

## QUESTIONS & ANSWERS

### *Youth Justice Act*

These questions and answers give more information about the *Youth Justice Act* than the [Fact Sheet](#) available from [www.justice.nt.gov.au](http://www.justice.nt.gov.au).

- *How will the Youth Justice Act change the (previous) juvenile justice system?*
- *Will young people understand how the system works and know what is happening to them?*
- *How does the diversion scheme under the new Act differ from the (previous) juvenile diversion scheme?*
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### ***How will the Youth Justice Act change the (previous) juvenile justice system?***

Essentially the youth justice system will not change. The new Act provides a framework that is more flexible and covers all facets of the youth justice system – from the investigation of offences and pre-court diversion, through court proceedings, sentencing and sentencing outcomes, to the operation of community supervision orders, detention centres and interstate transfers. It is the first time that these provisions are together in one piece of legislation, providing a more comprehensive picture of the provisions for young people who break the law and the agencies that are involved in the process. It is not however a Code in respect of young offenders.

The new Act clearly states what it aims to achieve (s3) and how it aims to achieve this – namely by taking account of general principles in the administration of the Act (s4) and for the courts to consider specific sentencing principles when sentencing a young person after he or she has been found guilty of an offence (s81).

The *Youth Justice Act* outlines the process Police must follow for the apprehension and remand of young people, including the diversion of youth who are believed, on reasonable grounds, to have committed an offence.

The new Act also outlines the options for a Youth Justice Court to sentence a young person once convicted of an offence. All options provided by the (repealed) *Juvenile Justice Act* are still available to the Court, plus the following:

- alternative detention (this is similar to the option of home detention for adults and not previously available in the sentencing of young offenders);
- periodic detention (available previously, but not with sufficiently detailed provisions to make it work well in practice); and
- an increased term of detention/imprisonment for a youth who is 15 years or older (to ensure that, where necessary, a young offender can be provided with an appropriate sentence without having to be referred to the Supreme Court).

The new Act also provides for the detention of young persons when detention – or even imprisonment on rare occasions – is the last remaining appropriate option.

***Will young people understand how the system works and know what is happening to them?***

The new *Youth Justice Act* specifically states that all agencies of the criminal justice system must explain to the youth what is happening at each stage of the process. That is, Police (s15), Courts (s61) and Correctional Services (s150) are required to explain what is happening in a language and manner that young persons are likely to understand, having regard to their individual age, maturity, cultural background and English language skills.

***How does the diversion scheme under the new Act differ from the (previous) juvenile diversion scheme?***

The review of the *Juvenile Justice Act* recommended removing the legislative basis of the juvenile diversion scheme from the *Police Administration Act* because it was considered preferable that all matters relating to young offenders be located in the one piece of legislation. This will make it easier for young people and people working with them (including the police, courts and legal personnel) to locate legislative provisions relevant to young offenders.

The aim of the diversion scheme is to take young people out of the formal criminal justice system. One of the new guiding principles under the *Youth Justice Act* is that criminal proceedings should not be instituted or continued against a young person if there are alternative means of dealing with the matter (s4(q)) – diversion is one such alternative.

Diversion under the *Youth Justice Act* does not apply to certain traffic offences (eg driving under the influence, or driving while disqualified or unlicensed) or where an infringement notice has been issued (s38).

Similar levels of diversion will be available under the new *Youth Justice Act* (s39(2)) as under the current scheme in the *Police Administration Act* – namely:

- verbal warnings;
- written warnings;
- family or victim offender conferences (Youth Justice Conferences); and
- referral to community-based youth offender programs which include counselling, education, training and life skills programs.

The Act creates a new presumption in favour of diversion as the appropriate response to youth offending in all cases except those involving serious offences or where the young person in question has a history which makes diversion unsuitable (s39(4)).

“Serious offences” are defined in regulation 3 of the Youth Justice Regulations and include terrorism, rioting, perjury, aiding escapes, possession of child abuse material, incest, sexual intercourse with under 16 year old, dangerous act, murder, manslaughter, grievous harm, assaults on police, sexual assault, kidnapping, robbery, assault with intent to steal, unlawful entry when armed, home invasion,

blackmail, arson and some other criminal damage offences and some drug offences eg involving commercial quantities.

