

# Children and Young Persons (Care and Protection) Act 1998 No 157

[1998-157]



New South Wales

## Status Information

### Currency of version

Historical version for 7 July 2003 to 21 July 2003 (accessed 20 March 2025 at 13:58)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**
  - [Children and Young Persons \(Care and Protection\) Amendment \(Permanency Planning\) Act 2001 No 91](#), Sch 1 [17] [18] and [21] (not commenced)
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
  - [Commission for Children and Young People Amendment \(Child Death Review Team\) Act 2003 No 26](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2003](#)

### Authorisation

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File last modified 15 July 2003

# Children and Young Persons (Care and Protection) Act 1998 No 157



New South Wales

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# Children and Young Persons (Care and Protection) Act 1998 No 157



New South Wales

An Act to provide for the care and protection of, and the provision of services to, children and young persons; and for other purposes.

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Children and Young Persons (Care and Protection) Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

**Aboriginal**—see section 5.

**authorised carer**—see section 137.

**authorised justice** has the same meaning as in the *Search Warrants Act 1985*.

**care application**—see section 60.

**care order**—see section 60.

**care plan** means a plan to meet the needs of a child or young person:

- (a) that is developed through agreement with the parents of the child or young person, or
- (b) that represents a set of proposals for consideration by the Children's Court.

#### Note—

A care plan is not enforceable except to the extent to which aspects of it are endorsed by an order of the Children's Court. Aspects of a care plan may be endorsed by an order under section 66 (Leave to withdraw application) or 78 (Care plans).

**care proceedings**—see section 60.

**care responsibility** means the authority to exercise the functions specified in section 157.

**child**, except in Chapter 13, means a person who is under the age of 16 years.

**Child Death Review Team** or **Team** means the Child Death Review Team established under Chapter 11.

**Children's Court** means the Children's Court of New South Wales constituted by the [Children's Court Act 1987](#).

**Children's Guardian** means the Children's Guardian appointed under section 178.

**children's service**—see section 200.

**compulsory assistance**—see section 123.

**Department** means the Department of Community Services.

**designated agency**—see section 139.

**Director-General** means the person for the time being holding office or acting as the Director-General of the Department.

**employer's authority** means an employer's authority that has been granted by the Minister under Schedule 2 and that is in force.

**out-of-home care**—see section 135.

**parent** of a child or young person means a person having parental responsibility for the child or young person.

**parental responsibility**, in relation to a child or young person, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

**permanency plan** means a plan that makes provision with respect to permanency planning.

**permanency plan involving restoration**—see section 84.

**permanency planning**—see section 78A.

**permanent placement** means a long-term placement following the removal of a child or young person from the care of a parent or parents pursuant to this Act which provides a safe, nurturing and secure environment for the child or young person and which may be achieved by:

- (a) restoration to the care of a parent or parents, or
- (b) placement with a member or members of the same kinship group as the child or young person, or
- (c) long-term placement with an authorised carer, or
- (d) placement under an order for sole parental responsibility under section 149, or
- (e) placement under a parenting order under the *Family Law Act 1975* of the Commonwealth, or
- (f) adoption.

**report** means a report made under section 24, 25 or 27.

**Torres Strait Islander**—see section 5.

**young person** means a person who is aged 16 years or above but who is under the age of 18 years.

#### 4 Children and young persons to whom this Act applies

The functions conferred or imposed by this Act and the regulations may be exercised in respect of children and young persons:

- (a) who ordinarily live in New South Wales, or
- (b) who do not ordinarily live in New South Wales, but who are present in New South Wales, or
- (c) who are subject to an event or circumstances occurring in New South Wales that gives or give rise to a report.

#### 5 Meaning of “Aboriginal” and “Torres Strait Islander”

(1) In this Act:

**Aboriginal** has the same meaning as Aboriginal person has in the *Aboriginal Land Rights Act 1983*.

**Aboriginal child or young person** means a child or young person descended from an Aboriginal and includes a child or young person who is the subject of a determination under subsection (2).

**Torres Strait Islander** means a person who:

- (a) is descended from a Torres Strait Islander, and
- (b) identifies as a Torres Strait Islander, and



(c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

**Torres Strait Islander child or young person** means a child or young person descended from a Torres Strait Islander and includes a child or young person who is the subject of a determination under subsection (3).

- (2) Despite the definition of **Aboriginal person** in the [Aboriginal Land Rights Act 1983](#), the Children's Court may determine that a child or young person is an Aboriginal for the purposes of this Act if the Children's Court is satisfied that the child or young person is of Aboriginal descent.
- (3) Despite the definition of **Torres Strait Islander** in subsection (1), the Children's Court may determine that a child or young person is a Torres Strait Islander for the purposes of this Act if the Children's Court is satisfied that the child or young person is of Torres Strait Islander descent.

## 6 Notes

Notes and diagrams included in this Act are explanatory notes and do not form part of this Act.

## Chapter 2 Objects, principles and responsibilities

### Part 1 Objects and principles

#### 7 What is the role of the objects and principles of this Act?

The provisions of this Chapter are intended to give guidance and direction in the administration of this Act. They do not create, or confer on any person, any right or entitlement enforceable at law.

#### 8 What are the objects of this Act?

The objects of this Act are to provide:

- (a) that children and young persons receive such care and protection as is necessary for their safety, welfare and well-being, taking into account the rights, powers and duties of their parents or other persons responsible for them, and
- (b) that all institutions, services and facilities responsible for the care and protection of children and young persons provide an environment for them that is free of violence and exploitation and provide services that foster their health, developmental needs, spirituality, self-respect and dignity, and
- (c) that appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.

## **9 What principles are to be applied in the administration of this Act?**

The principles to be applied in the administration of this Act are as follows:

- (a) In all actions and decisions made under this Act (whether by legal or administrative process) concerning a particular child or young person, the safety, welfare and well-being of the child or young person must be the paramount consideration. In particular, the safety, welfare and well-being of a child or young person who has been removed from his or her parents are paramount over the rights of the parents.
- (b) Wherever a child or young person is able to form his or her own views on a matter concerning his or her safety, welfare and well-being, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances.
- (c) In all actions and decisions made under this Act (whether by legal or administrative process) that significantly affect a child or young person, account must be taken of the culture, disability, language, religion and sexuality of the child or young person and, if relevant, those with parental responsibility for the child or young person.
- (d) In deciding what action it is necessary to take (whether by legal or administrative process) in order to protect a child or young person from harm, the course to be followed must be the least intrusive intervention in the life of the child or young person and his or her family that is consistent with the paramount concern to protect the child or young person from harm and promote the child's or young person's development.
- (e) If a child or young person is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests, the child or young person is entitled to special protection and assistance from the State, and his or her name, identity, language, cultural and religious ties should, as far as possible, be preserved.
- (f) If a child or young person is placed in out-of-home care, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child or young person's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement.
- (g) If a child or young person is placed in out-of-home care, the child or young person is entitled to a safe, nurturing, stable and secure environment. Unless it is contrary to his or her best interests, and taking into account the wishes of the child or young person, this will include the retention by the child or young person of relationships with people significant to the child or young person, including birth or adoptive parents, siblings, extended family, peers, family friends and community.

## **10 The principle of participation**

- (1) To ensure that a child or young person is able to participate in decisions made under or pursuant to this Act that have a significant impact on his or her life, the Director-General is responsible for providing the child or young person with the following:
  - (a) adequate information, in a manner and language that he or she can understand, concerning the decisions to be made, the reasons for the Department's intervention, the ways in which the child or young person can participate in decision-making and any relevant complaint mechanisms,
  - (b) the opportunity to express his or her views freely, according to his or her abilities,
  - (c) any assistance that is necessary for the child or young person to express those views,
  - (d) information as to how his or her views will be recorded and taken into account,
  - (e) information about the outcome of any decision concerning the child or young person and a full explanation of the reasons for the decision,
  - (f) an opportunity to respond to a decision made under this Act concerning the child or young person.
- (2) In the application of this principle, due regard must be had to the age and developmental capacity of the child or young person.
- (3) Decisions that are likely to have a significant impact on the life of a child or young person include, but are not limited to, the following:
  - (a) plans for emergency or ongoing care, including placement,
  - (b) the development of care plans concerning the child or young person,
  - (c) Children's Court applications concerning the child or young person,
  - (d) reviews of care plans concerning the child or young person,
  - (e) provision of counselling or treatment services,
  - (f) contact with family or others connected with the child or young person.

## **Part 2 Aboriginal and Torres Strait Islander principles**

### **11 Aboriginal and Torres Strait Islander self-determination**

- (1) It is a principle to be applied in the administration of this Act that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible.

- (2) To assist in the implementation of the principle in subsection (1), the Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination.

## **12 Aboriginal and Torres Strait Islander participation in decision-making**

Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons.

## **13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles**

- (1) **The general order for placement** Subject to the objects in section 8 and the principles in section 9, an Aboriginal or Torres Strait Islander child or young person who needs to be placed in out-of-home care is to be placed with:
- (a) a member of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, or
  - (b) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or it would not be in the best interests of the child or young person to be so placed—a member of the Aboriginal or Torres Strait Islander community to which the child or young person belongs, or
  - (c) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or (b) or it would not be in the best interests of the child or young person to be so placed—a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of the child's or young person's usual place of residence, or
  - (d) if it is not practicable for the child or young person to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the safety, welfare and well-being of the child or young person to be so placed—a suitable person approved by the Director-General after consultation with:
    - (i) members of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, and
    - (ii) such Aboriginal or Torres Strait Islander welfare organisations as are appropriate to the child or young person.
- (2) **Relevance of self-identification and expressed wishes of child or young person** In determining where a child or young person is to be placed, account is to be taken of

whether the child or young person identifies as an Aboriginal or Torres Strait Islander and the expressed wishes of the child or young person.

- (3) **Child or young person with parents from different Aboriginal or Torres Strait Islander communities** If a child or young person has parents from different Aboriginal or Torres Strait Islander communities, the order for placement established by paragraphs (a), (b), (c) and (d) of subsection (1) applies, but the choice of a member or person referred to in those paragraphs is to be made so that the best interests of the child or young person will be served having regard to the principles of this Act.
- (4) **Child or young person with one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent** If a child or young person has one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent, the child or young person may be placed with the person with whom the best interests of the child or young person will be served having regard to the principles of this Act.
- (5) If a child or young person to whom subsection (4) applies:
- (a) is placed with a person who is not within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her Aboriginal or Torres Strait Islander family, community and culture, or
  - (b) is placed with a person who is within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her non-Aboriginal and Torres Strait Islander family, community and culture.
- (6) **Placement of child or young person in care of person who is not an Aboriginal or Torres Strait Islander** The following principles are to determine the choice of a carer if an Aboriginal or Torres Strait Islander child or young person is placed with a carer who is not an Aboriginal or Torres Strait Islander:
- (a) Subject to the best interests of the child or young person, a fundamental objective is to be the reunion of the child or young person with his or her family or Aboriginal or Torres Strait Islander community.
  - (b) Continuing contact must be ensured between the child or young person and his or her Aboriginal or Torres Strait Islander family, community and culture.
- These principles are subject to subsection (2).
- (7) **Exceptions: emergency placements and placements of short duration** Subsection (1) does not apply to:
- (a) an emergency placement made to protect a child or young person from serious

risk of immediate harm, or

(b) a placement for a duration of less than 2 weeks.

- (8) Where an emergency placement is made to protect an Aboriginal or Torres Strait Islander child or young person from serious risk of immediate harm, the Director-General must consult with the appropriate Aboriginal or Torres Strait Islander community as soon as practicable after the safety of the child or young person has been secured.

**Note—**

In the course of any consultation under this Part, the Director-General must have regard to the right of Aboriginal or Torres Strait Islander children and young persons and their families to confidentiality.

#### **14 Records relating to Aboriginals and Torres Strait Islanders**

- (1) All records made within the Department relating to the placement in out-of-home care of Aboriginal and Torres Strait Islander children and young persons are to be kept permanently.
- (2) If an Aboriginal or Torres Strait Islander child or young person has been placed in out-of-home care:
- (a) the child or young person, and
  - (b) a birth or adoptive parent of the child or young person, and
  - (c) a person authorised in writing by the child, young person or parent,
- is entitled to have access, in accordance with the regulations, to all records kept by the Department that relate to the placement.
- (3) The identity of a person who made any such record, or information from which the identity of that person could be deduced, must not, so far as practicable, be disclosed to any person, except with the consent of the person who made the record.
- (4) Subsection (2) does not confer a right or entitlement to information that is subject to the [Adoption Information Act 1990](#).
- (5) The regulations may make provision for or with respect to the keeping of and access to records to which this section applies.

### **Part 3 Roles of the Minister and Director-General**

#### **15 General role of the Minister**

The Minister is to promote a partnership approach between the government, non-government agencies, families, corporations, business agencies and the community in taking responsibility for and dealing with children and young persons who are in need of

care and protection under this Act.

## **16 General role of the Director-General**

(1) **Principal role** The Director-General is to provide services and promote the development, adoption and evaluation of policies and procedures that accord with the objects and principles of this Act.

### **Note—**

This role may include:

- providing assistance to children and young persons
- involving children and young persons and their families in processes that affect them and making services and information available to them
- consistent with the care and protection of children and young persons, promoting the raising of children and young persons within families
- supporting communities involved in the care and protection of children and young persons
- regularly reviewing action
- implementing procedures to assess the suitability of people having contact with children and young persons
- undertaking or encouraging research, education or training.

(2) **Interagency procedures and protocols** The Director-General is to promote the development of procedures and protocols with government departments and agencies and the community sector that promote the care and protection of children and young persons and to ensure that these procedures and protocols are implemented and regularly reviewed.

(3) The objects of the procedures and protocols referred to in subsection (2) are:

- (a) to promote the development of co-ordinated strategies for the care and protection of children and young persons and for the provision of support services directed towards strengthening and supporting families, and
- (b) to co-ordinate the provision of services for assisting young persons leaving out-of-home care.

## **17 Director-General's request for services from other agencies**

In deciding what action should be taken to promote and safeguard the safety, welfare and well-being of a child or young person, the Director-General may request a government department or agency, or a non-government agency in receipt of government funding, to provide services to the child or young person or to his or her family.

