

15 things Local Court solicitors should know about children's matters

I am assuming in presenting this paper that a solid knowledge of the practice of criminal law in the Local Court jurisdiction exists in the reader. I am also not going into each section in great detail – rather I am trying to alert you as a practitioner to the sorts of things that should be considered that are either unique to children or different from adults.

1. Doli Incapax

ALWAYS check the date of birth – rebuttable presumption

Doli incapax is NOT a defence, it is an ELEMENT of the prosecution case. If the prosecution fail to rebut doli, then there is no case to answer.

Also important to remember that doli is not rebutted by what the young person thinks and knows by the time the matter is in court – it is what the young person knew and understood at the time of the offence. Police often endeavour to interview an under 14 young person, specifically so they can obtain evidence to rebut doli.

This paper is not attempting to give you a full run down of doli incapax, just alerting you to the importance of the issue. There are resources available discussing the main cases and applicable law.

2. BAIL

SHOW CAUSE PROVISIONS – do not apply to children, the relevant age is the age at the time of the offence.

BAIL ACT 2013 - SECT 16A - Accused person to show cause for certain serious offences

(1) A bail authority making a bail decision for a show cause offence must refuse bail unless the accused person shows cause why his or her detention is not justified.

(2) If the accused person does show cause why his or her detention is not justified, the bail authority must make a bail decision in accordance with Division 2 (Unacceptable risk test-all offences).

(3) This section does not apply if the accused person was under the age of 18 years at the time of the offence.

ACCOMMODATION REQUIREMENT – the old ‘reside as directed’

Important to use this provision as much as possible. Bail is granted, even though the young person will not leave custody until Juvenile Justice are able to arrange suitable accommodation. In the event that Juvenile Justice cannot arrange suitable accommodation, the child does not languish in custody, but must be brought back every 2 days.

The relevant age is the age AT THE TIME of the bail application, so cannot be used for a young person who has turned 18 with an offence that occurred when under 18, even though they may be in juvenile detention and the CC has jurisdiction.

BAIL ACT 2013 - SECT 28 Bail condition can impose accommodation requirements

(1) A bail condition imposed by a court or authorised justice on the grant of bail can require that suitable arrangements be made for the accommodation of the accused person before he or she is released on bail.

(2) A requirement of a kind referred to in this section is an "accommodation requirement".

(3) An accommodation requirement can be imposed only:

(a) if the accused person is a child, or

(b) in the circumstances authorised by the regulations.

(4) The court responsible for hearing bail proceedings must ensure that, if an accommodation requirement is imposed in respect of a child, the matter is re-listed for further hearing at least every 2 days until the accommodation requirement is complied with.

(5) The court may direct any officer of a Division of the Government Service to provide information about the action being taken to secure suitable arrangements for accommodation of an accused person.

(6) The regulations may make further provision for accommodation requirements.

3. Young Offenders Act

This is not a comprehensive advice on how and when to use the Young Offenders Act, but it is a reminder to think about YOA as a very first sentencing request where eligible. Remember that just because police have not cautioned or referred to a conference, the court may still consider doing so.

It could be that the young person did not make an admission to police, but having received legal advice is now prepared to make that admission. It could be that the police thought the offence, though technically eligible, was unsuitable, and the court may now take a different view.

Eligibility is basically strictly summary offences, and Table 1 and Table 2 offences (with some finer detail below in the excerpts of the Act).

BOCSAR figures show a much lower use of Young Offenders Act options that what occurs in the dedicated Children's Courts, and some regional areas show very little use at all of YOA. Practitioners should always continue to submit on YOA options.

Also remember it is three caution occasions, not three individual charge cautions [s31(5)].

DOMESTIC VIOLENCE OFFENCES under the *Young Offenders Act 1997* –

There is often confusion about the ability to caution for 'domestic violence' offences under YOA. The exclusion relates only to offences under the *Crimes (Domestic and Personal Violence) Act 2007* – (stalk intimidate and breach ADVO). Offences under the *Crimes Act 1900* (such as assault) even if they are 'designated' as domestic violence offences, are still able to be dealt with under the YOA [see s8(e)].

YOUNG OFFENDERS ACT 1997 - SECT 8 Offences covered by Act

(1) *The offences covered by this Act are, except as provided by this Act:*

(a) *summary offences, and*

(b) *indictable offences that may be dealt with summarily under Chapter 5 of the Criminal Procedure Act 1986 or another prescribed law, committed, or alleged to have been committed, by children.*

(2) *Despite subsection (1), an offence is not covered by this Act if:*

(a) *the principal person who investigates the offence is not an investigating official within the meaning of this Act, or*

(b) the offence is a traffic offence committed by a child who was, when the alleged offence occurred, old enough to obtain a learner licence under the Road Transport Act 2013 to drive the motor vehicle to which the offence relates, or

(c) the offence results in the death of any person, or

(d) the offence is an offence under section 61E, 61L, 61M, 61N, 61O (1), (1A) or (2), 66C, 66D, 80, 81A or 81B of the Crimes Act 1900, or

(e) the offence is an offence under the Crimes (Domestic and Personal Violence) Act 2007, or

(e1) the offence is an offence under Division 1 of Part 2 of the Drug Misuse and Trafficking Act 1985 other than an offence to which subsection (2A) applies, or

(f) the offence is an offence under Division 2 of Part 2 of the Drug Misuse and Trafficking Act 1985 other than:

(i) an offence under section 23 (1) (a) or (c) of that Act to which subsection (3) applies, or

(ii) an offence under section 27 or 28 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under section 23 (1) (a) or (c) to which subsection (3) applies,

(g) the offence is prescribed by the regulations for the purposes of this section.

(2A) An offence under Division 1 of Part 2 of the Drug Misuse and Trafficking Act 1985 is covered by this Act if in the opinion of the investigating official or prosecuting authority:

(a) in relation to an offence relating to a prohibited drug other than cannabis leaf within the meaning of the Drug Misuse and Trafficking Act 1985 -the offence involves not more than the small quantity applicable to that drug under that Act, or

(b) in relation to an offence relating to cannabis leaf:

(i) the offence involves not more than half the small quantity of cannabis leaf within the meaning of the Drug Misuse and Trafficking Act 1985, or

(ii) there are exceptional circumstances in that:

(A) the offence involves more than half, but not more than the total, small quantity of cannabis leaf within the meaning of that Act, and

(B) it would be in the interests of rehabilitation, and appropriate in all the circumstances, to deal with the matter under this Act.

