

Chapter 5 – Children

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5.1 Introduction

This chapter provides procedures for police to enable them to effectively administer the provisions of the *Youth Justice Act*.

Definitions

For the purposes of this chapter:

Chief Executive

means the Chief Executive, Department of Justice and Attorney-General.

Identifying particulars

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

See also Schedule 4 'Dictionary' of the Youth Justice Act and Service Manuals Definitions.

Resources

A number of resources, flowcharts and other information to assist officers when investigating matters under the Youth Justice Act are available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board).

5.2 Children (general information)

5.2.1 Child protection and investigation unit

POLICY

The Service subscribes to the 'Charter of Youth Justice Principles' set out in Schedule 1 of the *Youth Justice Act*.

Consistent with these principles, the child protection and investigation unit was established as a specialist unit to deal with matters involving children. Officers appointed to a child protection and investigation unit are selected and trained for this role. Wherever possible, when children come to the adverse notice of police, such matters should be investigated by, or in consultation with, an officer of the child protection and investigation unit.

In consultation with officers in charge of child protection and investigation units, regions or districts should develop local instructions which outline the circumstances whereby officers other than members of a child protection and investigation unit can investigate matters involving children while ensuring that the provisions of Youth Justice Act and relevant Service policy are complied with (see s. 1.5.3: 'Regional, district, station/establishment instructions' of this Manual).

5.2.2 Alternatives for dealing with child offenders

ORDER

Before starting a proceeding against a child for an offence, officers are to first consider the alternatives to commencing a proceeding against a child as outlined in s. 11: 'Police officer to consider alternatives to proceeding against child' of the *Youth Justice Act*, which are to:

- (i) take no formal action against a child;
- (ii) administer a caution (see s. 5.3: 'Cautioning' of this chapter);
- (iii) refer the offence to a youth justice conference (see s. 5.4: 'Youth justice conference' of this chapter);
- (iv) for a graffiti offence, offer the child the opportunity to attend a graffiti removal program (see s. 5.5: 'Graffiti removal program' of this chapter);
- (v) for a minor drugs offence, offer the child the opportunity to attend a drug diversion assessment program (see s. 2.22.9: 'Duty of prescribed police officer receiving custody of person arrested for minor drugs offence' 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).

Whilst proceedings would normally be commenced against a child who has committed a serious offence, officers are not prevented from taking the above action in (i) to (iii) in appropriate circumstances.

(See flowcharts 5.1: 'When a young person is dealt with as a child' and 5.2: 'Alternatives for dealing with child offenders' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

PROCEDURE

When considering an appropriate course of action, officers are to have regard to s. 11(2)-(7) of the *Youth Justice Act*.

If the actions of the child involve a sexual offence, the provisions of the Director of Public Prosecutions (State) Guidelines 5(i): 'Child offenders' and 5(v): 'Sexual offences by children' are to be considered and, where appropriate, complied with.

POLICY

The decision to take no action can only be properly made after the offence has been investigated. The term 'take no action' does not mean officers may ignore an incident which requires police attention.

5.3 Cautioning of children

POLICY

Children should be cautioned for first or subsequent offences, dependent upon the circumstances and seriousness of each particular offence with the view to diverting them from anti-social behaviour and the court's criminal justice system. Such caution is to be administered with utmost fairness and is to address the circumstances of each case in a constructive and purposeful manner.

Officers should consider the cautioning principles in Schedule 1: 'Charter of youth justice principles' of the Youth Justice Act.

5.3.1 Criteria for deciding to administer a caution

ORDER

A caution cannot be administered:

- (i) for an offence of unlawful killing or attempted unlawful killing; or
- (ii) to a child 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;
- (ii) a prima facie case must be established against the child in relation to each offence;
- (iii) the offence committed should not constitute a serious offence unless the matter is one for which an adult could be dealt with summarily; or
- (iv) for a serious offence which cannot be dealt with summarily and an authority to caution the child has been obtained from:
 - (a) a commissioned officer or the officer in charge of a child protection and investigation unit; or
 - (b) in cases of rape or attempted rape, a detective inspector.

(See the flowcharts 5.3: 'Criteria for deciding to administer a caution' and 5.4: 'Consideration for approval to caution for serious offences' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

POLICY

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.

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

The commissioned officer, or delegate, when determining whether a child should be cautioned for a serious offence, is to consider:

- (i) the 'sufficiency of evidence' and 'public interest test' (see s. 3.4.3: 'Factors to consider when deciding to prosecute' of this Manual) whether court proceedings should be commenced in the interests of justice;
- (ii) the circumstances of the offence; and

(iii) whether the child's previous history indicates to the officer that a caution may divert the child from the criminal justice system or further offending.

In granting an authority to caution a child for a rape or attempted rape offence, the detective inspector is to consider the:

- (i) the 'sufficiency of evidence' and 'public interest test' (see s. 3.4.3 of this Manual);
- (ii) the desires of the victim and victim's family regarding formal court proceedings against the child offender;
- (iii) 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) use of threats or violence in the commission of the offence;
- (viii) participation of any co-offender(s) in the commission of the offence; and
- (ix) the child's previous history.

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

5.3.2 Conditions for the administration of a caution

POLICY

The child protection and investigation unit is the primary group involved with the needs of children as offenders and victims. Wherever possible, cautioning or counselling of a child should be administered by or in the presence of an officer of the child protection and investigation unit.

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

Officers are only to administer cautions for offences applicable to their level of cautioning authority (see subsection 'Limitation of cautioning authority' of s. 5.3.3: 'Officers authorised to administer cautions' of this chapter).

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

5.3.3 Officers authorised to administer cautions

POLICY

In accordance with s. 16(3): 'Conditions for administration of police caution' of the *Youth Justice Act*, the Commissioner may appoint officers with sufficient training or experience to administer cautions. The Commissioner has delegated the power to:

- (i) the State Coordinator, Child Protection Investigation Unit (CPIU), Child Safety and Sexual Crime Group, State Crime Command;
- (ii) senior sergeants who are officers in charge of CPIU's; and
- (iii) regional crime coordinators,

to authorise police officers to administer a caution (see Delegation D 132.1 of the Handbook of Delegations and Authorities).

Authority granted by virtue of position

Officers who are permanently appointed to the following positions are, by virtue of their appointment, authorised by the Commissioner to administer a caution to a child:

- (i) the officer in charge of a CPIU;
- (ii) the officer in charge of a criminal investigation branch;
- (iii) the officer in charge of a police station; and
- (iv) in matters relating to their primary area of responsibilities, the officer in charge of a:
 - (a) road policing unit; or
 - (b) water police establishment.

Unless appointed to a similar position, the authority to administer cautions granted to officers appointed to positions under this order is automatically revoked when the officer vacates the position. Officers authorised under this order to administer a caution to a child are to, if not previously authorised, undergo training approved by the Executive Manager, Chief Superintendent, Education and Training within twelve months of appointment to the position. The training will be focused on skills associated with administering a caution to a child.

Authority granted by application

Officers who seek to be authorised to caution children should demonstrate that they have the ability, experience and knowledge of legislative requirements to administer cautions to children and make application in writing to their officer in charge for consideration and forwarding to an appropriate delegated officer.

(See flowchart 5.5: 'Granting or revocation of Authority to Caution' available on the Child Safety and Sexual Crimes Group 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

The State Coordinator, CPIU, is responsible for ensuring:

- (i) officers authorised to administer a caution under s. 16(3) of the Youth Justice Act have:
 - (a) successfully completed a course, approved by the Executive Manager, Chief Superintendent, Education and Training, which, as part of the course includes training and practice in the administration of cautions to children;
 - (b) satisfactorily demonstrated to the officer in charge of a dedicated CPIU that such 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, such authority may be revoked. However prior to such revocation, 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 as such;
- (iii) a register of authorities and revocations of authorities to administer cautions to children is maintained by the Child Safety and Sexual Crime Group, State Crime Command; 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.

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

Authorised officers may request the revocation of their authority to administer cautions in writing to the delegated officer.

PROCEDURE

Where an authorisation or revocation has been approved, the delegated officer issuing such authorisation or revocation is to ensure that the State Coordinator, CPIU is advised of the following:

- (i) the name, location and position held by the officer authorised or revoked;
- (ii) evidence of the officer's sufficient training and/or experience to administer cautions; or
- (iii) reasons why the authority to caution has been revoked,

for inclusion on the register of authorities and revocations of authority to administer cautions.