**18 Obligation to co-operate**

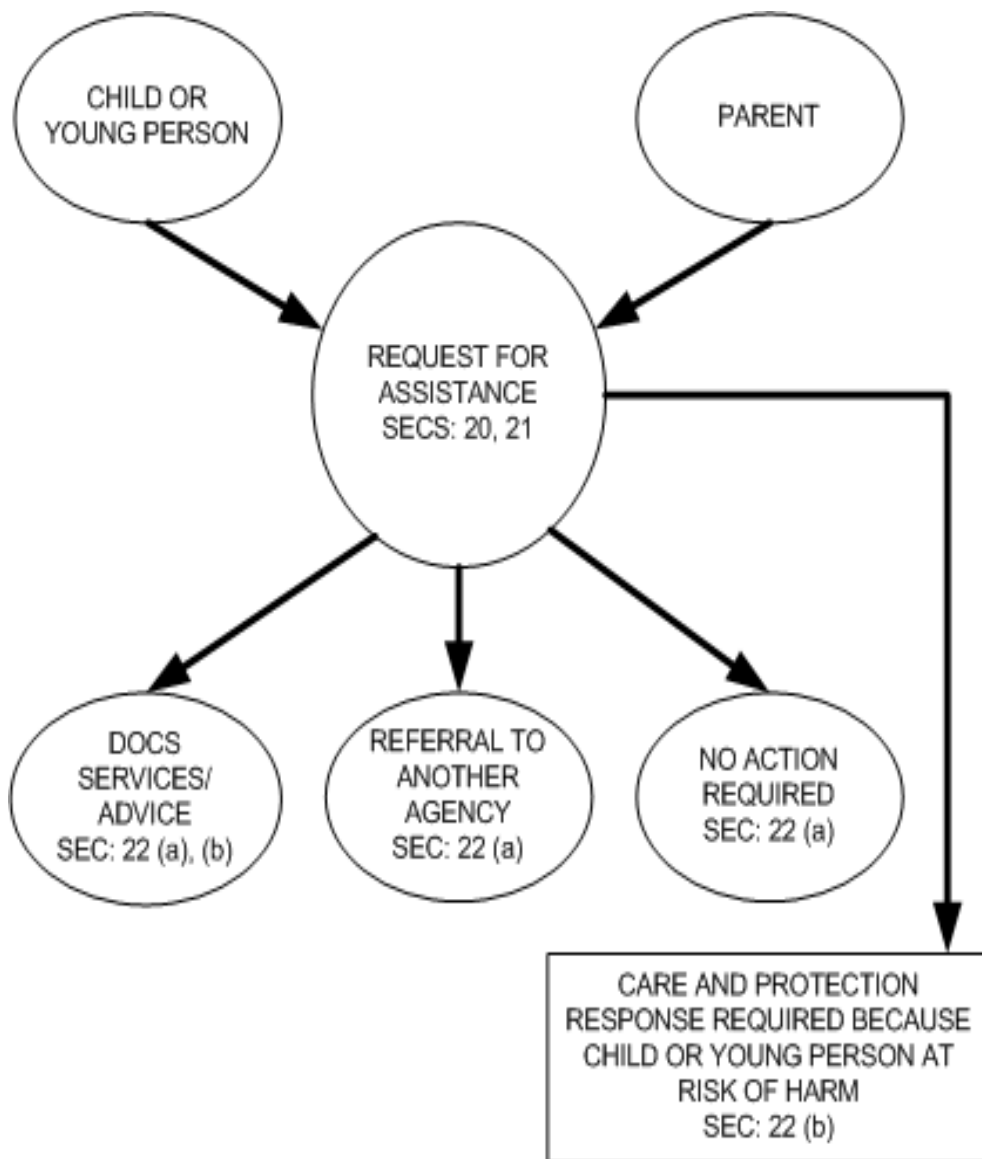
The government department or agency must use its best endeavours to comply with a request made to it under section 17 if it is consistent with its own responsibilities and does not unduly prejudice the discharge of its functions.

**19 Assistance comprising provision and exchange of information**

Sections 17 and 18 do not limit section 248 (Provision and exchange of information).

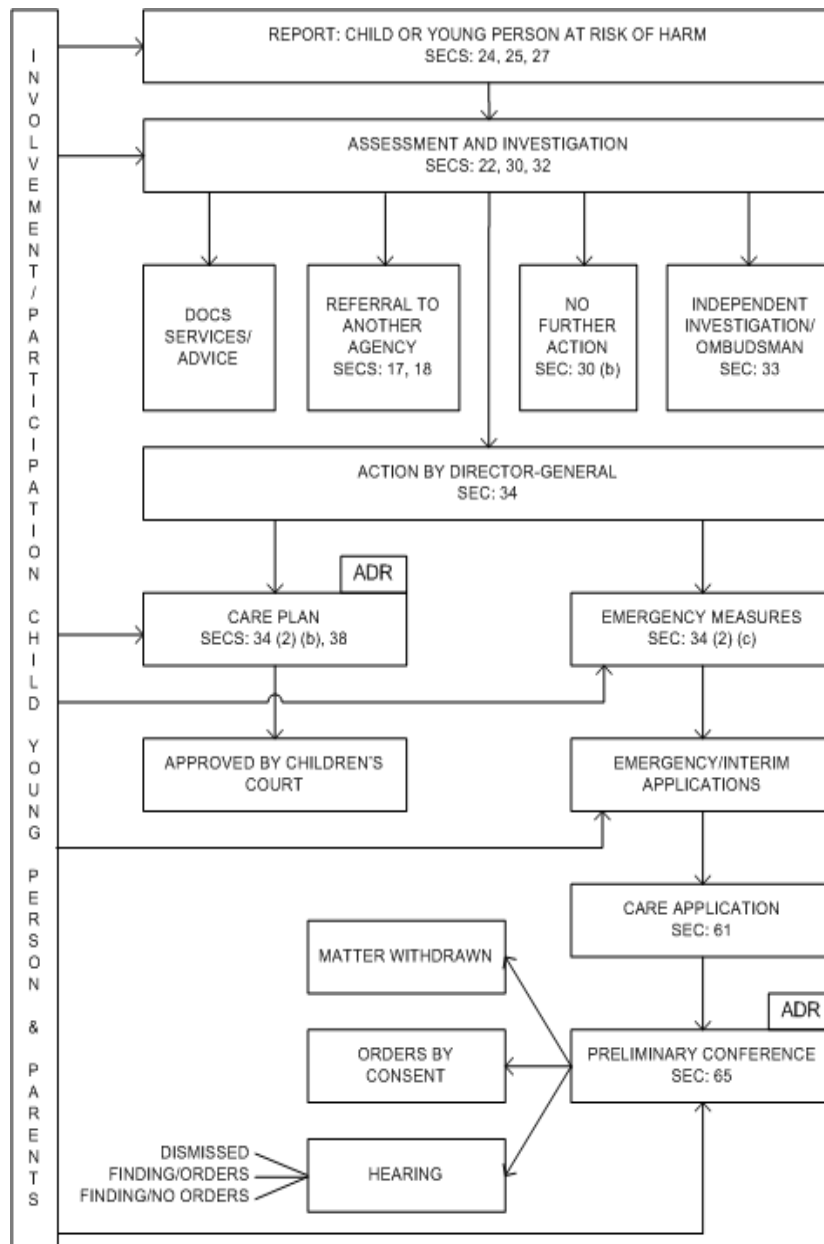
**Chapter 3 Requests for assistance and reports**

**Request for assistance**



**Child or young person at risk of harm**





## Part 1 Requests for assistance

### 20 Request for assistance by child or young person

A child or young person may seek assistance from the Director-General.

### 21 Request for assistance from parent of child or young person

A parent of a child or young person may seek assistance from the Director-General in order to obtain services that will enable the child or young person to remain in, or return to, the care of his or her family.

**Note—**

Under section 113, a parent, child or young person, or any other person may also ask the Director-General for assistance:

- (a) if there is a serious or persistent conflict between the parents and the child or young person of such a nature that the safety, welfare or well-being of the child or young person is in jeopardy, or
- (b) if the parents are unable to provide adequate supervision for the child or young person to such an extent that the safety, welfare or well-being of the child or young person is in jeopardy.

Requests for assistance in these circumstances are dealt with in accordance with Part 1 of Chapter 7.

## **22 Director-General's response to requests for assistance and reports**

If a person seeks assistance from the Director-General under this Part (whether or not a child or young person is suspected of being in need of care and protection), the Director-General must:

- (a) provide whatever advice or material assistance, or make such referral as, the Director-General considers necessary, or
- (b) take whatever other action the Director-General considers necessary,

to safeguard or promote the safety, welfare and well-being of the child or young person.

### **Note—**

After assessing the request for assistance, the Director-General need not take any further action.

The Director-General, in responding to a request for assistance or a report, can provide services or arrange for other government departments and agencies, or community organisations, to provide services to assist children, young persons and their families. Some of the services that may be available include:

- assessment of risk or need
- service co-ordination
- emergency financial assistance
- mediation
- counselling for children, young persons and their families
- services for people with disabilities
- parenting education
- out-of-home placement
- drug and alcohol counselling
- early childhood health services
- counselling and support for sexual assault or domestic violence
- respite care
- children's services
- family support
- youth support programs
- accommodation for the homeless
- adoption assistance

The Department may also play a role in referring people to services provided under Commonwealth legislation, such as Family Court counselling and access to maintenance entitlements or other benefits.

## Part 2 Reports

### 23 Child or young person at risk of harm

For the purposes of this Part and Part 3, a child or young person is **at risk of harm** if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of any one or more of the following circumstances:

- (a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
- (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- (d) the child or young person is living in a household where there have been incidents of

domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

- (e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.

**Note—**

Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

## **24 Report concerning child or young person at risk of harm**

A person who has reasonable grounds to suspect that a child or young person is, or that a class of children or young persons are, at risk of harm may make a report to the Director-General.

## **25 Pre-natal reports**

A person who has reasonable grounds to suspect, before the birth of a child, that the child may be at risk of harm after his or her birth may make a report to the Director-General.

**Note—**

The intention of this section is to provide assistance and support to the pregnant woman to reduce the likelihood that her child, when born, will need to be placed in out-of-home care. The principle is that of supportive intervention rather than interference with the rights of pregnant women.

## **26 Anonymity**

A report under section 24 or 25 may be made anonymously.

## **27 Mandatory reporting**

(1) This section applies to:

- (a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and
- (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.

(2) If:

- (a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of harm, and
- (b) those grounds arise during the course of or from the person's work,

the person must, as soon as practicable, report to the Director-General the name, or a description, of the child and the grounds for suspecting that the child is at risk of harm.

Maximum penalty: 200 penalty units.

## **28 Records of reports and subsequent action**

The Director-General must keep a record of:

- (a) all reports made to or by the Director-General, and
- (b) any action taken as a consequence of a report, and
- (c) any subsequent disposition of and dealings with children and young persons to whom such reports or actions relate,

subject to the regulations.

## **29 Protection of persons who make reports**

- (1) If, in relation to a child or young person or a class of children or young persons, a person makes a report in good faith to the Director-General or to a person who has the power or responsibility to protect the child or young person or the class of children or young persons:
  - (a) the making of the report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) no liability for defamation is incurred because of the report, and
  - (c) the making of the report does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy, and
  - (d) the report, or evidence of its contents, is not admissible in any proceedings (other than care proceedings in the Children's Court, or any appeal arising from those care proceedings), and
  - (e) a person cannot be compelled in any proceedings to produce the report or a copy of or extract from it or to disclose or give evidence of any of its contents, and
  - (f) the identity of the person who made the report, or information from which the identity of that person could be deduced, must not be disclosed by any person, except with:
    - (i) the consent of the person who made the report, or
    - (ii) the leave of a court or other body before which proceedings relating to the report are conducted,

and, unless that consent or leave is granted, a party or witness in any such proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity or leading to the identification of that person.

- (1A) A certificate purporting to be signed by the Director-General that a document relating to a child or young person or a class of children or young persons is a report to which this section applies is admissible in any proceedings and, in the absence of evidence to the contrary, is proof that the document is such a report.
- (2) A court or other body cannot grant leave under subsection (1) (f) (ii) unless the court or other body is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice.
- (3) A court or other body that grants leave under subsection (1) (f) (ii):
- (a) must state the reasons why leave is granted, and
  - (b) must ensure that the holder of the report is informed that evidence as to the identity of the person who made the report, or from which the identity of that person could be deduced, has been disclosed.
- (4) Subsection (1) (f) does not prevent the disclosure of information from which the identity of a person may be deduced if the prohibition on the disclosure of that information would prevent the proper investigation of the report.
- (5) A report to which this section applies is taken to be an exempt document for the purposes of the [Freedom of Information Act 1989](#).
- (6) In this section:
- court** includes a court exercising federal jurisdiction.
- report** includes a report under sections 24, 25, 27 and 122.

## Part 3 Investigations and assessment

### 30 Director-General's investigations and assessment

On receipt of a report that a child or young person is suspected of being at risk of harm:

- (a) the Director-General is to make such investigations and assessment as the Director-General considers necessary to determine whether the child or young person is at risk of harm, or
- (b) the Director-General may decide to take no further action if, on the basis of the information provided, the Director-General considers that there is insufficient reason to believe that the child or young person is at risk of harm.

**Note—**

Under section 248, the Director-General may direct certain bodies, including the Police Service, a government department or agency, a public authority, a school, an area health service and a hospital to furnish the Director-General with information concerning the safety, welfare and well-being of a child or young person.

**31 Matters for consideration**

In determining how to make investigations and assessment in accordance with section 30 in the case of a young person, the Director-General must have regard to any known wish expressed by the young person that he or she did not want a report to be made, taking into account the age of the young person and the extent to which the young person, and other children and young persons, appear to be at risk of harm.

**32 Initial identification—Aboriginals and Torres Strait Islanders**

If the Director-General has reason to believe that a child or young person who is the subject of a report may be an Aboriginal or Torres Strait Islander, the Director-General is to make such inquiries as are reasonable in the circumstances to determine whether the child or young person is in fact an Aboriginal or Torres Strait Islander.

**33 Investigation if allegation made against staff of Department**

- (1) If a report alleges abuse of a child or young person by a person employed within the Department, the Director-General must arrange for the report to be investigated in accordance with arrangements made between the Director-General and the Ombudsman.
- (2) A person appointed in accordance with those arrangements may exercise the functions of the Director-General under this Chapter.

**Note—**

Sections 25C and 25D of the [Ombudsman Act 1974](#) make provision with respect to the notification of the Ombudsman by the Director-General of child abuse by employees of the Department.

## **Chapter 4 Children and young persons in need of care and protection**

**34 Taking of action by Director-General**

- (1) If the Director-General forms the opinion, on reasonable grounds, that a child or young person is in need of care and protection, the Director-General is to take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child or young person.
- (2) Without limiting subsection (1), the action that the Director-General might take in response to a report includes the following:
  - (a) providing, or arranging for the provision of, support services for the child or young person and his or her family,

- (b) development, in consultation with the parents (jointly or separately), of a care plan to meet the needs of the child or young person and his or her family that:
  - (i) does not involve taking the matter before the Children's Court, or
  - (ii) may be registered with the Children's Court, or
  - (iii) is the basis for consent orders made by the Children's Court,
- (c) ensuring the protection of the child or young person by exercising the Director-General's emergency protection powers as referred to in Part 1 of Chapter 5,
- (d) seeking appropriate orders from the Children's Court.

**Note—**

In considering what action to take under this section, the Director-General is to have regard to the grounds under section 71 on which the Children's Court may make a care order.

