PARTIES:	TN v WALFORD, Vai CLERK OF COURTS OF THE SUMMARY JURISDICTION AT KATHERINE AND MURPHY, Raymond **AND**: RB v WALFORD, Vai CLERK OF COURTS OF THE SUMMARY JURISDICTION AT KATHERINE AND MILNER, Allan, LARSEN, Aaron, HILLCOAT, Gordon, DAVIE, Ian, FAIRWEATHER, Alexander, BRENNAN, Richard and PICKERING, Geoffrey **AND** MB v WALFORD, Vai CLERK OF COURTS OF THE SUMMARY JURISDICTION AT KATHERINE AND MERIDITH, Andrew, MEURANT, Michelle and WATKINSON, James George
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT, KATHERINE
FILE NOS:	199 of 1998, 200 of 1998 and 201 of 1998
DELIVERED:	13 November 1998

HEARING DATES: 9 and 10 November 1998

JUDGMENT OF: Martin CJ.

CATCHWORDS:

Juveniles – criminal responsibility – whether provisions of the Juvenile Justice Act prevail over the Territory Infringement Notice Enforcement Schemes (TINES) – procedure for enforcement of infringement notices – capacity of juveniles to understand criminal procedures – penalties – application of Justices Act to both juveniles and adults.

Juvenile Justice Act (1983) NT, s19, s20(1)&(2), s41, s42, s44, s47, s53, s63, s58, s57D(2) and s57A
Justices (Territory Infringement Notices Enforcement Scheme) Regulations (1990) NT, reg5
Criminal Code (1983) NT
Summary Offences Act (1923) NT
Summary Offences Regulations (1994) NT
Traffic Act (1949) NT
Traffic Regulations (1988) r87, 88 and 91

Goodwin v Phillips (1908) 7 CLR 1 @ 14, quoted.
Hall v Manahan (1919) St R Qd 217, referred to.

Statutory Interpretation of Australia, DC Pearce & RS Geddies, (1986), 4th Ed, Butterworths, Aust.
Delegated Legislation in Australia and New Zealand, DC Pearce (1977), Butterworths, Aust, par417

REPRESENTATION:

Counsel:

Plaintiff:	Mr S Southwood
First Defendant:	
Second Defendant:	Ms A Fraser

Solicitors:

Plaintiff:	KRALAS
First Defendant:	
Second Defendant	DPP

Judgment category classification:	B
Judgment ID Number:	mar98010
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 199 of 1998

BETWEEN:

TN
Plaintiff

AND:

VAI WALFORD
CLERK OF COURTS OF THE SUMMARY JURISDICTION AT KATHERINE
First Defendant

AND:

RAYMOND MURPHY
Second Defendant

No 200 of 1998

BETWEEN:

RB
Plaintiff

AND:

VAI WALFORD
CLERK OF COURTS OF THE SUMMARY JURISDICTION AT KATHERINE
First Defendant

AND:

ALLAN MILNER, AARON LARSEN, GORDON HILLCOAT, IAN DAVIE, ALEXANDER FAIRWEATHER, RICHARD BRENNAN AND GEOFFREY PICKERING
Second Defendants

No. 201 of 1998

BETWEEN:

MB
Plaintiff

AND:

VAI WALFORD
CLERK OF COURTS OF THE SUMMARY JURISDICTION AT KATHERINE
First Defendant

AND:

ANDREW MERIDITH, MICHELLE MEURANT AND JAMES GEORGE WATKINSON
Second Defendants

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT
(Delivered 13 November 1998)

[1] All these proceedings give rise to the same fundamental issue, that is, whether or not certain Territory Infringement Notice Schemes apply in respect of offences embraced by the schemes allegedly committed by a child, that is, one who has not attained or who has apparently not attained the age of 17 years (see definition of "juvenile" *Juvenile Justice Act* (1983) NT).

