

Functions of Standing Committee

17. The functions of the Standing Committee are to make proposals and recommendations as to the welfare of a particular child, including a recommendation to the Youth Advocate whether the Youth Advocate should, or should not, make an application to the Court for a declaration that the child is in need of care.

Assistance by authorities and agencies

18. An authority or agency established by a law of the Territory, being an authority or agency involved in the provision of welfare services to children, shall—

- (a) upon request by the Director or the Youth Advocate, make available to the Director or the Youth Advocate, as the case requires, such information, advice, guidance, assistance, documents, facilities or services as are necessary or desirable in connection with childrens welfare or with the welfare of a particular child; and
- (b) furnish to the Council or to the Standing Committee such information, advice, assistance or documents with respect to childrens welfare, or to the welfare of a particular child, as the Council or the Standing Committee reasonably requests.

Delegation

19. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, in writing delegate to an officer or employee within the meaning of the *Public Service Act 1922* any of his or her powers under this Ordinance, other than—

- (a) this power of delegation; or
- (b) a power exercisable by the Director in his or her capacity as a member of the Council or of the Standing Committee.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Director.

(3) A delegation under this section does not prevent the exercise of a power by the Director.

PART III—THE CHILDRENS COURT

Jurisdiction

20. The Magistrates Court has jurisdiction—

- (a) to hear and determine informations against children; and
- (b) to hear and determine applications and other proceedings under this Ordinance with respect to children,

and, when exercising that jurisdiction, shall be known as the Childrens Court.

Determination of jurisdiction by reference to age

21. For the purpose of determining the application of section 20 with respect to proceedings concerning a person (not being proceedings in relation to which section 24 applies), regard shall be had to the age of the person at the time of the commencement of the proceedings.

Procedure of Childrens Court

22. (1) Subject to this Ordinance and the regulations—

- (a) the *Magistrates Court Ordinance 1930* and the rules and regulations under that Ordinance apply to and in relation to the Court in the exercise of its jurisdiction under section 20 in respect of proceedings under Part IV, other than section 68; and
- (b) the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* and the regulations under that Ordinance apply to and in relation to the Court in the exercise of its jurisdiction under section 20 in respect of any other proceedings under this Ordinance.

(2) The Attorney-General may make regulations, not inconsistent with this Ordinance—

- (a) prescribing the procedure to be followed in proceedings in the Court in the exercise of its jurisdiction under section 20; and
- (b) prescribing all other matters that are necessary or convenient to be prescribed for the purposes of this Part.

PART IV—CHILD OFFENDERS

Division 1—General

Saving of other laws

23. Except as otherwise expressly provided by this Ordinance, this Part does not affect the operation of the common law or of any other law in force in the Territory.

Determination of criminal jurisdiction by reference to age

24. (1) Subject to this section, for the purpose of determining whether an information alleging an offence by a person should be heard and determined by the Court, regard shall be had to the age of the person at the time of the alleged offence.

(2) Where a person was under the age of 18 years at the time of an alleged offence and between the ages of 18 years and 18 years 6 months at the time of the person's first appearance in the Court after having been charged with the alleged offence—

- (a) the person shall be dealt with in accordance with this Part until such time (if any) as the Court finds the offence proved;
- (b) for the purposes of so dealing with the person, this Part applies to and in relation to the person as if the person were a child; and

- (c) if the Court finds the offence proved, the person shall be dealt with as an adult.

(3) Where a person was under the age of 18 years at the time of an alleged offence and over the age of 18 years 6 months at the time of the person's first appearance in the Court after having been charged with the alleged offence, the person shall be dealt with as an adult.

Proceedings where child jointly charged with adult

25. (1) Where a child and a person who is not a child are jointly charged with an offence, section 20 applies to and in relation to proceedings against the child arising out of that charge as though the child had been charged separately.

(2) Section 20 does not apply in relation to the preliminary examination in respect of an indictable offence alleged to have been committed jointly by a child and a person who is not a child if the Chief Magistrate, having regard to the nature of the alleged offence and the time and expense involved in carrying out the preliminary examinations separately, so orders.