(3) An offence under section 23 (1) (a) or (c) of the Drug Misuse and Trafficking Act 1985 is covered by this Act if in the opinion of the investigating official or prosecuting authority:

(a) the offence involves not more than half the small quantity applicable to the prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985, or

(b) there are exceptional circumstances in that:

(i) the offence involves more than half, but not more than the total, small quantity applicable to the prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985, and

(ii) it would be in the interests of rehabilitation, and appropriate in all the circumstances, to deal with the matter under this Act.

YOUNG OFFENDERS ACT 1997 - SECT 31 Cautions by courts

(1) A child may be given a caution by a court if:

(a) the offence is one for which a caution may be given under Division 1 or is a graffiti offence, and

(b) the child admits the offence.

(1A) If a court gives a caution under this section, the court must dismiss the proceedings for the offence in respect of which the caution is given.

(1B) A court giving a caution may:

(a) allow any victim of the offence concerned to prepare a written statement that describes the harm occasioned to the victim by the offence, and

(b) if it considers it appropriate to do so, may permit all or part of the statement to be read to the child when giving the caution.

- (1C) The regulations may make provision for or with respect to the content and form of written statements under subsection (1B).
- (2) This Part (other than this section and sections 32 and 33) does not apply to a caution given by a court.
- (3) Nothing in this Part affects the power of a court to give a caution under section 33 of the Children (Criminal Proceedings) Act 1987 .
- (4) A court that gives a caution under this section must notify, in writing, the Area Commander of the local police area in which the offence occurred of its decision to give the caution and must include the reasons why the caution was given.
- (5) Despite any other provision of this section, a court may not give a caution to a child in relation to an offence **if the child has been dealt with by caution on 3 or more occasions:**
- (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under this section, and
- (b) whether for offences of the same or of a different kind.

YOUNG OFFENDERS ACT s40 Referrals for conferences by DPP and courts

- (1) The Director of Public Prosecutions may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
- (a) the offence is one (other than a graffiti offence) for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the child consents to the holding of the conference, and
- (d) the Director is of the opinion that a conference should be held under this Part.
- (1A) A court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
- (a) the offence is one for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the court is of the opinion that a conference should be held under this Part.
- (2) An offence may be referred under this section even though the offence was not dealt with by an investigating official.
- (3) A court may refer a matter at any stage in proceedings, including after a finding that a child is guilty of an offence.
- (4) The Director of Public Prosecutions or a court must notify the Commissioner of Police in writing of the particulars of any referral after making a referral under this section.
- (5) In determining whether to refer a matter for the holding of a conference, the Director of Public Prosecutions or a court is to take into account the following matters:
- (a) the seriousness of the offence,
- (b) the degree of violence involved in the offence,
- (c) the harm caused to any victim,
- (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
- (e) any other matter the Director or court thinks appropriate in the circumstances.
- (6) Unless it is impracticable to do so, the Director of Public Prosecutions must consult with the investigating official (if any) before making any decision as to whom the matter is to be referred.

4. Standard Non-parole period

CRIMES (SENTENCING PROCEDURE) ACT 1999 - SECT 54D Exclusions from Division

- (1) This Division does not apply to the sentencing of an offender:
- (a) to imprisonment for life or for any other indeterminate period, or
 - (b) to detention under the Mental Health (Forensic Provisions) Act 1990 .
- (2) This Division does not apply if the offence for which the offender is sentenced is dealt with summarily.
- (3) This Division does not apply to the sentencing of an offender in respect of an offence if the offender was under the age of 18 years at the time the offence was committed.

5. ERISP admissibility

CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 - SECT 13 Admissibility of certain statements etc

- (1) Any statement, confession, admission or information made or given to a member of the police force by a child who is a party to criminal proceedings shall not be admitted in evidence in those proceedings unless:
- (a) there was present at the place where, and throughout the period of time during which, it was made or given:
 - (i) a person responsible for the child,
 - (ii) an adult (other than a member of the police force) who was present with the consent of the person responsible for the child,
 - (iii) in the case of a child who is of or above the age of 14 years-an adult (other than a member of the police force) who was present with the consent of the child, or
 - (iv) an Australian legal practitioner of the child's own choosing, or
 - (b) the person acting judicially in those proceedings:
 - (i) is satisfied that there was proper and sufficient reason for the absence of such an adult from the place where, or throughout the period of time during which, the statement, confession, admission or information was made or given, and
 - (ii) considers that, in the particular circumstances of the case, the statement, confession, admission or information should be admitted in evidence in those proceedings.
- (2) In this section:
- (a) a reference to a person acting judicially includes a reference to a person making a determination as to the admissibility of evidence in committal proceedings, and
 - (b) a reference to criminal proceedings is a reference to any criminal proceedings in which a person is alleged to have committed an offence while a child or which arise out of any other

criminal proceedings in which a person is alleged to have committed an offence while a child, and

(c) a reference to a person responsible for a child does not include a member of the police force (unless he or she has parental responsibility for the child).

(3) Nothing in this section limits or affects the admissibility in evidence in any criminal proceedings against a child of any statement or information that the child is required to make or give by virtue of the provisions of any Act or law.

What about the support person?

A support person is an independent adult present during the process of obtaining statements, admissions, or confessions. A support person should be present when any young person is being questioned by police, and when any young person participates in an ERISP or notebook interview or any other iteration of police having a child suspect talk to them or 'adopt' a previous conversation.

See also *R v Phung and Huyhn [2001] NSWSC 115* – decision of Wood J, and involving a very serious offence (armed robbery and murder). Wood J found that the irregularities didn't have to be deliberate, and the provisions are meant to protect young people from themselves, not necessarily from police.

Decline to participate in ERISP, but police persist and interview anyway

Best recent case about police actions in using an inappropriate support person, and in disregarding advice that a young person does NOT wish to be interviewed.