[2] Briefly, the basic circumstances in each case are that:

a) TN was born on 29 June 1983. On 1 August 1997 he was served with an infringement notice for allegedly committing the offence of disorderly behaviour contrary to s47 of the *Summary Offences Act* (1923) NT in that he was accused of burning a leaf of a palm tree with a cigarette, the palm tree being located near a service station in Katherine. The infringement notice stated that there was a penalty of $100 plus a victims levy for the alleged offence. In an affidavit in support of his application, his solicitor says that TN wished to plead not guilty to that offence.

b) RB was born on 7 August 1984 and between 4 September 1997 and 23 September 1997 he was served with seven infringement notices alleging in each case that he was not wearing a helmet while riding his bicycle and, in all but two of those cases, that he failed to have a lamp on his bicycle. The penalty for each is $25.00.

c) MB was born on 8 May 1981. On four occasions between 26 September 1996 and 10 April 1997 he was served with infringement notices, three alleging he was not wearing a bicycle helmet and the fourth that he rode his bicycle within ten metres of an entrance to a shop. The penalty in each case is $25.

d) In no case did the plaintiff respond in any way to the infringement notice nor to the "courtesy letter" nor did he seek to have the matters or any of them referred to a Court. (As to those procedures see later).

As a consequence warrants for the commitment into custody of each plaintiff were issued and executed.

[3] The period of confinement is one day for each $50 of the penalty plus costs, or part thereof unpaid Justices Act (s60E(1)(a)(i) and reg5 of the Justices (Territory Infringement Notices Enforcement Scheme) Regulations (1990) NT. Each plaintiff purported to lodge an appeal under the Justices Act upon being faced with the warrants of commitment and as a consequence was released from detention on bail.

[4] The substantive applications before the Court were for relief in the nature of certiorari and mandamus to set aside or quash each of the procedural steps and records taken or made in the course of the infringement notice scheme leading up to the execution of the warrant or warrants, and the warrants. At the conclusion of the hearing on 9 November I acceded to the argument advanced by the plaintiffs that the provisions of the *Juvenile Justice Act* prevailed over the infringement schemes in so far as juveniles were concerned and made appropriate orders at that time. These are the reasons.

[5] There is no material difference between the infringement notice scheme under the *Traffic Act* (1949) NT and the *Summary Offences Act* (1923) NT. I refer to those under the *Traffic Act*. Regulations under the Act authorise an officer or member of the police force to serve an infringement notice upon a person who the member or officer reasonable

believes has committed an offence against the law of the Territory specified in a schedule to the Regulations, by personally handing it to the person or posting it to the person's last known postal address of residence or business or by leaving it for the person at the person's last known place of residence or business with some other person apparently resident or employed there and apparently not less than 16 years of age (reg87). The particulars to be shown in the notice include the date, time and place of the offence, the nature of the offence and penalty payable, the place at which it may be paid, the date of the notice, a statement that the penalty may be paid within 28 days after that date, and a summary of the provisions relating to withdrawal of the notice. The penalties prescribed go up to $200. There is also required to be a statement to the effect that if the appropriate amount specified in the notice as the penalty for the offence is tendered at the place referred to in the notice within the time specified no further action will be taken, unless a notice is given by an officer or member of the police force that the notice has been withdrawn. Other particulars and instructions as the Commissioner of Police may approve may also be contained in the notice (reg88). A sample of such notice includes particulars apparently inserted by the Commissioner relating to the date of birth of the person and whether or not he or she is a juvenile. No argument was advanced going to the validity of any of the notices in these cases.

[6] Where before the expiration of the period specified in an infringement notice for payment of penalty, the amount of penalty shown on the notice is paid, the defender is deemed to have expiated the offence and no further proceedings shall be taken in relation to the offence unless the notice had been withdrawn (reg91).

[7] The enforcement of the infringement notice scheme is provided for in Division 2A of the *Justices Act*. Section 60B provides that the procedures set out in that Division may be used, in substitution for any other procedure under a law of the Territory, to enforce an infringement notice. Although relied upon by counsel for the defendants, it seems to me that that provision has no bearing upon the issue in this case. It is directed to methods of enforcement of infringement notices, but does not give infringement notices any greater standing than they already have. If it appears to an appropriate officer (see definition in s60A) that an infringement penalty has not been paid, then the officer may serve on the person on whom the notice was served a letter stating that the person has a further 28 days from the date of the letter in which to pay the infringement penalty together with prescribed costs, that in default of payment the person may be dealt with under Division 2A and such other information if any as is prescribed. That letter is called a "courtesy letter" and on service of the letter the time for payment of the infringement penalty is extended until the expiration of the period of 28 days from the date of the letter (s60C(1)&(2)).