Where an officer:

- (i) is authorised to caution a child, the delegated officer is to complete a QP 0955: 'Authority to Administer Caution' (available on QPS Forms Select) and forward the authority to the relevant officer; or
- (ii) has their authority to caution a child revoked, the delegated officer revoking such authorisation is to advise the authorised officer in writing. Such advice is to include the reasons for the revocation.

ORDER

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

Unless appointed to a similar position, the authority to administer cautions granted to officers in charge of a police station, establishment or unit is automatically revoked when the officer vacates the position.

A copy of the QP 0955 or revocation:

- (i) will be placed on the officer's personal file. This authority is to be retained by the officer and may be produced, if required, in proceedings; and
- (ii) is to be forwarded to the State Coordinator, CPIU, Child Safety and Sexual Crimes Group, State Crime Command.

The authority of an officer to caution a child is to remain in effect until revoked.

Limitation of cautioning authority

POLICY

To ensure accountability and consistency in the administration of cautions, two levels of cautioning authority are established.

'Level 1 Authorisation' permits an officer to administer a caution for any offence, subject to the provisions of s. 5.3.1: 'Criteria for deciding to administer a caution' of this chapter in respect to serious offences. The following officers have 'Level 1 Authorisation':

- (i) where a child protection and investigation unit is established:
 - (a) the officer in charge of that unit; and
 - (b) other officers attached to that unit who, because of their position, training or experience, have been issued an 'Authority to Administer Caution' specifically giving the officer 'Level 1 Authorisation'; or
- (ii) in districts where no child protection and investigation unit is established:
 - (a) the officer in charge of a criminal investigation branch; and
 - (b) the officer in charge of a station.

All other officers authorised to administer cautions have 'Level 2 Authorisation', which permits an officer to caution a child for:

- (i) a simple or regulatory offence;
- (ii) any offence which does not constitute a serious offence as defined in s. 8: 'Meaning of serious offence' of the *Youth Justice Act*, excluding offences against Chapter 22: 'Offences against morality' of the Criminal Code; and
- (iii) an indictable offence, with the prior approval of:
 - (a) a commissioned officer;
 - (b) the officer in charge of the child protection and investigation unit responsible for the area within which the officer is stationed; or
 - (c) where there is no established child protection and investigation unit, the officer in charge of the criminal investigation branch responsible for the area within which the officer is stationed; or
 - (d) where there is no relevant child protection and investigation unit or criminal investigation branch, the officer's officer in charge,

(see flowchart 5.6: 'Limitation of cautioning authority' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

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

POLICY

In accordance with s. 17: 'Caution administered by respected person of Aboriginal or Torres Strait Islander community' of the *Youth Justice Act*, where a child, who is a member of an Aboriginal or Torres Strait Islander community is to be cautioned, whenever practicable a respected person of the child's community should administer the caution.

A statement by a child that he or she 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 their community.

The term 'community' includes the Deeds of Grant in Trust areas, Mornington Island and Aurukun. The term community could extend to and include family groups and clan groups where agreement can be reached between the officer in charge of the 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 of the same community as the child who is 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 (see s. 17(1) of the *Youth Justice Act*).

PROCEDURE

Where a child, who is a member of a local Aboriginal or Torres Strait Islander community, is to be cautioned for an offence, and the Service and the relevant community has a mutually agreed protocol, the authorised officer should make contact with the community and inquire whether a respected person is available and willing to administer a caution to the child.

Where a respected member of the child's Aboriginal or Torres Strait Island 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 that 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 and on QPS Forms Select) which may be signed by the involved parties (see s. 5.3.15: 'Notice of Caution to be issued to child after caution' of this chapter).

When 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

POLICY

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

The preferred option is to commit the agreement to writing in a 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 that the agreement is fully understood by both parties.

PROCEDURE

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 an respected person of the community for the purposes of administering cautions;
- (ii) the community is to be given the option of nominating 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 *Youth Justice Act*;
- (vi) a respected person must not administer a formal caution under the *Youth Justice Act* to a child unless in the presence of an authorised officer; and
- (vii) the protocol should be signed by the officer in charge and each respected person who is to participate in the cautioning process.

Training of Aboriginal and Torres Strait Islander respected persons

POLICY

Aboriginal and 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.

ORDER

The Executive Manager, Chief Superintendent, Education and Training is responsible for developing and maintaining a training program for Aboriginal and Torres Strait Islander respected persons on the competencies to administer a caution to a child under the *Youth Justice Act*.

District education and training officers or the officers in charge of child protection and investigation units are responsible for delivering the training package on the cautioning of children to Aboriginal and 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.

5.3.5 Investigation of offences with a view to administering a caution or proceeding against an offender

PROCEDURE

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 the provisions of s. 3.4.5: 'Director of Public Prosecutions (State) guidelines' of this Manual, determine an appropriate charge to prefer in respect of the offence 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 criteria for cautioning (see s. 5.3.1: 'Criteria for deciding to administer a caution' of this chapter and flowchart 5.3: 'Criteria for deciding to administer a caution' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

5.3.6 Preparation for administering a caution

PROCEDURE

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 *Youth Justice Act* to caution a child, ensure that 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) ensure where possible that no more than two officers are involved in each cautioning process or interview;
- (vi) ensure, where practical, that 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 that action is taken to advise such parent as soon as possible.

(See flowchart 5.7: 'Preparation to administer a caution' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.3.7 Persons to be present for the administration of a caution

Section 16(2): 'Conditions for administration of a police caution' of the *Youth Justice Act* requires that, if practicable, the following persons 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.

POLICY

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

In circumstances where a person nominated to be present during the administration of a caution may be delayed, it may be appropriate for the authorised officer to postpone the caution to a more suitable time.

If it is unlikely that a nominated person will be present in the immediate future and that 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

In circumstances 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.

5.3.8 Electronic recording of cautions

POLICY

Cautions for indictable offences are to be electronically recorded, wherever possible.

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

Electronic recordings of cautions are to be recorded in QPRIME via an Interview Report linked to the offender (see QPRIME User Guide) and distributed in accordance with the Digital Electronic Recording of Interviews and Evidence 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 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 Digital Electronic Recording of Interviews and Evidence Manual.

5.3.9 Cautioning of child co-offender

PROCEDURE

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

- (i) conduct an electronically recorded interview with the child offender 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) conclude electronic recording;
- (iv) provide the child with a copy of the audio recording of the interview;
- (v) continue investigations in relation to co-offenders and take appropriate action; and
- (vi) record details of the interview on QPRIME in accordance with the QPRIME User Guide.

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.

5.3.10 Cautioning process

PROCEDURE

When an officer has arranged for a child to be cautioned, the officer should comply with the process as outlined in s. 7: 'Cautioning in detail' of the Cautioning Workshop Participants Manual (available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

Where appropriate, the officer should submit a Supportlink referral (see s. 6.3.14: 'Supportlink' of this Manual) to refer the child to an appropriate agency to assist the child in resolving their offending behaviour. The child should be encouraged to discuss their offending behaviour with that agency.

At the conclusion of the caution, the officer is to complete a Form 3: 'Notice of Caution' and, if appropriate, the required number of Form 3A: 'Notice of Caution Further Offences' in QPRIME (see QPRIME User Guide) and serve the notice(s) on the child (see s. 5.3.15: 'Notice of Caution to be issued to child after caution' of this chapter).

5.3.11 Disclosure of previous offences during a caution

PROCEDURE

During an interview a child may disclose previous offences which have been committed by the child. If the child discloses offences which:

- (i) have been previously dealt with, then the caution should proceed;
- (ii) have not been previously dealt with, those offences may be:
 - (a) 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) investigated as separate offences in which case the provisions of the *Police Powers and Responsibilities Act*, to the extent that they apply to children, and the associated provisions of the Responsibilities Code apply to the investigation and the starting of any proceeding.

5.3.12 Apology to victim

Section 19: 'Caution procedures may involve apology to victim' of the *Youth Justice Act* provides that the caution procedure may involve an apology to the victim.

