

## Chapter 5 – Children

<b>5.1 INTRODUCTION</b>	<b>4</b>
5.1.1 WHO IS TREATED AS A CHILD	4
5.1.2 REFERENCES TO LEGISLATION	4
5.1.3 DEFINITIONS	5
5.1.4 ADDITIONAL RESOURCES	5
<b>5.2 GENERAL POLICY</b>	<b>5</b>
5.2.1 SUSPECTED CHILD ABUSE	6
5.2.2 INVESTIGATION OF MATTERS INVOLVING CHILDREN	6
5.2.3 CHILDREN UNDER 10 YEARS OF AGE	6
5.2.4 CHILDREN UNDER 14 YEARS OF AGE	6
5.2.5 OFFICIAL COUNSELLING	6
<b>5.3 DIVERSION FROM THE COURT SYSTEM</b>	<b>7</b>
5.3.1 DIVERSION OPTIONS	7
5.3.2 REPEATED USE OF DIVERSION OPTIONS	8
5.3.3 POLICE REFERRAL	8
<b>5.4 AUTHORITY TO CAUTION</b>	<b>8</b>
5.4.1 AUTHORITY GRANTED BY VIRTUE OF POSITION	8
5.4.2 AUTHORITY GRANTED AFTER COMPLETION OF PRESCRIBED TRAINING	9
5.4.3 REVOCATION OF AUTHORITY	9
5.4.4 RESPONSIBILITIES OF THE STATE COORDINATOR, CPIU	9
5.4.5 LIMITATION OF CAUTIONING AUTHORITY	10
5.4.6 CAUTIONS ADMINISTERED BY RESPECTED PERSONS OF ABORIGINAL OR TORRES STRAIT ISLANDER COMMUNITIES	10
<b>5.5 CAUTIONING PROCESS</b>	<b>12</b>
5.5.1 CRITERIA FOR DECIDING TO ADMINISTER A CAUTION	12
5.5.2 PREPARATION FOR ADMINISTERING A CAUTION	13
5.5.3 PERSONS TO BE PRESENT FOR THE ADMINISTRATION OF A CAUTION	13
5.5.4 ELECTRONIC RECORDING OF CAUTIONS	14
5.5.5 CONDUCTING THE CAUTION	14
5.5.6 QPRIME RECORD	15
5.5.7 DISCLOSURE OF FURTHER OFFENCES DURING CAUTION PROCESS	15
5.5.8 APOLOGY TO VICTIM	15
5.5.9 RESTITUTION OR COMPENSATION AFTER CAUTION	15
5.5.10 CAUTIONING OF CHILD CO-OFFENDER	16
5.5.11 CONFIDENTIALITY	16
5.5.12 CHILDRENS COURT MAY DISMISS A CHARGE IF CAUTION SHOULD HAVE BEEN ADMINISTERED OR NO ACTION TAKEN	16
<b>5.6 RESTORATIVE JUSTICE PROCESS</b>	<b>18</b>
5.6.1 POLICE REFERRAL TO A RESTORATIVE JUSTICE CONFERENCE	18
5.6.2 REFERRAL BACK TO POLICE FROM CHIEF EXECUTIVE DYJ	19
5.6.3 COURT REFERRAL TO RESTORATIVE JUSTICE CONFERENCE	19
5.6.4 ATTENDING A RESTORATIVE JUSTICE CONFERENCE	20
5.6.5 OUTCOMES OF A RESTORATIVE JUSTICE CONFERENCE	20
5.6.6 CONFIDENTIALITY OF RESTORATIVE JUSTICE CONFERENCES	21
<b>5.7 GRAFFITI REMOVAL PROGRAM</b>	<b>21</b>

5.7.1 PURPOSE OF GRAFFITI REMOVAL PROGRAM	21
5.7.2 ELIGIBILITY FOR A GRAFFITI REMOVAL PROGRAM	21
5.7.3 OFFER TO ATTEND GRAFFITI REMOVAL PROGRAM AFTER THE COMMENCEMENT OF PROCEEDINGS	22
5.7.4 RECEIPT OF AGREEMENT BY YOUTH JUSTICE SERVICE	22
5.7.5 COMPLETION OF GRAFFITI REMOVAL PROGRAM	22
5.7.6 PROPERTY FORFEITURE	23
<b>5.8 PROTECTED ADMISSIONS</b>	<b>23</b>
5.8.1 GENERAL INFORMATION	23
5.8.2 APPLICATION OF PROTECTED ADMISSION SCHEME	24
5.8.3 PROTECTED ADMISSION PROCESS	24
5.8.4 FURTHER OFFENCES DISCLOSED	25
5.8.5 USES OF A PROTECTED ADMISSIONS INTERVIEW	25
<b>5.9 COMMENCING PROCEEDINGS AGAINST A CHILD</b>	<b>26</b>
5.9.1 PERSONS TO BE PRESENT FOR AN INTERVIEW WITH A CHILD WHO IS SUSPECTED OF COMMITTING AN INDICTABLE OFFENCE (ADMISSIBILITY OF CHILD'S STATEMENT)	26
5.9.2 PROCEEDINGS AGAINST A CHILD BY NOTICE TO APPEAR	27
5.9.3 PROCEEDINGS AGAINST A CHILD BY COMPLAINT AND SUMMONS	27
5.9.4 TAKING A CHILD INTO CUSTODY	28
5.9.5 ENSURING RIGHTS OF CHILDREN TAKEN INTO CUSTODY	29
5.9.6 PARENT AND OTHER NOTIFICATION REQUIREMENTS	29
5.9.7 INTERESTED PERSONS ACCOMPANYING A CHILD TO A WATCH-HOUSE OR VISITING A CHILD IN A WATCH-HOUSE	30
<b>5.10 RELEASING CHILDREN FROM CUSTODY</b>	<b>30</b>
5.10.1 CHILD RELEASED TO GO AT LARGE	31
5.10.2 CHILD RELEASED ON BAIL	31
5.10.3 CHILD IN CUSTODY OF THE COMMISSIONER PENDING COURT APPEARANCE	31
<b>5.11 TAKING CHILDREN'S IDENTIFYING PARTICULARS</b>	<b>32</b>
5.11.1 TAKING IDENTIFYING PARTICULARS OF A CHILD NOT ARRESTED	32
5.11.2 TAKING IDENTIFYING PARTICULARS FOR AN INVESTIGATIVE PURPOSE	33
5.11.3 DESTRUCTION OF IDENTIFYING PARTICULARS TAKEN FOR AN INVESTIGATIVE PURPOSE	34
5.11.4 TAKING FINGERPRINTS UPON A FINDING OF GUILT BY A COURT	34
5.11.5 ACCESS TO DETENTION CENTRES TO TAKE IDENTIFYING PARTICULARS	34
<b>5.12 MISCELLANEOUS</b>	<b>35</b>
5.12.1 HANDCUFFING CHILDREN	35
5.12.2 ELECTRONIC RECORDING OF INTERVIEWS WITH A CHILD	35
5.12.3 FAILURE OF PARENT TO EXERCISE PROPER CARE OR SUPERVISION OVER A CHILD	35
5.12.4 INTERNATIONAL HOMESTAY SCHOOL STUDENTS	35
5.12.5 CHILDREN UNDER 18 YEARS LEAVING HOME	36
<b>5.13 ESCAPE OF YOUNG PEOPLE FROM DEPARTMENT OF YOUTH JUSTICE DETENTION</b>	<b>36</b>
5.13.1 INITIAL POLICE ACTION	36
5.13.2 ACTION TO BE TAKEN ON LOCATION OF YOUNG PERSON	37
5.13.3 NOTIFYING PERSONS AT RISK	37
5.13.4 RELEASE OF INFORMATION TO MEDIA	38
<b>5.14 ELECTRONIC MONITORING (CHILDREN ON BAIL)</b>	<b>38</b>
5.14.1 BAIL CONDITION TO WEAR ELECTRONIC MONITORING DEVICE	38

5.14.2 ACTION ON GRANT OF BAIL WITH AN ELECTRONIC MONITORING DEVICE CONDITION	39
5.14.3 ELECTRONIC MONITORING DEVICE ALERTS	39
5.14.4 REMOVAL OF ELECTRONIC MONITORING DEVICE	39
5.14.5 PROCEDURE FOR REMOVAL OF ELECTRONIC MONITORING DEVICE	39
5.14.6 VARIATION OF CHILD'S BAIL CONDITIONS	39
5.14.7 OFFICERS REQUIRING ELECTRONIC MONITORING DEVICE LOCATION DATA FOR COURT	39

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## 5.1 Introduction

This chapter provides procedures which are designed to ensure officers effectively administer the provisions of the YJA, the PPRA and other laws, when dealing with persons aged under 18 years involved in the commission of an offence.

### 5.1.1 Who is treated as a child

A person, who at the time of the alleged offending has not turned 18 years old, is to be dealt with under the youth justice system as a child.

A person, who is alleged to have committed an offence as a child but has since become an adult, is to be treated as a child for the purposes of the YJA, unless proceedings for the offence are commenced more than 1 year after the person has become an adult (see s. 140: 'When offender must be treated as an adult' of the YJA).

### 5.1.2 References to legislation

This chapter should be read in conjunction with the various statutes referred to throughout.

The YJA provides the laws for children who commit, or are alleged to have committed, offences and operates in conjunction with the PPRA and the *Bail Act*.

Officers should note:

- (i) the YJA takes precedence over the PPRA wherever an inconsistency arises; and
- (ii) Schedule 4 of the YJA provides specific definitions that apply when interpreting the YJA.

### Charter of youth justice principles

Schedule 1 of the YJA provides a charter of youth justice principles which underlie the operation of the YJA.

Officers should apply these principles when dealing with children who may have been involved in the commission of an offence.

### Human Rights Act 2019

At all times when dealing with a child, officers should act or make decisions in a way that is compatible with the following human rights:

- (i) every person is equal before the law and is entitled to the equal protection of the law without discrimination (see s. 15 of the *Human Rights Act (HRA)*);
- (ii) every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child (see s. 26 of the HRA);
- (iii) a person must not be subject to arbitrary arrest or detention, and a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law (see s. 29 of the HRA);
- (iv) a child charged with a criminal offence has the right to a procedure that takes account of the child's age and desirability of promoting the child's rehabilitation (see s. 32 of the HRA);
- (v) a person charged with a criminal offence has the right to be presumed innocent until proven guilty and is entitled to the following minimum guarantees (see s. 32 of the HRA):
  - (a) to be informed promptly and in detail of the nature and the reason for the charge in language, or if necessary, a type of communication the person speaks or understands;
  - (b) to communicate with a lawyer or advisor chosen by the person;
  - (c) to be tried without reasonable delay;
  - (d) to be tried in person, and to defend themselves personally or through legal assistance chosen by the person, or if eligible, through legal aid;
  - (e) to examine, or have examined, witnesses against the person;
  - (f) to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution;
  - (g) to have the free assistance of an interpreter if the person cannot understand or speak English; and
  - (h) to have the free assistance of specialised communication tools and technology, and assistance, if the person has communication or speech difficulties that require assistance;
- (vi) an accused child who is detained, or a child detained without charge, must be segregated from all detained adults, and an accused child must be brought to trial as quickly as possible (see s. 33 of the HRA);
- (vii) every child has the right to have access to primary and secondary education appropriate to the child's needs (see s. 36 of the HRA); and

(viii) every person has the right to access health services without discrimination (see s. 37 of the HRA).

### 5.1.3 Definitions

For the purposes of this chapter:

#### **Charter of youth justice principles**

means the principles stated in Schedule 1 of the YJA.

#### **Chief Executive CSSD**

means the Chief Executive, Department of Child Safety, Seniors and Disability Services.

#### **Chief Executive DYJ**

means the Chief Executive, Department of Youth Justice.

#### **Identifying particulars**

relates to the meaning in Schedule 6: 'Dictionary of the PPRA, except in the case of identifying particulars taken under the provisions of s. 255: 'Court may order sentenced child's particulars to be taken' of the YJA. For the purposes of s. 255 of the YJA, the term 'identifying particulars' means fingerprints and palm prints (see s. 255(6) of the YJA).

#### **Legal aid organisation**

means Legal Aid Queensland and Aboriginal and Torres Strait Islander Legal Service.

#### **Parent**

means a:

- (i) parent or guardian of a child;
- (ii) person who has lawful custody of the child other than because of the child's detention for an offence or pending a proceeding for an offence;
- (iii) person who has the day-to-day care and control of a child; or
- (iv) person who is apparently a parent of a child.

The definition of 'parent' will include 'homestay provider' in the case of international homestay school students (see s. 5.12.4: 'International homestay school students' of this chapter).

#### **Serious offence**

means an offence as defined in s. 8: 'Meaning of serious offence' of the YJA.

### 5.1.4 Additional resources

A number of resources, flowcharts and other information to assist officers when investigating matters under the YJA are available on the Youth Justice Unit webpage on the Service Intranet.

## 5.2 General policy

The provisions of this chapter apply to all dealings with children involved in, or suspected of being involved in, a criminal offence. When considering what action should be taken against a child who is reasonably suspected of having committed an offence, officers are to consider the charter of youth justice principles.

Where a child comes to the adverse attention of an officer, the officer should:

- (i) as soon as practicable, make all reasonable inquiries to contact a parent, guardian or another adult who can take responsibility for the child; and
- (ii) encourage a parent of a child to fulfil the parent's responsibility for the care and supervision of the child and provide support in the parent's efforts to fulfil this responsibility.

Because a child tends to be vulnerable in dealings with a person in authority, officers are to comply with all safeguards contained in the YJA and PPRA during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.

Where a prima facie case is established against a child in relation to an offence, officers should, wherever practicable divert the child from the court system, unless the nature of the offence and the child's criminal history indicate a proceeding for the offence should be commenced (see s. 5.3: 'Diversion from the court system' of this chapter).

Officers should provide a victim of an offence committed by a child with the opportunity to participate in the process of dealing with the child for the offence in a way allowed by law.

When dealing with a child, an officer should explain procedures and other matters to the child in a way the child understands. Where practicable, any decision affecting a child should be made and implemented within a timeframe appropriate to the child's sense of time.

When making a decision relating to a child, an officer should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices. Where practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.

### 5.2.1 Suspected child abuse

Where an officer identifies child abuse as a possible cause of the offending behaviour, officers should, as soon as practicable, refer the matter to the CPIU or a Child Abuse and Sexual Crimes Group officer for immediate action.

Where an officer believes a child has been harmed or is at risk of harm, the officer is to submit a 'Report of Suspected Harm to a Child' occurrence in QPRIME (see s. 7.3.1: 'Initial action for reports of child harm' of this Manual).