Another new feature of the *Youth Justice Act* is that it includes the capacity for the Youth Justice Court to refer a young person back to the Police Diversion Unit to reassess their suitability to participate in a diversionary conference or program even once they have started to proceed through the formal court process (s64).

It will be an offence to publish information about a young person who is participating in a diversionary program (s43).

If a young person does not satisfactorily complete diversion, the Police retain the option to commence or continue criminal investigations or court proceedings.

### ***What is the Youth Justice Court and who appears before it?***

The Youth Justice Court is a specialised Court, established to deal with all charges (summary or indictable) against a youth alleged to have committed an offence (s52). It will replace the Juvenile Court with the start of the new *Youth Justice Act* on 1 August 2006 (s45).

A young person who is charged with committing an offence before his or her 18<sup>th</sup> birthday will appear before the Youth Justice Court – even though they are no longer under 18 when they are dealt with by the Court.

Each magistrate will be a magistrate of the Youth Justice Court. However, the Chief Magistrate may appoint a magistrate as a special 'Youth Magistrate' if the Chief Magistrate is of the opinion that magistrate has the knowledge, qualifications, skills and experience in the law and social/behavioural sciences and in dealing with youth and their families, appropriate to such an appointment. A magistrate does not however need to be appointed as a Youth Magistrate to exercise the powers of a Youth Justice Court (s46).

Proceedings in the Youth Justice Court are held in open court, unless it appears to the Court that justice will best be served by ordering that the Court be closed (s49).

### ***What information or material can the Court draw upon in sentencing a young offender?***

On finding a young person guilty of an offence, the Court has a wide power to seek submissions or reports in relation to the young person (s68).

A pre-sentence report must be provided to the Court if the Court is considering a sentence of detention (or imprisonment), unless the Court has the information necessary to determine an appropriate sentence (s69). Such a report must ensure that the Court is informed as to the circumstances of the youth (s69) and may include information on the young person's offending history, social history and background, educational background, the circumstances of the offence and risk issues, diversionary history and family and community views (s70).

A pre-sentence report is also required if the Court is considering imposing:

- a sentence of supervision, a community work order, an alternative detention order or a periodic detention order – such reports must address the suitability of the young person for the proposed sentence (s71(1));
- a fine or a sentence requiring financial restitution – a report regarding the financial circumstances of the young person must be provided to satisfy the Court that the sentence is appropriate (s71(2)).

The Court must also consider victim impact statements and victim reports in determining the appropriate sentence to be imposed on a young offender – such statements or reports contain details of the harm suffered by a victim and can contain a statement as to the victim's wishes in respect of the sentence to be imposed.

The Court may, before determining the appropriate sentence, adjourn sentencing proceedings and order a young person to participate in a pre-sentencing conference (s84). People who may take part in a conference include members of the youth's family and members of the victim's family, community representatives or any other person the Court thinks is suitable to attend.

### ***What is so special about a pre-sentencing conference?***

It is generally accepted that pre-sentencing conferences (s84), which can include a family conference or a victim/offender conference, result in better outcomes for offenders and victims alike, as well as for the community in general. That is because the people who take part in a conference have the opportunity to talk about the situation with the help of a qualified convenor or facilitator. They all have the opportunity to tell their story and find out how everyone else is feeling about the offence and its consequences. They all get to understand how the youth got into the situation and, more importantly, what they can do to improve that situation.

In a victim/offender conference, the victim will see the offender and understand his or her circumstances; while the offender has the opportunity to understand what the victim(s) experienced as a result of his or her actions.

Young offenders may be apprehensive of being held to account for their actions in the presence of their family, friends or victim(s) – and the families and victims may not feel comfortable either. However, once the conference starts, everyone usually settles down and becomes aware of how the other participants feel. At the end of the conference, particularly when they reach an agreed outcome, everyone feels good and the offender can be proud of what he or she helped to achieve, even if it was painful at the start.

The Convener of a pre-sentencing conference must report the outcome of the conference to the Court (s84(4)) and the Court can take the outcome into account when determining the appropriate sentence.