**35 Decision against taking action**

- (1) The Director-General may decide to take no action if the Director-General considers that proper arrangements exist for the care and protection of the child or young person and the circumstances that led to the report have been or are being adequately dealt with.
- (2) If the Director-General decides to take no action, the Director-General must make a record of the reasons for the decision.

**36 Principles of intervention**

- (1) In deciding the appropriate response to a report concerning a child or young person, the Director-General must have regard to the following principles:
  - (a) The immediate safety, welfare and well-being of the child or young person, and of other children or young persons in the usual residential setting of the child or young person, must be given paramount consideration.
  - (b) Subject to paragraph (a), any action must be appropriate to the age of the child or young person, any disability the child, young person or his or her family members have, and the circumstances, language, religion and cultural background of the family.
  - (c) Removal of the child or young person from his or her usual caregiver may occur only where it is necessary to protect the child or young person from the risk of serious harm.
- (2) The principles in this section are to be applied in priority to the principles in section 9 in deciding the appropriate response to a report concerning a child or young person.



### **37 Alternative dispute resolution**

- (1) In responding to a report, the Director-General is to consider the appropriateness of using alternative dispute resolution services that are designed:
  - (a) to ensure intervention so as to resolve problems at an early stage, and
  - (b) to reduce the likelihood that a care application will need to be made under Chapter 5, and
  - (c) to reduce the incidence of breakdown in adolescent-parent relationships, and
  - (d) if an application for a care order under Chapter 5 is made, to work towards the making of consent orders that are in the best interests of the child or young person concerned.
- (2) Attendance at a preliminary court conference is mandatory.
- (3) Participation in all other forms of counselling and conferencing is voluntary.

**Note—**

Within this provision, models for counselling and conferencing may be developed to accommodate the unique requirements of a community (whether cultural, geographic or language), the complexities of the case, or the nature and severity of the abuse suffered by the child or young person.

### **38 Development and enforcement of care plans**

- (1) A care plan, developed by agreement in the course of alternative dispute resolution, may be registered in the Children's Court and may be used as evidence of an attempt to resolve the matter without bringing a care application in accordance with Part 2 of Chapter 5.
- (2) A care plan that allocates parental responsibility, or aspects of parental responsibility, to any person other than the parents of the child or young person, takes effect only if the Children's Court makes an order by consent to give effect to the proposed changes in parental responsibility.
- (3) The Children's Court may make such orders as are necessary to give effect to a care plan without the need for a care application under Part 2 of Chapter 5 and without the need to be satisfied of the existence of any of the grounds under section 71 if the Children's Court is satisfied that:
  - (a) the proposed order will not contravene the principles of this Act, and
  - (b) the parties to the care plan understand its provisions and have freely entered into it, and
  - (c) in the case of a party other than the Director-General, the party has received independent advice concerning the provisions that the proposed order will give

effect to.

**Note—**

A care plan may be introduced into Children’s Court proceedings under section 66 (Leave to withdraw application) or 78 (Care plans).

**39 Action for removal of child or young person or exercise of other functions**

Nothing in this Chapter prevents the Director-General from exercising, at any time during or after the investigation and assessment of a request for assistance or a report, any function conferred or imposed on the Director-General by or under this Act if, in the Director-General’s opinion, it is necessary or desirable to do so having regard to the safety, welfare and well-being of the child or young person concerned.

**40 Application for certain orders**

Nothing in this Chapter prevents the Director-General from applying, at any time during or after the investigation and assessment of a request for assistance or a report, for an order under Chapter 5 of the Children’s Court if, in the Director-General’s opinion, it is necessary or desirable to do so having regard to the safety, welfare and well-being of the child or young person concerned.

**Note—**

The intention of the Act is to ensure that children and young persons are protected by using the least intrusive option. Removal of children and young persons should be a last resort.

The option of an apprehended violence order to protect a child or young person should be considered. In cases where there is an immediate danger of abuse, an apprehended violence order against the alleged abuser, requiring him or her, for example, to leave the house, may be sufficient to ensure the protection of the child or young person while investigations and assessments continue. The order could be made to cover the child or young person and, if appropriate, the child or young person’s primary caregiver and other members of their household.

These orders are available under the [Crimes Act 1900](#) on application by a police officer. Orders may be made by telephone on an emergency and interim basis. Under section 562H (9) of the [Crimes Act 1900](#), telephone orders can remain in force for 14 days.

If a child or young person is removed in an emergency situation, the Director-General should also consider whether an application for an apprehended violence order may still be the most effective way of ensuring the immediate and safe return of the child or young person to the home.

**41 Temporary care arrangements**

The Director-General may make a temporary care arrangement under section 151 in respect of a child or young person if the child or young person is, in the opinion of the Director-General, in need of care and protection.

**42 Sexually abusive behaviour by certain children and young persons**

(1) If the Director-General is aware that a child who is not less than 10 years of age but less than 14 years of age has exhibited sexually abusive behaviour, the Director-

General must inform a police officer of all relevant circumstances before making a decision whether or not to apply for a care order under Chapter 5.

- (2) The Director-General is not required to inform a police officer in compliance with this section if information of all relevant circumstances has been made to a police officer by another person.

## **Chapter 5 Children's Court proceedings**

### **Part 1 Emergency protection and assessment**

#### **Division 1 Emergency removal**

##### **43 Removal of children and young persons without warrant**

- (1) If the Director-General or a police officer is satisfied, on reasonable grounds:
- (a) that a child or young person is at immediate risk of serious harm, and
  - (b) that the making of an apprehended violence order would not be sufficient to protect the child or young person from that risk,
- the Director-General or police officer may (without the need for any authority other than that conferred by this subsection) remove the child or young person from the place of risk in accordance with this section.
- (2) If the Director-General or a police officer suspects a person is a child and suspects on reasonable grounds:
- (a) that the person is in need of care and protection, and
  - (b) that the person is not subject to the supervision or control of a responsible adult, and
  - (c) that the person is living in or habitually frequenting a public place,
- the Director-General or police officer may (without the need for any authority other than that conferred by this subsection) remove the person from any public place.
- (3) If the Director-General or a police officer suspects a person is a child or young person and suspects on reasonable grounds:
- (a) that the person is in need of care and protection, and
  - (b) that the person:
    - (i) is or has recently been on any premises where prostitution or acts of child prostitution take place or where persons are used for pornographic purposes, or

(ii) is or has recently been participating in an act of child prostitution in any place or is being or has recently been used for pornographic purposes in any place,

the Director-General or police officer may (without the need for any authority other than that conferred by this subsection) remove the person from the premises or place or any such adjacent place.

(4) For the purposes of this section, the Director-General or a police officer may (without the need for any authority other than that conferred by this subsection):

(a) enter any premises or place in which the Director-General or police officer suspects the child or young person (or the person suspected on reasonable grounds of being a child or young person) may be, and

(b) enter the premises or place (and any adjacent place, if the Director-General or police officer suspects on reasonable grounds that the person, having just left the premises or place, is in the adjacent place), and

(c) search for the person in the premises or place and in any such adjacent place.

(5) Until a person removed under this section is placed in the care and protection of the Director-General, the person must be kept separately from any persons who are detained for committing offences or who are on remand.

(6) A person authorised to exercise powers by a subsection of this section may exercise any or all of the powers, as appropriate in the circumstances.

(7) In this section:

**act of child prostitution** has the same meaning as in section 91C of the [Crimes Act 1900](#).

**place** means any place, whether or not a public place, and whether or not on premises.

**pornographic purposes** has the same meaning as in section 91G of the [Crimes Act 1900](#).

**Note—**

Part 3 of Chapter 15 (Removal of persons and entry of premises and places) confers various ancillary powers on persons who exercise functions under this section.

**44 Director-General may assume care responsibility of child or young person in hospital or other premises**

(1) If the Director-General:

(a) suspects on reasonable grounds that a child or young person is at risk of serious harm, and

(b) is satisfied that it is not in the best interests of the child or young person that the child or young person be removed from the premises in which he or she is currently located,

the Director-General may, instead of removing the child or young person from the premises under a power of removal conferred by or under this Act, assume the care responsibility of the child or young person by means of an order in writing, signed by the Director-General and served on the person (whether or not a parent of the child or young person) who appears to the Director-General to be in charge of the premises.

(2) An order under this section does not cease to have effect merely because the child or young person to whom it relates is transferred to different premises.

#### **45 Prompt application to Children's Court for care order**

(1) If a child or young person is removed from premises or a place under a power of removal conferred by or under this Act or the care responsibility of a child or young person is assumed by an order under section 44, the Director-General must apply to the Children's Court at the first available opportunity, but no later than the next sitting day of the Children's Court after the removal or assumption of care and protection, for one or more of the following care orders in respect of the child or young person:

(a) an emergency care and protection order,

(b) an assessment order (within the meaning of Division 6 of this Part),

(c) any other care order.

(2) On the hearing of the application, the Director-General must explain to the Children's Court why the removal of the child or young person without a warrant was considered to be necessary.

(3) Despite subsection (1), the Director-General is not required to apply for any order of the Children's Court if the Director-General considers that no order is necessary, but the Director-General must explain to the Children's Court at the first available opportunity why no care application was made.

(4) Sections 61, 64, 67, 68 and 70 apply to an application for an emergency care and protection order. The other provisions of Part 2 do not apply to such an order.

#### **Note—**

This section holds the Director-General accountable for the serious decision to remove a child or young person from his or her family suddenly.

If the Children's Court considers that the removal of the child or young person was not warranted in terms of the Act, or was conducted in an inappropriate manner, adverse comment could be made in court or other steps taken to draw the matter to the attention of the Minister. However, the making of an order should not be refused, or the child or young person discharged from care and protection, only because of the inappropriate manner of

the removal. The paramount issue for the Children's Court is the safety of the child or young person and not the procedural failures of those with the statutory responsibility for the protection of children and young persons.

In the case of removal pursuant to a warrant issued by an authorised justice under section 233, the authorised justice who issues the warrant should first consider whether the child or young person could be adequately protected if an apprehended violence order were sought which might provide for the removal of the alleged perpetrator. The matter should be brought before the Children's Court at the first available opportunity and an emergency care and protection order sought if further protection is necessary.

## **Division 2 Emergency care and protection orders**

### **46 Emergency care and protection orders**

- (1) The Children's Court may make an order for the emergency care and protection of a child or young person if it is satisfied that the child or young person is at risk of serious harm.
- (2) The order, while in force, places the child or young person in the care responsibility of the Director-General or the person specified in the order.
- (3) The order has effect for a maximum period of 14 days, unless the order is extended in accordance with subsection (4).
- (4) An order under this section may, while the order remains in force, be extended once only for a further maximum period of 14 days.

### **47 Order prohibiting action**

The Children's Court may, at any stage in the proceedings, make an order prohibiting any person, including a parent of a child or young person, in accordance with such terms as are specified in the order, from doing anything that could be done by the parent in carrying out his or her parental responsibility.

## **Division 3 Other removal authorised by the Children's Court**

### **48 Removal of child or young person pursuant to order of the Children's Court**

On the making of a care application in respect of a child or young person:

- (a) the Children's Court may make an order for the removal of the child or young person from the premises or place specified in the order, and
- (b) the Director-General or a police officer may, pursuant to the order, enter the premises or place, search the premises or place for the presence of the child or young person and remove the child or young person from the premises or place.

## **Division 4 Who has care responsibility?**

### **49 Care of child or young person pending care proceedings**

- (1) If a child or young person is removed from the care of his or her parent or parents under this Part or a warrant issued under section 233:
  - (a) the child or young person is to be kept at a place approved by the Minister for the purposes of this section, and
  - (b) the Director-General has the care responsibility for the child or young person.
- (2) The Children's Court may, by order, vest the care responsibility in a designated agency.
- (3) The Director-General or designated agency having the care responsibility for the child or young person may delegate that responsibility to a relative of the child or young person, an authorised carer or a person approved by the Children's Guardian.
- (4) Despite subsection (3), the Director-General may delegate the care responsibility for the child or young person on an interim basis to a person other than a person specified in subsection (3) but must use his or her best endeavours to delegate that responsibility to a person so specified as soon as is reasonably practicable.
- (5) The exercise of the care responsibility by a person referred to in subsection (3) or (4) is subject to any direction given to the person by the Director-General or the designated agency that made the delegation.

### **50 Discharge of child or young person from Director-General's care responsibility**

- (1) The Director-General may, at any time, discharge a child or young person from the Director-General's care responsibility with or without any undertakings being given by the child or young person or by a parent of the child or young person.
- (2) An undertaking, if given, is to be in writing and signed by the person giving it.
- (3) In determining whether or not to exercise the power under subsection (1), the Director-General is to have regard to the following:
  - (a) any views expressed by the child or young person as to whether he or she wishes that power to be exercised,
  - (b) any views expressed by the child or young person as to whether he or she intends to return to the care and protection of a parent,
  - (c) whether the exercise by the Director-General of that power is likely to protect the safety, welfare and well-being of the child or young person,
  - (d) whether the failure by the Director-General to exercise that power is likely to

endanger the safety, welfare and well-being of any other person.

- (4) If the Director-General discharges the child or young person from the Director-General's care responsibility following an order of the Children's Court, the Director-General must explain to the Children's Court at the next sitting day of the Court why the Director-General's care responsibility was no longer needed.

## **Division 5 What information must be given following removal?**

### **Note—**

Section 234 requires a person who removes a child or young person from any premises or place under this Act to give certain information to the person (if any) on the premises or at the place who appears to have the care and protection of the child or young person and, in the case of a child who is of or above the age of 10 years or a young person, to the child or young person.

### **51 Duty of Director-General to give information to certain persons**

- (1) If a child or young person is in the care and protection of the Director-General under this Part or a warrant issued under section 233, the Director-General:
- (a) must, as soon as practicable, cause notice of the fact that the child or young person is in the care and protection of the Director-General, and the fact that an application may be made to the Director-General for the discharge of the child or young person from the care and protection of the Director-General and the procedures for making such an application, to be given to:
    - (i) in the case of a child who is of or above the age of 10 years or a young person—the child or young person, and
    - (ii) in the case of a young person—such person as the young person may nominate, being a person who can reasonably be located, and
    - (iii) each parent of the child or young person who can reasonably be located, and
  - (b) must, in the case of a child, ensure that the child's parents are kept informed of the whereabouts of the child, unless the Director-General has reason to believe that the disclosure of the child's whereabouts would be prejudicial to the safety, welfare, well-being and interests of the child.
- (2) The Children's Court, on the hearing of any application made in respect of a child whose whereabouts have not been disclosed to a parent of the child, may order that the Director-General disclose the whereabouts of the child to such of the parents of the child as it may direct.
- (3) Failure to comply with any provision of this section does not invalidate anything done under any other provision of this Act.