Transfer of proceedings

26. (1) If it appears to the Court when hearing an information against a child that the circumstances are such that the child should be dealt with under Part V, the Court may order that a copy of the papers, together with any report that the Court thinks fit to make, be furnished to the Youth Advocate.

(2) Where the Court makes an order under sub-section (1), the Court shall release the child into the custody of an authorised person within the meaning of Part V and either—

- (a) dismiss the information; or
- (b) adjourn the matter indefinitely.

(3) Where the Court adjourns the matter in pursuance of sub-section (2), the matter may be set down again for hearing at the request of the prosecutor, the child to whom the matter relates or the Youth Advocate.

Age of criminal responsibility

27. (1) A child who has not attained the age of 8 years shall, for all purposes, be presumed to be incapable of committing in the Territory an offence against a law in force in the Territory.

(2) There is a rebuttable presumption that a child who has attained the age of 8 years but has not attained the age of 14 years is incapable of committing in the Territory an offence against a law in force in the Territory by reason that the child did not have the capacity to know that the act or omission concerned was wrong.

Power to apprehend under-age children

28. (1) Where a police officer has reasonable grounds to believe that a person is a child who has not attained the age of 8 years and has done or is doing an act which, but for sub-section 27 (1), would constitute an offence, the police officer may apprehend the child, and for that purpose may use such force as is necessary and reasonable.

(2) For the purpose of exercising the power conferred by sub-section (1), the police officer may enter any premises, by force if necessary and reasonable, at any time of the day or night for the purpose of arresting the child, and may search the premises for the child, if the police officer believes on reasonable grounds that the child has committed a serious offence within the meaning of Division 2 and is on the premises.

(3) Upon apprehending a child under sub-section (1), the police officer shall—

- (a) take the child to one of the child's parents; or
- (b) if it is not practicable to do so, place the child with a suitable person who is prepared to care for the child and notify the Youth Advocate that the police officer has done so.

Division 2—Criminal Proceedings against Children

Interpretation

29. (1) In this Division, unless the contrary intention appears—

“authorised officer” means the Commissioner of Police or a Deputy Commissioner of Police of the Australian Federal Police or a police officer authorised by one of those officers to act under this Division;

“police officer” includes a person holding office under an Ordinance or under regulations under an Ordinance and having power by virtue of that Ordinance or those regulations to arrest or detain a person or to take a person into his or her custody;

“serious offence” means an offence punishable by imprisonment for a period exceeding one year;

“to interview” includes to ask questions.

(2) For the purposes of this Division, a child is under restraint if the child is under restraint—

- (a) as a result of the child's having been lawfully arrested or detained; or
- (b) in respect of an offence and a police officer believes on reasonable grounds that—
 - (i) the child has committed the offence; or
 - (ii) he or she would be authorised under a law in force in the Territory to arrest the child for the offence.

(3) If a child is in the company of a police officer for a purpose connected with the investigation of an offence or a possible offence and the

police officer would not allow the child to leave if the child wished to do so, whether or not the police officer has reasonable grounds for believing that the child has committed the offence and whether or not the child is in lawful custody in respect of the offence, the child is, for the purposes of this Division, under restraint.

(4) For the purposes of this Division, a child is not under restraint if the child is in the company of a police officer by the roadside, whether or not the child is in a motor vehicle, for a purpose connected with the investigation of an offence, not being a serious offence, arising out of the use of a motor vehicle.

(5) For the purposes of this Division, a child is in the company of a police officer for a purpose connected with the investigation of an offence if the child is waiting at a place at the request of a police officer for such a purpose.

(6) For the purposes of this Division, a reference to a child who has committed an offence includes a reference to a child who has committed an offence with another person or other persons.

Children not to be interviewed in certain circumstances

30. (1) Where a police officer—

- (a) suspects that a child may have committed a serious offence or an offence against the person or property;
- (b) believes, on reasonable grounds, that a child may be implicated in the commission of such an offence; or
- (c) is holding a child under restraint,

the police officer shall not interview the child in respect of an offence or cause the child to do anything in connection with the investigation of an offence—

(d) unless a person who is not a child or a police officer but is—

- (i) a parent of the child;
- (ii) a relative of the child acceptable to the child; or
- (iii) a barrister and solicitor acting for the child or some other appropriate person acceptable to the child,

is present; or

(e) unless—

- (i) the police officer has taken reasonable steps to secure the presence of a person referred to in paragraph (d);
- (ii) it was not practicable for such a person to be present within 2 hours after the person was requested to be present; and
- (iii) another person (who may be a police officer) who has not been concerned in the investigation of the offence is present.