PROCEDURE

In circumstances where a caution is to be administered to a child and an authorised officer decides that 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 establishment for the apology to take place;
- (v) ensure that the apology is supervised either personally or by another authorised officer;
- (vi) introduce all persons present to each other;
- (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 that 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 Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.3.13 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, arrangements are to be made by the investigating officer with the child or the child's parents for the restitution to be posted to the complainant at an agreed address.

PROCEDURE

Where restitution or compensation is to be paid directly to the victim, the member may arrange for the payment to be posted to the victim at a particular post office, rather than a personal address if desired by the victim or deemed appropriate by the investigating officer.

A member may, in some instances arrange for the money to be paid into the Service collections account. The offender will be given a receipt and a cheque can be drawn in favour of the victim. The cheque can then be given to the victim in the most convenient manner.

(See flowchart 5.9: 'Restitution, compensation or return of property' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

5.3.14 Return of property after caution (relinquishing order)

PROCEDURE

Where property, the subject of an investigation or a complaint can be returned to the rightful owner as a result of a caution being administered, the investigating officer may request the child to relinquish the property on a QP 0368: 'Relinquishing order' (available in QPRIME and from QPS Forms Select). If the child completes a QP 0368, it should be witnessed by a parent or independent adult person. The QP 0368 should be scanned as an attachment to the relevant QPRIME occurrence and then filed with the station copy of the QPRIME occurrence report and the caution notice.

The property is to be disposed of in accordance s. 4.8: 'Disposal of property' of this Manual.

(See flowchart 5.9: 'Restitution, compensation or return of property' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.3.15 Notice of Caution to be issued to child after caution

ORDER

At the conclusion of the caution the authorised officer is to ensure that a Notice of Caution is completed and provided to the child. A Notice of Caution is to be completed for each offender.

PROCEDURE

The Form 3: 'Notice of caution' may be typed or handwritten. Two identical copies of the Form 3 are to be completed. Once the child has been provided with the original of the notice of caution, the child is to be given the opportunity to endorse the copy of the Form 3 certifying that:

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

The parent or support person described by s. 16(2): 'Conditions for administration of police caution' of the *Youth Justice Act* who was present for the caution 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 copy of the Form 3, the authorised officer is to make a note of the refusal on the rear of the Form 3 that the child refused to sign. There is no obligation on the child to sign the Notice of Caution.

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

QPRIME record

ORDER

For the purposes of statistical recording, the investigating officer is to ensure that the following information is completed in the relevant QPRIME occurrence (see QPRIME User Guide):

- (i) before the caution:
 - (a) create the relevant charge against the person and subject occurrence;
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 relevant QPRIME occurrence with the outcome of the caution.

5.3.16 Confidentiality

ORDER

The strict legislative requirements of the *Youth Justice Act* do not permit the disclosure of confidential information (see s. 284: 'Definitions for Part 9' of the *Youth Justice Act*), 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 *Youth Justice Act*;
- (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 *Youth Justice Act*;
- (iii) 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 *Youth Justice Act*;
- (iv) to a law enforcement entity in another jurisdiction in accordance with s. 294: 'Disclosure to law enforcement entity in another jurisdiction' of the *Youth Justice Act*; or
- (v) in regard to cautions and youth justice conferences and agreements, to those persons nominated in s. 295: 'Disclosure by police of information about cautions and youth justice conferences and agreements' of the *Youth Justice Act*.

(See flowchart 5.10: 'Confidentiality' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.3.17 Childrens Court may dismiss a charge if caution should have been administered or no action taken

In accordance with s. 21: 'Childrens court may dismiss charge if caution should have been administered or no action taken' of the *Youth Justice Act*, where a child has entered a guilty plea, a magistrate may dismiss a charge if the court is satisfied, upon application by or on behalf of the child, that a caution should have been administered to a child or no action should have been taken in the circumstances. When considering the circumstances, the court may have regard

to any other cautions administered to the child for any offence or any youth conference agreements which have been made with the child. If a court dismisses a charge in this circumstance, the court may:

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

Where the court orders that 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.

ORDER

Officers are to outline reasons why a caution or no action 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.

PROCEDURE

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

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

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

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

- (i) clearly record this result on the Court Brief (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 will ensure that the Form 3: 'Notice of Caution' is completed and distributed in accordance with this chapter.

When a court dismisses a charge in relation to a simple offence, the investigating officer is responsible for the disposal of any property in relation to the charge before the investigation is considered finalised.

PROCEDURE

When a court dismisses a charge in relation to a simple offence, the investigating officer may:

- (i) where there is no property involved, consider the matter finalised. The investigating officer is to ensure that all correspondence concerning the matter is completed; or
- (ii) where property is involved in the offences, the property is to be disposed of in accordance with s. 4.8: 'Disposal of property' of this Manual.

When a court dismisses a charge in relation to an indictable offence, the investigating officer has an additional option to complete a brief of evidence so that a Crown law officer can prepare an ex officio indictment in relation to the offence. When the officer believes that an ex officio indictment should be prepared the following process should occur:

- (i) the officer should discuss the circumstances of the investigation with the police prosecutor and the officer in charge of the station or establishment to which the officer is attached; and
- (ii) the officer in charge should, if in his/her opinion the matter should be pursued in the court system, contact the nearest office of the Director of Public Prosecutions (State) to establish if the Crown law officer would be prepared to present the ex-officio indictment on behalf of the investigating officer.

If the Crown law officer is prepared to present the ex officio indictment, the investigating officer should prepare the brief of evidence, and deliver it to the Crown law officer after the officer in charge has checked the brief.

(See flowcharts 5.11: 'Court may dismiss charges', 5.12: 'Court may dismiss charges – action for simple offences' and 5.13: 'Court may dismiss charges – action for indictable offences' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.3.18 Children under the age of criminal responsibility

POLICY

Where a child who is under the age of criminal responsibility commits an offence, that child may be officially counselled. Counselling has no legal standing, but may assist in diverting a child from future involvement with the criminal justice system.

PROCEDURE

Official counselling is to be conducted only by an officer authorised to administer cautions.

Officers are not to compel children or their parents or guardians to take part in official counselling.

An officer who decides to officially counsel a child should adopt substantially the same process as that used for cautions, making such allowances as are necessary to:

- (i) emphasise the guidance aspect of counselling; and
- (ii) accommodate the levels of understanding of a younger child.

5.4 Youth justice conferences

Section 22: 'When a police officer may refer an offence for conference' of the *Youth Justice Act* allows an offence committed by a child to be referred to a youth justice conference by a police officer as an alternative to bringing a child before a court.

A youth justice conference is directed towards making a conference agreement about the offence and may include a provision relating to matters such as restitution or compensation, the performance of voluntary work, an apology to the victim, and the child's future conduct. It is conducted by a conference convenor, who is responsible for all decisions.

The *Youth Justice Act* provides for an offence to be sent back to the referring police officer where:

- (i) a child fails to attend a conference;
- (ii) a child contravenes a conference agreement; or
- (iii) a conference agreement is not reached.

5.4.1 Police referral to a youth justice conference

POLICY

In accordance s. 22: 'When a police officer may refer an offence for conference' of the *Youth Justice Act*, officers may refer an offence for a youth justice conference as an alternative to bringing a child before a court.

Officers are to refer an offence committed by a child to a youth justice conference only if:

- (i) the child admits committing the offence;
- (ii) having regard to:
 - (a) the offence's 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 youth justice conference; and
- (iii) the officer considers:
 - (a) a caution is inappropriate;
 - (b) a proceeding for the offence would be appropriate if a reference were not made;
 - (c) the referral 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

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

PROCEDURE

An officer, who decides to refer a matter to a conference, should:

- (i) complete a Form 4: 'Youth Justice Conference Police Referral Form' (available in QPRIME);
- (ii) send the form to the relevant delegate of the Chief Executive, (the delegate will subsequently advise the referring officer whether the youth justice conference 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,

(see QPRIME User Guide).

If advised that the conference is to proceed, the referring officer should complete a Form 7: 'Notice to Attend a Youth Justice Conference' (available in QPRIME) and personally serve this notice on the child, ensuring the child is given a pamphlet explaining the youth justice conferencing process (available in hard copy or from the Department of Justice and Attorney-General, youth justice conferencing web page). The completed notice is to then be forwarded to the Chief Executive.