### 5.2.2 Investigation of matters involving children

#### Child Protection Investigation Unit

Where practicable, when children come to the adverse attention of officers, particularly for serious or sexual offences, such matters should be investigated by, or in consultation with, an officer of the CPIU.

The CPIU was established as a specialist unit to deal with matters involving children and officers appointed to a CPIU are selected and trained for this role.

In consultation with the OIC of the relevant CPIU, regions or districts should develop local instructions which outline the circumstances whereby officers, other than members of a CPIU, can investigate matters involving children in accordance with the provisions of the YJA and relevant Service policy (see s. 1.5.3: 'Regional, district and station/establishment instructions' of this Manual).

### 5.2.3 Children under 10 years of age

A child under the age of 10 years is not criminally responsible for any act or omission (see s. 29(1): 'Immature age' of the CC).

Where a child who is under the age of 10 commits an offence, the child may be officially counselled by an officer authorised to administer a caution (see s. 5.4: 'Authority to caution' of this chapter).

### 5.2.4 Children under 14 years of age

A child under the age of 14 years is not criminally responsible for an act or omission, unless it is proved at the time of doing the act or omission, the child had the capacity to know what the child was doing was wrong (see s. 29(2): 'Immature age' of the CC). Without proof of capacity, the prosecution of the matter will likely fail.

Where an officer is questioning a child under 14 years of age, the officer should question the child as to whether at the time of the offence, the child knew it was seriously wrong to do the act alleged. This issue should be investigated whether or not the child admits to the offence.

Where the child does not admit to knowing that doing the act was wrong, the officer should further investigate the issue of capacity and may seek evidence from a parent, teacher or other person who knows the child (see Guideline 6: 'Capacity of Child Offenders' of the Director of Public Prosecutions Guidelines).

Where evidence to show the child knew what the child was doing was wrong cannot be obtained, the child may be officially counselled by an officer authorised to administer a caution.

### 5.2.5 Official counselling

Official counselling has no legal standing but may assist in diverting the child from future involvement with the criminal justice system. Officers are not to compel a child or their guardian to take part in official counselling.

Where an officer decides to officially counsel a child, the officer is to:

- (i) adopt substantially the same process as that used for cautions (see s. 5.5: 'Cautioning process' of this chapter), making such allowances as are necessary to:
  - (a) emphasise the guidance aspect of counselling; and
  - (b) accommodate the level of understanding of a younger child; and
- (ii) update the relevant QPRIME occurrence status to 'Behavioural Counselling' (see s. 1.11.11: 'QPRIME offender action status type and requirements' of this Manual).

Where additional support would assist to divert a child from future offending, officers should consider making a police referral (see s. 6.3.14: 'Police Referrals' of this Manual). It is not the function of officers to determine what additional support services would benefit a child or their family.



## 5.3 Diversion from the court system

Diversion of children from the youth justice court system is an important component of reducing recidivism among young people. The Service supports the diversion of children from the court system in accordance with the charter of youth justice principles, noting:

- (i) if a child commits an offence, the child should be treated in a way that diverts the child from the court's criminal justice system, unless the nature of the offence and the child's criminal history indicate a proceeding for the offence should be started;
- (ii) a victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by law;
- (iii) a parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility;
- (iv) a decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time; and
- (v) a child who commits an offence should be:
  - (a) held accountable and encouraged to accept responsibility for the offending behaviour; and
  - (b) dealt with in a way that allows the child to:
    - be reintegrated into the community; and
    - continue the child's education, training or employment without interruption or disturbance, if practicable.

### 5.3.1 Diversion options

Before deciding to charge a child with an offence, officers are to consider alternatives to commencing a proceeding in accordance with s. 11: 'Police to consider alternatives to proceeding against child' of the YJA, which are to:

- (i) take no formal action (this decision must be clearly articulated in the relevant QRIME occurrence);
- (ii) administer a caution (see s. 5.5: 'Cautioning process' of this chapter);
- (iii) refer the matter to a restorative justice process (see s. 5.6: 'Restorative justice process' of this chapter);
- (iv) for a graffiti offence, offer the child the opportunity to participate in the graffiti removal program (see s. 5.7: 'Graffiti removal program' of this chapter);
- (v) for a minor drugs offence and where the child is eligible, offer the child the opportunity to:
  - (a) be given a drug diversion warning; or
  - (b) participate in and complete a Drug Diversion Assessment Program (initial or subsequent),(see s. 2.22: 'Police Drug Diversion Program' of this Manual); or
- (vi) for an offence of being intoxicated in a public place, take and release the child at a place of safety (see s. 16.6.3: 'Intoxication' of this Manual)

Before a caution or other diversion action, except police drug diversion, can be taken against a child, the child must:

- (i) admit to committing the offence to the officer; and
- (ii) consent to the caution or other diversion action.

If a child does not admit to the offence, diversion options, except police drug diversion, are not available.

A child is not required to admit to committing a minor drugs offence to be eligible for Police Drug Diversion Program (see s. 2.22.1: 'Eligibility for drug diversion' of this Manual).

Officers should consider whether the child is eligible for the Protected Admissions Scheme (see s. 5.8: 'Protected admissions' of this chapter).

#### ORDER

In all circumstances where a child commits an offence that is not a serious offence, officers are to consider the appropriateness of taking diversion action and in appropriate cases, divert the child.

While proceedings can be commenced against a child who has committed a serious offence, in appropriate circumstances, officers should consider whether one of the diversion options in (i) to (iv) above may be appropriate. Officers may contact their local CPIU to discuss whether diversion is the most appropriate action.

Where appropriate, if a child commits a sexual offence, officers are to consider and comply with the provisions of Guidelines 5(i): 'Child Offenders' and 5(v): 'Sexual Offences by Children' of the Director of Public Prosecutions Guidelines.

Officers should conduct a complete investigation into any matter prior to deciding to take diversion action against a child. The term 'take no action' does not mean officers may ignore an incident which requires police attention.

#### ORDER

If an officer decides to charge a child with an offence, the officer is to outline reasons why no action, caution or a diversion process was not appropriate in the Court Brief (QP9), including reference to the circumstances of the alleged offence and to the child's previous criminal history and history of prior cautions or youth conference agreements, if applicable. Attaching a copy of the child's history to the QP9 is not sufficient to fulfil this requirement.

### 5.3.2 Repeated use of diversion options

Dependent on the circumstances and seriousness of each offence, children should be diverted for first and subsequent offences, with the view to diverting them from anti-social behaviour and the court's criminal justice system.

Officers may take no formal action, administer a caution, refer to a restorative justice process or refer a child to a graffiti removal program even though:

- (i) action of that kind has been taken in relation to the child on more than one previous occasion; or
- (ii) a proceeding against the child for another offence has already been started or has ended.

In circumstances where a child meets the criteria for diversion and the child can be diverted, officers should:

- (i) consider which diversion option is likely to have the greatest effect on the child; and
- (ii) divert the child.

### 5.3.3 Police referral

Where additional support would assist to divert the child from offending, officers should consider making a police referral (see s. 6.3.14: 'Police Referrals' of this Manual). It is not the function of the officer to determine what additional support services would benefit the child or their family.

## 5.4 Authority to caution

The Commissioner may appoint officers with sufficient training or experience to administer cautions. The Commissioner has delegated the power to authorise officers to administer a caution to:

- (i) a detective superintendent;
- (ii) a detective inspector; and
- (iii) the designated OIC of an established CPIU at sergeant level or above.

See s. 16(3): 'Conditions for administration of police caution' of the YJA and Delegation D 132.1.

Officers may be authorised to administer a caution:

- (i) by virtue of their designated position; or
- (ii) upon being granted authorisation after completing prescribed training.

### 5.4.1 Authority granted by virtue of position

Officers who are permanently appointed to the following positions are authorised to administer a caution to a child:

- (i) the OIC of a CPIU;
- (ii) the OIC of a criminal investigation branch (CIB);
- (iii) the OIC of a station; and
- (iv) in matters relating to their primary area of responsibilities, the OIC of a:
  - (a) Highway Patrol; or
  - (b) water police establishment.

The authority to administer a caution granted to officers by virtue of their appointment to the above positions is automatically revoked when the officer vacates the position, unless the officer:

- (i) is appointed to a similar position; or
- (ii) held an authority to administer a caution (QP 0955: 'Authority to Administer Caution') prior to taking up a position mentioned above. Unless revoked, a prior authority to administer a caution is maintained, regardless of any transfer or redeployment within the Service.



Officers authorised under this subsection to administer a caution to a child are to, if not previously authorised, undergo an approved training course or workshop (see Child Abuse and Sexual Crime Group webpage on the Service Intranet) within twelve months of appointment to the position.

#### 5.4.2 Authority granted after completion of prescribed training

Officers seeking authorisation to administer a caution to children are to enrol in and complete the:

- (i) Police Cautioning Workshop (QC1544\_01) or equivalent; and
- (ii) Authority to administer cautions to children (QC1478\_01).

See Flowchart 5.5: 'Granting or revocation of authority to caution' and Flowchart 5.5.1: 'Application for authority to caution process' available on the Youth Justice Unit webpage on the Service Intranet.

The delegated officer issuing an authority to an officer is to ensure the process contained in Flowchart 5.5.1 is followed by:

- (i) ensuring there is sufficient evidence of the officer's successful completion of an on-the-job cautioning assessment supervised by an approved trainer; and
- (ii) completing a QP 0955: 'Authority to Administer Caution' and forwarding the QP 0955 to the officer for uploading into the QC1478 (the register).

The officer is to retain the original copy of the QP 0955 for production in proceedings, if required.

The State Coordinator, CPIU is to ensure the process contained in Flowchart 5.5.1 is completed.

Officers authorised to administer cautions in accordance with this subsection will retain the authority, unless revoked, regardless of any transfer or redeployment within the Service.

ORDER

The OIC of a region or command is to ensure all officers authorised to administer cautions maintain appropriate skills for cautioning children.

#### 5.4.3 Revocation of authority

Where an officer's authority to administer a caution to children is revoked, the delegated officer issuing the revocation is to provide written advice to the:

- (i) officer, including the reasons for the revocation; and
- (ii) State Coordinator, CPIU of the:
  - (a) officer's name, location and position held; and
  - (b) reasons why the authority has been revoked.

The officer is to forward the original copy of the QP 0955 to the State Coordinator, CPIU.

The State Coordinator, CPIU is to ensure the:

- (i) revocation process contained in Flowchart 5.5: 'Granting or revocation of authority to caution' is followed; and
- (ii) officer's authority to administer cautions is cancelled in the QC1478 (the register).

Officers authorised to administer a caution to children may request the revocation of their authority in writing to a delegated officer.

#### 5.4.4 Responsibilities of the State Coordinator, CPIU

The State Coordinator, CPIU is responsible for ensuring:

- (i) officers authorised to administer a caution under s. 16(3): 'Conditions for administration of police caution' of the YJA have:
  - (a) successfully completed an approved training course or workshop (see Child Abuse and Sexual Crime Group webpage on the Service Intranet);
  - (b) satisfactorily demonstrated to the OIC of a dedicated CPIU the officer has sufficient training and/or experience to administer cautions to children;
- (ii) where an authorised officer does not have sufficient training and/or experience to administer cautions to children, the officer's authority may be revoked. Prior to revoking an officer's authority, a request should be made of the authorised officer's district officer for a report as to the suitability of the authorised officer to continue;
- (iii) a register of authorities, and revocations of authorities, to administer cautions to children is maintained by the Child Abuse and Sexual Crime Group, CIC; and

(iv) authorised officers are advised by the delegated officer in writing of the authorisation or revocation of the authority to administer a caution to a child.

#### 5.4.5 Limitation of cautioning authority

An officer's level of authority to caution is determined by the officer's current designated position within the service.

The following levels of cautioning authority have been established to ensure accountability and consistency in the cautioning process:

- (i) Level 1 Authorisation; and
- (ii) Level 2 Authorisation.

An officer's level of authority will automatically change when the officer's designated position changes.

##### Level 1 – Authority to Caution

Level 1 Authorisation permits an officer to administer a caution for any offence, subject to the provisions of s. 5.5.1: 'Criteria for deciding to administer a caution' of this chapter.

The following officers have Level 1 Authorisation:

- (i) where a CPIU is established:
  - (a) the OIC of that unit; and
  - (b) other CPIU officers attached to that unit who have been issued with a QP 0955: 'Authority to Administer Caution'; or
- (ii) in districts where no CPIU is established:
  - (a) the OIC of a CIB; and
  - (b) the OIC of a station;
  - (c) in matters relating to their primary area of responsibilities, the OIC of a:
    - Highway Patrol; or
    - water police establishment.

##### Level 2 – Authority to Caution

All other officers who have been issued with a QP 0955 have Level 2 Authorisation.

Officers with Level 2 Authorisation are not to administer a caution for a sexual offence.

Level 2 Authorisation permits an officer to administer a caution for the following:

- (i) an offence which does not constitute a serious offence (see s. 8: 'Meaning of serious offence' of the YJA), excluding sexual offences (see Chapter 22: 'Offences against morality' of the CC);
- (ii) a serious offence which can be dealt with summarily, excluding sexual offences;
- (iii) a serious offence, which cannot be dealt with summarily, with the prior approval of:
  - (a) the OIC of the CPIU responsible for the area within which the officer is stationed;
  - (b) where there is no established CPIU, the OIC of the CIB responsible for the area within which the officer is stationed;
  - (c) where there is no relevant CPIU or CIB, the officer's OIC; or
  - (d) a commissioned officer; and
- (iv) in cases of rape or attempted rape, where an authority to caution has been obtained from a detective inspector.

See Flowchart 5.6: 'Limitation of cautioning authority' available on the Youth Justice Unit webpage on the Service Intranet.

#### 5.4.6 Cautions administered by respected persons of Aboriginal or Torres Strait Islander communities

When a child who is a member of an Aboriginal or Torres Strait Islander community is to be cautioned, wherever practicable, a respected person of the child's community should administer the caution (see s. 17: 'Caution administered by respected person of Aboriginal or Torres Strait Islander community' of the YJA).

A statement by a child that the child is a member of an Aboriginal or Torres Strait Islander community should be considered as fact until the contrary is shown. Where appropriate, inquiries may be conducted with Aboriginal or Torres Strait Islander community organisations to determine whether the child is accepted as a member of a particular community.

The term '**community**':

- (i) includes the Deeds of Grant in Trust areas, Mornington Island and Aurukun; and
- (ii) can extend to and include family groups and clan groups where agreement can be reached between the OIC of a police station or establishment and the relevant group.