(2) Sub-section (1) does not require a police officer—

- (a) to permit a person whom the police officer believes to be an accomplice of the child in respect of the offence to be present while the child is being interviewed, or is doing anything, in connection with the investigation of the offence; or
- (b) to take steps to procure the presence of a person referred to in paragraph (1) (d) whom the police officer believes to be an accomplice of the child in respect of the offence.

(3) A reference in sub-section (2) to an accomplice shall be read as including a reference to a person whom the police officer believes, on reasonable grounds, to be likely to secrete, lose, destroy or fabricate evidence relating to the offence.

(4) Sub-section (1) does not prevent a police officer from interviewing a child, or asking or causing a child to do a particular thing, where the police officer has reasonable grounds for believing that it is necessary to do so without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property.

Limitations in respect of arrest of children

31. A police officer shall not, except in pursuance of a warrant, arrest a child for an offence unless he or she believes on reasonable grounds that—

- (a) the child has committed, or is committing, the offence;
- (b) the arrest is necessary or appropriate for one or more of the following purposes:
 - (i) ensuring the appearance of the child before the Court in respect of the offence;
 - (ii) preventing a continuance of, or a repetition of, the offence or the commission of a further offence;
 - (iii) preventing the concealment, loss or destruction of evidence of the offence;
 - (iv) preserving the safety or physical well-being of the child; and
- (c) proceedings by summons would not effectively achieve a purpose specified in paragraph (b).

Notification of arrest, &c.

32. Where a police officer places a child under restraint, the police officer shall forthwith—

- (a) take all reasonable steps to cause a parent of the child to be notified, whether the parent resides in the Territory or not; and
- (b) if the police officer is not an authorised officer, notify an authorised officer.

Limitations in respect of criminal proceedings against children

33. (1) Subject to sub-section (4), a police officer shall not institute a prosecution against a child for an offence unless an authorised officer, being

an officer not otherwise involved in the investigation of the alleged offence, has consented in writing to the institution of the prosecution and the consent has not been revoked.

(2) Sub-section (1) does not affect any requirement under any other law to obtain consent to a prosecution.

(3) For the purpose of determining whether he or she should consent to the prosecution of a child, an authorised officer shall have regard to such matters as seem to the officer to be relevant and, in particular, to each of the following:

- (a) the seriousness of the offence;
- (b) the evidence available as to the commission of the offence;
- (c) the circumstances in which the offence is alleged to have been committed;
- (d) whether the child has previously been found guilty or convicted of an offence, whether against a law in force in the Territory or elsewhere, and the seriousness or otherwise of that offence;
- (e) whether a warning has at any time been given to the child in the Territory by a police officer;
- (f) the age of the child;
- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child;
- (i) whether the parents of the child appear able and prepared to exercise effective discipline and control over the child;
- (j) whether it would be sufficient to warn the child, at a police station, at home or otherwise, against the commission of the same or similar offences;
- (k) the prevalence of the same or similar offences;
- (l) whether the prosecution would be likely to be harmful to the child, or to be inappropriate, having regard to the personality of the child, the circumstances of living of the child or any other circumstances that the authorised officer considers should be taken into account.

(4) Where the offence is one the prosecution for which requires the consent of a person under any other law, the authorised officer shall—

- (a) make a recommendation with respect to the prosecution, having regard to the matters specified in sub-section (3); and
- (b) forward his or her recommendation, together with the papers and all other relevant material, to the person whose consent is required under that other law.

(5) The authorised officer shall not consent to the prosecution unless the authorised officer is satisfied, after having considered the matters referred to in sub-section (3), that a prosecution is justified.

(6) If an authorised officer consents to the prosecution of a child whom the authorised officer knows or believes has not previously been convicted

of an offence, whether against a law in force in the Territory or elsewhere, the authorised officer shall record in writing his or her reasons for giving consent.