### ***When does the Supreme Court become involved with young people?***

There are several ways for the Supreme Court to become involved with young people:

- indictable offences (the more serious offences) that are not heard summarily by the Youth Justice Court in accordance with s54, go to the Supreme Court for trial after a preliminary examination / committal before the Youth Justice Court;

- the Youth Justice Court may accept a guilty plea and refer the young person to the Supreme Court for sentencing if appropriate (s57);
- the Youth Justice Court may also refer a legal question to the Supreme Court for that Court's opinion on the matter (s60).

If the Supreme Court finds a youth guilty of an offence, the Supreme Court has all the powers of the Youth Justice Court, in addition to its own powers, and can sentence a young offender to detention or imprisonment for a period longer than the Youth Justice Court (which is limited to 2 years), although not to a period longer than the term it would order if an adult had committed the offence (s82(1)). In particular, it may make orders in relation to detention or imprisonment under the *Sentencing Act*, which is usually for adults only (people who are 18 or older) (s82(2)). If the Supreme Court finds a youth guilty of murder, it does not have to order life imprisonment but may order a shorter period of detention or imprisonment (s82(3)).

The Supreme Court may also order that the matter goes back to the Youth Justice Court (s82(1)(c)).

### ***Can a young person be sent to a prison?***

Yes, if a youth has committed a serious offence and is 15 years or older, both the Youth Justice Court and the Supreme Court have the power to sentence that young offender to a prison instead of a detention centre.

The principles state that the Court can only impose a sentence of detention or imprisonment on a youth as a last resort, and a sentence of imprisonment only if there is no appropriate alternative (s81(6)).

### ***What type of sentencing orders can the Youth Justice Court make?***

The Court has many options for maximum flexibility in dealing with the circumstances in which a youth, against whom a charge is found proven, might find him or herself.

The sentencing options vary from dismissing the charge to imprisonment and include no penalty, staying out of trouble for a certain period, supervised bail, attending a program, good behaviour order, pay a fine, do up to 480 hours of community work, detention that may be fully or partly suspended (including on alternative detention), periodic detention order or 12 months detention for a youth who is less than 15 years of age or 2 years detention or imprisonment for a youth who is 15 years or older.

The Court will always assess the circumstances of a young person before it makes an order, so it is suited to the offence and makes it possible for the youth to complete successfully. If the Court is considering imposing a sentence of detention or imprisonment (s69) or of supervision or a community work order, alternative detention or periodic detention (s71(1)), the Court must order a report. Similarly, if the Court is considering a fine or monetary restitution, it must assess the financial circumstances of the youth (s71(2)).

If the Court orders a youth to serve a term of detention or imprisonment that is longer than 12 months, it will fix a minimum term or non-parole period. A person cannot be released before serving the term specified as the non-parole period.

In line with the principles set out in the *Youth Justice Act*, the Court should use custody as a last resort and for the shortest appropriate period of time where detention can not be avoided (s4(c)).

The Youth Justice Court may also disqualify a youth from holding a driver's licence (s88), order a youth to pay restitution (up to \$5000) or compensation by performance of service (s89).

### ***What happens when a young person in detention turns 18?***

Detention centres are for young people and generally a youth who reaches the age of 18 must be transferred to a prison within 28 days (s164(1)).

The new *Youth Justice Act* however, gives some flexibility for young persons who would finish their sentence, or their remand period, within 6 months. That is, the Director for Correctional Services has the power to direct a young person who has turned 18 years in a detention centre to finish their sentence in the detention centre as long as the time remaining to serve is less than 6 months. This does not happen automatically, but it is an option for special circumstances. The Director in exercising his discretion must have regard to the interests of the other detainees as well as those of the 18 year old (s164(5)). The decision of the Director can not be reviewed or appealed (s164(6)).

A detainee whose sentence is longer than 6 months is transferred to a prison within 28 days of turning 18 years.

### ***Further information***

For more information about pre-sentencing conferences, brochures and Frequently Asked Questions about all types of diversionary programs, visit this website <http://www.nt.gov.au/pfes/police/community/jdu/faq.html>.

For stories from people who were in a conference and conference examples, visit <http://www.nt.gov.au/pfes/police/community/jdu/stories.html>,  
<http://www.nt.gov.au/pfes/police/community/jdu/conferencing.html>

For more information and contact details about the Youth Justice Advisory Committee, visit [www.justice.nt.gov.au](http://www.justice.nt.gov.au).