The aim of the conference is to obtain an agreement between all parties present. If an agreement is reached, the referring officer will be given a copy of the conference agreement on an approved Form 6: 'Youth Justice Conference Agreement' by the conference convenor.

The referring officer should record the outcome of the Youth Justice Conference in the relevant QPRIME occurrence (see QPRIME User Guide).

Within fourteen days of a youth justice conference ending, the Chief Executive is required to send the referring officer a copy of the Form 5: 'Report on the Outcome of a Youth Justice Conference'. Officers receiving this document should scan the report into the relevant QPRIME occurrence and file the hard copy at the investigating officer's station/establishment.

In certain circumstances, as outlined in ss. 22(4) and 22(5), Chief Executive may refer the offence back to the officer by written notice. 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 conference agreement' of the *Youth Justice Act*).

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.

(See flowcharts 5.14: 'Referral to youth justice conference' and 5.15: 'Process to refer to youth justice conference' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

ORDER

Where the Chief Executive has referred an offence back to an officer, the officer is to take reasonable steps to inform the child (see s. 22(8) of the *Youth Justice Act*).

5.4.2 Attending a youth justice conference

POLICY

When a child has been referred to a youth justice conference by a police officer, in accordance with s. 34(1)(g): 'Who may participate in a conference' of the *Youth Justice Act* the following officers should attend the youth justice conference:

- (i) the referring officer; or
- (ii) the investigating officer.

If neither officer is available, another officer who:

- (i) has a sufficient knowledge of the circumstances of the offence;
- (ii) has a sufficient knowledge of the of the investigation which was conducted; and
- (iii) knows whether or not the child's identifying particulars have been obtained under s. 25: 'Application by police officer for permission to take child's identifying particulars' of the *Youth Justice Act*,

should attend the youth justice conference.

Where the Commissioner is a victim and a specific officer has permission from the relevant delegated officer to attend a conference as a representative of the Commissioner, another officer can only be substituted where similar permission is sought. (see s. 5.4.6: 'Action where Commissioner is victim' of this chapter).

5.4.3 Outcomes of a youth justice conference

Once the youth justice conference process has commenced, all decisions regarding conduct of the conference are made by the convenor.

Where agreement is reached at a youth justice conference, the convenor will prepare a Form 6: 'Youth Justice Conference Agreement' which, in addition to the child's admission to committing the offence and how the agreement will be monitored, the conference agreement 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 program similar to one a child is subject to under a youth justice service order or a probation order; and
- (vi) another matter the conference convenor considers appropriate.

All the parties present at the youth justice conference will be signatories on the Form 6.

PROCEDURE

The officer attending the youth justice conference will receive a copy of the Form 6, which should be scanned into the relevant QPRIME occurrence.

(See flowchart 5.16: 'Outcomes of a youth justice conference' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.4.4 Failure of a youth justice conference as a way of dealing with an offence when referred by a police officer

A youth justice conference is one option available to an officer as a way of dealing with an offence. However, in some instances a youth justice conference will not be successful due to:

- (i) the child failing to attend the conference;
- (ii) the youth justice conference ending without agreement; or
- (iii) the child contravening the youth justice conference agreement.

PROCEDURE

In these circumstances, a referring police officer should then reconsider the options provided under the Youth Justice Act to:

- (i) take no formal action against a child;
- (ii) administer a caution;
- (iii) refer the offence to the relevant delegate of the Chief Executive, for another youth justice conference; or
- (iv) commence proceedings in a court.

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 5.17: 'Considerations for action after a youth justice conference did not proceed' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.4.5 Confidentiality of youth justice conferences

POLICY

The provisions of s. 5.3.16: 'Confidentiality' of this chapter apply to youth justice conferences.

5.4.6 Action where Commissioner is victim

Under s. 34(1)(e): 'Who may participate in a conference' of the *Youth Justice Act*, the victim is entitled to participate in a youth justice conference. Where the Commissioner is the victim (see s. 10.11: 'Ownership of official property' of the *Police Service Administration Act*), the participation in a youth justice conference has been delegated to commissioned officers (see Delegation D 132.2 of the Handbook of Delegations and Authorities). These 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 that a matter is appropriate to refer to a youth justice conference 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 youth justice conference by a youth justice 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.

5.5 Graffiti removal program

Section 379A: 'Additional case when arrest for graffiti offence may be discontinued' of the *Police Powers and Responsibilities Act* provides an option for an officer to refer a child to a graffiti removal program for a graffiti offence under s. 469: 'Wilful damage' of the Criminal Code. The program provides a timely response to a graffiti offence instead of commencing a proceeding.

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

When a child signs an agreement to attend and complete a graffiti removal program, anything used in the commission of the graffiti offence is forfeited to the State (see s. 5.5.3: 'Property forfeiture' of this chapter).

If the child fails to attend and complete the graffiti removal program, any further action is to be taken in accordance with s. 11: 'Police officer to consider alternatives to proceeding against child' of the *Youth Justice Act*. Officers may commence proceedings against the child for failing to comply with the requirement under s. 791: 'Offence to contravene direction or requirement of a police officer' of the *Police Powers and Responsibilities Act* and they may also take action for the original graffiti offence(s) (see the subsection 'Failure to complete program' within s. 5.5.2: 'Completion of graffiti removal program' of this chapter).

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 graffiti offence(s), if the investigating officer believes:

- (i) the child would benefit from the program; and
- (ii) the child's current and past offending is relatively minor and the program may dissuade the child from committing further graffiti offences; and
- (iii) a referral is appropriate with reference to options available for the officer under s. 11 of the *Youth Justice Act*.

Depending on the seriousness of the graffiti offences committed, referral to a graffiti removal program:

- (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 youth justice conference;
- (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.

5.5.1 Police referral to attend and complete a graffiti removal program

In accordance with s. 11: 'Police officer to consider alternatives to proceeding against a child' of the *Youth Justice Act*, officers may offer a child who has committed a graffiti offence (see sch. 6 'Dictionary' of the *Police Powers and Responsibilities Act*) an opportunity to attend and complete a graffiti removal program as an alternative to bringing a child before a court. The officer must consider whether referral to a graffiti removal program is appropriate with respect to the graffiti offence(s) committed and the child's previous offending history (see s. 11(2): 'Police officer to consider alternatives to proceeding against child' of the *Youth Justice Act*).

Officers should consider offering a child the opportunity to complete a graffiti removal program, if the child:

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

Referral to a graffiti removal program:

- (i) may be offered to a child at any time prior to the child's first court appearance for the relevant offence; and
- (ii) may be offered on more than one occasion.

PROCEDURE

An officer, who decides to offer a child the option of completing a graffiti removal program 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) inform the child and parent or support person that:
 - (a) the QP 0951 outlines the consequences of agreeing to attend the graffiti removal program;
 - (b) if the child fails to attend and complete the graffiti removal program:
 - the child commits an offence against s. 791: 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act*, 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 graffiti removal program, the officer is to:

- (i) update the relevant QPRIME occurrence(s) to record the referral to the graffiti removal program. If the child:
 - (a) has been in police custody for the relevant offence, capture the graffiti removal program referral from the custody report in QPRIME (see QPRIME User Guide); or
 - (b) has not been taken into custody for the relevant offence, capture the graffiti removal program referral from the person record in QPRIME (see QPRIME User Guide);
- (ii) scan the completed QP 0951 and save in the relevant QPRIME occurrence(s) (see QPRIME User Guide); and
- (iii) send the completed QP 0951 by email (or facsimile if email is unavailable) to the Youth Justice Service (see Service Manuals Contact Directory).

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).

ORDER

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

Offer to attend graffiti removal program after the commencement of proceedings

In accordance with s. 379A(2): 'Additional case when arrest for graffiti offence may be discontinued' of the *Police Powers and Responsibilities Act* an officer may offer a child the opportunity to attend and complete a graffiti removal program at any time prior to the child's first appearance before a court on the relevant charge.

POLICY

Where an officer has commenced proceedings against a child for a graffiti offence under s. 469: 'Wilful damage' of the Criminal Code and the officer considers referral to a graffiti removal program 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 Digital Electronic Recording of Interviews and Evidence Manual) prior to offering a referral to a graffiti removal program in accordance with this section; and
- (ii) where a graffiti removal program referral is accepted, make the necessary arrangements for the withdrawal of the wilful damage charge(s) in accordance with s. 3.4.4: 'Withdrawal of charges' of this Manual.