(7) Where a child is under restraint, an authorised officer shall, as soon as practicable and in any case within 48 hours after the child was placed under restraint, decide whether he or she will consent to a prosecution of the child and, if the authorised officer does not so consent, the child shall forthwith be released.

Procedure by summons

34. (1) A police officer shall not charge a child at a police station with an offence unless the police officer is satisfied that proceeding by way of a summons would not be effective.

(2) For that purpose, the police officer shall have regard to the need to achieve the purposes specified in paragraph 31 (b).

Parent to be informed of charge against child

35. Where a child is charged at a police station with an offence, the person who so charged the child shall forthwith take all reasonable steps to cause a parent of the child to be notified of the charge and of the time and place when the child will be brought before the Court, whether the parent resides in the Territory or not.

Identifying material

36. (1) In this section, "identifying material", in relation to a child, means prints of the hands, fingers, feet or toes of the child, recordings of the voice of the child, photographs of the child, samples of the handwriting of the child or material from the body of the child.

(2) An authorised officer or a police officer for the time being in charge of a police station shall not take, or cause to be taken, identifying material of a child unless a magistrate has, under sub-section (4), approved the taking of the identifying material.

(3) An authorised officer or a police officer referred to in sub-section (2) may—

- (a) make application to a magistrate in person; or
- (b) if it is not practicable for the officer to do so, make application to a magistrate by telephone,

for approval to take identifying material of a child who is in lawful custody in respect of an offence or of a child against whom proceedings have been instituted by summons in respect of an offence.

(4) The magistrate may, if he or she thinks it proper in the circumstances, give his or her approval, in writing, for the taking of specified identifying material and shall send the writing to the applicant.

(5) The magistrate may inform the applicant by telephone of his or her approval and in that case the applicant may proceed under the approval notwithstanding that the written approval has not been given.

Criteria for bail

37. (1) The question whether a child who has been charged with an offence should be admitted to bail shall be considered by—

- (a) the police officer who charged the child, as soon as practicable after the child has been charged with the offence; and
- (b) where the child has not been admitted to bail—
 - (i) by the authorised officer when determining whether to give his or her consent under sub-section 33 (1) or when making a recommendation under sub-section 33 (4); and
 - (ii) by the Court when the child comes before the Court in connection with the offence.

(2) A child shall be admitted to bail unless the police officer, authorised officer or Court, as the case may be, having regard to the matters specified in sub-section (4) and to such other matters as the officer or Court considers relevant, is satisfied that the child should not be admitted to bail.

(3) Where a police officer determines that a child should be admitted to bail, the child shall enter into a recognisance, with or without sureties, to appear before the Court at the time and place named in the recognisance.

(4) For the purposes of sub-section (2), the following matters are specified:

- (a) the following matters related to the probability of the child appearing in court in respect of the offence if admitted to bail:
 - (i) the background and community ties of the child, having regard to the nature of the child's residence, schooling, employment (if any) and family situation and to the child's police record, if known;
 - (ii) the circumstances in which the alleged offence was committed, the nature and seriousness of the alleged offence, the severity of the penalty, the strength of the evidence against the child and other information relevant to the likelihood of the child absconding;
 - (iii) any previous failure of the child to appear in court after having been granted bail;
- (b) the following matters relating to the interests of the child:
 - (i) the period that the child may be obliged to spend in custody if bail is refused and the conditions under which the child would be held in custody;
 - (ii) the need of the child to be free for the purposes of preparing for his or her appearance before the Court and obtaining legal advice and for other purposes;

- (iii) the need of the child for physical protection, whether the need arises because the child is incapacitated by intoxication, injury or the use of drugs or arises from other causes;
- (iv) the matters referred to in section 5;
- (c) the following matters related to the protection of the community:
 - (i) the likelihood of the child interfering with evidence, intimidating witnesses or hindering police inquiries;
 - (ii) if the child has been convicted of an offence—the likelihood, having regard to that conviction, of the child committing, while on bail, an offence involving violence or a serious offence;
 - (iii) where the child has previously been granted bail—any breach by the child of the conditions subject to which bail was granted; and
- (d) where a report has been furnished to the court under section 162 in respect of the child—that report.