ORDER

If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, the authorised officer is to:

- (i) consider whether there is a respected person who is a member of the same community as the child and available and willing to administer the caution; and
- (ii) if a respected person of the community is available and willing to administer the caution, request the person to administer the caution.

Where the Service and the relevant community have a mutually agreed protocol, the authorised officer should contact the community in accordance with the agreed protocol.

Where a respected member of the child's Aboriginal or Torres Strait Islander community is available and willing to administer a caution to the child, the authorised officer is to:

- (i) prior to the caution taking place, explain the cautioning process to the respected person. The officer should be satisfied the respected person understands and is willing to comply with the cautioning process;
- (ii) be present when the respected person administers the caution to the child; and
- (iii) whenever practicable, have copies of the Form 3: 'Notice of caution' (available in QPRIME) which may be signed by the involved parties (see s. 5.5.5: 'Conducting the caution' of this chapter).

Where no respected person is available or willing to administer a caution to a child, the authorised officer may:

- (i) postpone the caution process to a more suitable time; or
- (ii) where postponing the caution would not be in the best interests of the child or would render the caution ineffective, the caution should be administered by the authorised officer as soon as practicable.

### **Agreement between the Service and Aboriginal and Torres Strait Islander Respected Persons**

The OIC of a station or establishment, or CPIU where a unit exists, should liaise with the local Aboriginal or Torres Strait Islander communities to develop and formalise a mutually agreed protocol for involving respected persons from their community in administering cautions to Aboriginal or Torres Strait Islander children.

The preferred option is to commit the agreement to writing in a plain English format that is easily understood by the respected person and other members of the community. This may require the services of an interpreter to ensure the agreement is fully understood by both parties.

When an agreement between the Service and an Aboriginal or Torres Strait Islander community is being developed, the following issues should be considered and addressed in the protocol:

- (i) an agreement as to who is a respected person of the community for the purposes of administering cautions;
- (ii) the community's nomination of those persons whom it considers would be suitable to administer cautions to children from within that community;
- (iii) the decision to request any particular respected person to administer a caution or be present during the administration of a caution remains at the discretion of the authorised officer in each particular instance;
- (iv) an authorised officer must request a respected person to administer the caution;
- (v) the caution which is to be administered by the respected person must be in a format which complies with the YJA;
- (vi) a respected person must not administer a formal caution under the YJA to a child unless in the presence of an authorised officer; and
- (vii) the protocol should be signed by the OIC and each respected person who is to participate in the cautioning process.

### **Training of Aboriginal and Torres Strait Islander Respected Persons**

Aboriginal or Torres Strait Islander respected persons are not required to undergo training before being able to administer cautions, however, they should be encouraged to do so.

The Assistant Commissioner, People Capability Command is responsible for developing and maintaining a training program for Aboriginal or Torres Strait Islander respected persons on the competencies to administer a caution to a child under the YJA.

District education and training officers and the OIC of the relevant CPIU are responsible for delivering the training package on the cautioning of children to Aboriginal or Torres Strait Islander respected persons who may be called upon to administer a caution to a child from their community. The training is to be delivered to those respected persons who indicate their desire to participate.

## 5.5 Cautioning process

A caution is to be administered with utmost fairness and is to address the circumstances of each case in a constructive and purposeful manner. Wherever possible and appropriate, young children should be cautioned or offered other diversion options.

Dependent on the circumstances and where appropriate, officers may caution a child even though:

- (i) action of that kind has been taken on a previous occasion or occasions; or
- (ii) a proceeding against the child for another offence has already been started or has ended.

When investigating an offence for which a child is, or is suspected of being, responsible, the officer considering administering a caution should:

- (i) obtain all relevant facts concerning the alleged offence;
- (ii) obtain all relevant information about the child, which may include the child's behaviour;
- (iii) having regard to s. 3.4.5: 'Director of Public Prosecutions (State) guidelines' of this Manual, determine an appropriate charge to prefer if a caution is not administered. This charge should also be used to define the correct offence for which a caution is given; and
- (iv) establish whether the child meets the criteria for cautioning (see s. 5.5.1: 'Criteria for deciding to administer a caution' of this Manual and Flowchart 5.3: 'Criteria for deciding to administer a caution' available on the Youth Justice Unit webpage on the Service Intranet).

### 5.5.1 Criteria for deciding to administer a caution

Only officers who have been granted the authority to caution are to administer a caution to a child.

If officers are not authorised to administer a caution within the meaning of the YJA they may only administer a caution in the presence of an officer who is authorised to caution for that offence.

#### ORDER

Officers are not to caution a child:

- (i) for an offence of unlawful killing or attempted unlawful killing;
- (ii) for an offence of rape or attempted rape without the prior approval of an officer of the rank of at least Detective Inspector; or
- (iii) who is under the age of criminal responsibility.

Before a caution can be administered:

- (i) the child must:
  - (a) admit to having committed the offence; and
  - (b) consent to being cautioned (see s. 16: 'Conditions for administration of police caution' of the YJA);
- (ii) a prima facie case must be established against the child in relation to each offence;
- (iii) a caution must be appropriate in the circumstances; and
- (iv) the officer must possess the requisite level of authority to administer a caution for the offence (see s. 5.4.5: 'Limitation of cautioning authority' of this chapter).

See Flowchart 5.3: 'Criteria for deciding to administer a caution' and Flowchart 5.4: 'Consideration for approval to caution for serious offences' available on the Youth Justice Unit webpage on the Service Intranet.

#### Restitution

The ability of a child to pay restitution or compensation is not to be considered as a criterion for determining whether a caution is appropriate.

#### Commissioned officer authorisation

A commissioned officer requested to authorise a caution for a serious offence, may delegate the responsibility to an officer in the region or command within which the commissioned officer is located.

When determining whether to grant approval for a child to be cautioned for a serious offence, a commissioned officer, or delegate, is to consider:

- (i) the 'Sufficiency of Evidence' and 'Public Interest' tests (see s. 3.4.3: 'Factors to consider when deciding to prosecute' of this Manual) and determine whether court proceedings should be commenced in the interests of justice;
- (ii) the circumstances of the offence;
- (iii) whether the child's previous history indicates a caution may divert the child from the criminal justice system or further offending; and
- (iv) if the child meets the legislative criteria for a caution and the offence is one for which the child can be cautioned, the child should be cautioned.

When determining whether to grant approval for a child to be cautioned for a rape or attempted rape offence, a detective inspector is to consider:

- (i) the 'Sufficiency of Evidence' and 'Public Interest' tests (see s. 3.4.3: 'Factors to consider when deciding to prosecute' of this Manual) and determine whether court proceedings should be commenced in the interests of justice;
- (ii) the desires of the victim and victim's family regarding formal court proceedings against the child offender;
- (iii) all the circumstances of the offence;
- (iv) the age and developmental state of both the offender and the victim;
- (v) the relationship of the offender to the victim;
- (vi) the use of any weapons in the commission of the offence as an aggravating factor;
- (vii) any use of threats or violence in the commission of the offence;
- (viii) the participation of any co-offender(s) in the commission of the offence; and
- (ix) whether the child's previous history indicates a caution may divert the child from the criminal justice system or further offending.

The name of the authorising commissioned officer or delegate is to appear on the relevant QPRIME occurrence report.

### 5.5.2 Preparation for administering a caution

Prior to cautioning a child, the investigating officer should:

- (i) ascertain the whereabouts of the parents of the child, and if practicable contact the parents prior to the caution being administered to inform them of the circumstances;
- (ii) if not authorised under the YJA to caution a child, ensure an authorised officer administers the caution or is present during the administration of the caution;
- (iii) arrange the interview for a mutually acceptable time to the officers involved, the child and the parent or independent person;
- (iv) attempt to arrange for the interview to take place at police premises unless special circumstances otherwise exist;
- (v) where possible, ensure no more than two officers are involved in each cautioning process or interview;
- (vi) where practical, ensure a person chosen by the child or the parent of the child or an independent person is going to be present; and
- (vii) if the parent is not available or is unable to be contacted, ensure action is taken to advise such parent as soon as possible.

See Flowchart 5.7: 'Preparation to administer a caution' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.5.3 Persons to be present for the administration of a caution

Where practicable, the following persons are to be present during the administration of a caution:

- (i) an adult chosen by the child;
- (ii) a parent of the child; or
- (iii) a person chosen by the parent of the child.

See s. 16(2): 'Conditions for administration of a police caution' of the YJA.



Where a child or a parent of the child chooses a member of the Service, who is not a parent of the child, to be present during the administration of a caution, the authorised officer should ensure an 'independent person' is present in addition to the member nominated.

Where a person nominated to be present during the administration of a caution may be delayed, the authorised officer should consider postponing the caution to a more suitable time.

If it is unlikely a nominated person will be present in the immediate future and any delay will reduce the effectiveness of the caution process, the investigating officer may either:

- (i) arrange for an independent person to be present at the caution; or
- (ii) proceed with the caution.

#### ORDER

Where a person nominated to be present is, or is suspected of being, a co-offender of the child, the investigating officer is to advise the person requesting the presence of the co-offender of the inappropriateness of such an action. The child or parent of the child is to then be given the opportunity to choose a more appropriate person to be present during the administration of the caution.

### 5.5.4 Electronic recording of cautions

Wherever possible, officers are to electronically record cautions for indictable offences.

Cautions for non-indictable offences may be electronically recorded at the discretion of the investigating officer. However, where an officer considers a caution interview may be contentious or a co-offender is likely to be charged with the same offence, the interview should be electronically recorded.

Electronic recordings of cautions are to be recorded in QPRIME via an Interview Report linked to the offender and distributed in accordance with the DERIE Manual.

The investigating officer should only give a copy of the recording to the child who was interviewed.

Where other persons who are present at the caution interview require a copy of any recording, the investigating officer should ensure a request for a copy of the recording is made in accordance with s. 6: 'Processing and copying of media' of the DERIE Manual.

### 5.5.5 Conducting the caution

When administering a caution, an officer should comply with the cautioning process as outlined in 'Cautioning in detail' Youth Cautioning OLP (QC1543\_01). A copy of the OLP content is also available in the QPS Cautioning Workshop User Manual (available on the Child Abuse and Sexual Crime Group, Child Protection and Investigation Unit, 'Resources' webpage on the Service Intranet).

Where it is appropriate and in the best interest of the child, an officer should:

- (i) discuss with the child and the child's parent or guardian a Police Referral to an appropriate support agency to assist the child in resolving any underlying issues related to the offending behaviour. The child should be encouraged to discuss their offending behaviour with that support agency; and
- (ii) submit a Police Referral (see s. 6.3.14: 'Police Referrals' of this Manual). Officers are not to determine the support agency to which the child or family should be referred.

At the conclusion of a caution the authorised officer is to ensure a Form 3: 'Notice of Caution' (available in QPRIME) and, if appropriate, the required number of Form 3A: 'Notice of Caution Further Offences' (available in QPRIME) are completed and provided to the child. A separate Form 3 is to be completed for each child offender.

The Form 3 may be typed or handwritten. Two identical original copies of the Form 3 are to be completed.

Once the child has been provided with a copy of the Form 3, the child is to be given the opportunity to endorse the second copy of the Form 3 (the station copy) certifying the child:

- (i) consented to the caution;
- (ii) admitted committing the offence or offences contained in the Form 3; and
- (iii) received a copy of the Form 3.

The parent or support person who was present for the caution (see s. 16(2): 'Conditions for administration of a police caution' of the YJA) should be invited to witness the child's signature. In the absence of such a person, the authorised officer should witness the signature.

If the child, parent or support person present declines to endorse the Form 3, the authorised officer is to make a note of the refusal on the rear of the station copy of the Form. There is no obligation on the child to sign the Form 3.

A copy of the Form 3 is to be scanned into the relevant QPRIME occurrence and remain on the station file.



### 5.5.6 QPRIME record

For the purposes of statistical recording, the investigating officer is to ensure the following is completed in the relevant QPRIME occurrence:

- (i) before the caution:
  - (a) create the relevant charge against the person. Where the child is above the age of criminal responsibility the words 'Officially Cautioned' are to be included in the offence section. Where the child is under the age of criminal responsibility the words 'Officially Counselling' are to be included in the offence section;
  - (b) create a diversion record from the Disposition area of the QPRIME Offence/Charge Window; and
  - (c) create the Form 3: 'Notice of Caution' within the QPRIME occurrence; and
- (ii) after the caution, update the occurrence status to reflect the outcome of the caution.

### 5.5.7 Disclosure of further offences during caution process

Where a child discloses further offences that have been committed by the child, the child should be questioned in relation to these further offences to determine if there is a prima facie case.

If the child discloses offences which:

- (i) have been previously dealt with, the caution should proceed; or
- (ii) have not been previously dealt with and those offences:
  - (a) are of the nature that the child can be cautioned, the offences should be included as part of that formal caution process if:
    - the child's admissions establish a prima facie case; and
    - the matter is one for which a caution is appropriate; or
  - (b) are not of the nature that the child can be cautioned, the offences should be investigated as separate offences. To the extent applicable to children, the provisions of the PPRA and the associated provisions of the Police Responsibilities Code apply to the investigation and the commencement of any proceeding.

### 5.5.8 Apology to victim

The caution procedure may involve an apology to the victim (see s. 19: 'Caution procedures may involve apology to victim' of the YJA).

Where a caution is to be administered to a child and an authorised officer decides an apology may be appropriate in the circumstances, the officer should:

- (i) ask if the child is willing to apologise;
- (ii) establish whether the victim is willing to participate in the apology;
- (iii) if the child is willing to apologise to the victim and the victim is willing to participate, arrange a suitable time for the apology;
- (iv) provide an area at a police station or establishment for the apology to take place;
- (v) ensure the apology is supervised either personally or by another authorised officer;
- (vi) introduce all persons present;
- (vii) allow the victim to commence by explaining to the child the effect of the offence on the victim;
- (viii) allow the child to apologise to the victim;
- (ix) encourage further discussion to take place between the parties;
- (x) ensure the meeting proceeds and concludes in a constructive format; and
- (xi) ensure the safety of the child and victim during the process.

When an apology from the child is not forthcoming, the caution process should continue.

See Flowchart 5.8: 'Apology to victim' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.5.9 Restitution or compensation after caution

ORDER

Except as outlined below, members are not to accept money on behalf of victims for the purpose of restitution or compensation.

Where the victim desires no contact with the offending child, the investigating officer is to arrange with the child or the child's parents for the restitution or compensation to be:

- (i) posted to the complainant at an agreed address; or
- (ii) if the victim does not want the offending child to know their address:
  - (a) posted to a nominated post office; or
  - (b) paid into a Service collections account.