[8] The person served may decline, within the period of 28 days, to be dealt with under Division 2A (s60C(3)). If the person served does not pay or declines to be dealt with, then the officer may lodge with the Clerk of the Court of Summary Jurisdiction a certificate going to compliance with the infringement notice scheme and if satisfied that the facts as alleged in the certificate constitute the offence and that sufficient particulars are set out in the certificate, the Clerk may register the penalty and the prescribed costs payable in relation to the courtesy letter and certificate for the purposes of enforcement (s60D). On registering the penalty and costs, the Clerk shall make an order, in the case of a natural person, that the person pay to the Court of Summary Jurisdiction within 28 days after the date of the enforcement order the amount of the penalty and costs and in default of payment the person be imprisoned for a period determined in accordance with the prescribed ratio (see above) or that the amounts be recovered by a warrant of distress (an enforcement order). Such an order is deemed to be an order of the Court of Summary Jurisdiction (s60E).

[9] On the making of the order, the Clerk is to issue a notice of enforcement order and cause the notice, and a statement in the prescribed form setting out a summary of the provisions of Division 2A and the regulations relating to allowance of time to pay and payment for instalments and applications for revocation of the enforcement orders, to be served on the person against whom the enforcement order was made. The notice is to state that if the penalty is not paid within 28 days after the date of the

notice, then a warrant will be issued for commitment to prison or a warrant of distress will be issued (s60F).

[10] A person against whom an enforcement order is made may apply to the Clerk personally or in writing for an order that the time within which the penalty is to be paid be extended or that the penalty be paid by instalment and the Clerk is empowered to accede to any such application (s60G). However, if within the time specified in the notice of enforcement order, the person does not pay the full amount of the penalty, then in the case of a natural person the Clerk shall issue a warrant of commitment or distress against the person (s60H).

[11] The person against whom an enforcement order is made may apply to the Clerk for the revocation of the order unless a warrant issued under Division 2A has been executed, and on receipt of such an application, the Clerk shall revoke the enforcement order whereupon it ceases to have effect (s60K). Subject to that, where an enforcement is made the matter of the alleged offence shall be deemed to have been heard and determined according to law, the person shall not for that reason be taken to have been found guilty of the offence, the person shall not be proceeded against for the alleged offence, the making of the order does not affect or prejudice a civil claim and payment is not an admission of liability for the purposes of and does not affect or prejudice a civil claim (s60J).

[12] Where an enforcement order is revoked, the Clerk shall give notice to the enforcement agency and the person against whom it was made, and not later than 14 days after the revocation, refer the relevant certificate to the Court of Summary Jurisdiction for hearing of the offence, unless notice of withdrawal had been received (s60L). Where the certificate in relation to the alleged offence is referred to the Court of Summary Jurisdiction, the Court may hear and determine a matter of the alleged offence even if a copy of the certificate had not been served on the defendant (s60P). The Clerk of that Court is to give notice to the relevant enforcement agency and person of the time and place of hearing (s60Q).

[13] There is no reason to think that the ordinary procedures under the *Justices Act* would not then be followed by the Court of Summary Jurisdiction. The *Juvenile Justice Act* provides at s57A that where in the course of proceedings before a Court other than the Juvenile Court it appears to the Court that the proceedings should have been instituted in the Juvenile Court, then the Court may desist from further proceeding with the hearing of the proceedings, or, it may, subject to the *Juvenile Justice Act*, proceed with the hearing and determination of those proceedings. Where a Court desists, it shall by memorandum refer the proceedings for hearing and determination by the Juvenile Court at a time specified in the memorandum and notify it to the parties. It is provided in subs(2) of s57D of the *Juvenile Justice Act* that no proceedings referred to the Juvenile Court under s57A shall be declared invalid by reason that prior to the date

of the referral, those proceedings did not comply with the *Juvenile Justice Act*. Those provisions appear to enable a Court of Summary Jurisdiction seized of proceedings arising from the infringement notices enforcement scheme, if applicable to juveniles, to either refer the matter to the Juvenile Court or deal with them in accordance with the *Juvenile Justice Act*. However, that situation can only arise if some step has been taken under the infringement notice scheme such that the matter comes within the jurisdiction of the Court of Summary Jurisdiction. As these cases show, that situation does not necessarily arise.