(5) In paragraph (4) (c), a reference to an offence shall be read as including a reference to an offence against a law of the Commonwealth, of a State, of another Territory (including an external Territory) or of a country other than Australia.

(6) Nothing in this section affects any other right of a child to apply to be admitted to bail and, where a court is considering an application by a child to be admitted to bail, that court shall admit the child to bail unless that court, having regard to the matters specified in sub-section (4), is satisfied that the child should not be admitted to bail.

(7) Where the Court orders that a child be admitted to bail, the Court may—

- (a) order that the child enter into a recognisance, with or without sureties, that the child will attend court at the date and time next required by the Court; and
- (b) impose such further conditions as the Court considers—
 - (i) are appropriate, having regard to section 5;
 - (ii) appear likely to result in the appearance of the child before the Court on the date and at the time required by the Court; or
 - (iii) appear necessary in the interests of justice or for the prevention of crime.

Detention of children

38. (1) Subject to this section, a child who has been charged with an offence and is not admitted to bail shall, as soon as practicable, be taken to a shelter, and shall be detained there.

(2) In the case of the actual or apprehended violent behaviour of the child (whether in the shelter or elsewhere) or by reason of the seriousness

of the offence with which the child is charged, an escape, or attempted escape, by the child from lawful detention, or for other good cause, the child may be taken to a remand centre and shall be detained there.

(3) A child who requires medical attention may be taken to a hospital and, if the person in charge of the hospital consents, be detained in the hospital.

(4) When a child who was detained in a hospital is discharged from hospital, the child shall—

- (a) in the case of a child to whom sub-section (2) applies—be taken to, and detained in, a remand centre; and
- (b) in any other case—be taken to, and detained in, a shelter.

(5) Where it is necessary to take the child from the place at which the child is detained to a court, or from a court to that place, the child shall not, unless it is impracticable to avoid doing so, be so taken in company with a person under detention who is not a child and shall not be placed at the court in a room in which another person under detention who is not a child is placed.

Arrested children to be brought promptly before the Court

39. (1) Where a child has been charged with an offence and has not been released from custody, a police officer shall bring the child before the Court as soon as practicable and in any case within 48 hours after the arrest.

(2) If the child is not so brought before the Court, the child shall forthwith be released from custody.

Exclusion of evidence unlawfully obtained

40. (1) Where, in proceedings against a child in respect of an offence, the court is satisfied that evidence tendered to the court was obtained in contravention of, or in consequence of a contravention of, a provision of this Ordinance in relation to the child, the court shall refuse to admit that evidence in the proceedings unless it is satisfied that—

- (a) admission of the evidence is substantially in the public interest as regards the administration of criminal justice; and
- (b) that interest would outweigh any prejudice to the rights of any person, including the child, that has occurred or is likely to occur as a result of the contravention or the admission of the evidence.

(2) The matters to which a court may have regard in deciding whether it should admit the evidence that was obtained in contravention of, or in consequence of a contravention of, a provision of this Ordinance in relation to the child include—

- (a) the seriousness of the offence to which the evidence relates, the difficulty of detecting the offender, the need to apprehend the offender and the need to preserve evidence of the facts;

- (b) the nature and seriousness of the contravention; and
- (c) the extent to which the evidence might have been lawfully obtained.

(3) This section is in addition to, and not in substitution for, any other law or rule under which a court may refuse to admit evidence.

Summary disposal of certain cases

41. (1) Subject to this section and to section 43, where—

- (a) a child is charged before the Court with an indictable offence; and
- (b) the Court is of the opinion that the case can properly be disposed of summarily,

the Court may hear and determine the charge summarily.

(2) Sub-section (1) does not apply to an offence that is punishable by imprisonment for life.

(3) Before forming an opinion whether or not a case can properly be disposed of summarily, the Court shall have regard to such matters as it considers relevant and, in particular, to each of the following:

- (a) any relevant representations made by the defendant;
- (b) any relevant representations made by the prosecutor in the presence of the defendant;
- (c) the facts of the case;
- (d) the seriousness of the alleged offence;
- (e) the circumstances in which the offence is alleged to have been committed;
- (f) the age of the child;
- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child;
- (i) the suitability of the penalties that the Court is empowered to impose;
- (j) the difficulty of any question of law that is likely to arise.

