 Amended by No. 72 of 2005, s. 140
Section 109	Amended by No. 23 of 2016, s. 9
Section 111	Amended by No. 27 of 2013, s. 46
Section 117	Amended by No. 27 of 2013, s. 47 Substituted by No. 23 of 2016, s. 10

Provision affected	How affected
Section 118	Repealed by No. 23 of 2016, s. 10
Section 120	Amended by No. 23 of 2016, s. 11
Section 121	Amended by No. 1 of 2003, s. 18 and No. 23 of 2016, s. 12
Section 124	Amended by No. 49 of 2007, s. 8
Section 124A	Inserted by No. 13 of 2019, Sched. 1
Section 126	Amended by No. 1 of 2003, s. 19
Section 129	Amended by No. 27 of 2013, s. 48
Section 131	Amended by No. 14 of 2022, s. 7
Section 132	Amended by No. 47 of 1999, s. 5
Section 133A	Inserted by No. 49 of 2007, s. 9
Section 133B	Inserted by No. 49 of 2007, s. 9
Section 133C	Inserted by No. 49 of 2007, s. 9
Section 133D	Inserted by No. 49 of 2007, s. 9
Section 134A	Inserted by No. 72 of 2005, s. 141 Amended by No. 69 of 2013, Sched. 1, No. 18 of 2021, s. 396 and No. 4 of 2023, s. 184
Section 134B	Inserted by No. 72 of 2005, s. 141 Substituted by No. 69 of 2013, Sched. 1 Amended by No. 18 of 2021, s. 397 and No. 4 of 2023, s. 185
Section 135	Amended by No. 23 of 2016, s. 13
Section 135A	Inserted by No. 23 of 2016, s. 14
Section 140	Amended by No. 23 of 2016, s. 15
Section 141	Amended by No. 23 of 2016, s. 16
Section 142	Amended by No. 23 of 2016, s. 17
Section 146	Amended by No. 1 of 2003, s. 20
Section 146A	Inserted by No. 1 of 2003, s. 21
Section 146B	Inserted by No. 1 of 2003, s. 21 Amended by No. 13 of 2019, Sched. 1
Section 161	Amended by No. 1 of 2003, s. 22
Section 161A	Inserted by No. 27 of 2013, s. 49
Section 165	Amended by No. 27 of 2013, s. 50
Section 166	Amended by No. 49 of 2007, s. 10
Section 166A	Inserted by No. 49 of 2007, s. 11
Section 167	Amended by No. 86 of 2000, Sched. 1
Section 167A	Inserted by No. 27 of 2013, s. 51 Amended by No. 30 of 2016, Sched. 2 and No. 6 of 2024, Sched. 3