R v FE [2013] NSWSC 1692

132. It is improper for police investigating the commission of a crime to persist in questioning a suspect after he or she has indicated an unwillingness to answer any more questions: R v Ireland [1970] HCA 21; 126 CLR 321 at 327 per Barwick CJ.

133. In R v Plevac (1995) 84 A Crim R 570, at 579-581, the Court of Criminal Appeal outlined the principles that apply when questioning a suspect. The first question is whether the suspect is willing to answer questions. If the suspect is willing to answer questions, the questioning must be fair and must not amount to undue insistence or pressure. The Court said:

"Police should not persist with such an interrogation after the suspect has indicated that he or she does not wish to answer further questions... although merely because a suspect says he does not wish to answer, or will not answer, any further questions does not render inadmissible answers to further questions which the suspect does answer provided the questions are fair and proper and the answers are otherwise admissible."

134. The accused declined, through Ms Hopgood, to participate in an interview and also declined to have her refusal to answer questions filmed. The unequivocal communication of her intention was disregarded. She was led to the interviewing room in utter derogation of her right to silence.

135. I regard the contravention of the accused's rights by Detective Gibson as very grave.

The weighing exercise under s 138(1) of the Evidence Act

136. I am not satisfied that the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which these admissions have been obtained. Accordingly, s 138(1) requires that the admissions not be admitted.

Section 90 of the Evidence Act

137. For substantially the same reasons as given in respect of the first interview, I am persuaded that, having regard to the circumstances in which the admissions were made, it would be unfair to the accused to use the evidence obtained in the second interview. Had I not been persuaded that s 138 prohibited its admission I would have exercised my discretion under s 90 to reject the record of the second interview.

Summary

138. For the reasons given above, I exclude the interview with the accused on 12 July 2012 and the ERISP conducted with the accused on 2 August 2012.

This protection only applies while the young person is actually still under 18. If they have turned 18, even though the offence may have happened when they were still under 18, then police do not have to provide support person, call hotline etc.

Was hotline called?

R v ME, R v LT & R v CE (unreported, Supreme Court Common Law Division, 3 October 2002) – affirms that the custody manager has a positive obligation to assist a vulnerable person or young person to exercise their rights, which extends to informing a young person of their right to call the Legal Aid Youth Hotline to obtain legal advice. The absence of a hotline call can be argued as a basis for exclusion of evidence.

6. Charged after 18 – for an offence before 18

If an adult under 21 years of age has been charged with an offence arising when they were under 18, the matter must be listed before the Children's Court.

If an adult has been charged with an offence arising from when they were under 18 but they were not charged until they were 21, then the matter goes to the Local Court (see section 28 of the *Children (Criminal Proceedings) Act*).

If a child was convicted in their absence, the warrant is recalled before the Children's Court, regardless of the age of the accused when the warrant is executed.

7. WARRANTS – for Children's Court matters where person now over 18

A person 21 or over is not to be admitted or detailed in a juvenile detention centre on an arrest warrant of any kind. For persons over 18 but under 21, section 9A prescribes that, for many types of arrest warrants (including breach good behaviour bond and breach CSO), they must go to adult gaol as well.

Section 9A does not mention arrest warrants for breach of parole, breach of suspended sentence bond, or breach of a Griffith remand. This means that, for persons between 18 and under 21 with these breach warrants, they are detained in juvenile detention.

CHILDREN (DETENTION CENTRES) ACT 1987 - SECT 9A Certain persons not to be detained in detention centres

(1) A person who is of or above the age of 21 years is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any kind.

(2) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if he or she is the subject of an arrest warrant or order of any of the following kinds:

(a) a warrant issued under section 41 of the Children (Criminal Proceedings) Act 1987 in relation to an alleged breach of a good behaviour bond or an alleged breach of probation, or

- (b) a warrant issued under section 23 of the Children (Community Service Orders) Act 1987 in relation to an alleged breach of a children's community service order, or
- (c) a warrant issued under section 98 of the Crimes (Sentencing Procedure) Act 1999 in relation to an alleged breach of a condition of a good behaviour bond, or
- (d) a warrant issued under section 39 of the Crimes (Administration of Sentences) Act 1999 in relation to an alleged escape from custody, or
- (e) a warrant issued under section 116 of the Crimes (Administration of Sentences) Act 1999 in relation to an alleged breach of a community service order, or
- (f) a warrant issued under section 172A (1) (b), 180 (1) (b) or 181 (1) (a) of the Crimes (Administration of Sentences) Act 1999, or
- (g) an order or warrant issued under section 38.

Note : Pursuant to Part 13 of the Crimes (Administration of Sentences) Act 1999, persons referred to in section 9A may be detained in a correctional centre.

8. RIGHT TO SILENCE – qualifications and exceptions (unfavourable inferences special caution)

EVIDENCE ACT 1995 - s89A Evidence of silence in criminal proceedings for serious indictable offences

(1) *In a criminal proceeding for a serious indictable offence, such unfavourable inferences may be drawn as appear proper from evidence that, during official questioning in relation to the offence, the defendant failed or refused to mention a fact:*

- (a) *that the defendant could reasonably have been expected to mention in the circumstances existing at the time, and*
- (b) *that is relied on in his or her defence in that proceeding.*

(2) *Subsection (1) does not apply unless:*

- (a) *a special caution was given to the defendant by an investigating official who, at the time the caution was given, had reasonable cause to suspect that the defendant had committed the serious indictable offence, and*
- (b) *the special caution was given before the failure or refusal to mention the fact, and*
- (c) *the special caution was given in the presence of an Australian legal practitioner who was acting for the defendant at that time, and*
- (d) *the defendant had, before the failure or refusal to mention the fact, been allowed a reasonable opportunity to consult with that Australian legal practitioner, in the absence of the investigating official, about the general nature and effect of special cautions.*

(3) *It is not necessary that a particular form of words be used in giving a special caution.*

(4) *An investigating official must not give a special caution to a person being questioned in relation to an offence unless satisfied that the offence is a serious indictable offence.*

(5) This section does not apply:

*(a) to a defendant who, at the time of the official questioning, is under 18 years of age or is incapable of understanding the general nature and effect of a special caution, or
(b) if evidence of the failure or refusal to mention the fact is the only evidence that the defendant is guilty of the serious indictable offence.*

(6) The provisions of this section are in addition to any other provisions relating to a person being cautioned before being investigated for an offence that the person does not have to say or do anything. The special caution may be given after or in conjunction with that caution.