Committal for trial in certain cases

42. Where a child is charged before the Court with an indictable offence and—

- (a) the Court is not empowered to hear and determine the charge summarily; or
- (b) the Court is so empowered but decides not to hear and determine the charge summarily,

the Court shall deal with the charge in accordance with the provisions of the Magistrates Court Ordinance relating to indictable offences.

Child may elect to be committed for trial

43. (1) The Court shall not exercise its powers under sub-section 41 (1) without the consent of the child.

(2) Before proceeding to hear the charge, the Court shall inform the child, and any parent of the child who is present, of the provisions of sub-section (1).

(3) If a parent is not present, the Court may adjourn the hearing so as to enable a parent to be present.

(4) If a parent is not present at the adjourned hearing, the Court may continue the hearing.

(5) The Court may, at any time, adjourn the hearing to enable the child or a parent of the child to obtain legal advice.

Committal of guilty child to Supreme Court

44. (1) Where the Court convicts a child of an indictable offence, the Court may, where it appears to it that, by reason of the character and antecedents of the child, it is desirable that sentence be passed on the child by the Supreme Court, by order commit the child to the Supreme Court for sentence.

(2) The Supreme Court may deal with a child committed for sentence under sub-section (1) in any way in which it might have dealt with the child if the child had been convicted of the offence before the Supreme Court.

(3) Before the Court makes an order under sub-section (1), the Court shall have regard to any report furnished to the Court in pursuance of section 162.

Childrens Court to give reasons

45. Where the Court decides not to hear and determine a charge summarily and commits a child to the Supreme Court, the Court shall state the reasons for its decision and cause those reasons to be entered in the records of the Court.

Remission of matter by Supreme Court

46. (1) Where a child is convicted by the Supreme Court of an offence, the Supreme Court may remit the case to the Childrens Court.

(2) The Childrens Court may deal with a child remitted under sub-section (1) in any way in which it might have dealt with the child if the child had been convicted of the offence in that Court.

(3) Where the Supreme Court remits a case under sub-section (1)—

(a) the Supreme Court may give directions as to the custody of the child, or the child's release on bail, until the child is brought before the Childrens Court; and

(b) the Registrar of the Supreme Court shall cause to be transmitted to the Clerk of the Magistrates Court a certificate stating—

(i) the nature of the offence;

- (ii) that the child has been convicted of the offence; and
- (iii) that the case has been remitted to be dealt with under this section.

Division 3—Disposition of Young Offenders

Disposition of young offenders

47. (1) Where a child has been convicted of an offence by the Court, the Court shall, as soon as practicable and, in any case, within 6 months after the date of the conviction, make one or more of the following orders:

- (a) an order reprimanding the child;
- (b) a conditional discharge order;
- (c) an order imposing a penalty provided by law with respect to the offence;
- (d) any other order that the Court is empowered by any other law to make with respect to the offence;
- (e) where a fine is not provided by law with respect to the offence, an order imposing a fine not exceeding \$1,000;
- (f) where reparation or compensation is not provided for by law with respect to the offence, an order that the child make reparation by way of money payment, or pay compensation, in respect of any loss suffered or expense incurred by reason of the offence, but so that the total amount of reparation or compensation does not exceed \$1,000;
- (g) a probation order;
- (h) an attendance centre order;
- (i) a residential order having effect for such period, not exceeding 2 years, as the Court specifies;
- (j) an order committing the child to a State institution in a specified State or Territory for such period, not exceeding 2 years, as the Court specifies;
- (k) an order committing the child to an institution for such period, not exceeding 6 months, as the Court specifies.

(2) A probation order may be expressed to commence to have effect when an order under paragraph (1) (i), (j) or (k) ceases to have effect.

(3) A conditional discharge order shall specify the period, being a period not exceeding 6 months, within which the conditions of the order are to be complied with.

Disposition without proceeding to conviction

48. Where the Court is satisfied that a charge against a child is proved but, in the circumstances, and having regard to—

- (a) the provisions of section 5;
- (b) the welfare of the child;