## **Division 6 Examination and assessment orders**

### **52 Definition of “assessment order”**

In this Division:

- (a) an order made under section 53 is referred to as ***an assessment order***, and
- (b) a reference to ***assessment*** includes, in the case of an order for the physical, psychological, psychiatric or other medical examination of a child or young person, a reference to such examination.

### **53 Making of assessment orders**

- (1) The Children’s Court may make an order for:
  - (a) the physical, psychological, psychiatric or other medical examination of a child or young person, or
  - (b) the assessment of a child or young person,or both.
- (2) An assessment order authorises a person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.
- (3) The carrying out of a medical examination under such an order is not limited to an examination made only by use of the senses but includes the taking and analysis of samples and the use of any machine or device that enables or assists in the examination of a person.
- (4) Despite subsections (2) and (3), if a child or young person is of sufficient understanding to make an informed decision, the child or young person may refuse to submit to a physical, psychological, psychiatric or other medical examination or an assessment.

### **54 Assessment of person’s capacity for parental responsibility**

- (1) The Children’s Court may, for the purposes of an assessment order, appoint a person to assess the capacity of a person with parental responsibility, or who is seeking parental responsibility, for a child or young person to carry out that responsibility.
- (2) Such an assessment may be carried out only with the consent of the person whose capacity is to be assessed.
- (3) This Division applies to such an assessment in the same way as it applies to the assessment of a child or young person.

### **55 Application for order**

- (1) An assessment order may be made on the application of:
  - (a) the Director-General, or
  - (b) if a care application has been made in respect of the child or young person, a party to the application.
- (2) An assessment order may be made whether or not an application has been made for any other care order, including an emergency care and protection order, in respect of the child or young person.

### **56 Matters for consideration in making an assessment order**

- (1) In considering whether to make an assessment order, the Children's Court is to have regard to the following:
  - (a) whether the proposed assessment is likely to provide relevant information that is unlikely to be obtained elsewhere,
  - (b) whether any distress the assessment is likely to cause the child or young person will be outweighed by the value of the information that might be obtained,
  - (c) any distress already caused to the child or young person by any previous assessment undertaken for the same or another purpose,
  - (d) any other matter the Children's Court considers relevant.
- (2) In making an assessment order, the Children's Court must ensure that a child or young person is not subjected to unnecessary assessment.

### **57 Information concerning assessment**

- (1) A child or young person must be informed about the reasons for the assessment in language and a manner that he or she can understand having regard to his or her development and the circumstances.
- (2) The parties to an application for an assessment order are to be given an opportunity to provide the Children's Court with relevant information for consideration by the person who is to carry out the assessment.

### **58 Role of Children's Court Clinic**

- (1) If the Children's Court makes an assessment order, it is to appoint the Children's Court Clinic to prepare and submit the assessment report concerning the child or young person to it, unless the Children's Court Clinic informs the Children's Court that:
  - (a) it is unable or unwilling to prepare the assessment report, or

(b) it is of the opinion that it is more appropriate for the assessment report to be prepared by another person.

(2) If the Children's Court Clinic informs the Children's Court that it is unable or unwilling to prepare the assessment report or that it is of the opinion that it is more appropriate for the assessment report to be prepared by another person, the Children's Court is to appoint a person whose appointment is, so far as possible, to be agreed to by the child or young person being assessed, the parents or other persons who have parental responsibility for the child or young person and the Director-General.

### **59 Evidentiary status of assessment report**

An assessment report submitted to the Children's Court under this Division is taken to be a report to the Children's Court rather than evidence tendered by a party.

## **Part 2 Care applications**

### **60 Definitions**

In this Act:

***care application*** means an application for a care order.

***care order*** means an order under this Chapter for or with respect to the care and protection of a child or young person, and includes a contact order under section 86.

***care proceedings*** means proceedings under this Chapter.

### **61 Applications for care orders**

- (1) A care order may be made only on the application of the Director-General, except as provided by this Chapter.
- (2) A care application must specify the particular care order sought and the grounds on which it is sought.
- (3) The order sought may be varied, but only with the leave of the Children's Court.

#### **Note—**

Section 34 requires the Director-General to consider a variety of alternative means to provide for the safety, welfare and well-being of the child or young person before commencing proceedings in the Children's Court.

Section 71 sets out the various grounds that enable the making of a care order.

### **62 Interim and final orders**

A care order may be made as an interim order or a final order, except as provided by this Part.

### **63 Evidence of prior alternative action**

- (1) When making a care application, the Director-General must furnish details to the Children's Court of:
  - (a) the support and assistance provided for the safety, welfare and well-being of the child or young person, and
  - (b) the alternatives to a care order that were considered before the application was made and the reasons why those alternatives were rejected.
- (2) The Children's Court must not:
  - (a) dismiss a care application in relation to a child or young person, or
  - (b) discharge a child or young person who is in the care and protection of the Director-General from that care and protection,by reason only that the Children's Court is of the opinion that an appropriate alternative action that could have been taken in relation to the child or young person was not considered or taken.
- (3) Subsection (2) does not prevent the Children's Court from adjourning proceedings.

### **64 Notification of care applications**

- (1) **Persons having parental responsibility** The Director-General is required to make reasonable efforts to notify the parents of a child or young person of the making of a care application by the Director-General in relation to the child or young person.
- (2) **Children and young persons** The Director-General is required to notify a child or young person who is the subject of a care application of the making of the application.
- (3) A notification under subsection (2) is to be made in language and in a manner that the child or young person can understand having regard to his or her development and the circumstances.
- (4) **Application for care order** In particular, the Director-General must, as soon as practicable after a care application is made in relation to a child or young person, cause a copy of the application, together with copies of all supporting affidavits and other documentary evidence that accompanied the application, to be served on the parents of the child or young person who can reasonably be located, subject to section 64A.
- (5) The copy of the care application must be written and arranged in such a form that there is a reasonable likelihood that its contents will be understood by the person on whom it is served.
- (6) **Effect of failure to comply with this section** Failure to comply with the requirements of

this section in relation to a care application does not invalidate the application or any decision of the Children's Court on the application.

**Note—**

The participation of children and young persons in decisions made under or pursuant to this Act that have a significant impact on their life as referred to in section 10 requires information, if appropriate, about a care application to be provided to the child or young person.

**64A Evidence in the form of a recording**

(1) In this section, **recording** means:

- (a) an audio recording, or
- (b) a video recording, or
- (c) a video recording accompanied by a separately but contemporaneously recorded audio recording.

(2) If:

- (a) any evidence in support of a care application in relation to a child or young person comprises a recording, and
- (b) the Director-General considers it would be inappropriate for the parents of the child or young person to be given a copy of the recording,

the Director-General may decline to cause a copy of the recording to be served on the parents under section 64 (4) and, instead, must serve a notice on the parents that complies with subsection (3).

(3) The notice must:

- (a) be in writing, and
- (b) specify each recording proposed to be used in evidence, and
- (c) inform the parents that they, and their lawyer, are entitled to listen to or view the recording at a place nominated by the Director-General and at a mutually convenient time, and
- (d) identify the person responsible for arranging access to each recording.

(4) The notice must be given to the parents, or their lawyer, at least 14 days before the care application is heard.

(5) The parents, and their lawyer, are entitled to listen to or view each recording, on one or more occasions, before the care application is heard.

(6) The Children's Court may, on application of the parents of a child or young person the

subject of a care application, direct the Director-General to cause a copy of any recording proposed to be used in evidence in the care application to be served on the parents.

## **65 Preliminary conferences**

- (1) After copies of the care application have been served in accordance with section 64, a Children's Registrar of the Children's Court is to arrange and conduct a preliminary conference between the parties, unless the Children's Registrar is of the opinion that the holding of such a conference should be deferred until a later time in the proceedings.
- (1A) Despite subsection (1), a Children's Registrar may dispense with the requirement for a preliminary conference between the parties if:
  - (a) there has been a defended hearing in relation to an application for an assessment order under section 53, an interim care order under section 69, or a care order under section 70, and the Children's Registrar considers that no useful purpose will be served by a preliminary conference, or
  - (b) the parties consent to dispense with the preliminary conference, or
  - (c) there are circumstances, identified by the Children's Court Rules, in which the requirement for a preliminary conference may be dispensed with.
- (2) The purpose of a preliminary conference is:
  - (a) to identify areas of agreement between the parties, and
  - (b) to identify issues in dispute between the parties, and
  - (c) to determine the best way of resolving any issues in dispute, including by referring the application to independent alternative dispute resolution, and
  - (d) if it is not appropriate to refer the application to independent alternative dispute resolution, to set a timetable for the hearing of the application by the Children's Court, and
  - (e) to formulate any interim orders that may be made by consent.
- (3) A party may be legally represented at a preliminary conference.
- (4) A power conferred by this Act when exercised by a Children's Registrar is taken to have been exercised by the Children's Court.
- (5) The exercise by a Children's Registrar of a power conferred by this Act (including this section) does not prevent the exercise of the power by the Children's Court.

## **66 Leave to withdraw care application**

- (1) A care application may be withdrawn by the person who made the application with the leave of the Children's Court.
- (2) An application for leave to withdraw the care application must be accompanied by:
  - (a) a statement that indicates how the issues that caused the application to be brought have been resolved, or
  - (b) a care plan that specifies how those issues are proposed to be addressed.

## **67 Children's Court order not limited by terms of care application**

The making of a care application for a particular care order of the Children's Court does not prevent the Children's Court from making a care order different from, in addition to, or in substitution for, the order for which the application was made, provided all prerequisites to the making of the order are satisfied.

## **68 Leave to file further documentary evidence or amend application**

A party to proceedings:

- (a) may file further documentary evidence in connection with a care application, and
  - (b) may amend a care application,
- with the leave of the Children's Court.

## **69 Interim care orders**

- (1) The Children's Court may make interim care orders in relation to a child or young person after a care application is made and before the application is finally determined.
- (2) The Director-General, in seeking an interim care order, has the onus of satisfying the Children's Court that it is not in the best interests of the safety, welfare and well-being of the child or young person that he or she should remain with his or her parents or other persons having parental responsibility.

### **Note—**

Section 49 makes provision for the care of children and young persons pending care proceedings.

## **70 Other interim orders**

The Children's Court may make such other care orders as it considers appropriate for the safety, welfare and well-being of a child or young person in proceedings before it pending the conclusion of the proceedings.

### **70A Consideration of necessity for interim care order**

An interim care order should not be made unless the Children's Court has satisfied itself that the making of the order is necessary, in the interests of the child or young person, and is preferable to the making of a final order or an order dismissing the proceedings.

**Note—**

Sections 63 and 72 deal with the power of the Children's Court to dismiss proceedings and section 94 deals with adjournments.

### **71 Grounds for care orders**

- (1) The Children's Court may make a care order in relation to a child or young person if it is satisfied that the child or young person is in need of care and protection for any of the following reasons:
  - (a) there is no parent available to care for the child or young person as a result of death or incapacity or for any other reason,
  - (b) the parents acknowledge that they have serious difficulties in caring for the child or young person and, as a consequence, the child or young person is in need of care and protection,
  - (c) the child or young person has been, or is likely to be, physically or sexually abused or ill-treated,
  - (d) subject to subsection (2), the child's or young person's basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents,
  - (e) the child or young person is suffering or is likely to suffer serious developmental impairment or serious psychological harm as a consequence of the domestic environment in which he or she is living,
  - (f) in the case of a child who is under the age of 14 years, the child has exhibited sexually abusive behaviours and an order of the Children's Court is necessary to ensure his or her access to, or attendance at, an appropriate therapeutic service,
  - (g) the child or young person is subject to a care and protection order of another State or Territory that is not being complied with,
  - (h) section 171 (1) applies in respect of the child or young person.
- (2) The Children's Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of:
  - (a) a parent's disability, or
  - (b) poverty.



**Note—**

The Children's Court cannot make a care order in circumstances to which section 75 (2) applies.

**72 Determination as to care and protection**

- (1) A care order in relation to a child or young person may be made only if the Children's Court is satisfied, on the balance of probabilities, that the child or young person is in need of care and protection or that even though the child or young person is not then in need of care and protection:
  - (a) the child or young person was in need of care and protection when the circumstances that gave rise to the care application occurred or existed, and
  - (b) the child or young person would be in need of care and protection but for the existence of arrangements for the care and protection of the child or young person made under section 49 (Care of child or young person pending care proceedings), section 69 (Interim care orders) or section 70 (Other interim orders).
- (2) If the Children's Court is not so satisfied, it may make an order dismissing the application.

**73 Order accepting undertakings**

- (1) If the Children's Court, after inquiring into a care application in relation to a child or young person, is satisfied that the child or young person is in need of care and protection:
  - (a) it may make an order accepting such undertakings (given by a parent of the child or young person) as it thinks fit with respect to the care and protection of the child or young person, or
  - (b) it may make an order accepting such undertakings (given by the child or young person) as it thinks fit with respect to the child's or young person's conduct, or
  - (c) it may make an order accepting undertakings under both paragraphs (a) and (b).
- (2) An undertaking referred to in this section:
  - (a) is to be in writing signed by the person giving it, and
  - (b) remains in force for such period (expiring on or before the day on which the child or young person attains the age of 18 years) as may be specified in the undertaking.
- (3) The Children's Court is to cause a copy of an undertaking referred to in this section to be served on the person giving it.
- (4) The Director-General or a party to proceedings in which an order accepting an

undertaking was made may notify the Children's Court of an alleged breach of an undertaking.

- (5) The Children's Court, on being notified of an alleged breach of an undertaking:
  - (a) must give the parties an opportunity to be heard concerning the allegation, and
  - (b) is to determine whether the undertaking has been breached, and
  - (c) if it finds that the undertaking has been breached, make such orders as it considers appropriate in all the circumstances.
- (6) An application for further orders under this section is not a variation application under section 90 (Rescission and variation of care orders) and the Children's Court may make any orders that it could have made when the order for undertakings was made.

#### **74 Order for provision of support services**

- (1) The Children's Court may make an order directing a person or organisation named in the order to provide support for that child or young person for such period (not exceeding 12 months) as is specified in the order.
- (2) The Children's Court must not make an order under this section unless:
  - (a) it gives notice of its intention to consider making the order to the person or organisation who would be required to provide support pursuant to such an order, and
  - (b) the person or organisation is given an opportunity to appear and be heard by the Children's Court before the Children's Court makes such an order, and
  - (c) the person or organisation consents to the making of the order, and
  - (d) the views of the child or young person in relation to the proposed order have been taken into account.
- (3) The Director-General may be required to provide support pursuant to an order made under this section.

#### **Note—**

The parents of a child or young person cannot be compelled to accept the provision of support services, particularly if the services relate to the parents rather than to the child or young person.

#### **75 Order to attend therapeutic or treatment program**

- (1) The Children's Court may, subject to this section, make an order:
  - (a) requiring a child of less than 14 years of age to attend a therapeutic program relating to sexually abusive behaviours, and

(b) requiring the parents of a child to take whatever steps are necessary to enable a child to participate in a treatment program,

in accordance with such terms as are specified in the order.