(7) Nothing in this section precludes the drawing of any inference from evidence of silence that could properly be drawn apart from this section.

(8) The giving of a special caution in accordance with this section in relation to a serious indictable offence does not of itself make evidence obtained after the giving of the special caution inadmissible in proceedings for any other offence (whether or not a serious indictable offence).

(9) In this section:

"official questioning" of a defendant in relation to a serious indictable offence means questions put to the defendant by an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of the serious indictable offence.

"special caution" means a caution given to a person that is to the effect that:

(a) the person does not have to say or do anything, but it may harm the person's defence if the person does not mention when questioned something the person later relies on in court, and

(b) anything the person does say or do may be used in evidence.

Note : The Commonwealth Act does not include this section.

Note – the age that applies is the age at the time of questioning, even if the alleged offence was committed while under 18.

9. Traffic matters for <18 in Local Court

Section 28(2)

Notwithstanding subsection (1), the Children's Court does not have jurisdiction to hear or determine proceedings in respect of a traffic offence that is alleged to have been committed by a person unless:

(a) the offence arose out of the same circumstances as another offence that is alleged to have been committed by the person and in respect of which the person is charged before the Children's Court, or

(b) the person was not, when the offence was allegedly committed, old enough to obtain a licence or permit under the Road Transport Act 2013 or any other applicable Act authorising the person to drive the motor vehicle to which the offence relates.

This is 16 years for car licence and 16 years and 9 months for motor cycle.

CRIMINAL PROCEDURE ACT 1986 - SECT 210 Penalties applying to traffic offences committed by children

(1) The Local Court may deal with a child found guilty of a traffic offence in accordance with Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987 .

(2) In so dealing with a child, the Local Court has and may exercise the functions of the Children's Court under that Division as if the Local Court were the Children's Court and the offence were an offence to which the Division applies.

(3) The Local Court must not impose a sentence of imprisonment on a child found guilty of a traffic offence.

(4) In this section:

"child" means a person who was under 18 years when the traffic offence was committed and under 21 years when summary proceedings for the offence were commenced,

"traffic offence" means an offence arising under a provision of:

(a) the road transport legislation (within the meaning of the Road Transport Act 2013) or the former road transport legislation (within the meaning of Part 2 of Schedule 4 to that Act), or

(b) the Roads Act 1993 , or

(c) the Motor Vehicles (Third Party Insurance) Act 1942 , or

(d) the Recreation Vehicles Act 1983 , or

(e) the Motor Accidents Compensation Act 1999 ,

in respect of the use, standing or parking of a motor vehicle within the meaning of that provision.

Note : *Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987 sets out the penalties which the Children's Court may impose on a child who has been found guilty of a summary offence.*

10. SCPOs and OCPSs

The Crimes (Serious Crime Prevention Orders) Act 2016 – assented 11 May 2016
Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016 – assented 11 May 2016 also.

The SCPOs do not apply to children.

The OCPSs do apply to children, and with very few safeguards. Section 87T(2) is about trying (but not having to) serve a copy of any Order on a parent or guardian where the Order is for a child or vulnerable person. Section 87ZC(1)(c) allows for safeguards to be put in the Act's regulations for the protection of vulnerable persons. The main problem with OCPSs is that they are put in place by police and not the courts, like 'move on directions' but they are much more onerous and any breach is very serious (max penalty 5 years imprisonment).

11. Forensic Procedure Applications

A young person CANNOT consent to the carrying out of a forensic procedure.

Note – the relevant age to be considered is the age of the young person AT THE TIME OF THE APPLICATION, not at the time of the offence concerned.

CRIMES (FORENSIC PROCEDURES) ACT 2000 - SECT 7 Forensic procedure may be carried out with informed consent of suspect

(1) A person is authorised to carry out a forensic procedure on a suspect with the informed consent of the suspect. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.

(2) This Part does not authorise the carrying out of a forensic procedure on a suspect who is:

(a) a child, or

(b) an incapable person.

(3) This Part does not authorise keeping a suspect under arrest, in order to carry out a forensic procedure, for more than 2 hours after the expiration of the investigation period provided for by section 115 of the Law Enforcement (Powers and Responsibilities) Act 2002 .

(4) In working out any period of time for the purposes of subsection (3), any time out is to be disregarded.

(5) Nothing in this Act or Part 9 of the Law Enforcement (Powers and Responsibilities) Act 2002 prevents the carrying out of a forensic procedure, with the informed consent of the suspect, during the investigation period provided for by section 115 of the Law Enforcement (Powers and Responsibilities) Act 2002 . However, neither carrying out the forensic procedure, nor any delays associated with carrying out the forensic procedure, operates to extend the investigation period provided for by section 115 of the Law Enforcement (Powers and Responsibilities) Act 2002 .

The section where a senior police officer can order a forensic procedure application to be carried out does NOT apply to children.

CRIMES (FORENSIC PROCEDURES) ACT 2000 - SECT 17 Non-intimate forensic procedure may be carried out by order of senior police officer

(1) A person is authorised to carry out a non-intimate forensic procedure on a suspect by order of a senior police officer under section 18. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.

(2) This Part does not authorise the carrying out of a forensic procedure on a suspect who is:

(a) a child, or

(b) an incapable person.

(3) This Part does not authorise keeping a suspect under arrest, in order to carry out a forensic procedure, for more than 2 hours after the expiration of the investigation period provided for by section 115 of the Law Enforcement (Powers and Responsibilities) Act 2002 .

(4) In working out any period of time for the purposes of subsection (3), any time out is to be disregarded.

(5) Nothing in this Act or Part 9 of the Law Enforcement (Powers and Responsibilities) Act 2002 prevents the carrying out of a forensic procedure, in accordance with a senior police officer's order under section 18, during the investigation period provided for by section 115 of that Act. However, neither carrying out the forensic procedure, nor any delays associated with carrying out the forensic procedure, operate to extend the investigation period provided for by Part 9 of the Law Enforcement (Powers and Responsibilities) Act 2002 .

Even though a child can't consent, there are circumstances in which a practitioner will know that the FPO will be granted by a Magistrate. In CLS, we use the terminology 'the application is not opposed' where there is no wish to formally oppose an FPO.