Where money is paid into a Service collections account, the offending child or child's parent is to be given a receipt and a cheque drawn in favour of the victim. The cheque should be given to the victim in the most convenient manner.

See Flowchart 5.9: 'Restitution, compensation or return of property' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.5.10 Cautioning of child co-offender

Where a child is to be cautioned and a co-offender is to be placed before a court, the investigating officer should:

- (i) conduct an electronically recorded interview with the child to be cautioned;
- (ii) prior to concluding the interview, arrange for a caution to be administered at a suitable time after the interview has concluded;
- (iii) provide the child with a copy of the recording of the interview;
- (iv) continue investigations in relation to co-offenders and take appropriate action; and
- (v) record details of the interview in QPRIME.

Generally, a handwritten statement from the child will not be required as the court will rely on the electronically recorded record of interview. If it is considered necessary or appropriate to obtain a handwritten statement from the child, this can only be done with the consent of the child.

### 5.5.11 Confidentiality

#### ORDER

The strict legislative requirements of the YJA do not permit the disclosure of confidential information (see s. 284: 'Definitions for pt 9' of the YJA), including information about the cautioning of children, other than as outlined in Part 9.

Confidential information is only to be disclosed:

- (i) for an authorised purpose under s. 289: 'Recording, use or disclosure for authorised purpose' of the YJA;
- (ii) to the child or with the child's consent under s. 290: 'Disclosure to the child or with the child's consent' of the YJA;
- (iii) where the child has agreed to a police referral. Wherever possible, officers should obtain the consent of the child under this section to release the information through the police referral system.
- (iv) to ensure someone's safety in accordance with the written authority of the Chief Executive, under s. 292: 'Disclosure to ensure someone's safety' of the YJA;
- (v) to a law enforcement entity in another jurisdiction in accordance with s. 294: 'Disclosure to law enforcement entity in another jurisdiction' of the YJA; or
- (vi) in regard to cautions and restorative justice processes and agreements, to those persons nominated in s. 295: 'Disclosure by police of information about cautions and restorative justice process referrals and restorative justice' of the YJA;
- (vii) for the purpose of sentencing a child for an offence in accordance with s. 150(e): 'Sentencing principles' of the YJA;

See Flowchart 5.10: 'Confidentiality' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.5.12 Childrens court may dismiss a charge if caution should have been administered or no action taken

Where a child has entered a guilty plea, the court may dismiss a charge if satisfied, upon application by or on behalf of the child, a caution should have been administered or no action taken in the circumstances (see s. 21: 'Childrens court may dismiss charge if caution should have been administered or no action taken' of the YJA).

When considering the circumstances, the court may have regard to any:

- (i) other cautions administered to the child for any offence; or
- (ii) youth conference agreements which have been made with the child.

If a court dismisses a charge under s. 21 of the YJA, the court may:

- (i) administer a caution to the child, or
- (ii) direct a caution be administered to the child.

Where the court orders a caution be administered to a child, and the court does not direct a specific person to administer the caution, the child should be cautioned by the arresting officer, if the officer is authorised to administer a caution. Otherwise, an authorised officer should administer the caution to the child.

### **Reasons why a diversion option was not appropriate**

ORDER

Officers are to outline in the Court Brief (QP9) the reasons why a diversionary option (see s. 5.5.1: 'Diversions from court' of this chapter) was not appropriate. In the reasons reference is to be made to the:

- (i) circumstances of the alleged offence; and
- (ii) where applicable, child's criminal history, prior cautions or youth conference agreements.

Attaching a copy of the child's criminal history record to the QP9 is not sufficient to fulfil this requirement.

In addition to any criminal history, officers are to ensure full details of any prior cautions or youth conference agreements are provided for the information of the prosecutor.

### **Caution administered or ordered by court**

If a court administers a caution to the child, the prosecutor is to:

- (i) clearly note on the QP9 a caution was administered by the court pursuant to s. 21 of the YJA; and
- (ii) conclude the court matter in accordance with the QPRIME User Guide.

If a court directs a caution is to be administered, the prosecutor is to:

- (i) clearly record this result on the QP9; and
- (ii) conclude the court matter in accordance with the QPRIME User Guide; and
- (iii) assign a work task to the investigating officer to ensure the caution is administered.

The investigating officer is to cause the child to be cautioned in accordance with the court order and ensure the Form 3: 'Notice of Caution' is completed and distributed in accordance with this section.

When a court dismisses a charge, the investigating officer should:

- (i) where there is no property involved, consider the investigation finalised and ensure all correspondence concerning the matter is completed; or
- (ii) where there is property involved, dispose of the property in accordance with s. 4.6: 'Disposal of property' of this Manual and ensure all correspondence concerning the matter is completed.

See Flowchart 5.11: 'Court may dismiss charges' and Flowchart 5.11.1: 'Court may dismiss charges – Additional actions' available on the Youth Justice Unit webpage on the Service Intranet.

### **Consideration of ex-officio indictment**

Where a court:

- (i) dismisses a charge in relation to a serious offence; and
- (ii) does not:
  - (a) administer a caution to the child;
  - (b) direct a caution be administered to the child; or
  - (c) refer the offence to the chief executive for a restorative justice conference,

the investigating officer should discuss the matter with the prosecutor and the officer's OIC. The OIC should consider all the available evidence relating to the offence and, where appropriate, forward the completed brief of evidence and covering report to the Superintendent, Prosecution Services. Where appropriate, the Superintendent, Prosecution Services should forward the file to the Office of the Director of Public Prosecutions for assessment and consideration of an ex-officio indictment.

See Flowchart 5.11.2: 'Court may dismiss charges – Action for serious offences' available on the Youth Justice Unit webpage on the Service Intranet.

## 5.6 Restorative justice process

Officers may refer an offence committed by a child to a restorative justice process as an alternative to bringing a child before a court (see s. 22: 'When a police officer may refer offence for restorative justice process' of the YJA).

A restorative justice process means a restorative justice conference (RJC) or an alternative diversion program (see s. 31: 'The restorative justice process' of the YJA).

Dependent on the circumstances, where appropriate, officers may refer a child to a restorative justice process even though action of that kind has been taken on a previous occasion or occasions; or a proceeding against the child for another offence has already been started or has ended.

### Restorative justice conference

A RJC is directed towards making a conference agreement about the offence and may include:

- (i) a provision relating to matters such as restitution or compensation;
- (ii) the performance of voluntary work;
- (iii) an apology to the victim; and
- (iv) the child's future conduct.

It is conducted by a conference convenor, who is responsible for all decisions.

An offence may be sent back to the referring police officer where:

- (i) a child fails to attend a conference;
- (ii) a child contravenes a conference agreement;
- (iii) a conference agreement is not reached; or
- (iv) a conference fails after a referral is made under s. 24A: 'Childrens Court may dismiss charge if offence should have been referred to restorative justice conference' of the YJA.

### 5.6.1 Police referral to a restorative justice conference

Officers should refer an offence committed by a child to a restorative justice conference (RJC) where:

- (i) the child admits committing the offence;
- (ii) the child consents to the referral;
- (iii) having regard to:
  - (a) the nature of the offence nature;
  - (b) the harm suffered by anyone because of the offence; and
  - (c) whether the interests of the community and the child would be served by having the offence considered or dealt with at a RJC; and
- (iv) the officer considers:
  - (a) a caution is inappropriate;
  - (b) a proceeding for the offence would be appropriate if a referral to a RJC was not made;
  - (c) referral to a RJC is a more appropriate way of dealing with the offence than starting a proceeding; and
  - (d) a conference convenor will be available for the conference.

#### ORDER

OICs of stations are to obtain contact details of the relevant delegate of the Chief Executive, who is tasked with coordinating restorative justice conferencing and make those details available to officers under their control.

An officer who decides to refer a matter to a RJC should:

- (i) complete a Form 4: 'Restorative Justice Process Police Referral Form' (available in QPRIME);
- (ii) send the Form 4 to the relevant delegate of the Chief Executive (who will advise the referring officer whether the RJC is to proceed); and
- (iii) if the child:
  - (a) has been in police custody for the relevant offence, capture the diversion from the custody report in QPRIME; or
  - (b) has not been taken into custody for the relevant offence, capture the diversion from the person record in QPRIME.

Where a referring officer receives notice the RJC is to proceed, the referring officer is to:

- (i) complete a Form 5: 'Notice to Attend a Restorative Justice Process' (available in QPRIME);
- (ii) personally serve the Form 5 on the child, ensuring the child is given a pamphlet explaining the RJC process (available on the Department of Child Safety, Youth and Women, Restorative justice conferences webpage);
- (iii) inform the child generally of the restorative justice process and potential consequences for the child if s/he fails to participate in the process; and
- (iv) forward the completed Form 5 to the Chief Executive.

Where a child successfully completes a RJC and an agreement is reached, the referring officer is to:

- (i) receive a copy of the:
  - (a) agreement on an approved Form 9: 'Restorative Justice Agreement' from the conference convenor (see s. 36: 'Conference agreement' of the YJA and s. 5.6.5: 'Outcomes of a restorative justice conference' of this chapter); and
  - (b) Form 13: 'Report on the Completion of a Restorative Justice Process' within fourteen days from the Chief Executive. The hardcopy is to be filed at the investigating officer's station/establishment; and
- (ii) within the relevant QPRIME occurrence:
  - (a) record the outcome of the RJC; and
  - (b) save a copy of the Form 13.

See Flowchart 5.12: 'Referral to restorative justice conference' and Flowchart 5.13: 'Process to refer to restorative justice conference' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.6.2 Referral back to police from Chief Executive DYJ

In some instances, a restorative justice conference will not be successful and the offence and child will be referred back to the officer by the Chief Executive DYJ via written notice (see s. 32: 'Returning referrals' of the YJA).

The officer should then decide what further action is to be taken (see s. 24: 'Powers of police officer if referral is unsuccessful or if child contravenes restorative justice agreement' of the YJA).

In considering what further action is appropriate, the officer is to consider:

- (i) the circumstances of the alleged offence;
- (ii) the child's criminal history;
- (iii) any previous cautions administered to the child for an offence;
- (iv) if the child has been in any other way dealt with for an offence under any Act, the other dealings;
- (v) any participation by the child in the conference; and
- (vi) if an agreement was made at the conference – anything done by the child under the agreement.

Action that may be taken by the officer includes:

- (i) taking no further action;
- (ii) administer a caution to a child;
- (iii) refer the offence to the Chief Executive for another conference; or
- (iv) start a proceeding against the child for the offence.

If the matter is to be brought before the court for sentencing, the court's proper officer is to give notification of the court date to the child and the Chief Executive.

See Flowchart 5.15: 'Considerations for action after a YJC did not proceed' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.6.3 Court referral to restorative justice conference

The Childrens Court may dismiss a charge if the offence should have been referred to a restorative justice process (s. 24A: 'Powers of police officer if referral is unsuccessful or if child contravenes restorative justice agreement' of the YJA).

This may occur if a child admits to committing an offence at court and the charge was made against the child by a police officer. The court has the option to dismiss the charge and refer the offence to the Chief Executive for a restorative justice conference under s. 22: 'When police officer may refer offence for restorative justice process' of the YJA.

These referrals may occur in circumstances where there was no admission by the child before being charged.



A referral of this type will operate in the same manner as a police referral; the police officer is taken to be the referring authority. If the child fails to engage in the conferencing process, the matter will be returned to police (by written notice) to exercise their discretion in considering the following options:

- (i) take no further action;
- (ii) administer a caution to a child;
- (iii) refer the offence to the Chief Executive for another conference; or
- (iv) start a proceeding against the child for the offence.

#### 5.6.4 Attending a restorative justice conference

##### Police attendance

When a child has been referred to a restorative justice conference (RJC) by an officer, the following officers may attend the conference, the:

- (i) referring officer;
- (ii) investigating officer; or
- (iii) where neither of those officers are available, an officer with sufficient knowledge of the circumstances of the offence and the investigation which was conducted.

Officers are not required to attend all RJCs. Attendance by an officer should be discussed and determined on a case-by-case basis between the youth justice officer and the relevant CPIU or investigating officer in the region.

See s. 34(1): 'Who may participate in conference' of the YJA.

##### Victims of crime attendance

A victim is entitled to participate in a RJC (see s. 34(1)(b) of the YJA). Officers are to liaise with victims throughout the process as per the Charter of Victim's Rights (see s. 2.12.1: 'Victims of Crime Assistance Act' of this Manual) and the *Victims of Crime Assistance Act*.

##### Where Commissioner is the victim

Where the Commissioner is the victim (see s. 10.11: 'Ownership of official property' of the *Police Service Administration Act*), the participation in a RJC has been delegated to commissioned officers (see Delegation D 132.2). Delegated officers may then give permission for other officers to attend the conference as the Commissioner's representative.

The officer who commenced the proceedings or investigating officer for the offence who considers a matter is appropriate to refer to a RJC where the Commissioner is the victim, is to advise the relevant delegated officer. The delegated officer is to be informed of all the particulars of the case. The officer referring the matter to the Chief Executive should provide the contact details of the relevant delegated officer to the Chief Executive.

A delegated officer who is invited to participate in a RJC by a conference convenor should determine whether a representative of the Commissioner, as the victim of the offence, should attend the conference and advise the convenor accordingly. The delegated officer may nominate another officer to attend the conference on behalf of the Commissioner.

#### 5.6.5 Outcomes of a restorative justice conference

Once a restorative justice conference (RJC) process has commenced, all decisions regarding conduct of the conference are made by the convenor.

Where agreement is reached at a RJC, the convenor will prepare a Form 9: 'Youth Justice Conference Agreement' which, in addition to the child's admission to committing the offence and how the agreement will be monitored, may also contain provisions about the following:

- (i) the making of restitution or payment of compensation;
- (ii) voluntary work to be performed by the child;
- (iii) an apology to the victim;
- (iv) the child's future conduct while a child;
- (v) a diversion program to address the child's behaviour that involves remedial actions, activities intended to strengthen the child's relationship with family and community; and educational programs; and
- (vi) any other matter the conference convenor considers appropriate.

All the parties present at the RJC will be signatories on the Form 9. An officer is only required to sign the conference agreement if the officer participates in the conference.

An officer who has participated in the RJC, or has received notification of a RJC outcome, will receive a copy of the Form 9, which should be scanned into the relevant QPRIME occurrence.



See Flowchart 5.14: 'Outcomes of a YJC' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.6.6 Confidentiality of restorative justice conferences

The provisions of s. 5.5.11: 'Confidentiality' of this chapter apply to restorative justice conferences.