Receipt of agreement by Youth Justice Service

The Youth Justice Service, Department of Justice and Attorney-General should reply to the officer who referred the child to a graffiti removal program 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 that 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 and details of the service provider administering the graffiti removal program (if relevant).

The graffiti removal program is to be completed within 60 days of receipt of the referral by the Youth Justice Service, Department of Justice and Attorney-General.

POLICY

The officer receiving the information from Youth Justice Services should update the relevant QPRIME occurrence with the information and set a diary date for 60 days into the future to follow up on the outcome of the referral (see QPRIME User Guide).

5.5.2 Completion of graffiti removal program

Successful completion of program

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

PROCEDURE

Officers receiving a 'Report on the Completion/Non-Completion of a Graffiti Removal Program' should:

- (i) update the relevant QPRIME occurrence(s) and scan the form and attach it as an external report; and
- (ii) arrange for the forfeited property to be disposed, if still held by police (see s. 5.5.3: 'Property forfeiture' of this chapter).

Failure to complete program

Where a child who has been referred to a graffiti removal program, fails to attend and complete the program, the Youth Justice Service, Department of Justice and Attorney-General will forward by facsimile or email a 'Report on the Completion/Non-Completion of a Graffiti Removal Program' to the officer who referred the child to the graffiti removal program. The report will provide all the relevant information in relation to the child failing to attend and complete a graffiti removal program.

POLICY

Where an officer receives information from the Youth Justice Service, Department of Justice and Attorney-General of a child's failure to attend and complete the graffiti removal program, the officer is to:

- (i) modify the relevant QPRIME occurrence to record the child's failure to attend and complete the graffiti removal program;
- (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 graffiti removal program;
- (iii) consider the circumstances of the child's failure to attend and complete the graffiti removal program and:
 - (a) in relation to the child's original graffiti offence(s), the officer should consider taking action with reference to options under s. 11: 'Police officer to consider alternatives to proceeding against child' of the *Youth Justice Act*, and:
 - caution the child (see s. 5.3: 'Cautioning' of this chapter);
 - refer the child to a youth justice conference (see s. 5.4: 'Youth justice conference' of this chapter);
 - offer the child another opportunity to attend a graffiti removal program; or
 - commence a prosecution for original graffiti offence under s. 469: 'Wilful damage' of the Criminal Code;
 - (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 *Police Powers and Responsibilities Act*.

When considering whether a prosecution should be commenced for failing to attend and complete a graffiti removal program, the officer is 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, youth justice conferences, or graffiti removal programs.

5.5.3 Property forfeiture

When a child agrees to attend a graffiti removal program 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. 379(8): 'Additional case when arrest for graffiti offence may be discontinued' of the *Police Powers and Responsibilities Act*).

POLICY

Officers receiving forfeited graffiti implements are to:

- (i) deal with the items in accordance with s. 4.6: '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 graffiti removal program and a prosecution is commenced); and
- (iii) dispose of the items in accordance with s. 4.8.4: 'Disposal of things forfeited to the State' 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.

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5.6 Commencing proceedings against a child

5.6.1 Taking children into custody

The provisions relating to the arrest of children are contained in the *Police Powers and Responsibilities Act* and the *Youth Justice Act*. As a Schedule 1 Act, the provisions of the *Youth Justice Act* take precedence over those of the *Police Powers and Responsibilities Act* 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 *Police Powers and Responsibilities Act* apply to children.

Generally, a child may be arrested without warrant:

- (i) for questioning about an indictable offence or for investigating an indictable offence under the provisions of s. 365(2) of the *Police Powers and Responsibilities Act*; or
- (ii) subject to s. 13: 'Police officer's power of arrest preserved in particular general circumstances' of the *Youth Justice Act*, to commence a proceeding against a child under the provisions of s. 365(3) of the *Police Powers and Responsibilities Act*.

POLICY

Officers are to arrest a child, without warrant, only if the officer reasonably suspects that the child has committed or is committing:

- (i) an indictable offence and the officer arrests the child for the purpose of questioning the child about the offence in accordance with Chapter 15 of the *Police Powers and Responsibilities Act* or investigating the offence (see s. 365(2) of the *Police Powers and Responsibilities Act* and s. 13(3) of the *Youth Justice Act*).

At the conclusion of any questioning or investigation any further action is to be taken in accordance with ss. 11: 'Police officer to consider alternatives to proceeding against child'; 12: 'Preferred way for police officer to start proceedings' and 13(1) of the *Youth Justice Act* (see s. 5.2.2: 'Alternatives for dealing with child offenders' and s. 5.6.3: 'Issuing of a notice to appear to a child for offences' of this chapter); or

- (ii) an offence (see s. 365(3) of the *Police Powers and Responsibilities Act*) and the officer:
 - (a) reasonably suspects that the offence the child has committed or is committing is a serious offence (see s. 11: 'Police officer to consider alternatives to proceeding against child' of the *Youth Justice Act*);
 - (b) believes on reasonable grounds that the arrest is necessary to:
 - prevent a continuation or a repetition of the offence or the commission of another offence;
 - obtain or preserve, or prevent concealment, loss or destruction of, evidence relating to the offence;
 - prevent the fabrication of evidence; or
 - ensure the child's appearance before a court;
 - (c) believes on reasonable grounds that the child is an adult. Officers who arrest a child under the reasonable belief that the child is an adult are to outline in the Court Brief (QP9) the circumstances that lead to that belief;
 - (d) believes on reasonable grounds that the child is contravening s. 278: 'Escape' of the *Youth Justice Act* or is unlawfully at large; or

- (iii) the officer is using the officer's power of arrest under a warrant issued under the *Bail Act*,

(see s. 13 of the *Youth Justice Act*).

It is not Service policy to arrest a child for the purpose of obtaining their identifying particulars. Section 25: 'Application by police officer for permission to take child's identifying particulars' of the *Youth Justice Act* allows an officer 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. 5.7: 'Taking children's identifying particulars' of this chapter).

(See flowchart 5.18: 'Taking children into custody' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

Ensuring rights of children taken into custody

POLICY

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 *Police Powers and Responsibilities Act* to the extent that those provisions:

- (i) are applicable to a child; and
- (ii) apply to the type of offence for which the child was arrested; or

(iii) impose applicable responsibilities upon officers which are additional to those imposed by the *Youth Justice Act*.

5.6.2 Releasing children from custody

POLICY

Officers who arrest a child under the provisions of ss. 365(2) or 365(3) of the *Police Powers and Responsibilities Act* 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 *Police Powers and Responsibilities Act* 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 *Police Powers and Responsibilities Act*); 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 *Police Powers and Responsibilities Act*); 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. 5.3: 'Cautions' of this chapter);
 - (c) referring the offence to a youth justice conference (see s. 5.4: 'Youth justice conference' of this chapter);
 - (d) for a graffiti offence, offer the child the opportunity to attend a graffiti removal program (see s. 5.5: 'Graffiti removal program' of this chapter);
 - (e) for a minor drugs offence, offer the child the opportunity to attend a drug diversion assessment program (see s. 2.22.9: 'Duty of prescribed police officer receiving custody of person arrested for minor drugs offence' 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): 'Additional case when arrest of child may be discontinued' of the *Police Powers and Responsibilities Act* or complaint and summons under the *Justices Act*.

The requirement for an officer to discontinue an arrest of a child because the reason for arresting the child 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 *Police Powers and Responsibilities Act*).

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

Where the child involved in an incident under this section is an international homestay school student, see s. 5.9: 'International homestay school students' of this chapter.

(See flowchart 5.19: 'Release of children from custody' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

Release of a child after being charged

POLICY

Where a child has been arrested on a charge of an offence, and is not being detained under the provisions of Chapter 15, Part 2: 'Investigations and questioning' of the *Police Powers and Responsibilities Act*, and it is not practicable to:

- (i) release the child in accordance with ss. 376, 378, 379 or 380 of the *Police Powers and Responsibilities Act*; or
- (ii) promptly constitute a children's court to deal with the child,

the prescribed police officer (see [Service Manuals Definitions](#)) is to:

- (i) give the child a Form 14: 'Release notice' or QP 0699: 'Notice to appear' (available on QPRIME or as a booklet) and release the child from custody under s. 51: 'Release of child without bail' of the *Youth Justice Act*;

(ii) grant bail to the child and release the child from custody under s. 52: 'Conditions of release on bail' of the *Youth Justice Act*; or

(iii) keep the child in custody.