- (2) An order cannot be made under this section if the child is or has been the subject of criminal proceedings arising from the same sexually abusive behaviours.
- (3) An order cannot be made under this section unless the Children's Court has been presented with and has considered the provisions of a treatment plan that outlines the therapeutic program proposed for the child.

## **76 Order for supervision**

- (1) The Children's Court may, after inquiry, make an order placing a child or young person in relation to whom a care application has been made under the supervision of the Director-General if it is satisfied that the child or young person is in need of care and protection.
- (2) In making an order under this section, the Children's Court must specify:
- (a) the reason for the order, and
  - (b) the purpose of the order, and
  - (c) the length of the order.
- (3) The maximum period of supervision under an order under this section is 12 months.
- (4) The Children's Court may require the presentation of:
- (a) a report before the end of the period of supervision that states:
    - (i) the outcomes of the supervision, and
    - (ii) whether the purposes of the supervision have been achieved, and
    - (iii) whether there is a need for further supervision in order to protect the child or young person, and
    - (iv) whether any other orders should be made to protect the child or young person, or
  - (b) one or more reports during the period of supervision that describe the progress of the supervision,
- or reports under both paragraph (a) and paragraph (b).
- (5) A copy of a report, or part of a report, presented to the Children's Court under subsection (4) and a copy of any medical or assessment report presented to the

Children's Court may be given by the Children's Court to the legal representative of the child or young person to whom the report relates.

- (6) Despite subsection (3), the Children's Court may, of its own motion or on the application of the Director-General, and after giving the parties an opportunity to be heard, extend the period of a supervision order for such further period, not exceeding 12 months, as it considers appropriate in all the circumstances.

#### **77 Supervision of child or young person under a supervision order**

- (1) While a child or young person is subject to a supervision order:
- (a) the premises in which the child or young person resides are subject to inspection by the Director-General, and
  - (b) the Director-General may meet and talk with the child or young person, and
  - (c) the child or young person must:
    - (i) accept the supervision of the Director-General, and
    - (ii) obey all reasonable directions of the Director-General.
- (2) The Director-General may notify the Children's Court of an alleged breach of a supervision order.
- (3) The Children's Court, on being notified of an alleged breach of a supervision order:
- (a) must give the parties an opportunity to be heard concerning the allegation, and
  - (b) is to determine whether the order has been breached, and
  - (c) if it finds that the order has been breached, may make such orders as it considers appropriate in all the circumstances.
- (4) An application for further orders under this section is not a variation application under section 90 (Rescission and variation of care orders) and the Children's Court may make any orders that it could have made when the order for supervision was made.

#### **78 Care plans**

- (1) If the Director-General applies to the Children's Court for an order, not being an emergency protection order, for the removal of a child or young person from the care of his or her parents, the Director-General must present a care plan to the Children's Court before final orders are made.
- (2) The care plan must make provision for the following:
- (a) the allocation of parental responsibility between the Minister and the parents of the child or young person for the duration of any period for which the child or

young person is removed from the care of his or her parents,

- (b) the kind of placement proposed to be sought for the child or young person, including:
    - (i) how it relates to permanency planning for the child or young person, and
    - (ii) any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,
  - (c) the arrangements for contact between the child or young person and his or her parents, relatives, friends and other persons connected with the child or young person,
  - (d) the agency designated to supervise the placement in out-of-home care,
  - (e) the services that need to be provided to the child or young person.
- (3) The care plan is to be made as far as possible with the agreement of the parents of the child or young person concerned.
- (4) The care plan is only enforceable to the extent to which its provisions are embodied in or approved by orders of the Children's Court.
- (5) Other requirements and the form of a care plan under this section may be prescribed by the regulations.

#### **78A Permanency planning**

- (1) For the purposes of this Act, **permanency planning** means the making of a plan that aims to provide a child or young person with a stable placement that offers long-term security and that:
- (a) has regard, in particular, to the principle set out in section 9 (f), and
  - (b) meets the needs of the child or young person, and
  - (c) avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements.
- (2) Permanency planning recognises that long-term security will be assisted by a permanent placement.
- (3) A permanency plan for an Aboriginal or Torres Strait Islander child or young person must address how the plan has complied with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13.
- (4) If a permanency plan indicates an intention to provide permanent placement through

an order for sole parental responsibility or adoption of an Aboriginal or Torres Strait Islander child or young person with a non-Aboriginal or non-Torres Strait Islander person or persons, such an order should be made only:

- (a) if no suitable permanent placement can be found with an Aboriginal or Torres Strait Islander person or persons in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in section 13, and
- (b) in consultation with the child or young person, where appropriate, and
- (c) in consultation with a local, community-based and relevant Aboriginal or Torres Strait Islander organisation and the local Aboriginal or Torres Strait Islander community, and
- (d) if the child or young person is able to be placed with a culturally appropriate family, and
- (e) with the approval of the Minister for Community Services and the Minister for Aboriginal Affairs.

#### **79 Order allocating parental responsibility**

- (1) If the Children's Court finds that a child or young person is in need of care and protection, it may:
  - (a) make an order allocating the parental responsibility for the child or young person, or specific aspects of parental responsibility:
    - (i) to one parent to the exclusion of the other parent, or
    - (ii) to one or both parents and to the Minister or another person jointly, or
    - (iii) to another suitable person, or
  - (b) make an order placing the child or young person under the parental responsibility of the Minister.
- (2) The specific aspects of parental responsibility that may be allocated by an order of the Children's Court include, but are not limited to, the following:
  - (a) the residence of the child or young person,
  - (b) contact,
  - (c) the education and training of the child or young person,
  - (d) the religious upbringing of the child or young person,
  - (e) the medical treatment of the child or young person.

- (3) The Children's Court must not make an order allocating parental responsibility unless it has given particular consideration to the principle in section 9 (d) and is satisfied that any other order would be insufficient to meet the needs of the child or young person.
- (4) The Children's Court must not make an order allocating parental responsibility for a child or young person if the order would be inconsistent with any order in relation to the child or young person made by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children.

#### **80 Requirement to consider care plan**

The Children's Court must not make a final order:

- (a) for the removal of a child from the care and protection of his or her parents, or
- (b) for the allocation of parental responsibility in respect of the child,

unless it has considered a care plan presented to it by the Director-General.

#### **81 Parental responsibility of the Minister**

- (1) If the Children's Court makes an order placing a child or young person under the parental responsibility of the Minister, the Children's Court must determine:
  - (a) which aspects (if any) of parental responsibility are to be the sole responsibility of persons other than the Minister, and
  - (b) which aspects of parental responsibility are to be the sole responsibility of the Minister, and
  - (c) which aspects (if any) of parental responsibility are to be exercised jointly by the Minister and other persons,and the Minister may exercise parental responsibility alone or together with another person or other persons accordingly.
- (2) If an order places a child or young person under the sole parental responsibility of the Minister, the Minister must, so far as is reasonably practicable, have regard to the views of the persons who had parental responsibility for the child or young person before the order was made while still recognising that the safety, welfare and well-being of the child or young person remains the paramount consideration.
- (3) If aspects of parental responsibility are to be exercised jointly by the Minister and another person, either the Minister or the other person may exercise those aspects but, if they disagree concerning their exercise, the disagreement is to be resolved by order of the Children's Court.

## **82 Monitoring by Children's Court of order concerning parental responsibility**

- (1) The Children's Court may, in making an order allocating parental responsibility of a child or young person to a person (including the Minister) other than a parent, order that a written report be made to it within 6 months, or such other period as it may specify, concerning the suitability of the arrangements for the care and protection of the child or young person.
- (1A) The report must include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement.
- (2) If, after consideration of such a report, the Children's Court is not satisfied that proper arrangements have been made for the care and protection of the child or young person, it may order that the case be brought before it so that the existing orders may be reviewed.

## **83 Preparation of permanency plan**

- (1) If the Director-General applies to the Children's Court for a care order (not being an emergency care and protection order) for the removal of a child or young person, the Director-General must assess whether there is a realistic possibility of the child or young person being restored to his or her parents, having regard to:
  - (a) the circumstances of the child or young person, and
  - (b) the evidence, if any, that the child or young person's parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.
- (2) If the Director-General assesses that there is a realistic possibility of restoration, the Director-General is to prepare a permanency plan involving restoration and submit it to the Children's Court for its consideration.
- (3) If the Director-General assesses that there is not a realistic possibility of restoration, the Director-General is to prepare a permanency plan for another suitable long-term placement for the child or young person and submit it to the Children's Court for its consideration.
- (4) In preparing a plan under subsection (3), the Director-General may consider whether adoption is the preferred option for the child or young person.
- (5) The Children's Court is to decide whether to accept the assessment of the Director-General.
- (6) If the Children's Court does not accept the Director-General's assessment, it may direct the Director-General to prepare a different permanency plan.
- (7) The Children's Court must not make a final care order unless it expressly finds:



- (a) that permanency planning for the child or young person has been appropriately and adequately addressed, and
  - (b) that prior to approving a permanency plan involving restoration there is a realistic possibility of restoration having regard to:
    - (i) the circumstances of the child or young person, and
    - (ii) the evidence, if any, that the child or young person's parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.
- (8) A permanency plan is only enforceable to the extent to which its provisions are embodied in, or approved by, an order or orders of the Children's Court.
- (9) In this section, **parent**, in relation to the child or young person concerned, means:
- (a) if the child or young person has been adopted—the child's or young person's adoptive parent, or
  - (b) if the child or young person has not been adopted—the child's or young person's birth parent.

#### **84 Requirements of permanency plans involving restoration**

- (1) A permanency plan involving restoration is to include the following:
- (a) a description of the minimum outcomes the Director-General believes must be achieved before it would be safe for the child or young person to return to his or her parents,
  - (b) details of the services the Department is able to provide, or arrange the provision of, to the child or young person or his or her family in order to facilitate restoration,
  - (c) details of other services that the Children's Court could request other government departments or funded non-government agencies to provide to the child or young person or his or her family in order to facilitate restoration,
  - (d) a statement of the length of time during which restoration should be actively pursued.
- (2) In this section, **parent**, in relation to the child or young person concerned, means:
- (a) if the child or young person has been adopted—the child's or young person's adoptive parent, or
  - (b) if the child or young person has not been adopted—the child's or young person's birth parent.

## **85 Provision of services to facilitate restoration**

A government department or agency or a funded non-government agency that is requested by the Children's Court to provide services to a child or young person or his or her family in order to facilitate restoration is to use its best endeavours to provide those services.

### **85A Review of permanency plans involving restoration**

- (1) A permanency plan involving restoration is to be reviewed by the designated agency responsible for the placement of the child or young person:
  - (a) at the end of the length of time included in the permanency plan as the length of time during which restoration should be actively pursued, or
  - (b) if a review is directed by the Children's Guardian.
- (2) A permanency plan involving restoration is to be reviewed by the designated agency if it has not been reviewed under subsection (1) within 12 months after the last occasion on which it was considered by the Children's Court.
- (3) A review is to determine:
  - (a) whether the provisions of the permanency plan should be changed, particularly with respect to the length of time during which restoration should be actively pursued, and
  - (b) whether other arrangements should be made for the permanent placement of the child or young person, and
  - (c) whether the designated agency should recommend to the Director-General that an application for a care order be made or whether the designated agency should make an application for the rescission or variation of a care order.
- (4) Nothing in this section affects any obligation under section 150 to review the placement, and a review under section 150 may be taken to be a review for the purposes of this section also if the review under section 150 satisfies the requirements of this section.
- (5) The regulations may make provision for or with respect to a review under this section, including:
  - (a) the qualifications of the person carrying out the review on behalf of the designated agency, and
  - (b) the matters to be taken into consideration in carrying out the review, and
  - (c) the release of reports prepared in relation to the review.

## **86 Contact orders**

- (1) If a child or young person is the subject of proceedings before the Children's Court, the Children's Court may, on application made by any party to the proceedings, do any one or more of the following:
  - (a) make an order stipulating minimum requirements concerning the frequency and duration of contact between the child or young person and his or her parents, relatives or other persons of significance to the child or young person,
  - (b) make an order that contact with a specified person be supervised,
  - (c) make an order denying contact with a specified person if contact with that person is not in the best interests of the child or young person.
- (2) The Children's Court may make an order that contact be supervised by the Director-General or a person employed within the Department only with the Director-General's or person's consent.
- (3) An order of the kind referred to in subsection (1) (a) does not prevent more frequent contact with a child or young person with the consent of a person having parental responsibility for the child or young person.
- (4) An order of the kind referred to in subsection (1) (b) may be made only with the consent of the person specified in the order and the person who is required to supervise the contact.

## **87 Making of orders that have a significant impact on persons**

- (1) The Children's Court must not make an order that has a significant impact on a person who is not a party to proceedings before the Children's Court unless the person has been given an opportunity to be heard on the matter of significant impact.
- (2) If the impact of the order is on a group of persons, such as a family, not all members of the group are to be given an opportunity to be heard but only a representative of the group approved by the Children's Court.
- (3) The opportunity to be heard afforded by this section does not give the person who is heard the status or rights of a party to the proceedings.

## **88 Costs**

The Children's Court cannot make an order for costs in care proceedings unless there are exceptional circumstances that justify it in doing so.

## **89 Copies of final orders to be given to all parties**

The Children's Court is to take such action as is reasonably practicable to ensure that each party to an application receives a copy of a final order of the Children's Court

concerning the application.

**90 Rescission and variation of care orders**

- (1) An application for the rescission or variation of a care order may be made with the leave of the Children's Court.
- (2) The Children's Court may grant leave if it appears that there has been a significant change in any relevant circumstances since the care order was made or last varied.
- (2A) Before granting leave to vary or rescind the care order, the Children's Court must take the following matters into consideration:
  - (a) the nature of the application, and
  - (b) the age of the child or young person, and
  - (c) the length of time for which the child or young person has been in the care of the present carer, and
  - (d) the plans for the child, and
  - (e) whether the applicant has an arguable case.
- (3) An application may be made by:
  - (a) the Director-General, or
  - (b) the Children's Guardian, or
  - (c) a person having parental responsibility for the child or young person, or
  - (d) a person from whom parental responsibility for the child or young person has been removed, or
  - (e) any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.
- (3A) If:
  - (a) an application is made to the Children's Court by a person or persons (other than the Director-General) for the rescission or variation of a care order (other than a contact order) in relation to a child or young person, and
  - (b) the application seeks to change the parental responsibility for the child or young person, or those aspects of parental responsibility involved in having care responsibility for the child or young person, and
  - (c) the Director-General is not a party to the proceedings,

the applicant must notify the Director-General and the Children's Guardian of the application, and the Director-General and the Children's Guardian are entitled to be parties to the application.

(4) The Children's Court is not required to hear or determine an application made to it with respect to a child or young person by a person referred to in subsection (3) (e) unless it considers the person to have a sufficient interest in the welfare of the child or young person.