[14] If the defendants are right in their argument that there is nothing in the Regulations or Division 2A of the *Justices Act* to distinguish between adults and juveniles and thus it is intended to be of universal application, in all likelihood children will go to "gaol" if the law is enforced. A sample of the warrants of commitment issued by the Clerk of the Court of Summary Jurisdiction in these matters requires all members of the Northern Territory police force to demand payment from the defendant of the total due in each case, and unless payment in full is received immediately "to take the defendant to the most accessible or convenient goal or detention centre and deliver the defendant to the officer in charge or Superintendent thereof" and further directs the Director of Correctional Services, the officer in charge of each prison and the Superintendent of each detention centre in the Territory to take the defendant into custody for the number of days shown unless the amount due is paid sooner. A

warrant in that form is not authorised. The form of warrant is prescribed as Form 5 under the *Justices (Territory Infringement Notices Enforcement Scheme) Regulations* (1990) NT, and consistent with the provisions of Division 2A set out above, the Director or members of the Northern Territory police force are to demand payment and failing payment to take the defendant to the most accessible or convenient gaol and deliver the defendant to the keeper thereof and direct the keeper of the gaol to take the defendant into custody for the prescribed period of time. However, by definition in s4 of the *Justices Act* "Keeper of a gaol" includes any superintendent, keeper, or other chief officer of a gaol, and "gaol" is defined as including any prison or other place in which imprisonment or detention is authorised by law according to the circumstances of a case. Although s60F of the *Justices Act* requires a warrant be issued for commitment of the person to "prison", I consider that word should be read as "goal" within the meaning given to it by the Act.

[15] The commitment of a juvenile under the enforcement provisions to a detention centre is envisaged by the legislation, and it is more than likely that that would be the disposition of such a juvenile unless someone paid the penalty and costs on his or her behalf. It is unlikely that a juvenile would have sufficient goods to meet a warrant of distress. The warrants show just how a simple penalty of, say, $25 can be significantly increased by costs, victims levy and warrant fees so as to amount in all to $135 (three days detention) or in the case of a penalty for $50, to bring about a

total of $160. A detention period of three days is specified, but it seems to me it should be four (see above [4]). There is no provision whereby the period to be served under each warrant of commitment executed at the one time is to be concurrent with others executed at that time, and thus the period to be served under each warrant will be cumulative upon each of the others.

[16] Infringement notice schemes are to be compared with the provisions of the *Criminal Code* (1983) NT in so far as they relate to juveniles and the *Juvenile Justice Act*. Although some of these offences, for example, failure to wear a helmet while riding a bicycle, are regulatory offences, s38 of the *Criminal Code* applies (*Criminal Code*, s22). That section provides that a person under the age of 10 is excused from criminal responsibility for an act, omission or event, and a person under the age of 14 is excused from criminal responsibility for an act, omission or event unless it is provided at the time of doing the act making the omission or causing the event he had capacity to know that he ought not to do the act, make the omission or cause the event.

[17] RB was born on 7 August 1984 and was thus under the age of 14 years on every occasion when he was served with a traffic infringement notice for failure to wear his bicycle helmet and failing to have a lamp on his bicycle. Although not raised in the course of submissions, to be consistent with the arguments put by their counsel, the defendants must be taken to be asserting that the provisions of the infringement notice

schemes override the provisions of the *Criminal Code* relating to the age of criminal responsibility at least in so far as persons between the ages of 10 and 14 are concerned.

[18] The intention of the *Juvenile Justice Act* as disclosed in the preamble is that juveniles be dealt with in the criminal law system in a manner consistent with their age and level of maturity (including their being dealt with, where appropriate, by means of admonition and counselling). It is not necessary to go into all the well known provisions of that Act in detail. Reference to a few will suffice for these purposes. The Juvenile Court is empowered by s19 to hear and determine:

> "(a) all charges, both of a summary or indictable nature, against a juvenile for having committed an offence; and
>
> (b) all applications in the Territory relating to unlawful activity, or alleged unlawful activity, of juveniles, whether or not that activity took place, or is alleged to have taken place in the Territory."

[19] It is by reason of the operation of that provision that the plaintiffs say that any charge (meaning an accusation) against them for having committed an offence can only be dealt with in the Juvenile Court and in accordance with the provisions of the *Juvenile Justice Act.* Reliance is also placed on subs(1) of s20 providing that subject to subs(2), (the procedural matters) the jurisdiction of the Court of Summary Jurisdiction under the *Justices Act* ceases to exist in relation to a matter in which the Juvenile Court has

jurisdiction (that provision does not operate to exclude the operation of s57A).

[20] The Act requires that before a complaint or information against a juvenile for an offence is laid a discretion must be exercised by the Commissioner of Police, or a Deputy or Assistant Commissioner of Police, a member of the police force of or above the rank of Senior Sergeant or who is in charge of a police station who has been authorised by the Commissioner or Deputy or Assistant Commissioner (compare r87 *Traffic Regulations*).