A child should only be held in custody as a last resort and for the least time that is justified in the circumstances. Where a child is likely to be kept in custody due to a child's lack of support, accommodation, or the child's safety would be endangered, the prescribed police officer is to consult with Child Safety Services, Department of Communities, Child Safety and Disability Services, to ascertain whether suitable accommodation, support or alternative options to ensure the child's safety can be arranged.

ORDER

A prescribed police officer is not to release a child from custody if the officer is satisfied that the child's safety would be endangered if the child were released and there is no reasonably practicable way of ensuring the child's safety other than by keeping the child in custody (see s. 48(7): 'Decisions about bail and related matters' of the *Youth Justice Act*).

Otherwise the child is to be released immediately:

(i) the decision has been made that the child need not be held in custody and should be released from the watchhouse (refer to s. 48 of the *Youth Justice Act*); and

(ii) the watchhouse procedures have been completed.

PROCEDURE

The child should be released either:

(i) on bail under the conditions set out in s. 52 of the *Youth Justice Act*;

(ii) into the custody of a parent (see s. 51(2) of the *Youth Justice Act*); or

(iii) by permitting the child to go at large (see s. 51(2) of the *Youth Justice Act* and subsection 'Child released to go at large' of this section).

Advising Child Safety Services of child's release

ORDER

When a child is released from custody, the prescribed police officer is to advise Child Safety Services, Department of Communities, Child Safety and Disability Services as soon as practicable after the child's release (see Service Manuals Contact Directory).

PROCEDURE

When a child is released from custody, the prescribed police officer is to advise Child Safety Services of:

(i) the child's name, date of birth and usual address;

(ii) the offence with which the child is charged;

(iii) whether the child's parents or other persons have been advised;

(iv) the type of release being granted (including any special conditions);

(v) where applicable, the name and nature of the relationship of the child to the person(s) into whose custody the child has been released;

(vi) whether the child will be held for any length of time before being released; and

(vii) the date, time and place of the children's court at which the child is to appear.

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) of the *Youth Justice Act*, the prescribed officer is to immediately contact either the parent, a Child Safety Services officer, or the Child Safety After Hours Service Centre (see Service Manuals Contact Directory) and advise:

(i) the name, address, date of birth and telephone number of the child;

(ii) the circumstances of the detention;

(iii) the 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 *Youth Justice Act*;

(iv) the time, date and place of release; and

(v) the 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.

PROCEDURE

Where a responsible adult will not attend the watchhouse to take responsibility for a child being considered for release from custody, the prescribed police officer should determine whether the child should remain in custody for the child's own protection. An officer making such a determination should consider all the relevant circumstances including:

- (i) the time of day or night when the child is to be released;
- (ii) the apparent maturity of the child;
- (iii) the age of the child;
- (iv) the circumstances relating to the offence(s) for which the child is charged;
- (v) the propensity for offences against the person in the local area;
- (vi) the child's ability to travel home without assistance, in consideration of the distance and public transport availability to the child's home;
- (vii) the potential of any person to effect threats of violence made to the child; and
- (viii) alternatives to keeping the child in custody which would ensure the child's safety.

Children who request a place to wait for a parent or other person should be allowed to wait at the police station or other place of safety.

Child must be given release notice

ORDER

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 (see QPRIME User Guide) 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.

5.6.3 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 *Youth Justice Act* are to comply with the provisions of s. 16.18: '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' of the *Youth Justice Act*;
- (ii) into the custody of a parent (see s. 51(2): 'Release of child without bail' of the *Youth Justice Act*); or
- (iii) by permitting the child to go at large (see s. 51(2) of the *Youth Justice Act*),

the prescribed police officer is to ensure that the child, the child's parent or guardian and Child Safety Services, Department of Communities, Child Safety and Disability Services 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.

(See also s. 16.18 of this Manual).

5.6.4 Parent and chief executive must be advised of police action

Definition

For the purpose of this section, the term '**parent**' includes:

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

as defined in Schedule 4: 'Dictionary' of the *Youth Justice Act*. The definition will include the 'homestay provider' in the case of international homestay school students (see s. 5.9: 'International homestay school students' of this chapter).

ORDER

Pursuant to s. 392: 'Parent and chief executive to be advised of arrest or service of notice to appear' of the *Police Powers and Responsibilities Act*, an officer who arrests a child or serves a notice to appear on a child is to promptly provide advice of the arrest and whereabouts of the child or advice of the service of the notice to appear to:

- (i) a parent of the child, unless a parent cannot be found after reasonable inquiry; and
- (ii) the chief executive, or a person who holds an office within the department nominated by the chief executive for the purpose.

In all circumstances, the investigating officer is to document and if possible record on the back of the relevant Court Brief (QP9) what endeavours were made to locate a parent and any other reason why a parent was not advised as required.

In these circumstances the term 'parent' includes someone who is apparently the parent of the child.

The chief executive will always be able to be contacted through Department of Justice and Attorney-General or after hours through the Child Safety After Hours Service Centre. (See Service Manuals Contact Directory).

5.6.5 Issuing of a notice to appear to a child for offences

POLICY

Pursuant to s. 12: 'Preferred way for police officer to start proceedings' of the *Youth Justice Act*, officers starting a proceeding against a child for an offence, other than a serious offence, are to start the proceeding by way of notice to appear or complaint and summons, unless otherwise provided under the *Youth Justice Act*. See s. 5.6.1: 'Taking children into custody' of this chapter and s. 3.5.4: 'Proceedings by way of complaint and summons' of this Manual for relevant information about commencing a proceeding against a child by arrest or complaint and summons.

A notice to appear may also be issued after an officer has arrested a child by the officer who is in charge of the relevant police station or watchhouse in accordance with s. 50: 'Dealing with a child of court cannot be promptly constituted' of the *Youth Justice Act*.

ORDER

An officer issuing a notice to appear to a child is to specify a time for the child to appear before a court that is as soon as practicable after the service of the notice to appear and is fixed generally by the relevant clerk of the court for hearing matters under the *Youth Justice Act*. See s. 384(3): 'Notice to Appear form' of the *Police Powers and Responsibilities Act*.

PROCEDURE

Subject to the preceding order the time specified in the notice to appear for the child to appear before a court should be the next childrens court date set down by the clerk of the court (e.g. if childrens court is 2pm every Wednesday, notices to appear may direct the child to appear at 2pm on the following Wednesday).

Notices to appear are to be completed in accordance with s. 3.5.3: 'Proceedings by way of notice to appear' of this Manual, with the additional requirements for:

- (i) officers to clearly state that, at the time of the alleged offence, the person was a child; and
- (ii) an officer in charge of a police station or a watchhouse who issues a notice to appear under s. 50 of the *Youth Justice Act* is to:
 - (a) create the Form 014: 'Release Notice' in QPRIME;
 - (b) update the relevant custody report in QPRIME with details of the child's release; and
 - (c) assign a notification task to the arresting officer advising of the issue and service of the notice to appear.

(See flowchart 5.20: 'Issuing of notice to appear to a child for offences' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

Service of a notice to appear

ORDER

An officer serving a notice to appear on a child is to:

- (i) personally serve the notice on the child;
- (ii) serve the notice as discreetly as practicable;
- (iii) not serve the notice 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 effected (see s. 383: 'Notice to appear must be served discreetly on a child' of the *Police Powers and Responsibilities Act*); and
- (iv) if the notice to appear was not system generated (i.e. field issued), update the QPRIME charge sequencing report with details of the notice to appear in accordance with the QPRIME User Guide.

5.6.6 Proceedings against a child by complaint and summons

POLICY

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

PROCEDURE

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

Complaints and summons are to be completed and served 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 for officers 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, Department of Justice and Attorney-General (see s. 43(2): 'Service of complaint and summons if offender a child' of the *Youth Justice Act*); 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 effected (see s. 43(3) of the *Youth Justice Act*).

ORDER

Instantia summons are only to be used if the complaint is served on the parent and the Chief Executive, Department of Justice and Attorney-General.