12. Apprehended Domestic Violence Orders

Be aware of the Children's Court Practice Note 8 (full copy at the end of this paper). Allows for interim Orders and not final Orders in some circumstances. This means that at the end of the interim period, these matters are most often then withdrawn and dismissed.

Even though section 39 Crimes (Domestic and Personal Violence) Act 2007 stipulates that an Order must be made for certain charges, it does NOT specify whether that needs to be a final or an interim Order.

Also – watch for news regarding the Protocol for OoHC residential services and use of police as behaviour management for young people is resi care.

13. Victim's Support Levy and Court Costs levy

VICTIM SUPPORT LEVY – applies in Children's Court, but can be waived by the Magistrate. It doesn't apply for s33(1)(a) cautions or for Young Offenders Act outcomes.

VICTIMS RIGHTS AND SUPPORT ACT 2013 - SECT 105 Application of Part

(1) This Part applies to all offences (other than any offences of a class referred to in subsection (2) or prescribed by the regulations) that are dealt with by:

- (a) the Supreme Court, or
- (b) the District Court, or
- (c) the Drug Court, or
- (d) the Local Court, or
- (e) the Land and Environment Court, or
- (f) the Industrial Relations Commission in Court Session, or
- (g) the Children's Court, or
- (h) any other court prescribed by the regulations.

(2) This Part does not apply to offences relating to the following:

- (a) engaging in offensive conduct,
- (b) the use of offensive language,
- (c) travelling on public transport without paying the fare or without a ticket,
- (d) the parking or standing of a vehicle.

(3) This Part does not apply to an offence merely because it is taken into account (as referred to in Division 3 of Part 3 of the Crimes (Sentencing Procedure) Act 1999) on the sentence of a person in respect of some other offence, whether or not that other offence is an offence to which this Part applies.

(4) In this Part, "**conviction**" does not include an order made under section 10 (1) (a) of the Crimes (Sentencing Procedure) Act 1999 in relation to an offence that is not punishable by imprisonment (whether or not it is also punishable by some other penalty).

VICTIMS RIGHTS AND SUPPORT ACT 2013 - SECT 106 Imposition of victims support levy

(1) A person who is convicted of an offence to which this Part applies is, by virtue of the conviction, liable to pay to the State a levy of:

- (a) \$156, if the person is convicted on indictment or pursuant to a committal under Division 5 of Part 2 of Chapter 3 of the Criminal Procedure Act 1986 , or
- (b) \$69, if the person is convicted otherwise than as referred to in paragraph (a).

(2) Such a levy is in addition to, and does not form part of, any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

(3) A person who is under the age of 18 years is not liable to pay such a levy if the court by which the person is convicted directs, whether when it convicts the person or at any time afterwards, that the person is exempt from liability to pay the levy.

(4) Any money paid to the State in respect of an offence to which this Part applies is to be applied towards the discharge of such a levy before it is applied to the discharge of any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

Section 3 – DEFINITIONS - "conviction" includes:

- (a) an order made under section 10 of the Crimes (Sentencing Procedure) Act 1999 , and
- (b) except in Part 5, an order made under section 33 of the Children (Criminal Proceedings) Act 1987 (other than section 33 (1) (a) (i)).

Worth noting that the waiver can be AFTER, so it is possible to write on behalf of a young person requesting a waiver, even if it was overlooked at the time the matter was being dealt with.

COURT COSTS LEVY

The power to impose court costs exists in a number of different Acts and sections within those Acts.

Section 211A has a few provisions about children and costs. Basically it says that, under this section –

- Any child in the Local Court being dealt with on a traffic matter is liable for court costs where they are NOT dealt with under *Children (Criminal Proceedings) Act 1987* sentencing provisions, but the Magistrate CAN choose to waive the levy.
- Where they are dealt with in the Local Court but under the provisions of section 210 of the *Criminal Procedure Act 1986*, then they are exempt under section 211A.

EXCEPT – that the Magistrate decides to use the power in section 42A *Children (Criminal Proceedings) Act 1987*.

A Court Costs Levy does not apply in the Children's Court [section 27(2A) of *Children (Criminal Proceedings) Act 1987*] except if the Magistrate is exercising the specific power to do so under s42A *Children (Criminal Proceedings) Act 1987*.

CRIMINAL PROCEDURE ACT 1986 - SECT 211A- Imposition of court costs levy

(1) An accused person who is convicted of an offence in summary proceedings before a court is, by virtue of the conviction, liable to pay a "court costs levy"

(2) However, a court costs levy **is not payable** in relation to any of the following:

(a) a conviction resulting in the imposition of a sentence of imprisonment (unless the execution of the sentence is suspended by the court),

(b) an order under section 10 (1) (a) of the *Crimes (Sentencing Procedure) Act 1999* in relation to an offence that is not punishable by imprisonment,

(c) a finding of guilt in relation to a traffic offence (within the meaning of section 210 of this Act) by the Local Court when dealing with the accused person under Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987*,

(d) a conviction in proceedings before the Drug Court,

(e) a conviction that the regulations exempt from liability to pay the levy.

(3) A convicted person who is under the age of 18 years is not liable to pay the court costs levy if the court directs that the person is exempt from liability to pay the levy in respect of the conviction. Such a direction may be made when the court convicts the person, or at any time afterwards.

- (4) The court costs levy is in addition to, and does not form part of, any pecuniary penalty imposed in respect of the offence.
- (5) The court costs levy is to be paid to the registrar of the court. The registrar is to pay the levy to the prosecutor if court costs have been paid by the prosecutor in respect of the proceedings.
- (6) The commencement of any proceedings by way of appeal against, or review of, a conviction in respect of which the court costs levy has been imposed on a person stays the liability of the person to pay the levy. In such a case:
- (a) the setting aside of any such conviction annuls that liability, and
- (b) the dismissal of any such proceedings removes the stay of liability.
- (7) To avoid doubt, this section extends to:
- (a) proceedings conducted in the absence of the accused person, and
- (b) proceedings in which a person who was under the age of 18 years when an offence was allegedly committed pleads guilty to, or is found guilty of, an offence in proceedings before a court, but not if the person is dealt with under Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987 .
- (8) In this section, a reference to a person being convicted includes a reference to an order being made in relation to the person under section 10 of the Crimes (Sentencing Procedure) Act 1999 .
- Note 1 :** This section does not apply in respect of criminal proceedings before the Children's Court (see section 27 (2A) of the Children (Criminal Proceedings) Act 1987). Section 42A of that Act provides for the Children's Court to make orders regarding court costs at its discretion.
- Note 2 :** Section 4 of the Fines Act 1996 provides that a court costs levy payable under this section is, for the purposes of that Act, taken to be a fine imposed by the court that convicted the person or found the person guilty.

CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 - SECT 27 - Application of Criminal Procedure Act 1986 and other Acts

- (1) Subject to Part 2 and to the rules of the Children's Court, any Act or other law relating to the functions of the Local Court or Magistrates or to criminal proceedings before them applies to:
- (a) the Children's Court, and
- (b) any criminal proceedings before the Children's Court.
- (2) In particular (and subject to Part 2 and to the rules of the Children's Court), the provisions of the Criminal Procedure Act 1986 that apply to the Local Court and any criminal proceedings before the Local Court apply to the Children's Court and any criminal proceedings before the Children's Court.
- (2A) Despite subsection (2), section 211A of the Criminal Procedure Act 1986 does not apply in respect of criminal proceedings before the Children's Court.
- (3) If this Part and any Act or other law applied by this section (other than the Bail Act 2013) are inconsistent, this Part shall prevail to the extent of the inconsistency.

Although this makes it clear that s211A CPA does NOT apply in CC, there is still the option for CC to impose court costs of their own, separately from the power under s211A.

CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 - SECT 42A - Children's Court may make orders regarding court costs

- (1) The Children's Court may, at the end of summary proceedings in which a person is found guilty of an offence, order that the person pay court costs.

- (2) Court costs ordered to be paid under this section are in addition to, and do not form part of, any pecuniary penalty imposed in respect of the offence.
- (3) The court costs are to be paid to the registrar of the court. The registrar is to pay the costs to the prosecutor if court costs have been paid by the prosecutor in respect of the proceedings.
- (4) The amount of court costs ordered to be paid under this section cannot exceed the amount of the court costs levy that would be payable under section 211A of the Criminal Procedure Act 1986 if that section applied to the offence.
- (5) An order for the payment of court costs by a person may be included in any order made under section 33 in relation to the person.
- (6) This section applies to all summary proceedings before the Children's Court, including proceedings conducted in the absence of the accused person.
- (7) This section applies to summary proceedings before the Local Court relating to a traffic offence in which a person is dealt with under Division 4 (by virtue of section 210 of the Criminal Procedure Act 1986) in the same way as it applies to proceedings before the Children's Court.
- (8) This section does not apply to a finding of guilt that the regulations exempt from the operation of this section.

14. GRAFFITI offences & the YOA – Police = NO, Court = YES

YOA caution - Police cannot caution for a graffiti offence -

YOUNG OFFENDERS ACT 1997 - SECT 18 Offences for which cautions may be given

A caution may be given for an offence covered by this Act, other than a graffiti offence or any other offence prescribed by the regulations for the purposes of this section.

Note : Section 8 sets out offences covered by this Act. Under section 31, a court may give a caution for a graffiti offence.

BUT – the court can caution for a graffiti offence

31 Cautions by courts

- (1) A child may be given a caution by a court if:
- (a) the offence is one for which a caution may be given under Division 1 or is a graffiti offence, and
 - (b) the child admits the offence.

Youth Justice Conference - Police cannot refer to YJC for a graffiti offence -

37 Entitlement to be dealt with by conference

(1) A child who is alleged to have committed an offence (*other than a graffiti offence*) for which a conference may be held is entitled to be dealt with by holding a conference if the investigating official determines that the matter is not appropriate for a caution.

BUT – the court can refer to YJC for a graffiti offence -

40 Referrals for conferences by DPP and courts

(1A) A court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:

- (a) the offence is one for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the court is of the opinion that a conference should be held under this Part.

And when the court does refer a graffiti offence to a YJC, any outcome plan MUST include -

YOUNG OFFENDERS REGULATION 2010 - REG 9 - Outcome plans in respect of graffiti offences

(1) This clause applies to a child who admits to an offence covered by the Act that consists of:

- (a) an offence against section 5 or 6 of the Graffiti Control Act 2008 or another crime involving graffiti, or
- (b) damage to property by means of any graffiti implement (within the meaning of the Graffiti Control Act 2008).

(2) For the purposes of section 52 (6) (e) of the Act, an outcome plan for a child to whom this clause applies must provide for at least one of the following:

- (a) the making of reparation for the offence, such as:
 - (i) the performance of graffiti removal work or, if such work is not available, community service work comparable to the performance of such work, and
 - (ii) the payment of compensation (not exceeding the amount that a court may impose on conviction for the offence),
- (b) participation in a personal development, educational or other program,
- (c) the fulfilment of any other obligation by the child:
 - (i) that is suggested by any victim of the offence who personally attends the conference, and
 - (ii) that is consistent with the objects of the Act.

(3) This clause does not limit any other matter for which an outcome plan may provide.

(4) This clause does not affect the requirements of the Act relating to the agreement of the child and victims of the offence to the outcome plan.

GRAFFITI offences in general

GRAFFITI CONTROL ACT 2008 - SECT 13B - Alternative and additional actions to imposing penalty for graffiti offences under sections 4 (2) and 5

(1) A court may, instead of imposing a fine on a person for **an offence under section 4 (2) or 5**, make a community service order under the Crimes (Sentencing Procedure) Act 1999 or the Children (Community Service Orders) Act 1987 directing the person to perform **community service work**, as the case requires.

(2) A court may, in addition to or instead of imposing a fine on a person, sentencing the person to imprisonment or imposing any other penalty on the person for an offence under section 4 (2) or 5, **make a driver licence order**.

13C Driver licence orders

(1) A court may make any of the following orders ("**driver licence orders**") under section 13B (2):
(a) if the person is the holder of a learner licence or provisional licence-an order extending the person's learner licence period or provisional licence period, respectively, for a period of 6 months, or a lesser period specified in the order, with effect from the day on which the learner licence period or provisional licence period would otherwise end,
(b) an order requiring the person not to incur the same or more than the threshold number of demerit points applying to the person under section 13E for a period of 6 months or a lesser period specified in the order, commencing on the day on which the order is made (the "**graffiti licence order period**").