An officer should only disclose information relating to a child's cautioning or restorative justice history or outcomes as outlined in s. 295: 'Disclosure by police of information about cautions and restorative justice process referrals and restorative justice agreements' of the YJA.

## 5.7 Graffiti removal program

An officer should offer a child the opportunity to attend a graffiti removal program (GRP) if the child:

- (i) has been arrested for, or is being questioned in relation to a graffiti offence;
- (ii) admits to having committed the offence; and
- (iii) is at least 12 years of age at the time of the offence.

See s. 379A: 'Additional case when arrest for graffiti offence may be discontinued' of the PPRA.

A '**graffiti offence**' means an offence against s. 469: 'Wilful damage' of the CC, where the property is in a public place or visible for a public place and the destruction or damage is caused by:

- (i) spraying, writing, drawing, marking or otherwise applying paint or another marking substance; or
- (ii) scratching or etching.

A referral requires a child to attend and complete a GRP, which is managed by an external provider engaged by the Department of Youth Justice. The provider may be the relevant local government or a similar approved provider.

### 5.7.1 Purpose of graffiti removal program

Referral to attend and complete a graffiti removal program is aimed at providing a timely response to children who have committed a graffiti offence, if the investigating officer believes:

- (i) the child would benefit from the program;
- (ii) the child's current and past offending is relatively minor;
- (iii) the program may dissuade the child from committing further graffiti offences; and
- (iv) a referral is appropriate (see s. 11: 'Police officer to consider alternatives to proceeding against child' of the YJA).

The program provides an alternative to commencing a proceeding.

### 5.7.2 Eligibility for a graffiti removal program

Depending on the seriousness of the graffiti offence committed, referral to a GRP:

- (i) should be considered in instances where an officer would otherwise:
  - (a) consider offering the child a caution; or
  - (b) refer the child to a restorative justice process;
- (ii) may be offered to a child at any time prior to the child's first court appearance for the relevant offence; and
- (iii) may be offered on more than one occasion.

An officer who offers a child the option of completing a GRP, is to:

- (i) complete a QP 0951: 'Agreement to attend and complete a graffiti removal program and written requirement to comply with agreement' (available in QPRIME);
- (ii) explain to the child and parent or support person:
  - (a) the QP 0951 outlines the consequences of agreeing to attend the GRP;
  - (b) if the child fails to attend and complete the GRP:
    - the child commits an offence against s. 791: 'Offence to contravene direction or requirement of police officer' of the PPRA; and
    - the child may be charged with the original graffiti offence;
- (iii) invite the child and parent or support person to sign the QP 0951; and

(iv) provide a copy of the completed and signed QP 0951 to the child and parent or support person.

Once the child has signed and received a copy of the QP 0951, the child should be released.

After the child has agreed to attend and complete a GRP, the officer is to:

- (i) update the relevant QPRIME occurrence(s) to record the referral. If the child;
  - (a) has been in police custody for the relevant offence, capture the GRP referral in the custody report in QPRIME; or
  - (b) has not been taken into custody for the relevant offence, capture the GRP referral the person record in QPRIME;
- (ii) scan the completed QP 0951 and save in the relevant QPRIME occurrence; and
- (iii) send the completed QP 0951 by email to the relevant Youth Justice Service.

If the child does not sign the QP 0951 or otherwise does not agree to the referral, the officer should proceed with the investigation of the offence(s).

When an officer makes an offer to a child to attend and complete a GRP, the officer is to give the child and the parent or support person an oral or written explanation of the consequences of agreeing to attend the GRP. A written explanation is to be included on the QP 0951.

### 5.7.3 Offer to attend graffiti removal program after the commencement of proceedings

An officer may offer a child the opportunity to attend and complete a graffiti removal program (GRP) at any time prior to the child's first appearance before a court on the relevant charge (see s. 379A(2): 'Additional case when arrest for graffiti offence may be discontinued' of the PPRA).

Where an officer has commenced proceedings against a child for a graffiti offence and the officer considers referral to a GRP may be a preferable outcome, the officer is to:

- (i) contact the child, if necessary, and make arrangements to conduct an electronic record of interview, with the appropriate safeguards (see s. 3: 'Interview room recordings' of the DERIE), prior to offering a referral to a GRP in accordance with this section; and
- (ii) where a GRP referral is accepted, make the necessary arrangements for the withdrawal of the relevant charge in accordance with s. 3.4.4: 'Withdrawal of charges' of this Manual.

### 5.7.4 Receipt of agreement by Youth Justice Service

The Department of Youth Justice (DYJ) should reply to the referring officer within 3 business days of receiving the completed QP 0951: 'Agreement to attend and complete a graffiti removal program and written requirement to comply with agreement' with:

- (i) a faxed or emailed acknowledgement the completed QP 0951 had been received;
- (ii) the name and contact details of the Youth Justice Service officer managing the child's graffiti removal program (GRP) and details of the service provider administering the GRP (if relevant).

The GRP is to be completed within 60 days of receipt of the referral by the Youth Justice Service, DYJ.

### 5.7.5 Completion of graffiti removal program

#### Successful completion of program

Within 3 business days of a child successfully attending and completing a graffiti removal program (GRP), the Department of Youth Justice (DYJ) is required to send a 'Report on the Completion/Non-Completion of a Graffiti Removal Program' to the officer who made the GRP referral.

Officers receiving a 'Report on the Completion/Non-Completion of a Graffiti Removal Program' advising of the successful completion of a GRP are to:

- (i) update the relevant QPRIME occurrence(s) and import the report as an external report; and
- (ii) arrange disposal of the forfeited property, if still held by police (see s. 5.7.6: 'Property forfeiture' of this chapter).

#### Failure to complete program

Where a child fails to attend and complete a GRP, the DYJ is required to send a 'Report on the Completion/Non-Completion of a Graffiti Removal Program' to the officer who made the GRP referral. The report will provide all the relevant information in relation to the child failing to attend and complete the program.

Officers receiving information from the DYJ of a child's failure to attend and complete a GRP are to:

- (i) update the relevant QPRIME occurrence and import the report as an external report;

- (ii) contact the child and a parent/support person and arrange a suitable time for the child to be interviewed in relation to the failure to attend and complete the GRP;
- (iii) consider the circumstances of the child's failure to attend and complete the GRP and:
  - (a) in relation to the child's original graffiti offence(s), consider:
    - administering a caution (see s. 5.5: 'Cautioning process' of this chapter);
    - referring the child to a restorative justice process (see s. 5.6: 'Restorative justice process' of this chapter);
    - offering the child another opportunity to attend a GRP; or
    - commencing a prosecution for the original graffiti offence under s. 469: 'Wilful damage' of the CC;
  - (b) consider whether there is sufficient evidence to commence a prosecution for failing to attend and complete the graffiti removal program under s. 791: 'Offence to contravene direction or requirement of police officer' of the PPRA.

When considering whether a prosecution should be commenced for failing to attend and complete a GRP, officers are to consider the relevant circumstances of the child's failure to complete the program, for example:

- (i) the physical or mental capacity of the child (e.g. an injury or illness preventing the child from completing the program or the ability of the child to physically complete the program);
- (ii) the number of attempts made to contact the child, or appointments broken by the child;
- (iii) non-compliance with the program requirements or the failure to complete all required hours of the program;
- (iv) any other extenuating circumstances which prevented the child from completing the program; or
- (v) the child's criminal history, including any previous cautions, restorative justice conferences, or GRPs.

### 5.7.6 Property forfeiture

When a child agrees to attend a graffiti removal program (GRP) and signs the relevant QP 0951: 'Agreement to attend and complete a graffiti removal program and written requirement to comply with agreement', any implements used to commit the graffiti offence are forfeited to the State (see s. 379A(8): 'Additional case when arrest for graffiti offence may be discontinued' of the PPRA).

Officers seizing graffiti implements that may be subject to forfeiture to the State are to:

- (i) deal with the items in accordance with s. 4.2: 'Receiving property' of this Manual and lodge at a property point;
- (ii) arrange for the items to be photographed (in case the child fails to attend and complete a GRP and a prosecution is commenced); and
- (iii) dispose of the items in accordance with s. 4.6.3: 'Direction for disposal of forfeited property' of this Manual.

Where a prosecution is later commenced in relation to the forfeited implements, officers should tender the photographs of the graffiti implements as secondary evidence.

## 5.8 Protected admissions

### 5.8.1 General information

The Protected Admissions Scheme (PAS) allows officers (through a legal representative, parent or support person) and a child to come to an agreement about the child's eligibility for a diversion option (see s. 5.3.1: 'Diversion options' of this chapter) and the use of any admission.

Lawyers can provide advice to a child to admit an offence in the confidence they are acting in the best interests of the child. The investigation of the offence committed by the child does not change, nor does the cautioning or restorative justice conference schemes.

The PAS:

- (i) only operates where a child has declined to admit an offence, but a diversion option is otherwise appropriate; and
- (ii) is designed to remove the potential barriers to the cautioning or restorative justice conference options.

A protected admission interview is an interview that:

- (i) is conducted under the PAS; and
- (ii) allows a child to admit to an offence during an interview, but any admissions made are not admissible in court proceedings.

## 5.8.2 Application of Protected Admission Scheme

Where appropriate, officers are to use the Protected Admissions Scheme (PAS) to provide a child, who has failed to admit an offence during an interview or refused to take part in an interview but would otherwise be eligible for a diversion option (see s. 5.3.1: 'Diversion options' of this chapter), with an opportunity to satisfy the legislated criteria to be eligible for a diversion option.

A protected admission interview (PAI) is not necessary in circumstances where a child voluntarily admits an offence.

The decision to use the PAS and offer a child the opportunity to participate in a PAI can only be made:

- (i) by an officer who is authorised to administer a caution to the child for the offence (see s. 5.4: 'Authority to caution' of this chapter); and
- (ii) after the offence has been investigated.

If an investigating officer is not authorised to administer a caution to the child for the offence, the investigating officer may only use the PAS and conduct a PAI with the approval, and in the presence, of an officer who is authorised to caution for the offence.

Officers are to only offer a child a PAI through:

- (i) a legal representative; or
- (ii) where the child does not wish to seek legal advice or where legal advice is not available, a support person (generally the parent) who is present for the interview. A support person is to be given the opportunity to seek legal advice, if required.

Officers are to ensure any PAI conducted with a child meets the requirements of Part 3: 'Safeguards ensuring rights of and fairness to persons questioned for indictable offences' of the PPRA, particularly s. 421: 'Questioning of children'.

Nothing disclosed by a child during a PAI, concerning any offence, is admissible in any subsequent court proceedings and cannot be relied upon to prove any fact in issue.

Where a co-accused is involved, officers are to treat the child as a witness and obtain a statement using either s. 93A: 'Statement made before proceeding by child or person with an impairment of the mind' of the *Evidence Act* or a QP0125: 'Statement of witness'. The PAI cannot be produced.

## 5.8.3 Protected admission process

### ORDER

Officers are to first conduct an interview with a child in accordance with the provisions and requirements of the PPRA.

In circumstances where a child refuses to take part in an interview or fails to make any admissions during an interview, officers are to:

- (i) facilitate contact between the child and the child's parents and a legal representative, if required. Services including the Legal Aid Youth Hotline will provide the child with free legal advice;
- (ii) where required, provide the child's legal representative with:
  - (a) an outline of the circumstances of the offence alleged to have been committed by the child and that the child is eligible for a caution or other diversion provided the legislated requirements are met; and
  - (b) the opportunity to speak confidentially with the child and/or their parent;
- (iii) where the child does not wish to seek legal advice, or a legal representative is not available, speak with a support person (generally a parent) who is present for the interview and:
  - (a) provide the support person with:
    - a Form 36: 'Information for Support Persons About Their Role' (available on Forms Select); and
    - an 'Additional information for the support person of a young offender' information sheet (available on the Youth Justice Unit webpage on the Service Intranet);
  - (b) be satisfied the support person has the capacity to understand and comprehend all aspects of their role. Where the officer does not believe a support person understands the process, officers are to take all necessary steps to assist the support person, which may include facilitating contact with a legal representative;
  - (c) where the child or support person requests to speak with a legal representative, the interview should be delayed or rescheduled to allow legal advice to be sort. A support person may contact the Legal Aid Youth Hotline to obtain free legal advice;
  - (d) advise the support person the child is eligible for a caution or other diversion provided the legislated requirements are met; and

(e) provide the support person with the opportunity to speak confidentially with the child and a legal representative, if required;

(iv) if the child agrees to participate in a PAI, conduct a PAI, ensuring the questions outlined in the 'Interview Proforma – Protected Admissions Interview' proforma (available on the Youth Justice Unit webpage on the Service Intranet) are included in the interview; and

(v) if the child admits the offence being investigated during the PAI, caution or divert the child as agreed.

See Flowchart 5.26: 'Protected admission process' available on the Youth Justice Unit webpage on the Service Intranet.

#### 5.8.4 Further offences disclosed

It is foreseeable that during a protected admission interview (PAI), a child may disclose previously unknown offences. Where a child:

- (i) discloses further offences during a PAI;
- (ii) meets the criteria for diversion under the act; and
- (iii) can be diverted,

officers should divert the child.

The disclosure of previously unknown offences does not in itself preclude the PAI from continuing and the child subsequently being diverted for all offences. Before starting a proceeding against the child for further offences disclosed during a PAI, officers are to consider whether in all the circumstances it would be more appropriate to divert the child (see s. 11: 'Police to consider alternatives to proceeding against child' of the YJA and s. 5.3.1: 'Diversion options' of this chapter).

Where any further offences disclosed during a PAI meet the criteria for diversion, officers should continue the PAI and divert the child for the original offence and all subsequent offences. The number of further offences disclosed is not a bar to dealing with all offences through diversion.

Where any further offences disclosed during a PAI do not meet the criteria for diversion or diversion is not appropriate in the circumstances, officers should:

- (i) complete the PAI for the offences for which the child is eligible for diversion, but not question the child about any offence for which the child cannot be diverted;
- (ii) divert the child for the eligible offences;
- (iii) if a legal representative was used to arrange the PAI, contact the legal representative and:
  - (a) explain the change in circumstances and why a PAI cannot be conducted for the new offences; and
  - (b) allow the child and legal representative to speak privately;
- (iv) if a support person was present for the PAI:
  - (a) explain the change in circumstances and why a protected PAI cannot be conducted for the new offences; and
  - (b) allow the child and support person to speak privately; and
- (v) commence a PPRA interview for the new offences, ensuring the questions in the 'Protected Admission – PPRA Interview' proforma (available on the Youth Justice Unit webpage on the Service Intranet) are asked of the child.