Service of complaint on a parent and the chief executive

POLICY

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

- (i) a parent 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 by:
 - (a) personal service;
 - (b) delivering a copy of the complaint and summons to an officer from Youth Justice Services, Department of Justice and Attorney-General; (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 at the usual place of business of the chief executive.

Service of the complaint and summons should be affected where possible at least three days prior to the time the child is required to appear in answer to the summons.

PROCEDURE

The officer serving a copy of the complaint and summons on the parent or chief executive 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 the parent of a child 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 for service of the complaint and summons, the officer should outline in the Court Brief (QP9) what enquiries were conducted to locate the parent. Officers should note that the term parent in these circumstances includes someone who is apparently the parent of the child. If a police 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 5.21: 'Service of the complaint and summons' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.6.7 Court may order parent to attend

Section 70: 'Court may order parent to attend' of the *Youth Justice Act* allows a court before which a child appears charged with an offence, to order a parent of the child to attend the proceeding.

POLICY

Where appropriate the prosecutor may make application to the court for such an order.

Officers should assist in giving notice to the parent to attend the court when required to do so by the court's proper officer (i.e. the clerk of the court etc.).

5.6.8 Documents required when a child is placed before a court

POLICY

When an officer commences a proceeding against a child for an offence, the officer is to comply with s. 3.7.2: 'Documentation at first appearance' of this Manual, with the additional requirement for officers to provide:

- (i) a copy of the record of charges (which includes all cautions and youth justice conference agreements) and an original criminal history; and
- (ii) where applicable, a copy of the court order authorising the taking of identifying particulars under s. 25: 'Application by police officer for permission to take child's identifying particulars' of the *Youth Justice Act*.

When proceedings have been commenced against a child for a serious offence (see s. 8: 'Meaning of serious offence' of the *Youth Justice Act*), the investigating officer should also provide a statement suitably endorsed under the provisions of the *Oaths Act*. The statement should contain sufficient information to establish each of the elements of the offences.

(See flowchart 5.22: 'Documents required when a child is placed before a court' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.6.9 Statements required for children's court

PROCEDURE

When a child is placed before a court for a serious offence as defined in s. 8: 'Meaning of serious offence' of the *Youth Justice Act*, the investigating officer is responsible for preparing a statement endorsed under the provisions of the *Oaths Act* for tendering under the provisions of s. 110A: 'Use of tendered statements in lieu of oral testimony in committal proceedings' of the *Justices Act*. A proceeding for a serious offence is always conducted as committal proceedings.

If a child is legally represented in relation to an indictable offence, other than a serious offence, there is no requirement for the investigating officer to prepare a statement where the child is intending to plead guilty.

In all other cases, there is no requirement for the investigating officer to prepare a statement unless:

- (i) the child fails to appear;
- (ii) the matter is set for hearing, when a full brief of evidence is required; or
- (iii) the matter is set for committal, when a full brief of evidence is required.

5.6.10 Admissibility of a criminal history under the Youth Justice Act

A child's criminal history may be relevant to a court:

- (i) for a determination as to bail; or
- (ii) for a determination as to sentence after a finding of guilt.

A child's criminal history, including findings of guilt as a child without a conviction being recorded, will also be relevant to an officer considering bail (see s. 48(3): 'Decisions about Bail and related matters' of the *Youth Justice Act*).

Cautions and youth justice conference agreements do not form part of a child's criminal history.

However, cautions and/or youth justice conference agreements may be considered by a court:

- (i) when determining an application to dismiss a charge if a caution should have been administered; or
- (ii) considering an issue of criminal responsibility under s. 29: 'Immature age' of the Criminal Code.

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

Pursuant to s. 29: 'Support person must be present for statement to be admissible' of the *Youth Justice Act*, in a proceeding for an indictable offence, a court must not admit into evidence against a child a statement made or given to a police officer by the child unless the court is satisfied that a support person was present with the child at the time and place the statement was made or given.

POLICY

In accordance with s. 421: 'Questioning of children' of the *Police Powers and Responsibilities Act*, 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; and
- (ii) in the presence of a support person.

However, it is reasonable to obtain certain particulars from a person, to at least establish that the person being spoken to is a child, without the presence of a support person.

(See flowchart 5.23: 'Persons present for an interview with a child' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

ORDER

Where circumstances arise in which a child or a parent of the child chooses 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 that 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 that the Service will not be responsible for meeting expenses.

POLICY

An officer who is questioning a person in relation to an indictable offence, and during the course of the interview becomes aware that the person is a child, the officer should not ask any further questions in relation to the indictable offence until s. 421 of the *Police Powers and Responsibilities Act* 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. Who would you like to be present while I talk to you?'

ORDER

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.

5.6.12 Electronic recording of interviews

POLICY

Officers interviewing child suspects in relation to indictable offences should ensure that the giving of required information to the child and the questioning of the child is electronically recorded wherever practicable (see ss. 435: 'Rights of person to be electronically recorded' and 436: 'Recording of questioning etc.' of the *Police Powers and Responsibilities Act* and the Digital Electronic Recording of Interviews and Evidence Manual).

Requisite capacity of child offenders (between 10 and 14 years)

Instructions in relation to establishing the requisite capacity of child offenders is contained in Guideline 6: 'Capacity of Child Offenders – between 10 and 14 years' of the Director of Public Prosecutions (State) Guidelines.

5.6.13 Handcuffing of 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 *Youth Justice Act*; or
- (ii) the child in custody has previously attempted escape or the officer has reasonable grounds to believe the child will attempt to escape; or

- (iii) the demeanour of the child in custody is violent or gives rise to apprehension of violence; or
- (iv) to prevent self-inflicted injury by the child; or
- (v) to prevent injury to others.

(See flowchart 5.24: 'Handcuffing of children' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

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

POLICY

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 that the parent should be ordered to pay compensation for the offence,

the officer should:

- (i) 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
- (ii) provide an affidavit to the police prosecutor outlining circumstances supporting the officer's belief.

The investigating officer may seek a remand for the purpose of preparing the affidavit concerning the contribution of a parent to the commission of an offence. Further, the police prosecutor, upon perusal of the brief may direct that 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 5.25: 'Failure of parent to exercise proper care or supervision over a child' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.6.15 Interested persons accompanying a child to watchhouses and visiting a child in watchhouses

POLICY

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 watchhouse the officer should accede to the request.

The officer in charge of the watchhouse is responsible for the conduct of staff, prisoners and other persons in the watchhouse. Parents or interested persons should be allowed into the watchhouse unless;

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

When the officer in charge of the watchhouse refuses entry to any visitor, that fact and the reasons which contributed to 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.

5.7 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 *Youth Justice Act*, an application can be made for a court order to obtain the child's identifying particulars (see s. 5.7.1: 'Taking identifying particulars of a child not arrested' of this chapter);
- (ii) arrested and is in custody for an identifying particulars offence, the child's identifying particulars can be taken or photographed in accordance with s. 467: 'Taking identifying particulars of person in custody' of the *Police Powers and Responsibilities Act* (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 *Youth Justice Act*, a court may make an order to obtain the child's fingerprints and palm prints (see s. 5.7.4: '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.

5.7.1 Taking identifying particulars of a child not arrested

In accordance with s. 25: 'Application by police officer for permission to take child's identifying particulars' of the *Youth Justice Act* an officer may apply to a children's court magistrate for an order to obtain the identifying particulars (as defined in Schedule 6: 'Dictionary' of the *Police Powers and Responsibilities Act*) of a child who has been charged without being arrested. However, the authority only applies to indictable offences or arrest offences against the Acts mentioned in the section.

This authority will normally apply where a child is proceeded against by a notice to appear or by complaint 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.

The application process

PROCEDURE

Officers intending to obtain the child's identifying particulars under s. 25 of the *Youth Justice Act* 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 identifying particulars 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' (available on QPS Forms Select);
 - (b) a supporting affidavit (Form 46: 'Affidavit' available on QPS Forms Select) 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' (available on QPS Forms Select); or
 - an offender photograph of the child is required, a Form 059: 'Order – (Generic)' (available on QPS Forms Select 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

ORDER

The *Youth Justice Act* 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 enquiry (the parent includes someone who is apparently a parent of the child); and
- (iii) the Chief Executive, Department of Justice and Attorney-General.