(2) A court must not make an order under subsection (1) (b) if 10 or more demerit points have been recorded against the person in the demerit points register during the 3 year period immediately before the order is made.

BUT – its ONLY for graffiti offences under s4(2) and s5 of the Graffiti Control Act 2008.

GRAFFITI CONTROL ACT 2008 - SECT 4 - Marking premises or property

(1) A person must not, without reasonable excuse (proof of which lies on the person), intentionally mark any premises or other property, unless the person has first obtained the consent of the following:

- (a) in relation to premises that are occupied-the occupier or person in charge of the premises,
- (b) in relation to premises that are unoccupied or other property-the owner or person in charge of the premises or property.

Maximum penalty: 4 penalty units.

(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation.

Maximum penalty: 20 penalty units or imprisonment for 12 months.

(3) For the purposes of this section, a person commits an offence in "**circumstances of aggravation**" if the person intentionally marks the premises or other property:

(a) by means of any graffiti implement, or

(b) in such a manner that the mark is not readily removable by wiping or by the use of water or detergent.

(4) A court that convicts a person of an offence under subsection (2) must not sentence the person to imprisonment unless the person has previously been convicted of an offence under this section or section 5 (or under section 10A or 10B of the Summary Offences Act 1988 as in force before their repeal by this Act) on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.

(5) Subsection (1) does not apply to the marking of any public footpath or public pavement with chalk, including, but not limited to, marking out a hopscotch or handball court with chalk.

5 Possession of graffiti implement

(1) A person must not have any graffiti implement in the person's possession with the intention that it be used to commit an offence under section 4 (2).

Maximum penalty: 10 penalty units or imprisonment for 6 months.

(2) A court that convicts a person of an offence under this section must not sentence the person to imprisonment unless the person has previously been convicted of an offence under this section or section 4 (2) (or under section 10A or 10B of the Summary Offences Act 1988 as in force before their repeal by this Act) on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.

(3) If a person is convicted of an offence under this section, the court may, in addition to any other penalty it may impose, make an order that the graffiti implement be forfeited to the Crown, and the graffiti implement is forfeited accordingly.

So, if it's –

- Any of the other offences under the *Graffiti Control Act*; or
- A 'graffiti type' offence charged under the *Crimes Act 1900*

Then these 'additional actions' can't apply.

Also, if a young person has been dealt with under the s195 malicious damage provisions of the Crimes Act, then the YOA can be used.

15. Children & Contributions

Where legal aid is sought by a child (under 18 years) for any criminal proceedings to be held outside the Children's Court (Children's Court matters not being subject to the Means Test) including appeals to the District Court from a decision of a Children's Court magistrate, the Means Test is applied to the income and assets of the child only and **not** to the income and assets of parents or financially associated persons.

In assessing means for a child for a DC severity appeal, it is ONLY the income and assets of the child that count, and NOT the income and assets of parents or financially associated persons. It is this same means test that is used to decide on contribution, and so that takes child appellants straight into the category of exceptions or exceptional or whatever the term is.

The policy of not going past the child and onto any parent or financially associated person has NOT changed, and everyone seems to be getting confused about this somehow.

16. Lots of things we haven't dealt with here!

- Sentencing principles in the Children's Court.
- Sentencing options available in the Children's Court
- Parole jurisdiction exercised by Children's Court under s29 *Children (Detention Centres) Act 1987*

Debra Maher
2 June 2016
Legal Aid Criminal Law Conference

DIV 4 PART 3 - CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 - SECT 33 Penalties

(1) If the Children's Court finds a person guilty of an offence to which this Division applies, it shall do one of the following things:

(a) it may make an order:

(i) directing that the charge be dismissed (in which case the Court may also, if it thinks fit, administer a caution to the person), or

(ii) discharging the person on condition that the person enters into a good behaviour bond for such period of time, not exceeding 2 years, as it thinks fit,

(b) it may make an order directing the person to enter into a good behaviour bond for a specified period, not exceeding 2 years,

(c) it may make an order imposing on the person a fine, not exceeding:

(i) the maximum fine prescribed by law in respect of the offence, or

(ii) 10 penalty units,

whichever is the lesser,

(c1) it may make an order releasing the person on condition that the person complies with an outcome plan determined at a conference held under the *Young Offenders Act 1997*,

(c2) it may make an order adjourning proceedings against the person to a specified date (not later than 12 months from the date of the finding of guilt) for any of the following purposes (but only if bail for the offence is or has been granted or dispensed with under the *Bail Act 2013*):

(i) for the purpose of assessing the person's capacity and prospects for rehabilitation,

(ii) for the purpose of allowing the person to demonstrate that rehabilitation has taken place,

(iii) for any other purpose the Children's Court considers appropriate in the circumstances,

(d) it may do both of the things referred to in paragraphs (b) and (c),

(e) it may make an order releasing the person on probation, on such conditions as it may determine, for such period of time, not exceeding 2 years, as it thinks fit,

(e1) it may do both the things referred to in paragraphs (c) and (e),

(f) it may, subject to the provisions of the *Children (Community Service Orders) Act 1987*, make an order under section 5 of that Act requiring the person to perform community service work,

(f1) it may do both of the things referred to in paragraphs (e) and (f),

(g) it may, subject to the provisions of the *Crimes (Sentencing Procedure) Act 1999*, make an order committing the person for such period of time (not exceeding 2 years) as it thinks fit:

(i) in the case of a person who is under the age of 21 years, to the control of the Minister administering the *Children (Detention Centres) Act 1987*, or

(ii) in the case of a person who is of or above the age of 21 years, to the control of the Minister administering the *Crimes (Administration of Sentences) Act 1999*.

(1A) A good behaviour bond imposed under this section:

(a) must contain a condition to the effect that the person to whom the bond relates (the "**person under bond**") will appear before the court if called on to do so at any time during the term of the bond, and

(b) must contain a condition to the effect that, during the term of the bond, the person under bond will be of good behaviour, and

(c) may contain such other conditions as are specified in the order by which the bond is imposed, other than conditions requiring the person under bond:

(i) to perform community service work, or

(ii) to make any payment, whether in the nature of a fine, compensation or otherwise.