Officers are to ensure through the legal representative, parent or support person that the child understands the new interview is no longer a PAI. Officers are to use the interview format 'Question to commence PPRA interview after a Protected Admissions interview is terminated'.

If the child subsequently refuses to take part in a PPRA interview or does not admit their involvement in an offence, officers are to fully investigate the offence. If, after investigation it is determined the new offences meet the criteria for diversion, officers are to consider whether:

- (i) in the circumstances it would be appropriate to divert the child; and
- (ii) a subsequent PAI can take place.

See Flowchart 5.27: 'Protected Admissions – Further Offences' on the Youth Justice Unit webpage on the Service Intranet.

#### 5.8.5 Uses of a protected admissions interview

Nothing disclosed by a child during a protected admission interview (PAI) is admissible in any subsequent court proceedings and cannot be relied upon to prove any fact in issue.



Officers should ensure the existence of a PAI is disclosed as part of full disclosure, however, it should not be produced to a court as evidence by the prosecution unless directed to do so by the court.

This means the PAI cannot be used as:

- (i) evidence in a court for offences against the child;
- (ii) evidence in a court for offences against a co-offender; or
- (iii) to challenge a version in an interview with co-offenders.

### **Evidence against a co-offender**

Where a child provides information against a co-offender in a PAI, officers are to complete any diversion action in relation to the child and then request the child provide a statement concerning their knowledge of the offences involving a co-offender. If appropriate, the child's statement should be obtained in accordance with the provisions of s. 93A: 'Statement made before proceeding by child or person with an impairment of the mind' of the *Evidence Act* (EA). If the child does not meet the admissibility criteria under s. 93A of the EA, then a statement using a QP 0125: 'Statement of witness' is to be used.

### **To guide an investigation**

While the contents of a PAI cannot be used as evidence in a court, it is foreseeable information provided by a child may guide an investigation. Any evidence obtained must be able to stand alone and be admissible without the PAI.

### **Requisite Capacity**

An interview with a child may be used to establish requisite capacity for future investigations.

A PAI is not admissible in court for this purpose. The subsequent caution, which should be recorded for indictable offences (see s. 5.5.4: 'Electronic recording of cautions' of this chapter), can be produced and used to establish requisite capacity.

## **5.9 Commencing proceedings against a child**

### **5.9.1 Persons to be present for an interview with a child who is suspected of committing an indictable offence (admissibility of child's statement)**

Officers are to ensure arrangements are made for a support person to be present when questioning a child in relation to an indictable offence. If a support person is not present, a statement made by the child will not be admissible in a proceeding (see s. 29: 'Support person must be present for statement to be admissible' of the YJA).

In addition, any questioning about a child's alleged involvement as a suspect for an indictable offence is to be conducted:

- (i) after the child has, if practicable, been allowed to speak to a support person, chosen by the child, in circumstances in which the conversation will not be overheard,
- (ii) after a legal aid organisation has been notified; and
- (iii) in the presence of a support person.

See s. 421: 'Questioning of children' of the PPRA.

However, it is reasonable to obtain certain particulars from a person, to at least establish the person being spoken to is a child, without the presence of a support person (See Flowchart 5.21: 'Persons present for an interview with a child' available on the Youth Justice Unit webpage on the Service Intranet).

Where a child or a parent of the child nominates a member of the Service, who is not a parent of the child, to be the person present during questioning, the investigating officer is to ensure an 'independent person' is present in addition to the member nominated.

When the services of a support person are obtained, the engaging of that person is to be at no expense to the Service. If a lawyer or other person requires payment, the officer is to make it clear to both the child and the lawyer or other person the Service will not be responsible for meeting expenses.

An officer who is questioning a person in relation to an indictable offence, and during the course of the interview becomes aware the person is a child, the officer should not ask any further questions in relation to the indictable offence until s. 421 of the PPRA has been complied with. The officer should say to the child words to the effect:

'I am going to ask you some further questions in relation to this matter. However, I am required to ask you those questions in the presence of a support person and after notifying a legal aid organisation or lawyer of your choosing. Who would you like to be present while I talk to you?'

If the child then nominates a support person to be present, the officer is to arrange to have that person present at the interview. If the child declines or is unable to nominate a support person, the officer is to arrange for a support person to be present.



### 5.9.2 Proceedings against a child by notice to appear

When commencing a proceeding against a child for an offence, other than a serious offence, officers are to commence the proceeding by way of notice to appear (NTA) or complaint and summons, unless otherwise provided under the YJA (see s. 12: 'Preferred way for police officer to start proceedings' of the YJA).

Where an officer has arrested a child, an OIC of the relevant police station or watch-house or a prescribed police officer may issue a NTA and release the child (see s. 50: 'Dealing with children not brought before Childrens Court in accordance with s 49' of the YJA).

ORDER

An officer issuing a NTA to a child is to:

- (i) specify:
  - (a) a court that is the most convenient for the child to attend, unless the appearance time for that court will not satisfy the requirement for appearance to be as soon as practicable; and
  - (b) the appearance time, which should be the next childrens court date set down for the relevant court (e.g. if childrens court is 2pm every Wednesday, the NTA is to specify 2pm on the following Wednesday) (see s. 384(3): 'Notice to Appear form' of the PPRA);
- (ii) complete the NTA in accordance with s. 3.5.3: 'Proceedings by way of notice to appear' of this Manual; and
- (iii) clearly state that at the time of the alleged offence the person was a child.

In addition to (i)-(iii) above, an OIC of a police station or watch-house or a prescribed officer who issues a notice to appear under s. 50 of the YJA is to:

- (i) update the relevant custody report in QPRIME with details of the child's release; and
- (ii) assign a notification task to the arresting officer advising of the issue and service of the NTA.

See Flowchart 5.18: 'Issuing of notice to appear to a child for offences' available on the Youth Justice Unit webpage on the Service Intranet.

ORDER

Officers are to outline in the Court Brief (QP9) reasons why taking no action, administering a caution or another diversion option were not appropriate. Where applicable, the reasons are to include references to the:

- (i) circumstances of the alleged offence;
- (ii) child's previous criminal history; and
- (iii) history of prior cautions or youth conference agreements.

### 5.9.3 Proceedings against a child by complaint and summons

Where it is not possible to commence proceedings by way of notice to appear, proceedings should be commenced by way of complaint and summons.

When an officer decides to commence a proceeding against a child by way of complaint and summons, the officer is to ensure the child is served with the summons at least three clear days prior to the initial appearance date.

An officer is to complete and serve the complaint and summons in accordance with ss. 3.5.4: 'Proceedings by way of complaint and summons', 3.5.5: 'Service of a summons', 3.5.6: 'Responsibilities after serving a summons' and 3.5.7: 'Unserved summons' of this Manual, with the additional requirement to:

- (i) swear the complaint and summons before a justice of the peace, other than a commissioner for declarations;
- (ii) serve or cause to be served a copy of the complaint and summons on the parent and the Chief Executive, DYJ (see s. 43(2): 'Service of complaint and summons if offender a child' of the YJA); and
- (iii) when serving the complaint and summons on the child:
  - (a) serve the complaint and summons as discreetly as practicable; and
  - (b) not serve the complaint and summons at or in the vicinity of the child's place of employment or school, unless there is no other place where service may be reasonably affected (see s. 43(3) of the YJA).

An officer is only to use an instantia summons if the complaint is served on the parent and the Chief Executive, DYJ.

#### Service of complaint on a parent and the chief executive

Service of a copy of the complaint and summons for either a simple offence or an indictable offence must also be affected on:

- (i) a parent (unless a parent cannot be found after reasonable inquiry) by:
  - (a) personal service; or

- (b) posting a copy of the complaint and summons form by registered mail to the parent at the usual place of business or residence of the parent last known to the officer; and
- (ii) the Chief Executive, DYJ by:
  - (a) personal service;
  - (b) delivering a copy of the complaint and summons to an officer from the Department of Youth Justice; (Note: this would be the usual method of service); or
  - (c) posting a copy of the complaint and summons form by registered mail to the Chief Executive, DYJ at the usual place of business of the Chief Executive, DYJ.

The officer serving a copy of the complaint and summons on the parent or Chief Executive, DYJ should:

- (i) endorse a copy of the complaint and summons as to service and retain the endorsed copy with the investigation file;
- (ii) update the QPRIME occurrence with details of the time, date and place of service;
- (iii) note in the facts of the Court Brief (QP9) that the parent was served with a copy of the complaint and summons; and
- (iv) if it was sent by registered mail, retain the registered mail receipt with the investigation file so that it may later be tendered as proof of the service should proof be required.

Where an officer is unable to serve a parent with a copy of the complaint and summons in a reasonable time prior to the date of appearance, the complaint and summons should be returned to the clerk of the court where the child is to appear for an extension of time. This should occur when there is a reasonable expectation that a parent will be able to be located.

Where an officer has commenced proceedings by way of complaint and summons and is unable to serve the parent of a child with a copy of the complaint and summons and reasonably believes that it is unlikely that a parent will be located, the officer should outline in the Court Brief (QP9) what inquiries were conducted to locate the parent. If an officer contacts a person reasonably believed to be the parent by telephone, officers may disclose the content of the complaint and summons. Such contact should also be outlined in the Court Brief (QP9) if the parent is not otherwise served with the complaint and summons.

See Flowchart 5.19: 'Service of the complaint and summons' available on the Youth Justice Unit webpage on the Service Intranet.

#### **5.9.4 Taking a child into custody**

The provisions relating to the arrest of children are contained in the PPRA and the YJA.

As a Schedule 1 Act, the YJA takes precedence over the PPRA wherever an inconsistency arises except to the extent that s. 365(2): 'Arrest without warrant' and Chapter 15: 'Powers and responsibilities relating to investigations and questioning for indictable offences' of the PPRA apply to children.

Generally, a child may be arrested without warrant:

- (i) for questioning about, or for investigating, an indictable offence (see s. 365(2) of the PPRA); or
- (ii) subject to s. 13: 'Police officer's power of arrest preserved in particular general circumstances' of the YJA, to commence a proceeding against a child (see s. 365(3) of the PPRA).

#### **Arresting children**

Where:

- (i) a child has been arrested pursuant to s. 365(2) of the PPRA; and
- (ii) any questioning or investigation has been concluded,

any further action is to be taken in accordance with the following sections of the YJA:

- (i) s. 11: 'Police officer to consider alternatives to proceeding against child';
- (ii) s. 12: 'Preferred way for police officer to start proceedings'; and
- (iii) s. 13(1): 'Police officer's power of arrest preserved in particular general circumstances'.

See ss. 5.3.1: 'Diversion options' and 5.9.2: 'Proceedings against a child by notice to appear' of this chapter.

ORDER

Officers are to outline in the Court Brief (QP9) reasons why:

- (i) taking no action;
- (ii) administering a caution or another diversion option; or

(iii) commencing proceedings by way of notice to appear,

were not appropriate. Where applicable, the reasons are to include references to the:

- (i) circumstances of the alleged offence;
- (ii) child's previous criminal history; and
- (iii) history of prior cautions or youth conference agreements.

Attaching a copy of the child's history to the QP9 is not sufficient to fulfil this requirement.

Officers who arrest a child under the reasonable belief the child is an adult are to outline in the Court Brief (QP9) the circumstances that lead to that belief.

ORDER

Officers are not to arrest a child for the purpose of obtaining the child's identifying particulars.

An officer is to make application to a court for an order to take a child's identifying particulars, when the child has been charged with an indictable offence or an 'arrest offence' against certain Acts (see s. 25: 'Application by police officer for permission to take child's identifying particulars' of the YJA and s. 5.11: 'Taking children's identifying particulars' of this chapter).

See Flowchart 5.16: 'Taking children into custody' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.9.5 Ensuring rights of children taken into custody

Officers who arrest a child are to comply with the provisions of Chapter 15, Part 3: 'Safeguards ensuring rights of and fairness to persons questioned for indictable offences' and Chapter 20: 'Other standard safeguards' of the PPRA to the extent those provisions:

- (i) are applicable to a child; and
- (ii) apply to the type of offence for which the child was arrested; and
- (iii) impose applicable responsibilities upon officers which are additional to those imposed by the YJA.

### 5.9.6 Parent and other notification requirements

Where a child comes to the adverse attention of an officer, the officer should, as soon as practicable, make all reasonable inquiries to contact a parent, guardian or another adult who can take responsibility for the child.

#### Arrest or service of a notice to appear

An officer who:

- (i) arrests a child; or
- (ii) has served a notice to appear on a child,

is to promptly provide advice of the arrest or service and whereabouts of the child to:

- (i) a parent of the child, unless no parent of the child can be contacted after making all reasonable inquiries; and
- (ii) the Chief Executive DYJ; and
- (iii) the Chief Executive CSSD, only if the Chief Executive has custody or guardianship of the child under the *Child Protection Act*.

This includes arrest and immediate charge and an arrest for questioning for an indictable offence.

See s. 392: 'Parent and particular chief executives to be advised of arrest or service of notice to appear' of the PPRA and s. 16.17.2: 'Arrest of children' of this Manual.

#### Recording the notification

In all circumstances, the investigating officer is to record in the relevant QPRIME Custody Report (Full) and on the back of the relevant Court Brief (QP9) details of the names, date and time of each notification.

If a parent cannot be located, the officer must document what inquiries were made to locate a parent and any other reason why a parent was not advised as required.

The Chief Executive DYJ can always be contacted through the Office of the Director-General, Department of Youth Justice (see SMCD).

The Chief Executive CSSD can always be contacted through the Office of the Director-General, Department of Child Safety, Seniors and Disability Services (see SMCD) or after hours through the Child Safety After Hours Service Centre (see SMCD).

### 5.9.7 Interested persons accompanying a child to a watch-house or visiting a child in a watch-house

Where a child is arrested or detained, and a parent or person interested in the welfare of children is desirous of accompanying the child to the watch-house, an officer should accede to the request. The OIC of the watch-house is responsible for the conduct of staff, prisoners and other persons in the watch-house.

Parents or interested persons should be allowed into the watch-house unless:

- (i) the child has not been formally charged, and searched; or
- (ii) staffing levels and operational requirements of the watch-house are such that supervision cannot be adequately provided for the visitor.

When the OIC of the watch-house refuses entry to any visitor, that fact and the reasons for the decision should be noted in the detention log of the relevant custody report in QPRIME. Under normal circumstances the child would be searched after visitors leave.