(5) If:

(a) an application for variation of a care order is made or opposed by the Director-General, and

(b) a ground on which the application is made is a ground that has not previously been considered by the Children's Court,

the ground must be proved as if it were a ground of a fresh application for a care order.

(6) Before making an order to rescind or vary a care order that places a child or young person under the parental responsibility of the Minister, or that allocates specific aspects of parental responsibility from the Minister to another person, the Children's Court must take the following matters into consideration:

(a) the age of the child or young person,

(b) the wishes of the child or young person and the weight to be given to those wishes,

(c) the length of time the child or young person has been in the care of the present caregivers,

(d) the strength of the child's or young person's attachments to the birth parents and the present caregivers,

(e) the capacity of the birth parents to provide an adequate standard of care for the child or young person,

(f) the risk to the child or young person of psychological harm if present care arrangements are varied or rescinded.

(7) If the Children's Court is satisfied, on an application made to it with respect to a child or young person, that it is appropriate to do so:

(a) it may, by order, vary or rescind an order for the care and protection of the child or young person, and

(b) if it rescinds such an order—it may, in accordance with this Chapter, make any

one of the orders that it could have made in relation to the child or young person had an application been made to it with respect to the child or young person.

- (8) On the making of an order under subsection (7), the Children's Court must cause notice of the order to be served on the Director-General.

## **91 Appeals**

- (1) A party to proceedings who is dissatisfied with an order (other than an interim order) of the Children's Court may, in accordance with the rules of the District Court, appeal to the District Court against the order.
- (2) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the order was made, may be given on the appeal.
- (3) Without limiting subsection (2), the District Court may, instead of taking fresh evidence, decide to admit as evidence the transcript of proceedings before the Children's Court and any exhibit tendered during those proceedings.
- (4) In addition to any functions and discretions that the District Court has apart from this section, the District Court has, for the purposes of hearing and disposing of an appeal, all the functions and discretions that the Children's Court has under this Chapter or Chapter 6.
- (5) Without limiting the generality of subsection (4), the District Court may confirm, vary or set aside the decision of the Children's Court.
- (6) The decision of the District Court in respect of an appeal is taken to be the decision of the Children's Court and has effect accordingly.
- (7) Subject to any interlocutory order made by the District Court, an appeal does not affect the operation of the order appealed against or prevent the taking of action to implement that order.
- (8) The provisions of Chapter 6 apply to and in respect of the hearing of an appeal under this section in the same way as they apply to and in respect of the hearing of a care application under that Chapter.

## **Chapter 6 Children's Court procedure**

### **92 Proceedings to which this Chapter applies**

This Chapter applies to proceedings before the Children's Court under this Act.

### **93 General nature of proceedings**

- (1) Proceedings before the Children's Court are not to be conducted in an adversarial

manner.

- (2) Proceedings before the Children's Court are to be conducted with as little formality and legal technicality and form as the circumstances of the case permit.
- (3) The Children's Court is not bound by the rules of evidence unless, in relation to particular proceedings or particular parts of proceedings before it, the Children's Court determines that the rules of evidence, or such of those rules as are specified by the Children's Court, are to apply to those proceedings or parts.

#### **94 Expedition and adjournments**

- (1) All matters before the Children's Court are to proceed as expeditiously as possible in order to minimise the effect of the proceedings on the child or young person and his or her family and to finalise decisions concerning the long-term placement of the child or young person.
- (2) For this purpose, the Children's Court is to set a timetable for each matter taking into account the age and developmental needs of the child or young person.
- (3) The Children's Court may give such directions as it considers appropriate to ensure that the timetable is kept.
- (4) The Children's Court should avoid the granting of adjournments to the maximum extent possible and must not grant an adjournment unless it is of the opinion that:
  - (a) it is in the best interests of the child or young person to do so, or
  - (b) there is some other cogent or substantial reason to do so.

#### **95 Court to explain proceedings to children and young persons**

- (1) The Children's Court must take such measures as are reasonably practicable taking into account the age and developmental capacity of the child or young person to ensure that a child or young person in proceedings before it understands the proceedings and, in particular, that the child or young person understands:
  - (a) the nature of any assertions made in the proceedings, and
  - (b) the legal implications of any such assertion.
- (2) Without limiting the generality of subsection (1), the Children's Court must, if requested by the child or young person or by some other person on behalf of the child or young person, explain to the child or young person:
  - (a) any aspect of the Children's Court's procedure, and
  - (b) any decision or ruling made by the Children's Court,

in or in relation to the proceedings.

- (3) Without limiting the generality of subsection (1), the Children's Court must ensure that the child or young person has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

#### **96 Attendance of child or young person and parents**

- (1) In proceedings before it with respect to a child or young person, the Children's Court may require the attendance, at the court house where the proceedings are conducted, of the child or young person and of any parent of the child or young person.
- (2) If a child or young person does not wish to be present before the Children's Court during the hearing of any proceedings, the child's or young person's wishes are to be taken into account by the Children's Court.
- (3) A child or young person is not required to give evidence in the Children's Court.

#### **97 Effect of failure of attendance**

If a parent of a child or young person who has been given notice under section 64 does not attend the Children's Court on the hearing of the application, the Children's Court may proceed in the absence of the parent.

#### **98 Right of appearance**

- (1) In any proceedings with respect to a child or young person:
  - (a) the child or young person and each person having parental responsibility for the child or young person, and
  - (b) the Director-General, and
  - (c) the Minister,may appear in person or be legally represented or, by leave of the Children's Court, be represented by an agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.
- (2) However, if the Children's Court is of the opinion that a party to the proceedings who seeks to appear in person is not capable of adequately representing himself or herself, it may require the party to be legally represented.
- (3) In any proceedings with respect to a child or young person, any other person who, in the opinion of the Children's Court, has a genuine concern for the safety, welfare and well-being of the child or young person may, by leave of the Children's Court, appear in person in the proceedings, or be legally represented, or be represented by an agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.



## **99 Legal representation**

- (1) The Children's Court may appoint a legal representative for a child or young person if it appears to the Children's Court that the child or young person needs to be represented in any proceedings before it.
- (2) Without limiting the role of a legal representative, the role of the legal representative of a child or young person in proceedings before the Children's Court includes:
  - (a) ensuring that the views of the child or young person are placed before the Children's Court, and
  - (b) ensuring that all relevant evidence is adduced and, where necessary, tested, and
  - (c) acting on the instructions of the child or young person or, if the child or young person is incapable of giving instructions:
    - (i) acting as a separate representative for the child or young person, or
    - (ii) acting on the instructions of the guardian ad litem.
- (3) There is a rebuttable presumption that a child who is not less than 10 years of age, and a young person, is capable of giving proper instructions to his or her legal representative. This presumption is not rebutted only because a child or young person has a disability.
- (4) The Children's Court may, on the application of a legal representative, make a declaration:
  - (a) that a child who is not less than 10 years of age or a young person is not capable of giving instructions and that the legal representative is to act as a separate representative, or
  - (b) that a child who is less than 10 years of age is capable of giving instructions.
- (5) If:
  - (a) a child is less than 10 years of age, or
  - (b) a child who is not less than 10 years of age, or a young person, is incapable of giving proper instructions to his or her legal representative,the legal representative of the child or young person is to act as a separate representative.
- (6) The role of a separate representative includes the following:
  - (a) to interview the child or young person after becoming the separate representative,

- (b) to explain to the child or young person the role of a separate representative,
  - (c) to present direct evidence to the Children's Court about the child or young person and matters relevant to his or her safety, welfare and well-being,
  - (d) to present evidence of the child's or young person's wishes (and in doing so the separate representative is not bound by the child's or young person's instructions),
  - (e) to cross-examine the parties and their witnesses,
  - (f) to make applications and submissions to the Children's Court for orders (whether final or interim) considered appropriate in the interests of the child or young person,
  - (g) to lodge an appeal against an order of the Children's Court if considered appropriate.
- (7) The legal representative or separate representative of a child or young person who has not been appointed by the Children's Court may appear only with its leave.
- (8) The Children's Court may withdraw its leave at any time if the child or young person informs the Children's Court that he or she does not wish to be represented by the legal representative or separate representative.

#### **100 Guardian ad litem—child or young person**

- (1) The Children's Court may appoint a guardian ad litem for a child or young person if it is of the opinion that:
- (a) there are special circumstances that warrant the appointment, and
  - (b) the child or young person will benefit from the appointment.
- (2) Special circumstances that warrant the appointment of a guardian ad litem may include that the child or young person has special needs because of age, disability or illness.
- (3) The functions of a guardian ad litem of a child or young person are:
- (a) to safeguard and represent the interests of the child or young person, and
  - (b) to instruct the legal representative of the child or young person.
- (4) A legal representative of a child or young person for whom a guardian ad litem has been appointed is to act on the instructions of the guardian ad litem.

#### **101 Guardian ad litem and amicus curiae—parents of child or young person**

- (1) The Children's Court may:

- (a) appoint a guardian ad litem for either or both of the parents of a child or young person, or
- (b) request the legal representative of a parent or the parents of a child or young person to act as *amicus curiae*,

if it is of the opinion that the parent is, or the parents are, incapable of giving proper instructions to his or her, or their, legal representative.

- (2) Circumstances that warrant the appointment of a guardian ad litem or a request for a legal representative to act as *amicus curiae* may include that the parent of a child or young person has an intellectual disability or is mentally ill.
- (3) The functions of a guardian ad litem of a parent of a child or young person are:
  - (a) to safeguard and represent the interests of the parent, and
  - (b) to instruct the legal representative of the parent.
- (4) A legal representative of a parent for whom a guardian ad litem has been appointed is to act on the instructions of the guardian ad litem.

## **102 Support persons**

- (1) A participant in proceedings before the Children's Court may, with the leave of the Children's Court, be accompanied by a support person.
- (2) The leave of the Children's Court must be granted unless:
  - (a) the support person is a witness in the proceedings, or
  - (b) the Children's Court, having regard to the wishes of the child or young person with respect to whom the proceedings are brought, is of the opinion that leave should not be granted, or
  - (c) there is some other substantial reason to deny the application.
- (3) The Children's Court may withdraw its leave at any time if a support person does not comply with any directions given to the support person by the Children's Court.
- (4) A support person cannot give instructions on behalf of the participant.
- (5) A support person may, with the leave of the Children's Court, act as an interpreter for a participant if the participant does not sufficiently speak or understand English.
- (6) Without limiting section 254, that section applies to a support person who acts as an interpreter for a participant.

### **103 Views of siblings**

The Children's Court, at its discretion, may obtain and consider the views of any siblings of a child or young person with respect to whom proceedings are brought and must take account of the interests of any siblings in determining what orders (if any) to make in the proceedings.

### **104 Exclusion of general public from proceedings**

- (1) While the Children's Court is hearing proceedings with respect to a child or young person:
  - (a) any person (other than a person referred to in paragraph (b)) who is not directly interested in the proceedings must, unless the Children's Court otherwise directs, be excluded from the place where the proceedings are being heard, and
  - (b) any person who is engaged in preparing a report of the proceedings for dissemination through a public news medium is, unless the Children's Court otherwise directs, entitled to enter and remain in the place where the proceedings are being heard.
- (2) While the Children's Court is hearing proceedings with respect to a child or young person:
  - (a) the Children's Court may direct the child or young person to leave the place where the proceedings are being heard at any time during the proceedings if it is of the opinion that the prejudicial effect of excluding the child or young person is outweighed by the psychological harm that is likely to be occasioned to the child or young person if the child or young person were allowed to remain there, and
  - (b) the Children's Court may direct any person (other than the child or young person) to leave the place where the proceedings are being heard at any time during the examination of any witness if it is of the opinion that it is in the interests of the child or young person that such a direction should be given.
- (3) The powers exercisable by the Children's Court under subsection (2) (b) may be exercised even if the person to whom a direction under that paragraph is given is directly interested in the proceedings.
- (4) If the Children's Court gives a direction under subsection (2) (a) with respect to a child or young person, it must also give a direction under subsection (2) (b) with respect to all persons who are engaged in preparing reports of the proceedings for dissemination through a public news medium.

### **105 Publication of names and identifying information**

- (1) The name of a child or young person:

- (a) who appears, or is reasonably likely to appear, as a witness before the Children's Court in any proceedings, or
- (b) with respect to whom proceedings before the Children's Court are brought or who is reasonably likely to be the subject of proceedings before the Children's Court, or
- (c) who is, or is reasonably likely to be, mentioned or otherwise involved in any proceedings before the Children's Court,

must not be published or broadcast in any form that may be accessible by a person in New South Wales before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of.

- (2) A person who publishes or broadcasts the name of a child or young person in contravention of subsection (1) is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for a period not exceeding 2 years, or both, in the case of an individual or 2,000 penalty units in the case of a corporation.

- (3) Subsection (1) does not prohibit:

- (a) the publication or broadcasting of an official report of the proceedings of the Children's Court that includes the name of a child or young person the publication or broadcasting of which would otherwise be prohibited by subsection (1), or
- (b) the publication or broadcasting of the name of a child or young person:
  - (i) in the case of a child—with the consent of the Children's Court, or
  - (ii) in the case of a young person—with the consent of the young person, or
  - (iii) in the case of a child or young person who is under the parental responsibility of the Minister—with the consent of the Children's Guardian if the Children's Guardian is of the opinion that the publication or broadcasting may be seen to be to the benefit of the child or young person.

- (4) For the purposes of this section, a reference to the name of a child or young person includes a reference to any information, picture or other material:

- (a) that identifies the child or young person, or
- (b) that is likely to lead to the identification of the child or young person.

- (5) The offence created by this section is an offence of strict liability.

### **106 Admissibility of certain statements**

A statement or information made or given to a police officer by a child who is under the

age of 14 years and who has exhibited sexually abusive behaviours must not be admitted in evidence in proceedings before the Children's Court unless:

- (a) there was present at the place where, and throughout the period of time during which, it was made or given an adult (other than a police officer):
  - (i) nominated by the child, or
  - (ii) belonging to a class of persons selected by the child,
- (b) and the child was given (before the statement or information was made or given) an opportunity to consult with the adult in private, or
- (c) the Children's Court:
  - (i) is satisfied that there was proper and sufficient reason for no such adult to have been present at the place where, or throughout the period of time during which, the statement or information was made or given, and
  - (ii) considers that, in the particular circumstances of the case, the statement or information should be admitted in evidence in those proceedings.

#### **107 Examination and cross-examination of witnesses**

- (1) **Extent of examination and cross-examination** A Children's Magistrate may examine and cross-examine a witness in any proceedings to such extent as the Children's Magistrate thinks proper for the purpose of eliciting information relevant to the exercise of the Children's Court's powers.
- (2) **Offensive or scandalous questions** The Children's Court must forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting, abusive or humiliating, unless the Children's Court is satisfied that it is essential in the interests of justice that the question be asked or answered.
- (3) **Oppressive or repetitive examination** The Children's Court must forbid an examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the Children's Court is satisfied that it is essential in the interests of justice for the examination to continue or for the question to be answered.
- (4) **Definition** In subsection (1), a reference to a Children's Magistrate includes a reference to an authorised Magistrate within the meaning of the [Children's Court Act 1987](#).