(1AA) Before making an order imposing a fine on a child, the Children's Court is to consider the age of the child and the following matters, where information is available in relation to those matters:

- (a) the child's ability to pay the fine,
- (b) the potential impact of the fine on the rehabilitation of the child.

(1B) If the Children's Court deals with a person under subsection (1) (g), it may make an order:

- (a) suspending the execution of its order under subsection (1) (g) for a specified period (not exceeding the term of that order), and
- (b) releasing the person on condition that the person enters into a good behaviour bond under subsection (1) (b) for such a specified period, but only if the person is not subject to any other order under subsection (1) (g) or to any sentence of imprisonment. Part 4 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to an order under subsection (1) (g) whose execution is suspended under this subsection.

(1C) If the Children's Court makes an order under subsection (1) (g) (ii) committing a person to the control of the Minister administering the *Crimes (Administration of Sentences) Act 1999*, the period for which the person is committed is taken to be a sentence of imprisonment for the purposes of that Act.

(2) The Children's Court shall not deal with a person under subsection (1) (g) unless it is satisfied that it would be wholly inappropriate to deal with the person under subsection (1) (a)-(f1).

(3) In deciding under which paragraph of subsection (1) it should deal with a person who is a child, the Children's Court shall not have regard to the question of whether the child is a child in need of care and protection under the *Children and Young Persons (Care and Protection) Act 1998*.

(4) Notwithstanding any other Act or law to the contrary, the Children's Court shall not sentence a person to imprisonment.

(4A) Subsection (4) is subject to section 28B of the *Children (Detention Centres) Act 1987* but is not subject to any other provision of that Act.

(5) Nothing in this section limits or affects any power that the Children's Court may have apart from this section:

- (a) to impose any disqualification under the road transport legislation on a person whom it has found guilty of an offence,
- (b) to order the forfeiture of any property that relates to the commission of an offence of which it has found a person guilty, or
- (c) to make an order for restitution of property under section 43 of the *Criminal Procedure Act 1986*, or
- (d) to make a community clean up order in respect of a fine imposed for an offence under the *Graffiti Control Act 2008*.

(5) For the purposes of any provision of the road transport legislation that confers power on a court with respect to a person who has been convicted of an offence, a finding of guilt by the Children's Court for an offence is taken to be a conviction for the offence. Accordingly, following a finding of guilt, the Children's Court may exercise any power it could exercise under that legislation if the person had been convicted of the offence, unless the Court makes an order in respect of the person under section 33 (1) (a).

Children's Court of New South Wales

Practice Note No. 8

Apprehended Domestic and Personal Violence Proceedings in the Children's Court

1. Commencement

1.1 This Practice Note commences on 7 May 2012

2. Preamble

2.1 Sections 9 and 10 of the *Crimes (Domestic and Personal Violence) Act 2007* (the Act) set out the objects of the Act in relation to domestic and personal violence. Those objects include the ensuring of the safety and protection of all persons, including children, who experience or witness domestic or personal violence and the empowering of the courts to make apprehended domestic or personal violence orders in appropriate circumstances to protect people from violence, intimidation (including harassment) and stalking.

2.2 This Practice Note relates to court procedures in the Children's Court in cases where apprehended domestic or personal violence order proceedings have been commenced against a young person. The procedures are intended to promote the rehabilitation of the young person within his or her family and the community whilst acknowledging the objects of the Act and the importance of the need to protect victims of domestic and personal violence.

2.3 This Practice Note does not apply to domestic and personal violence applications against a young person involving allegations of sexual assault or indecent assault, applications which are related to criminal charges that are of a serious nature and cases where such applications have been repeatedly sought in the past. However, in such a case the procedures set out in the Practice Note may be applied with the consent of the prosecutor and the young person.

3. Procedures in the Children's Court relating to domestic and personal violence applications against young persons

3.1 When an application for a domestic or personal violence order first comes before the court (the first return date) the magistrate will enquire²

of the young person, or their legal representative, whether the young person is prepared to enter into family/relationship and/or individual counselling (for example, anger management counselling) or other interventions (for example, mediation) to address the issue or issues which led to the making of the application.

3.2 At courts where a Court Support Officer (CSO) is available, the young person will be asked by the magistrate to speak with the CSO for the purpose of the CSO carrying out a brief assessment of the young

person to determine whether any suitable family/relationship and/or individual counselling (or other intervention) is available for the young person and, in appropriate cases, his or her family. In making that assessment the CSO may also speak with members of the young person's family.

3.3 At courts where a CSO is not available, the young person, with the assistance of their legal representative, should ascertain the availability of suitable counselling or other intervention services for the young person, and in appropriate cases, the young person's family.

3.4 If the young person agrees to undertake counselling or engage in other interventions, the young person, or their legal representative, will inform the court of the identity of the relevant counselling or other intervention service and, if it is known, when the child will have their first appointment with the service. The magistrate will record this information on the court file.

3.5.1 If the police prosecutor and the young person consent to the making of an interim order the court may make an interim domestic or personal violence order and adjourn the proceedings for **3 months** to allow the child to engage with the relevant counselling or other intervention service.

3.6 In cases where there are no suitable counselling services or other intervention services available for the young person or the young person does not wish to participate in counselling or other interventions the court may, with the consent of the young person and the police prosecutor, make an interim domestic or personal violence order and adjourn the proceedings for **5 months**.

3.7 Where the court makes an interim order and adjourns the matter pursuant to clause 3.5 or clause 3.6 and during the adjournment period there are no breaches of the interim order the application may be withdrawn and dismissed by the court on the adjourned date if the police prosecutor makes such an application and the young person consents to this course.

3.8 If any of the parties do not consent to the making of an interim order (as referred to in clauses 3.5 and 3.6) or, if the application is not withdrawn by the prosecutor following an adjournment under clause 3.5

3
or clause 3.6, the court will proceed either to make a final domestic or personal violence order by consent or will make directions for the listing of the application for a defended hearing.

Judge Mark Marien SC

PRESIDENT

4 May 2012