## 5.10 Releasing children from custody

Officers who arrest a child under the provisions of ss. 365(2) or 365(3) of the PPRA are to discontinue the arrest and release the child at the earliest reasonable opportunity if:

- (i) the child is no longer reasonably suspected of committing the offence for which the person was arrested, unless the provisions of s. 376(2): 'When arrest may be discontinued—general rule' of the PPRA apply;
- (ii) the officer considers there is not enough evidence to bring the child before a court on a charge of the offence (see s. 376(3) of the PPRA); or
- (iii) the reason for arresting the child no longer exists or is unlikely to happen again if the child is released, e.g. the questioning of the child has concluded (see s. 380(2): 'Additional case when arrest of child may be discontinued' of the PPRA); and
- (iv) after considering the circumstances of the alleged offence and the child's previous history known to the officer, it is more appropriate to deal with the offence by:
  - (a) taking no action;
  - (b) administering a caution (see s. 5.5: 'Cautioning process' of this chapter);
  - (c) referring the offence to a restorative justice process (see s. 5.6: 'Restorative justice process' of this chapter);
  - (d) for a graffiti offence, offer the child the opportunity to attend a graffiti removal program (see s. 5.7: 'Graffiti removal program' of this chapter);
  - (e) for a minor drugs offence and where the child is eligible, offer the child the opportunity to:
    - be given a drug diversion warning; or
    - participate in and complete a Drug Diversion Assessment Program (initial or subsequent), (see s. 2.22: 'Police Drug Diversion Program' of this Manual);
  - (f) for an offence of being intoxicated in a public place, take and release the child at a place of safety (see s. 16.6.3: 'Intoxication' of this Manual); or
  - (g) commencing proceedings by way of notice to appear under s. 380(3) of the PPRA or complaint and summons under the *Justices Act*.

Discontinuing an arrest of a child because the reason for arresting no longer exists or is unlikely to happen again if the child is released or it would be more appropriate to deal with the child in another way does not apply if:

- (i) the nature or seriousness of the offence for which the child is a suspect makes it inappropriate to release the child; or
- (ii) the officer reasonably believes the child is an adult (see s. 380 of the PPRA).

ORDER

Officers who do not discontinue the arrest of a child are to outline in the Court Brief (QP9) why the arrest was not discontinued.

### 5.10.1 Child released to go at large

#### ORDER

Where a child is to be released to go at large (unaccompanied by an adult) under s. 51(2): 'Release of child without bail' of the YJA, the prescribed officer is to immediately contact either the parent, a Child and Family Services officer, or the Child Safety After Hours Service Centre and advise the:

- (i) name, address, date of birth and telephone number of the child;
- (ii) circumstances of the detention;
- (iii) fact that the Service no longer has authority to detain the child and that the child has been or is to be released either on bail or by virtue of s. 51 of the YJA;
- (iv) time, date and place of release; and
- (v) time, date and place of appearance of the child before a court. Where the person contacted is not a parent of the child, the officer is to obtain the name and position of the person advised and note any response.

#### Child to be given release notice

When a prescribed police officer has decided to release a child without bail, unless the officer issues the child with a notice to appear, the officer is to prepare a Form 14: 'Release notice' in the relevant QPRIME occurrence and distribute copies as follows:

- (i) the original to be filed with the clerk of the court where the child is to appear;
- (ii) a copy to be attached to the Court Brief (QP9); and
- (iii) a copy to be given to the child.

### 5.10.2 Child released on bail

If an officer decides to release a child on bail, the officer may only impose conditions, other than a condition about appearing in court or surrendering into custody, if the:

- (i) officer believes an unacceptable risk exists in releasing the child (see s. 16.17.2: 'Arrest of children' of this Manual); and
- (ii) condition is necessary to mitigate the risk and will not require undue management or supervision of the child.

See s. 52A: 'Other conditions of release on bail' of the YJA.

#### ORDER

When determining whether a condition will require undue management or supervision of the child, an officer is to consider the child's:

- (i) age, maturity level, cognitive ability and development needs;
- (ii) health needs, including medical treatment;
- (iii) disability support needs;
- (iv) home environment; and
- (v) ability to comply with the condition.

Any condition imposed must have a stated time period that is no longer than is necessary to mitigate the risk.

An officer is to record the reasons for the imposition of a bail condition and how the condition will mitigate an unacceptable risk outlined in s. 48AAA(2)(a) or (3): 'Releasing children in custody—risk assessment' of the YJA.

### 5.10.3 Child in custody of the Commissioner pending court appearance

#### ORDER

Officers responsible for the detention of children in custody under the provisions of s. 54: 'Custody of child pending court appearance' of the YJA are to comply with the provisions of s. 16.17: 'Children' of this Manual relating to the detention of children in police custody.

Where a prescribed police officer refuses to release a child:

- (i) on bail under the conditions set out in s. 52: 'Conditions of release on bail—generally' of the YJA;
- (ii) into the custody of a parent (see s. 51(2): 'Release of child without bail' of the YJA); or
- (iii) by permitting the child to go at large (see s. 51(2) of the YJA),



the prescribed police officer is to ensure that the child, the child's parent or guardian, the Department of Youth Justice, and the Department of Child Safety, Youth and Women (if applicable) are advised, as soon as practicable, of details relating to:

- (i) the reason for the refusal to release the child;
- (ii) the date, time and place of the intended appearance of the child before a children's court or justice; and
- (iii) any arrangements made for transporting the child to a detention centre.

## 5.11 Taking children's identifying particulars

Where a child has been:

- (i) issued with a notice to appear for an offence described in s. 25: 'Application by police officer for permission to take child's identifying particulars' of the YJA, an application can be made for a court order to obtain the child's identifying particulars (IDP) (see s. 5.11.1: 'Taking identifying particulars of a child not arrested' of this chapter);
- (ii) arrested and is in custody for an IDP offence, the child's IDP can be taken or photographed in accordance with s. 467: 'Taking identifying particulars of person in custody' of the PPRA (see s. 2.26: 'Identifying particulars' of this Manual); and
- (iii) convicted for an offence described in s. 255: 'Court may order sentenced child's identifying particulars to be taken' of the YJA, a court may make an order to obtain the child's fingerprints and palm prints (see s. 5.11.4: 'Taking fingerprints upon a finding of guilt by a court' of this chapter).

For the policy and procedures to obtain a DNA sample from a child, see s. 2.25.7: 'Taking DNA sample from a child' of this Manual.

### 5.11.1 Taking identifying particulars of a child not arrested

An officer may apply to a children's court magistrate for an order to obtain the identifying particulars (IDP) of a child who has been charged, without being arrested, with an indictable offence or an arrest offence mentioned in s. 25: 'Application by police officer for permission to take child's identifying particulars' of the YJA.

This authority will normally apply where a proceeding against a child is commenced by way of a notice to appear or complain and summons. However, it may also apply where the child is charged from the bench, or when arraigned as a result of an ex officio indictment by the Director of Public Prosecutions (State).

The application to take identifying particulars may relate to the offence for which the child is charged or to another offence arising out of the same, or same set, of circumstances, for which the child is not yet charged.

#### Application process

Officers intending to obtain a child's IDP under s. 25 of the YJA should:

- (i) contact the clerk of the children's court and request a date and time when the application is to be made so that:
  - (a) the child's appearance and the hearing of the application for IDP coincide; and
  - (b) sufficient time is allowed for the court and respondent parties or agencies to make any necessary arrangements;
- (ii) prepare an application consisting of:
  - (a) a Form 1: 'Notice of application to a children's court for identifying particulars';
  - (b) a supporting affidavit (Form 46: 'Affidavit') providing evidence of the offence (see subsection 'Preparing a supporting affidavit' of this section); and
  - (c) an appropriate draft order, where:
    - the child's fingerprints and palm prints are required, a Form 2: 'Order that a child's identifying particulars be taken'; or
    - an offender photograph of the child is required, a Form 059: 'Order – (Generic)' is to be completed, including the text as contained on the Form 2 and the text 'Identifying particulars mean photographs of your identifying particulars' (include fingerprints and palm prints in the text if these are also required),

for presentation to the magistrate at the time of the application; and

- (iii) lodge the original application and supporting affidavit to the clerk of the children's court at the same time as the notice to appear or complaint and summons.

A copy of the completed application should be provided to the police prosecutor with the Court Brief (QP9), along with any relevant instructions.

## Notice of the application

The YJA requires that notice of the application is to be given to:

- (i) the child;
- (ii) a parent of the child, unless a parent cannot be found after reasonable inquiry (the parent includes someone who is apparently a parent of the child); and
- (iii) the Chief Executive, Department of Youth Justice (DYJ).

Notices to the child and to the parent of the child are to be served personally.

Notices to the Chief Executive, DYJ, should be addressed to the nearest regional Youth Justice Service Centre or after hours, the Child Safety After Hours Service Centre.

All notices are to be lodged or served, allowing sufficient time for the court and respondent parties or agencies to make any necessary arrangements.

Where the parent of the child cannot be located after reasonable inquiry, applicant officers should outline in an affidavit what reasonable inquiries were made to locate the parent of the child.

Following service of the application on the child and parent, the serving officer is to complete a Form 46: 'Affidavit' outlining the time, date, place and to whom the notice was provided, and the name, rank, registered number and station of the officer providing the notice. Where the applicant officer serves the notice, the information may be included in the application affidavit.

### Preparing a supporting affidavit

Officers making application for an order to take IDP of a child under s. 25 of the YJA should ensure their affidavit contains sufficient evidence for the court to satisfy itself on the balance of probabilities that the child's IDP are necessary for the investigation of the offence.

The applicant officer should state in the body of the affidavit:

- (i) a brief outline of the offence including time, date, place, complainant's details, police attendance, etc.;
- (ii) in accordance with s. 25(6) of the YJA, what evidence there is of IDP of the offender that are of the same type as those sought to be taken from the child (e.g. a scenes of crime officer has told the applicant a latent fingerprint/palm print was located in connection with the offence and the defendant child's fingerprints/palm prints are sought);
- (iii) why the defendant child is reasonably suspected of being the offender, (normally because a fingerprint expert has told the applicant that the latent impression located has been identified as belonging to the defendant child);
- (iv) how the order is necessary for the proper conduct of the investigation; and
- (v) a brief outline of any police action to date concerning the investigation.

Evidence supporting the application will normally consist of an affidavit. However, it may also be in the form of oral evidence. Officers should be aware that where oral evidence is given in support of the application, they may be subject to cross examination.

The OIC of a police prosecutions corps may consider approaching the local clerk of the court to determine whether a statement endorsed under the *Oaths Act* is acceptable as an alternative to an affidavit. If a court is satisfied with such statements in respect of applications under s. 25 of the YJA, relevant officers should be advised of this fact.

### 5.11.2 Taking identifying particulars for an investigative purpose

Officers should not take identifying particulars (IDP) from a child under the provisions of s. 25: 'Application by police officer for permission to take child's identifying particulars' of the YJA unless a support person chosen by the child is also present.

While s. 26: 'Support person must be present when identifying particulars are taken' of the YJA provides that IDP taken in the absence of such persons may be admissible as evidence if the prosecution satisfies the court that there was proper and sufficient reason for taking the IDP in the absence of any such person, circumstances of this nature should be rare and officers should do all that is necessary to protect the integrity of the investigation.

Where an officer decides to exclude a person from being present at the taking of IDP on the grounds prescribed in s. 26(3) or s. 26(4) of the YJA, the officer should ensure another support person is present when the IDP are taken.

ORDER

The QP 0013: 'Fingerprint form' used in these cases is to be clearly marked 'Prints taken pursuant to Court Order – Section 25 – Youth Justice Act'.

Such fingerprint forms are to be kept separate from all other fingerprints held at the Fingerprint Bureau, Forensic Services Group.

The applicant officer is to notify the Fingerprint Bureau of the outcome of the case after the expiry of any appeal period. Where there has been no sentence order, the fingerprints are to be destroyed. Where there has been a sentence order, those fingerprints are to be dealt with in the same manner as all other fingerprints held at the Fingerprint Bureau.

### 5.11.3 Destruction of identifying particulars taken for an investigative purpose

Where a child's identifying particulars (IDP) have been obtained under a court order under s. 25: 'Application by police officer for permission to take child's identifying particulars' of the YJA, the IDP are to be destroyed within seven days:

(i) of the end of the proceeding if no sentence order was made, due to the:

(a) charge being discontinued or dismissed; or

(b) child pleading guilty to an offence, but the court dismissing the charge and administering a caution or directing a caution be administered,

whether the proceeding was started before or within twenty-eight days after the order to take IDP was made; or

(ii) after a twenty-eight day deadline to commence proceedings has passed, and no proceeding has been commenced, since the order to take IDP was made.

See s. 27: 'Destruction of identifying particulars taken under court order' of the YJA.

#### ORDER

Where an investigation does not lead to a sentence order being made, the officer who applied to have the IDP taken is to ensure the destruction of the IDP within seven days of the decision. Where the applicant officer is unable to arrange destruction within required period, the OIC of the applicant officer's police station or establishment is to manage the destruction of the IDP.

When:

(i) a proceeding, where a police prosecutor has appeared, ends without a sentence order being made; and

(ii) IDP have been taken under s. 25 of the YJA in relation to that proceeding;

the police prosecutor is to ensure the arresting officer and the OIC of the arresting officer's station or establishment are notified as soon as practicable to arrange for the destruction of any IDP.

OIC of stations or establishments who receive such advice on behalf of one of their officers should ensure the arresting officer is notified as soon as possible.

If an arresting officer is absent from duty and will not return to duty for more than 24 hours from the time the OIC is notified, the OIC should make arrangements to have the IDP destroyed.

Officers arranging the destruction of IDP in accordance with s. 27 of the YJA should:

(i) update the relevant occurrence by submitting a supplementary report outlining:

(a) the court outcome;

(b) the date of the court outcome; and

(c) reason for the destruction of the IDP, including whether the IDP include an offender photograph and/or fingerprints and palm prints; and

(ii) initiate a QPS IDP/DNA Destruction Request Task Workflow in QPRIME.

The OIC, Fingerprint Bureau should ensure requests for destruction of identifying particulars are analysed and, where appropriate, identifying particulars are destroyed promptly in accordance with s. 27 of the YJA.

### 5.11.4 Taking fingerprints upon a finding of guilt by a court

On the making of a sentence order against a child after a finding of guilt for an offence against a prescribed Act, a court may order that the child's fingerprints and palm prints be taken (see s. 255: 'Court may order sentenced child's identifying particulars to be taken' of the YJA).

Where a court order is issued to obtain a child's fingerprints and palm prints under s. 255 of the YJA, there is no requirement to have a support person present when the identifying particulars (IDP) are obtained.