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

Notices to the Chief Executive, Department of Justice and Attorney-General, should be addressed to the nearest regional Youth Justice Service Centre (see Service Manuals Contact Directory) or after hours, the Child Safety After Hours Service Centre (see Service Manuals Contact Directory).

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

PROCEDURE

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' (available on QPS Forms Select) 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

PROCEDURE

Officers making application for an order to take identifying particulars of a child under s. 25 of the *Youth Justice Act* should ensure that their affidavit contains sufficient evidence for the court to satisfy itself on the balance of probabilities that the child's identifying particulars 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 *Youth Justice Act*, what evidence there is of identifying particulars of the offender that are of the same type as those sought to be taken from the child (e.g. a scene 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.

POLICY

The officer in charge 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 *Youth Justice Act*, relevant officers should be advised of this fact.

5.7.2 Taking identifying particulars for an investigative purpose

POLICY

Officers should not take identifying particulars from a child under the provisions of s. 25: 'Application by police officer for permission to take child's identifying particulars' of the *Youth Justice Act* 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 *Youth Justice Act* provides that identifying particulars 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 identifying particulars 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 identifying particulars on the grounds prescribed in s. 26(3) or s. 26(4) of the *Youth Justice Act*, the officer should ensure that another support person is present when the identifying particulars 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.

5.7.3 Destruction of identifying particulars taken for an investigative purpose

In accordance with s. 27: 'Destruction of identifying particulars taken under court order' of the *Youth Justice Act*, where a child's identifying particulars have been obtained under a court order under s. 25: 'Application by police officer for permission to take child's identifying particulars' of the *Youth Justice Act*, the identifying particulars 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 identifying particulars 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 identifying particulars was made.

ORDER

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

Police prosecutors are to ensure that:

- (i) whenever a proceeding, at which they appear, ends without a sentence order being made; and
- (ii) identifying particulars have been taken under s. 25 of the *Youth Justice Act* in relation to that proceeding;

the arresting officer and the officer in charge of the arresting officer's station or establishment is notified as soon as practicable to arrange for the destruction of any identifying particulars taken under the provisions of s. 25 of the *Youth Justice Act*.

PROCEDURE

Officers in charge of stations or establishments who receive such advice on behalf of one of their officers should ensure that 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 officer in charge is notified, the officer in charge should make arrangements to have the identifying particulars destroyed.

Officers arranging the destruction of identifying particulars in accordance with s. 27 of the *Youth Justice Act* 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 particulars, including whether the identifying particulars include an offender photograph and/or fingerprints and palm prints; and
- (ii) initiate a QPS IDP/DNA Destruction Request Task Workflow in QPRIME,

(see QPRIME User Guide).

The Officer in Charge, Fingerprint Bureau should ensure that requests for destruction of identifying particulars are analysed and, where appropriate, identifying particulars are destroyed promptly in accordance with s. 27 of the *Youth Justice Act*.

5.7.4 Taking fingerprints upon a finding of guilt by a court

Section 255: 'Court may order sentenced child's identifying particulars to be taken' of the *Youth Justice Act* allows a court that makes a sentence order against a child after a finding of guilt for an offence against a prescribed Act, to also order that the child's fingerprints and palm prints be taken.

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

PROCEDURE

Where a child's identifying particulars have not already been taken under s. 25: 'Application by police officer for permission to take child's identifying particulars' of the *Youth Justice Act*, 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 identifying particulars taken.

5.7.5 Access to detention centres to take identifying particulars

PROCEDURE

The Department of Justice and Attorney-General, will permit members of the Service access to Youth Detention Centres for the purpose of taking the identifying particulars 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 identifying particulars of a child who has been admitted to, or sentenced to a Youth Detention Centre should contact the centre manager of the Youth Detention Centre to make the necessary arrangements for the officer's attendance at that centre.

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5.8 Escape of young people from Department of Justice and Attorney-General detention

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

When a young person escapes from Department of Justice and Attorney-General detention, either from a detention centre or elsewhere, the relevant Department of Justice and Attorney-General officer will notify the appropriate police communication centre.

(See flowchart 5.26: 'Action to be taken when a young person escapes from detention' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board))

5.8.1 Initial police action

POLICY

Members receiving advice that a young person has escaped from Department of Justice and Attorney-General detention are to ensure that:

- (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 Department of Justice and Attorney-General detention, are to:

(i) carry out the first response procedure described in s. 2.4.1: 'First response procedure at 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. Enquiries 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.

5.8.2 Action to be taken on location of young person

Offences against s. 278: 'Escape' of the *Youth Justice Act* are summary offences.

POLICY

Officers locating a young person who has escaped from Department of Justice and Attorney-General detention should:

(i) 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:

(a) a young person who is aged 17 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 *Police Powers and Responsibilities Act* and is dealt with in the courts as an adult;

(b) a young person who was aged 16 years or younger at the time of committing an offence and is aged 17 years or younger at the time of arrest, is to be arrested under the provisions of s. 365(3) of the *Police Powers and Responsibilities Act* and is dealt with in the courts as a child (see s.134: 'Offender treated as a child' of the *Youth Justice Act*); or

(c) a young person who was aged 16 years or younger at the time of committing an offence but is aged 18 years or older at the time of arrest, is to be arrested under the provisions of s. 365(1) of the *Police Powers and Responsibilities Act* and is dealt with in the courts as an adult (see s. 140: 'When offender must be treated as an adult' of the *Youth Justice Act*);

(ii) notify the shift supervisor of the detention centre responsible for the young person;

(iii) 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

(iv) 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);

5.8.3 Notifying persons at risk

POLICY

Where an officer making inquiries to locate an escapee from Department of Justice and Attorney-General detention determines that 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 that 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 *Youth Justice Act*). When such authority is obtained, the regional duty officer or patrol group inspector should ensure that:

(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 *Youth Justice Act*).

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.

5.8.4 Release of information to media

POLICY

The initial media release regarding any escape from Department of Justice and Attorney-General detention will be made by the Department of Justice and Attorney-General.

Officers investigating the escape of a young person from Department of Justice and Attorney-General 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 officer in charge of the investigation should:

- (i) request that their supervising commissioned officer or the relevant 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, Department of Justice and Attorney-General.

The officer in charge of the investigation is to forward a copy of any media release the Director-General, Department of Justice and Attorney-General 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, Department of Justice and Attorney-General.

Media requests for information about the escape of a young person from Department of Justice and Attorney-General custody are to be referred to the Department of Justice and Attorney-General.

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5.9 International homestay school students

The hosting of international school-age children is managed under the *Education Services for Overseas Students Act* 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 Immigration and Border Protection (Cwlth) and the Department of Education and Training (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 in the following scenarios:

- (i) victim of crime;
- (ii) witness to an incident;

- (iii) offender (see s. 5.6.1: 'Taking children into custody' of this chapter);
- (iv) missing person (see Chapter 12: 'Missing Persons' of this Manual);
- (v) mental health (see s. 6.6: 'Mentally ill persons' of this Manual);
- (vi) involved in a traffic crash;
- (vii) domestic violence (see Chapter 9: 'Domestic Violence' of this Manual); or
- (viii) deceased (see s. 8.4.7: 'Advising relatives' of this Manual).

POLICY

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

PROCEDURE

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. 5.6.4: 'Parent and chief executive must be advised of police action' of this chapter.

Where the homestay provider is unable to be contacted, the officer should enquire 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: 'Special Needs' of this Manual due to their age, understanding of English, cultural background and any other special needs; and
- (ii) section 16.7: 'Foreign Nationals' of this Manual where appropriate.

(See flowchart 5.27: 'International homestay school students' available on the Child Safety and Sexual Crimes Group, Child Protection and Investigation Unit 'Resources' web page on the QPS Corporate Intranet (Bulletin Board)).

5.10 Children under seventeen years leaving home

POLICY

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

Whether a child under seventeen years of age may leave home without parental consent will be dependent upon all the circumstances of the case including ability of child to be self-supportive, availability of suitable accommodation, whether the child is or is likely to engage in criminal activity and whether the child is or is likely to be in moral danger.

PROCEDURE

Where a child under the age of seventeen 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 Communities, Child Safety and Disability Services.

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OPM Issue 48
Public Edition