#### **108 Proceedings unaffected by pending criminal proceedings**

The jurisdiction of the Children's Court to hear and determine any proceedings with respect to a child or young person is not affected merely because criminal proceedings are pending against:

- (a) the child or young person, or
- (b) any other party to the proceedings, or
- (c) any other person,

whether or not the criminal proceedings have arisen out of the same or similar facts as those out of which the proceedings under this Act have arisen.

**109 Application of *Criminal Procedure Act 1986* to secure attendance of witnesses and the production of documents**

The provisions of the *Criminal Procedure Act 1986* relating to warrants and subpoenas for the attendance of witnesses in proceedings before a Local Court for offences punishable on summary conviction apply to:

- (a) the attendance of witnesses in proceedings before the Children's Court, and
- (b) the production of documents in proceedings before the Children's Court,

in the same way as those provisions apply to the attendance of witnesses in proceedings for such offences.

## **Chapter 7 Support for children and young persons in crisis**

### **Part 1 Serious or persistent conflict**

**110 What are the objects of this Part?**

The objects of this Part are:

- (a) to ensure, so far as possible, that conflicts between children or young persons and their parents are resolved without recourse to legal proceedings, and
- (b) to enable proper access to services where breakdowns in relationships occur between children or young persons and their parents, and
- (c) to enable the Children's Court to make appropriate orders in circumstances where the differences between a child or young person and his or her parents are so serious that it is no longer possible for the child or young person to continue living with his or her parents.

**111 When does this Part apply?**

- (1) This Part applies:
  - (a) if there is a serious or persistent conflict between the parents and the child or young person of such a nature that the safety, welfare or well-being of the child or young person is in jeopardy, or

(b) if the parents are unable to provide adequate supervision for the child or young person to such an extent that the safety, welfare or well-being of the child or young person is in jeopardy.

(2) The provisions of this Part apply in addition to the provisions of Chapters 3, 4 and 5.

### **112 What principle is to be applied in the administration of this Part?**

(1) The principle to be applied in the administration of this Part in its application to children is that the parents of a child should have responsibility for the child unless it is not in the best interests of the child that his or her parents have responsibility for him or her.

(2) The provisions of this section apply in addition to the provisions of sections 9–13.

### **113 Request for assistance**

(1) A parent, child or young person, or any other person may ask the Director-General for assistance:

(a) if there is a serious or persistent conflict between the parents and the child or young person of such a nature that the safety, welfare or well-being of the child or young person is in jeopardy, or

(b) if the parents are unable to provide adequate supervision for the child or young person to such an extent that the safety, welfare or well-being of the child or young person is in jeopardy.

(2) On receiving a request for assistance, the Director-General may provide or arrange for the provision of such advice or assistance as is necessary:

(a) to help the parents and the child or young person to resolve the conflict between them without recourse to legal proceedings, or

(b) to ensure that the child or young person is adequately supervised, or

(c) to enable the child or young person and his or her parents to have access to appropriate services.

### **114 Alternative dispute resolution**

(1) If the differences between a child or young person and his or her parents are so serious that it is no longer possible for the child or young person to continue living with his or her parents, the child, the young person, or a parent or the parents may request the Director-General to attempt to resolve those differences.

(2) On receiving a request, the Director-General must seek to resolve the differences, by any form of dispute resolution the Director-General considers appropriate, prior to making an application to the Children's Court for appropriate orders.



### **115 Alternative parenting plan**

- (1) In this Chapter, ***alternative parenting plan*** means a plan:
  - (a) that sets out the way in which the needs of the child or young person are proposed to be met having regard to the breakdown in the relationship between the child or young person and his or her parents, and
  - (b) that may include proposals concerning the following:
    - (i) allocation of parental responsibility or specific aspects of parental responsibility,
    - (ii) residential arrangements,
    - (iii) supervision,
    - (iv) contact arrangements,
    - (v) education and training,
    - (vi) medical care,
    - (vii) the provision of services.
- (2) In seeking to resolve conflict of a kind to which this Chapter applies:
  - (a) the Director-General must formulate an alternative parenting plan if the Director-General is a party to the proceedings, and
  - (b) any party may formulate an alternative parenting plan if the Director-General is not a party to the proceedings.

### **116 Application for order for alternative parenting plan**

- (1) If the differences between a child or young person and his or her parents are so serious that it is no longer possible for the child or young person to continue living with his or her parents, the child or young person, a parent or the parents, or the Director-General may make an application to the Children's Court for an order approving an alternative parenting plan.
- (2) An application is to be accompanied by an alternative parenting plan.
- (3) The Children's Court must not make an order unless it is satisfied that the parents and the child or young person have been advised of the desirability of seeking legal advice concerning any proposed changes to the allocation of parental responsibility and:
  - (a) that all appropriate steps that could be taken to resolve the matter have been taken and that all other appropriate forms of dispute resolution have been exhausted, or

- (b) that no useful purpose would be served in taking those steps or other forms of dispute resolution.

### **117 Adjournment**

The Children's Court may adjourn an application for an order approving an alternative parenting plan in order that further assessment, counselling or mediation may be carried out.

### **118 Court orders**

- (1) The Children's Court may make such orders as it considers appropriate to give effect to a proposed alternative parenting plan or specified parts of the plan.
- (2) In considering whether to make an order with respect to a child or young person, the Children's Court is to have regard to the following:
  - (a) the views of the child or young person,
  - (b) the age of the child or young person,
  - (c) the maturity of the child or young person,
  - (d) the capacity of the child or young person for independent living,
  - (e) the practical and emotional supports available to the child or young person.

#### **Note—**

In accordance with its power to monitor its orders, the Children's Court may monitor an order giving effect to an alternative parenting plan.

### **119 Registration of certain alternative parenting plans**

- (1) A party to an alternative parenting plan that has been made with the agreement of:
  - (a) all persons having existing parental responsibility for the child or young person to whom the alternative parenting plan applies, and
  - (b) the child or young person,may apply to the Children's Court for registration of the plan.
- (2) The regulations may make provision with respect to such an application.
- (3) The Children's Court may register an alternative parenting plan if:
  - (a) it is of the opinion that it is necessary and appropriate for the care and protection of the child or young person to whom it applies, and
  - (b) the child or young person and his or her parents have been advised of the

desirability of seeking legal advice concerning changes to the allocation of parental responsibility.

- (4) On registration, an alternative parenting plan has the same effect as if it had been approved by order of the Children's Court.

## **Part 2 Homelessness**

### **120 Homelessness of children**

- (1) Any person may report the homelessness of a child to the Director-General.
- (2) On receipt of a report, the Director-General must conduct such investigation and assessment concerning the child as the Director-General considers necessary.
- (3) The Director-General may provide or arrange for the provision of services, including residential accommodation, where appropriate, for a child whose homelessness has been reported to the Director-General.

### **121 Homelessness of young persons**

Any person may, with the consent of the young person, report the homelessness of a young person to the Director-General.

### **122 Mandatory reporting of child who lives away from home without parental permission**

A person who provides residential accommodation for another person who the person believes, on reasonable grounds:

- (a) is a child, and
- (b) is living away from home without parental permission,

must immediately inform the Director-General of the child's whereabouts.

Maximum penalty: 200 penalty units.

#### **Note—**

The police will notify the Director-General of the details of children who have been reported to the police as missing. If the Director-General becomes aware that a child reported as missing is safe, the Director-General is required to advise the police that the child is safe but not of the whereabouts of the child. The purpose of this provision is to avoid wasting resources in having the police search for missing children whose whereabouts are known to the Director-General.

The parents should be informed that the child is safe, but nothing in this section requires any person to reveal the whereabouts of the child to a person other than the Director-General.

## **Part 3 Compulsory assistance**

### **123 What is “compulsory assistance”?**

For the purposes of this Act, **compulsory assistance** of a child or young person is a form of intensive care and support for the child or young person that is necessary to protect the child or young person from suicide or other life-threatening or serious self-destructive behaviour and that includes:

- (a) the making of a compulsory assistance order by the Children’s Court that places the child or young person under the care and protection of the Director-General, and
- (b) the making by the Children’s Court of an order that requires the child or young person to reside and remain at premises specified in the order, and
- (c) the maintaining of 24-hour supervision of the child or young person.

### **124 Application for compulsory assistance order or interim compulsory assistance order**

- (1) The Director-General may apply to the Children’s Court for a compulsory assistance order or an interim compulsory assistance order if the Director-General is of the opinion:
  - (a) that compulsory assistance is necessary for the protection of the child or young person, and
  - (b) that less intensive means that have been attempted are, or if attempted would be, insufficient for the protection of the child or young person.
- (2) The Director-General cannot delegate the power to apply for an order under this section.

### **124A Notification and participation of Children’s Guardian**

- (1) The Director-General must notify the Children’s Guardian immediately an application is made for a compulsory assistance order or an interim compulsory assistance order in relation to a child or young person.
- (2) The Children’s Guardian is entitled to be a party to any proceedings before the Children’s Court under this Part concerning a child or young person.

### **125 Making of compulsory assistance order**

The Children’s Court must not make a compulsory assistance order unless it is satisfied:

- (a) that the child or young person will receive treatment, therapy or other services that will assist the child or young person to deal with the problems that have led the child or young person to be a danger to himself or herself, and

- (b) that the program offered to the child or young person is more likely than not to lead to a significant improvement in his or her circumstances, and
- (c) that the agency that will be required to provide intensive supervision of the child or young person has indicated to the Children's Court that it is willing, and that it is able, to allocate the necessary resources.

**126 Terms of compulsory assistance order**

- (1) A compulsory assistance order must make provision for all of the following matters:
  - (a) the person who is to be responsible under the order for the child or young person,
  - (b) the place at which the child or young person is to reside,
  - (c) a description of the therapeutic program and other support to be provided,
  - (d) details of the service provider having the responsibility to provide the therapeutic program and other support,
  - (e) details of the funding of the compulsory assistance and the person who is to provide the funding,
  - (f) the duration of the order.
- (2) A compulsory assistance order may make provision for such other matters as the Children's Court determines.

**127 Apprehension of child or young person who breaches compulsory assistance order**

If a child or young person who is subject to a compulsory assistance order leaves the premises specified in the order without lawful authority and the Director-General or a police officer believes on reasonable grounds that the child or young person is in a situation of potential harm, the Director-General or a police officer may, without the need for any authority other than that conferred by this section:

- (a) enter and search any premises at which the Director-General or police officer has reasonable grounds for believing the child or young person may be present, and
- (b) apprehend the child or young person and return the child or young person to the premises specified in the order.

**128 Duration of compulsory assistance orders**

- (1) A compulsory assistance order cannot be of more than 3 months' duration.
- (2) The Children's Court may grant one or more extensions of a compulsory assistance order if, after hearing an application for the extension, it is satisfied afresh as to the matters set out in paragraphs (a), (b) and (c) of section 125.

- (3) An extension cannot be granted for more than 3 months.

### **129 Interim compulsory assistance orders**

If the Children's Court is of the opinion that there is evidence that a child or young person is such a danger to himself or herself that he or she may suffer serious harm, the Children's Court may make an interim compulsory assistance order in respect of the child or young person.

### **130 Duration of interim compulsory assistance orders**

- (1) The Children's Court, in making an interim compulsory assistance order, must specify its duration, which cannot be more than 21 days.
- (2) An interim compulsory assistance order cannot be extended.

### **131 Additional orders**

In making a compulsory assistance order or an interim compulsory assistance order, the Children's Court may make such other orders as it thinks fit concerning education, contact or other matters relevant to the safety, welfare and well-being of the child or young person.

### **132 Emergency compulsory assistance**

- (1) If the Director-General is of the opinion that it is necessary to do so in order to protect a child or young person from immediate harm, the Director-General may, without an order of the Children's Court, place the child or young person under immediate compulsory assistance and specify the place at which the child or young person is to reside.
- (2) If the Director-General acts under subsection (1), the Director-General must make an application to the Children's Court for a compulsory assistance order or an interim compulsory assistance order in respect of the child or young person on the next sitting day of the Children's Court.

### **133 Notification of Children's Guardian of orders**

The Children's Court must notify the Children's Guardian of the making of an order under this Part, unless the Children's Guardian was a party to the proceedings in which the order was made.

### **133A Monitoring of orders by Children's Guardian**

The Children's Guardian must monitor the circumstances of a child or young person who is subject to an order under this Part.

### **133B Variation and revocation of orders**

An application may be made at any time for the variation or revocation of an order under this Part in respect of a child or young person by:

- (a) the child or young person, or
- (b) the Director-General, or
- (c) the Children's Guardian, or
- (d) a person having parental responsibility for the child or young person, or
- (e) any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.

## **Chapter 8 Out-of-home care**

### **Part 1 Introduction**

#### **134 What are the objects of this Chapter?**

The objects of this Chapter are:

- (a) to create a high standard in the provision of out-of-home care, and
- (b) to provide a model for the organisation of out-of-home care, and
- (c) to clarify the roles and responsibilities of those involved in the provision of out-of-home care by distinguishing between care responsibility (that is, the daily care and control of a child or young person), supervisory responsibility (that is, the supervision of those who have care responsibility) and parental responsibility.

#### **Note—**

The Children's Guardian has the function of monitoring and reviewing the placement of children and young persons in out-of-home care and may obtain information concerning placements from designated agencies.

**Designated agency** is defined in section 139.

#### **135 What is "out-of-home care"?**

- (1) In this Act, **out-of-home care** means residential care and control (whether or not for fee, gain or reward) of a child or young person:
  - (a) at a place other than the usual home of the child or young person, and
  - (b) by a person, other than:
    - (i) a birth or adoptive parent of the child or young person, or
    - (ii) a person who is related to the child or young person, and

(c) for:

- (i) in the case of any such care and control provided under an order of the Children's Court, or by virtue of the child or young person being a protected person, a period of more than 14 days, and
- (ii) in any other case, a period, or periods in the aggregate, exceeding 28 days in any period of 12 months.

(2) **Out-of-home care** does not include:

- (a) daily care and control of a child given by a person in the person's capacity as a licensed provider of children's services, or
- (b) any care or control of a child or young person that is prescribed by the regulations not to be out-of-home care.

(3) Out-of-home care of a child or young person commences:

- (a) immediately on the making of a care order for a period of more than 14 days, or
- (b) in any other case:
  - (i) immediately the period or periods referred to in subsection (1) (c) (ii) have elapsed, or
  - (ii) immediately the child or young person is placed with an authorised carer, whichever first occurs.