Where a child's IDP have not already been taken under s. 25: 'Application by police officer for permission to take child's identifying particulars' of the YJA, prosecutors should make verbal application to a court which finds a child guilty of an offence prescribed in s. 255(1) for an order to have the child's IDP taken.

### 5.11.5 Access to detention centres to take identifying particulars

The Department of Youth Justice will permit members of the Service access to Youth Detention Centres (YDC) for the purpose of taking the identifying particulars (IDP) of a child detained in the centre where such authority has been granted by a court.

Officers who have been granted permission by a court to take the IDP of a child who is in custody at a YDC should contact the centre manager of the YDC to make the necessary arrangements for the officer's attendance at that centre.

## 5.12 Miscellaneous

### 5.12.1 Handcuffing children

ORDER

An officer is not to handcuff a child unless the child is in lawful custody and cannot be controlled by other means and:

- (i) the offence is a serious offence as defined in s. 8: 'Meaning of serious offence' of the YJA;
- (ii) the child has previously attempted escape or the officer has reasonable grounds to believe the child will attempt to escape;
- (iii) the demeanour of the child is violent or gives rise to apprehension of violence;
- (iv) it is necessary to prevent self-inflicted injury by the child; or
- (v) it is necessary to prevent injury to others.

See Flowchart 5.22: 'Handcuffing of children' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.12.2 Electronic recording of interviews with a child

Where practicable, officers questioning a child in relation to an indictable offence are to ensure the giving of required information to the child and the questioning of the child is electronically recorded (see ss. 435: 'Rights of person to be electronically recorded' and 436: 'Recording of questioning etc.' of the PPRA).

### 5.12.3 Failure of parent to exercise proper care or supervision over a child

An officer who is conducting an investigation into an offence relating to property or an offence against the person of another where:

- (i) compensation for the offence should be paid to someone;
- (ii) a parent of the child may have contributed to the fact the offence happened by not adequately supervising the child; and
- (iii) it is reasonable the parent should be ordered to pay compensation for the offence, the officer should:
  - (a) direct the investigation towards establishing the failure or otherwise of the parent to exercise proper care of or supervision over the child. Such investigation may result in the investigating officer conducting a recorded interview with the parents; and
  - (b) provide an affidavit to the police prosecutor outlining circumstances supporting the officer's belief.

The investigating officer may seek an adjournment for the purpose of preparing the affidavit concerning the contribution of a parent to the commission of an offence. Further, the police prosecutor may direct an affidavit be prepared concerning the failure of a parent to exercise care or supervision over a child. Where appropriate, the prosecutor may make submissions to the court with respect to a parent paying compensation without further evidence.

The prosecutor may also consider an application to have the parent called to the court to show cause, why the parent should not pay the compensation.

See Flowchart 5.23: 'Failure of parent to exercise proper care or supervision over a child' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.12.4 International homestay school students

The hosting of international school-age children is managed under the *Education Services for Overseas Students Act* (Cwlth) and National Code which requires course providers to be registered under Federal and State legislation. Under National Code Standard 5.1, where students under the age of 18 years are not cared for by a parent or suitable nominated relative; the course provider is responsible for approving and supplying suitable accommodation and welfare arrangements. In the majority of cases day-to-day care will be with a homestay provider.

The provider is required to report to the Department of Home Affairs (Cwlth) and the Department of Education (Cwlth) any matter which may affect the student's enrolment or visa status. The provider has a continual duty of care for the student whilst they are completing an educational course.

Police may come into contact with international school-age students who may:

- (i) be victims of crime;
- (ii) be witnesses to an incident;

- (iii) be offenders;
- (iv) be missing persons (see Chapter 12: 'Missing Persons' of this Manual);
- (v) have mental health issues (see s. 6.6: 'Mentally ill persons' of this Manual);
- (vi) be involved in a traffic crash;
- (vii) be involved in domestic violence (see Chapter 9: 'Domestic Violence' of this Manual); or
- (viii) be deceased (see s. 8.4.7: 'Advising relatives' of this Manual).

Whilst the homestay provider is not the legal guardian of the child, they should be considered to be the 'parent' as defined under the YJA.

When police come into contact with an international school-age student in a situation where a parent or guardian would normally be advised (for legal or welfare provision purposes), the homestay provider (parent/family) should be contacted in compliance with s. 5.9.6: 'Parent and other notification requirements' of this chapter.

Where the homestay provider is unable to be contacted, the officer should inquire with the student regarding any emergency contact person nominated by either the homestay or course provider. The final attempted point of contact should be the principal of the school the student is attending.

Officers are to provide sufficient information to the homestay provider or course provider to allow for the ongoing welfare, health and support of the student, whilst complying with Schedule 3: 'Information Privacy Principles' of the *Information Privacy Act*.

Officers dealing with international homestay school-age students should also consider:

- (i) Chapter 6: 'Persons who are vulnerable, disabled or have cultural needs' of this Manual due to their age, understanding of English, cultural background and any other vulnerability or needs; and
- (ii) s. 16.7: 'Foreign nationals' of this Manual where appropriate.

See Flowchart 5.25: 'International homestay school students' available on the Child Abuse and Sexual Crime Group (CASCG), Child Protection and Investigation Unit 'Resources' webpage.

### 5.12.5 Children under 18 years leaving home

Officers receiving inquiries from children, families and community members regarding the lawful age of when a child can leave home should not give any advice to an inquirer which may indicate approval or disapproval to leave home for a child under the age of 18 years.

Whether a child under 18 years of age may leave home without parental consent will be dependent upon all the circumstances of the case, including:

- (i) the ability of a child to be self-supportive;
- (ii) availability of suitable accommodation;
- (iii) whether the child is or is likely to engage in criminal activity; and
- (iv) whether the child is or is likely to be in moral danger.

Where a child under the age of 18 years is desirous of leaving home and has indicated that the intention is to leave home and the parents refuse to give permission for the child to leave home, the officer receiving the complaint from the parent should refer the parent to Child Safety Services, Department of Child Safety, Youth and Women.

## 5.13 Escape of young people from Department of Youth Justice detention

Both children and adults (generally young adults who were children at the time relevant offences were committed) may be subject to Department of Youth Justice (DYJ) detention. Collectively these people are called 'young people' for the purposes of this section.

When a young person escapes from DYJ detention, either from a detention centre or elsewhere, the relevant DCSYW officer will notify the appropriate police communication centre.

See Flowchart 5.24: 'Action to be taken when a young person escapes from detention' available on the Youth Justice Unit webpage on the Service Intranet.

### 5.13.1 Initial police action

Members receiving advice that a young person has escaped from Department of Youth Justice (DYJ) detention are to ensure:

- (i) the information received is recorded in accordance with s. 1.6.1: 'Recording initial demand' of this Manual; and



(ii) officers are tasked to attend the relevant youth detention centre, or such other place as may be appropriate, to investigate the escape of the young person.

First response officers tasked to investigate the escape of a young person from DYJ detention, are to:

- (i) carry out the first response procedure described in s. 2.4.1: 'First response procedure at an incident scene' of this Manual;
- (ii) evaluate the incident in accordance with s. 2.4.2: 'Evaluation of incident' of this Manual. In cases where the young person has a history of serious violent offences or represents a high risk of violence to themselves or others, the incident should be evaluated as a major investigation (see s. 2.4.5: 'Major investigations' and s. 1.4.6: 'Responsibilities of regional duty officer, district duty officer, and shift supervisor' of this Manual);
- (iii) if the young person cannot be promptly located a QPRIME occurrence is to be created in relation to the incident. Inquiries should be made with the shift supervisor of the detention centre at which the young person is normally accommodated to obtain full particulars of the young person's history (medical history, risk of self-harm, escape history, demeanour in custody, possible offending risk), known associates, any likely destination and a photograph. The photograph should be scanned and attached to the relevant QPRIME occurrence.

### 5.13.2 Action to be taken on location of young person

Offences against s. 278: 'Escape' of the YJA are summary offences.

Officers locating a young person who has escaped from Department of Youth Justice detention should arrest the young person and commence a proceeding in respect of all offences, for which sufficient evidence exists, including those committed in connection with the original escape.

Arrest powers will vary depending on whether the young person is a child or an adult and the following provisions should be applied:

- (i) a young person who is aged 18 years or older at the time of committing an offence is to be arrested under the provisions of s. 365(1): 'Arrest without warrant' of the PPRA and is dealt with in the courts as an adult;
- (ii) a young person aged 17 years or younger at the time of committing an offence and is aged 18 years or younger at the time of arrest, is to be arrested under the provisions of s. 365(3) of the PPRA and is dealt with in the courts as a child (see s. 134: 'Offender treated as a child' of the YJA); or
- (iii) a young person who was aged 17 years or younger at the time of committing an offence but is aged 19 years or older at the time of arrest, is to be arrested under the provisions of s. 365(1) of the PPRA and is dealt with in the courts as an adult (see s. 140: 'When offender must be treated as an adult' of the YJA);
- (iv) notify the shift supervisor of the detention centre responsible for the young person;
- (v) arrange for the young person to appear before an appropriate court as soon as practicable. This may require appearances at different courts where summary offences are committed in different court districts; and
- (vi) arrange for the young person to be returned to the appropriate detention centre (see s. 16.17.4: 'Custody of children' of this Manual where appropriate).

### 5.13.3 Notifying persons at risk

Where an officer making inquiries to locate an escapee from Department of Youth Justice detention determines there is a threat of harm to a person from the escapee the officer should notify their regional duty officer or patrol group inspector about the details of the threat.

Regional duty officers or patrol group inspectors who are advised of a threat of harm to a person from an escapee are to contact the on-call manager at the relevant detention centre to assess the credibility of the threat.

Where it is determined a threat of harm to a person from the escapee is credible, the regional duty officer or patrol group inspector should request that the on-call manager obtain written authority to disclose information in respect of the escapee to the person at threat of harm (see s. 292: 'Disclosure to ensure someone's safety' of the YJA). When such authority is obtained, the regional duty officer or patrol group inspector should ensure:

- (i) the nominated person is contacted and advised about the escapee's escape from custody; and
- (ii) a commissioned officer having responsibility for the area in which the nominated person lives or is located is advised.

Irrespective of whether written permission to disclose information in respect of the escapee has been obtained, regional duty officers or patrol group inspectors should make any necessary arrangements to ensure the safety of a person who is believed to be at particular risk of harm from an escapee. Where authority to disclose information about the escapee has not been granted, confidential information about the escapee is not to be given to the person (see s. 284: 'Definitions for pt 9' of the YJA).

A commissioned officer who is notified that there is a threat of harm from an escapee to a nominated person located or residing within their area of responsibility should determine what, if any, action should be taken to ensure the safety of the nominated person.

#### 5.13.4 Release of information to media

The initial media release regarding any escape from Department of Youth Justice (DYJ) detention will be made by the DYJ.

Officers investigating the escape of a young person from DYJ detention should consider whether it is necessary to release any further information to the media in the interests of public safety or to facilitate the recapture of the young person.

Where it is considered that further information should be released to the media, the OIC of the investigation should:

- (i) request their supervising commissioned officer, regional duty officer or patrol group inspector authorise the release of further information; and
- (ii) liaise with the Media and Public Affairs Group to prepare an appropriate media release.

Any information released to the media is to contain:

- (i) only factual matters designed to facilitate the recapture of the young person or ensure public safety; and
- (ii) no identifying information about the young person nor information linking the escapee to the commission of any offence, unless authorised by the Director-General, DYJ.

The OIC of the investigation is to forward a copy of any media release the Director-General, DYJ for information.

Where it is considered necessary to release identifying information or information linking the escapee to the commission of any offence, the commissioned officer, regional duty officer or patrol group inspector requested to authorise the release of information should liaise with the manager of the relevant detention centre to obtain the authorisation of the Director-General, DYJ.

Media requests for information about the escape of a young person from DYJ custody are to be referred to the DYJ.

### 5.14 Electronic monitoring (children on bail)

#### 5.14.1 Bail condition to wear electronic monitoring device

Where the provisions of s. 52AA: 'Court may impose monitoring device condition' of the YJA are satisfied the court may order a child, who is at least 15 years old, to wear an Electronic Monitoring Device (EMD) while released on bail.

Before a child can be released on bail with a condition to wear an EMD, an officer from the Department of Youth Justice (DYJ) will conduct a suitability assessment, which will be provided to the court and police prosecutor. The police prosecutor is to ensure a copy of the assessment is uploaded to the relevant QPRIME occurrence.

##### Child held in watch-house making application for bail

Where the court is considering imposing a bail condition that a child wear an EMD, the police prosecutor is to request:

- (i) a condition that the child be held in custody until the EMD is properly fitted; and
- (ii) any other condition that is reasonably necessary to facilitate the operation of the EMD (e.g. a condition that the child comply with a direction given by a police officer to attend or reattend a place to ensure an EMD is properly fitted and operational).

See s. 52AA(2): 'Court may impose monitoring device condition' of the YJA.

##### Child held in a detention centre making application for bail

Where a child held in a detention centre makes an application for bail and the court is considering imposing a bail condition that the child wear an EMD, the prosecutor is to request:

- (i) a condition that the child be transported to a specified watch-house and held in custody until the EMD is properly fitted; and
- (ii) any other condition that is reasonably necessary to facilitate the operation of the EMD (e.g. a condition that the child comply with a direction given by a police officer to attend or reattend a place to ensure an EMD is properly fitted and operational).

An officer from DYJ will advise on the nominated watch-house (see the Youth EMD Operational Guidelines for designated watch-house locations) and make transport arrangements for the child from the detention centre to the nominated watch-house for the fitting of the EMD.

**5.14.2 Action on grant of bail with an electronic monitoring device condition**

**Withdrawn from public release.  
Any inquiries to be referred to the Inspector, Operational Policy and Improvement.**

**5.14.3 Electronic monitoring device alerts**

**Withdrawn from public release.  
Any inquiries to be referred to the Inspector, Operational Policy and Improvement.**

**5.14.4 Removal of electronic monitoring device**

**Withdrawn from public release.  
Any inquiries to be referred to the Inspector, Operational Policy and Improvement.**

**5.14.5 Procedure for removal of electronic monitoring device**

**Withdrawn from public release.  
Any inquiries to be referred to the Inspector, Operational Policy and Improvement.**

**5.14.6 Variation of child's bail conditions**

**Withdrawn from public release.  
Any inquiries to be referred to the Inspector, Operational Policy and Improvement.**

**5.14.7 Officers requiring electronic monitoring device location data for court**

**Withdrawn from public release.  
Any inquiries to be referred to the Inspector, Operational Policy and Improvement.**