[21] A possible lack of understanding of a juvenile in relation to criminal procedures gives rise to an obligation on the Juvenile Court to satisfy itself that the juvenile understands the nature of the proceedings, and if not represented by a legal practitioner to explain as simply as practicable in a language that the juvenile understands, the nature of the allegations, legal implications and the elements of the offence that must be established (s41). There is an obligation on parents or guardian or persons having the custody of a juvenile to attend at the Court during the proceedings (s42).

[22] The Court has power to obtain reports relating to the juvenile (s44). If the Court has reason to suspect that the mental condition of a juvenile is such as to affect his criminal responsibility it can cause the juvenile to be examined by a properly qualified person (s47). The Court also has a responsibility where it believes, on reasonable grounds, that a juvenile against whom proceedings for an offence are brought is not receiving

adequate care or that his welfare is endangered in any way, it may require the Minister to make an investigation of the circumstances and to take appropriate action to secure the proper care of and attention to the juvenile's welfare. The Minister is obliged to furnish to the Court a report of the circumstances of the juvenile and the action, if any, that has been taken (s52). Clearly, one of the objectives of the *Juvenile Justice Act* is to ensure that juveniles who are alleged to have committed offences are not dealt with unfairly, the whole of their relevant circumstances can be investigated, and steps taken to secure their proper care where that might be required. There is no opportunity for any of that under the infringement notices scheme.

[23] When it comes to penalties, s53 of the *Juvenile Justice Act* provides a very significant range of options to the Juvenile Court when a charge has been proven. In appropriate cases the Court may order that the juvenile be under proper supervision in the community. Other options fall far short of ordering detention in a detention centre. These wide discretionary powers are only subject to the express provisions of Division 3 of the Act relating to mandatory detention for repeat property offenders. An appeal lies to the Supreme Court from a final order, declaration or adjudication of the Juvenile Court (58).

[24] It is provided in s63 of the *Juvenile Justice Act* that a person shall not be admitted to a detention centre except in accordance with that Act, that is, after a judicial adjudication. That is to be contrasted with the purely

administrative arrangements under the infringement notice scheme whereby a juvenile could be committed to a detention centre.

[25] The Parliament has turned its mind to whether or not the *Juvenile Justice Act* should be of universal application in relation to all matters concerning criminal offending by juveniles, as envisaged by s19. Subsection (4) of s25 provides that nothing in that section (relating to restrictions on interview with juveniles in some circumstances) affects the operation of ss20 – 29 of the *Traffic Act* and Part XVII of the *Traffic Regulations*. Subject to s53 relating to the disposition by the Juvenile Court, a juvenile may be dealt with under those provisions of the *Traffic Act* as if he were an adult. That is the only express exception.

[26] The case for the plaintiffs is that as a matter of law the regulatory infringement notice scheme and statutory enforcement provisions do not operate so as to effect the operation of the *Justices Act* and the *Criminal Code*.

[27] The written submissions of the second defendants' acknowledge that the scheme is structured in such a way that the offender must do some positive act to circumvent an otherwise inevitable process from the issue of the infringement notice, the requirement to pay a penalty; the expiration of the time to pay the fine, the issue of the courtesy letter, the registration of the non-payment of penalty, the issue of a notice of enforcement, and finally, the issue of a warrant of commitment. It is

pointed out that the obligation on the Clerk to issue the notice of enforcement and subsequent warrant of commitment is mandatory, although the notice of enforcement may be revoked at any time up until the time at which the warrant of commitment has been executed. It is submitted that there is ample opportunity for a juvenile to intervene in that process and put an end to it. If the prosecuting authorities are able or willing to do so, proceedings can then be taken under the *Juvenile Justice Act* or the administrative process can be referred to the Court of Summary Jurisdiction from whence it may make its way into the Juvenile Court.

[28] To my mind that argument relies too much upon a juvenile, a person falling between the ages of say 10 and 17, having the capacity to read and understand the implications of an infringement notice, a courtesy letter and notice of enforcement (assuming, of course, that those documents were received by the juvenile) and to have the necessary ability and opportunity to instigate the procedure to interrupt the process. It cannot be safely assumed that all juveniles who receive an infringement notice, and the other documents required to be served, will have the aid of an adult capable of explaining and understanding what is going on, and the inevitable consequence if nothing is done. There are no special requirements in the infringement notice scheme to take into account the fact that the alleged offender is a juvenile, even though the infringement notice (of which copies are kept by the enforcement authority) provides for the age of the offender to be particularised on it. It is too late under

the provisions of the scheme for anything to be done with a view to avoiding detention when the police arrive with the warrant absent there being sufficient funds on hand to immediately pay the penalty and costs.

