

#### **45. Provisions about children**

- (1) No restraining order is to be made against a child whose age is less than 10 years.
- (2) In an application to vary or cancel a restraining order against a child, section 45 of the *Young Offenders Act 1994* applies as if the matter were proceedings for an offence.
- (3) If the Children's Court hears an application for a restraining order under section 38 against a person or an application to vary or cancel a restraining order against a person in the belief that the person is a child when in fact the person is not a child —
  - (a) as soon as it becomes aware the person is not a child, the Children's Court is to transfer the matter to the Magistrates Court;
  - (b) the Children's Court proceedings are not, for that reason, invalidated; and
  - (c) an order made by the Children's Court before it became aware the person was not a child, is as valid and has the same effect as if it had been made by the Magistrates Court.
- (4) If the Magistrates Court hears an application for a restraining order under section 38 against a person or an application to vary or cancel a restraining order against a person in the belief that the person is not a child when in fact the person is a child —
  - (a) as soon as it becomes aware the person is a child, the Magistrates Court is to transfer the matter to the Children's Court;
  - (b) the Magistrates Court proceedings are not, for that reason, invalidated; and
  - (c) an order made by the Magistrates Court before it became aware the person was a child, is as valid and has the same effect as if it had been made by the Children's Court.
- (5) If a court transfers a matter to another court under this section, the registrar of each court is to give effect to the transfer.

*[Section 45 amended by No. 59 of 2004 s. 141.]*