[29] The submission of the defendants continues by asserting that there is no dispute that the plaintiff in each case was in breach of the relevant regulation. I do not accept that. In one case the plaintiff's solicitor swears that his client wished to defend the charge of disorderly behaviour, and given the intricacies of the law in that regard, it might well be accepted that juveniles who are alleged to have committed such an offence might wish to defend it. Reference was made in submissions to subreg79A(3) whereby an adult is exempted from wearing a helmet when riding a bicycle in certain places. As I understand it, the argument is that since the Regulation does not so exempt juveniles, then that shows that it was intended that the infringement notice scheme applies to juveniles. I do not accept that. The framing of the elements of the offence says nothing about the way in which a breach might be prosecuted.

[30] The defendants further submit that in order to assess whether Parliament intended the infringement notice schemes procedures to apply to juveniles it was helpful to examine the history of the respective pieces of legislation. Having done that, it is concluded that the infringement notice enforcement scheme provisions of the *Justices Act* were amended by the *Sentencing (Consequential Amendments) Act* in the same group of Acts that contain substantive amendments to the *Juvenile Justices Act*. It

therefore must be inferred that the legislature was aware of the consequences of the infringement notice scheme and intended it to remain parallel in operation to the *Juvenile Justice Act*. I do not accept that argument. It is equally open to infer that the legislature was aware that the infringement notice scheme did not operate in parallel to the *Juvenile Justice Act*. There is no information available to this Court that the legislature has been aware that the infringement notice scheme has been applied to juveniles.

[31] Examination of the two means by which it is suggested by the defendants that a juvenile may be dealt with as an alleged offender, and the consequences, demonstrates the stark difference between the infringement notice scheme and the *Juvenile Justice Act*. In the first, an administrative scheme has the inevitable consequence of the juvenile being detained in custody, unless (a) there is permitted intervention in the operation of the scheme, or (b) payment of the penalty and accumulated costs. As these three cases show, neither of those events can be confidently expected to always take place. The more steps that are taken in the process the higher becomes the amount payable and thus the longer the period which must be spent in custody.

[32] Consideration of the issue as to whether the prior *Juvenile Justice Act* (1983) and the *Criminal Code* (October 1983) were impliedly repealed in their application of juveniles accused of committing offences referred to in the later infringement notice schemes (*Traffic Regulations* 1988,

Summary Offences Regulations 1994), must commence by acknowledging that the schemes are established by delegated legislation which authorise the service of an infringement notice. Without that, the statutory enforcement provisions do not operate.

[33] As has been shown, service of an infringement notice triggers a scheme which is inconsistent with the operation of the *Juvenile Justice Act* and *Criminal Code*. If it is valid, the special jurisdiction of the Juvenile Court is removed and the operation of the *Criminal Code* in respect of children under the age of 14 is denied. It has been long accepted by the Courts that delegated legislation made under later Acts cannot override the provisions of earlier Acts (see D C Pearce, Delegated Legislation in Australia and New Zealand, pars417 et seq.). The author suggests at par420 that in determining whether Regulations are repugnant to or inconsistent with an Act, the Courts have been influenced by the tests applied under s109 of the Constitution. Applying those tests, it is plain that the *Juvenile Justice Act* was intended to cover the field and it is not open to alter, impair or detract from its operation by delegated legislation under another Act. The same considerations apply to the relevant provisions of the *Criminal Code*. In Statutory Interpretation of Australia: D C Pearce and R S Geddies, published in 1986, it is said that delegated legislation cannot impliedly repeal an earlier Act except where expressly so authorised (*Hall v Manahan* (1919) St R Qd 217).

[34] Another approach, disregarding that the infringement notice schemes are founded in Regulations, is to pay regard to the fact that the *Juvenile Justice Act* and the relevant provisions of the *Criminal Code* are special or specific enactments to do with juveniles accused of committing offences. The general application of the infringement notice scheme cannot, by implication, repeal the earlier enactments – generalia specialibus non-derogant.

> "Where there is a general provision which, if applied in its entirety, would neutralise a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far as it is inconsistent with the special provision, must be deemed not to apply."

per O'Conner J. in *Goodwin v Phillips* (1908) 7 CLR 1 at 14.