(4) In this section, **protected person** means:

- (a) a child or young person who is a ward of the Supreme Court and of whom the Minister or the Director-General has the custody or care pursuant to an order of the Supreme Court, or
- (b) a child or young person who is under the guardianship of the Director-General pursuant to section 34 (Guardianship of child awaiting adoption) of the [Adoption of Children Act 1965](#), or
- (c) a child or young person in respect of whom the Minister or the Director-General has parental responsibility, either wholly or partially, pursuant to an order in force under the [Family Law Act 1975](#) of the Commonwealth, or
- (d) a non-citizen child or young person in respect of whom the Director-General exercises the functions of a guardian pursuant to the [Immigration \(Guardianship of Children\) Act 1946](#) of the Commonwealth, or
- (e) a child or young person who, having been a child or young person referred to in paragraph (a), (b) or (c), was in the custody of a person referred to in section 91



(1) (d) (i) or (ii) of the *Children (Care and Protection) Act 1987* immediately before its repeal.

**136 Who may provide out-of-home care?**

- (1) Out-of-home care may be provided for a child or young person only by an authorised carer.
- (2) A person, other than an authorised carer, who provides out-of-home care for a child or young person is guilty of an offence.

Maximum penalty (subsection (2)): 200 penalty units.

**137 Who is an “authorised carer”?**

- (1) In this Act, ***authorised carer*** means:
  - (a) the principal officer of a designated agency, or
  - (b) a person who, in accordance with the regulations, is authorised as an authorised carer by a designated agency, or
  - (c) a person who, in accordance with the regulations, is otherwise authorised as an authorised carer.
- (2) The regulations may make provision for or with respect to the following:
  - (a) the making and determination of applications for authorisation,
  - (b) the authorisation of persons, by designated agencies or otherwise, as authorised carers,
  - (c) the imposition of conditions of an authorisation, including, but not limited to:
    - (i) the maximum number of children and young persons who may be placed in the care of an authorised carer (including the maximum number in specified age groups), and
    - (ii) the identification or description of children and young persons who may be placed in the care of an authorised carer,
  - (d) the period for which an authorisation remains in force,
  - (e) the cancellation or suspension of an authorisation.

**138 Who may arrange for the provision of out-of-home care?**

- (1) Arrangements for the provision of out-of-home care may be made only by:
  - (a) a designated agency, or

(b) the Children's Guardian.

(2) A person, other than a designated agency or the Children's Guardian:

(a) who places or arranges for the placement of a child or young person in out-of-home care, or

(b) who advertises or holds himself, herself or itself out as being willing to place or arrange for the placement of a child or young person in out-of-home care,

is guilty of an offence.

Maximum penalty (subsection (2)): 200 penalty units.

### **139 Who is a "designated agency"?**

(1) In this Act, **designated agency** means:

(a) a department of the Public Service, or

(b) an organisation that arranges the provision of out-of-home care,

if the department or organisation is accredited for the time being in accordance with the regulations.

(2) The regulations may prescribe the standards with which an applicant for accreditation must comply in order to be accredited as a designated agency.

### **140 Supervisory responsibility of designated agency**

The designated agency that places a child or young person in the out-of-home care of an authorised carer has a responsibility to supervise the placement.

#### **Note—**

Before a placement is found for a child or young person, parental responsibility will lie formally with the Minister by virtue of an order of the Children's Court. The designated agency is responsible for finding a placement and supervising it, and necessarily will exercise certain functions delegated to it. These functions could include the following:

(a) the power to place a child or young person with an authorised carer or in a residential unit,

(b) the power to make decisions on matters relating to the safety, welfare and well-being of a child or young person that are not encompassed in the care responsibility,

(c) the power to control the exercise of the care responsibility by giving directions to authorised carers,

(d) the duty to supervise the placement and to ensure that the safety, welfare and well-being of the child or young person is being protected and promoted.

These would encompass the powers and responsibilities of the designated agency. Certain powers would only be able to be exercised by the Minister or the Children's Guardian by delegation. These are the residual powers of guardianship. They would include the following:

- (a) the power to authorise the removal of a child or young person from the jurisdiction,
- (b) the power to apply for a passport,
- (c) the power to consent, or to decline to consent, to certain kinds of specified medical intervention,
- (d) the power to consent to the marriage of a young person.

#### **141 Inability of designated agency to fulfil responsibilities**

- (1) If a designated agency, other than the Department, is designated to supervise the placement of a child or young person in out-of-home care and that agency ceases to be able to fulfil its responsibilities in relation to the child or young person, the Department is to supervise the placement of the child or young person.
- (2) Immediately a designated agency becomes aware that it will cease to be able to fulfil its responsibilities in relation to a child or young person, it must make an application to the Children's Court for an order to vary the out-of-home care arrangements applying to the child or young person.

## **Part 2 Out-of-home care under order of Children's Court**

### **Division 1 General**

#### **142 Application of Part**

This Part applies if a child is placed in out-of-home care pursuant to an order of the Children's Court.

#### **143 Authorised carer's right to information for purpose of assessing placement**

- (1) The designated agency responsible for the placement of a child or young person must inform an authorised carer of all information that may be reasonably necessary to assist the carer to make an informed decision whether to accept the placement of a child or young person, subject to subsection (2).
- (2) In determining what information to make available to an authorised carer concerning a child or young person, the designated agency must pay due regard to any wishes expressed by the child or young person concerning the disclosure of information.

#### **144 Authorised carer's right to information for purpose of medical care and safety**

- (1) The designated agency responsible for the placement of a child or young person must provide to an authorised carer all information (including medical reports) in the possession of the designated agency concerning a child or young person that may be reasonably necessary:
  - (a) to enable the authorised carer to provide appropriate care for the child or young person, or

(b) to ensure the safety of the authorised carer and other members of the authorised carer's household.

(2) An authorised carer must not disclose information obtained under this section, except:

(a) to a medical practitioner or dentist for the purpose of medical or dental advice or treatment, or

(b) in such circumstances as may be approved by the Minister.

#### **145 Child's or young person's right to information concerning authorised carer**

A child or young person is to be given information concerning the proposed authorised carer by the designated agency responsible for the placement before being placed with the authorised carer.

#### **146 Involvement of authorised carers in decision-making**

An authorised carer is entitled to participate in the making of decisions, going beyond those relating to daily care and control, concerning the safety, welfare and well-being of a child or young person in the care of the authorised carer.

#### **147 Indemnity of authorised carers**

An authorised carer is entitled to be indemnified by the Minister for any loss or damage suffered by the authorised carer that is caused by a child or young person while in the care of the authorised carer.

#### **148 Disclosure of information concerning placement to parents**

(1) The designated agency responsible for the placement of a child or young person in out-of-home care must inform the parents of the child or young person of such information concerning the placement as is determined by the Children's Guardian.

(2) The Children's Guardian may approve of the withholding of information if there are reasonable grounds to fear for the safety of a child or young person, an authorised carer or any member of the authorised carer's family if the information were to be disclosed.

(3) In this section, **parent**, in relation to the child or young person concerned, means:

(a) the person (other than the Minister or the Director-General) who had parental responsibility for the child or young person immediately before the child or young person was placed in out-of-home care, and

(b) if the person referred to in paragraph (a) (including the Minister and the Director-General) had parental responsibility for the child or young person pursuant to an order of the Children's Court—the person who had parental responsibility for the child or young person immediately before the order was made.

**149 Order for sole parental responsibility**

- (1) An authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person, for whom the Minister (either alone or with another person or persons) has parental responsibility, may apply to the Children's Court for an order awarding sole parental responsibility for the child or young person to the authorised carer, subject to this section.
- (2) The application may be made by the authorised carer and the authorised carer's partner, if the partner so consents, and an order may be made accordingly.
- (3) An application cannot be made by a person who has the responsibility of an authorised carer solely in his or her capacity as the principal officer of a designated agency.
- (4) An application cannot be made without the consent of the person or persons who had parental responsibility for the child or young person immediately before parental responsibility was allocated to the Minister. The Children's Court must be satisfied that the consent has been properly given on an informed basis.
- (5) An application that relates to a child who is not less than 12 years of age, or a young person, and who is capable of giving consent cannot be made without the consent of the child or young person. A consent is to be given in such form and manner as may be prescribed by the regulations.
- (6) If an application relates to a child who is less than 12 years of age, the principal officer of the relevant designated agency is to give the child notice of the application.
- (7) In making an order under this section for sole parental responsibility, the Children's Court may make or vary a contact order under section 86.

**149A Variation or rescission of order for sole parental responsibility**

- (1) An application for the variation or rescission of a sole parental responsibility order under section 149 in respect of a child or young person cannot be brought except with:
  - (a) the leave of the Children's Court, and
  - (b) the consent of the principal officer of the designated agency that had last supervised the placement of the child or young person.
- (2) If:
  - (a) the principal officer of the designated agency that had last supervised the placement of the child or young person gives consent under subsection (1) (b), and

(b) the designated agency has provided support for the placement,

the principal officer must provide the Children's Court with a report concerning the placement together with such other information as may be relevant to the application.

- (3) Section 90 (6) applies to the determination of an application to vary or rescind a sole parental responsibility order under section 149 in respect of a child or young person in the same way as it applies to the variation or rescission of a care order.
- (4) This section does not limit or affect the making of an application to the Children's Court by the Director-General under section 45 or 61.

**Note—**

Section 247 provides that nothing in this Act limits the jurisdiction of the Supreme Court. Consequently, nothing in this section will limit that jurisdiction.

- (5) The regulations may make provision for or with respect to:
- (a) the form and manner in which a consent is to be given for the purposes of this section, and
- (b) the form and contents of a report under subsection (2).

## **Division 2 Review of out-of-home care under order of Children's Court**

### **150 Review of placements effected by order of Children's Court**

- (1) For the purpose of determining whether the safety, welfare and well-being of a child or young person who has been placed in out-of-home care by an order of the Children's Court is being promoted by the placement, the designated agency having responsibility for the placement of the child or young person is to conduct a review of the placement in accordance with this section.
- (2) Except as provided by subsection (3A), a review is to be conducted:
- (a) in the case of a child or young person who is in out-of-home care pursuant to an interim order of the Children's Court—within 4 months after the interim order is made, and
- (b) in the case of a child or young person who is in out-of-home care pursuant to a final order of the Children's Court:
- (i) in the case of a child of less than 2 years of age—within 2 months after the final order is made and thereafter within every period of 12 months after the final order is made, or
- (ii) in the case of a child of not less than 2 years of age—within 4 months after the final order is made and thereafter within every period of 12 months after the final order is made, and

- (c) after the death of a parent or the authorised carer, and
  - (d) after an unplanned change of placement.
- (3) Subsection (2) does not prevent the conduct of more frequent reviews.
- (4) A review is to be conducted in accordance with guidelines prepared by the Children’s Guardian.
- (5) A report of the review is to be given to the Children’s Guardian.
- (6) Despite subsection (1), a review may be conducted at any time by the Children’s Guardian.

### **Part 3 Voluntary out-of-home care**

#### **Division 1 Voluntary out-of-home care arranged by Director-General**

##### **151 Making of temporary care arrangements**

- (1) The Director-General may make a temporary care arrangement in respect of a child or young person if the child or young person is, in the opinion of the Director-General, in need of care and protection.
- (2) The Director-General must not make a temporary care arrangement in respect of a child unless:
- (a) a parent of the child consents to the arrangement, or
  - (b) the parents of the child cannot reasonably be located before the time that the Director-General considers that the arrangement should be made.
- (3) If the Director-General makes a temporary care arrangement without the consent of a parent of the child, the Director-General must take all reasonable steps to locate a parent of the child and to inform the parent of the arrangement.
- (4) A temporary care arrangement cannot be made under subsection (2) with the consent of a parent unless a permanency plan involving restoration is in place in relation to the child or young person.

##### **152 Duration, renewal and review of temporary care arrangements**

- (1) A temporary care arrangement ceases to be in force:
- (a) on the receipt by the Director-General of a request for the termination of the arrangement made by the person by whom the application for the making of the arrangement was made, or
  - (b) on the child or young person the subject of the arrangement attaining the age of

18 years, or

(c) on the expiration of the period of:

(i) except as provided by subparagraph (ii)—3 months, or

(ii) if the Director-General has renewed the arrangement pursuant to subsection (2)—6 months,

after the making of the arrangement, or

(d) on its termination by the Director-General under subsection (5),

whichever first occurs.

- (2) At the expiration of 3 months after the making of a temporary care arrangement in respect of a child or young person, the Director-General may, if of the opinion that the child or young person is still in need of care and protection, renew the arrangement for a further period of 3 months.
- (3) Section 151 (subsection (1) excepted) applies to the renewal of a temporary care arrangement in the same way as it applies to the making of such an arrangement.
- (4) A temporary care arrangement cannot be made or renewed in respect of a child or young person if the child or young person has, during the previous 12 months, been the subject of a temporary care arrangement for a period, or for periods in the aggregate, exceeding 6 months.
- (5) The Director-General may, whether on the application of the child or young person, or a parent of the child or young person, or on the Director-General's own motion, at any time terminate a temporary care arrangement in respect of a child or young person if the Director-General is of the opinion that the child or young person is no longer in need of care and protection.
- (6) An application for the review of a temporary care arrangement may, in accordance with the regulations, be made to the Children's Court:
  - (a) by or on behalf of the child or young person the subject of the arrangement, or
  - (b) by a person having parental responsibility for the child or young person.
- (7) The decision of the Children's Court in respect of an application for a review is to be given effect to as if it were the decision of the Director-General with respect to the making of a temporary care arrangement under section 151 (1).

### **153 Regulations relating to temporary care arrangements**

The regulations may make provision for or with respect to temporary care arrangements under this Part.



## **154 Effect of temporary care arrangements**

- (1) The Director-General has the care responsibility of a child or young person in respect of whom there is in force a temporary care arrangement.
- (2) In providing for the care and protection of a child or young person the subject of a temporary care arrangement, the Director-General:
  - (a) must have regard to:
    - (i) the views of the child's or young person's parents, and
    - (ii) such other matters as may be prescribed by the regulations,in relation to all matters concerning the safety, welfare and well-being of the child or young person, and
  - (b) must ensure that:
    - (i) the child's or young person's parents are kept informed as to all matters concerning the safety, welfare and well-being of the child or young person, and
    - (ii) all efforts are made to encourage continuing contact between the child or young person and his or her parents, and
  - (c) in the case of a child—must ensure that the child's parents are kept informed of the whereabouts of the child, unless the Director-General has reason to believe that the disclosure of the child's whereabouts would be prejudicial to the safety, welfare and well-being of the child.
- (3) The Children's Court may, on an application for the review of a temporary care arrangement under section 152 relating to a child or young person, direct the Director-General to disclose the whereabouts of the child or young person to the parents of the child or young person.

## **Division 2 Other voluntary care arrangements**

### **155 Monitoring of children and young persons in voluntary out-of-home care**

- (1) A child or young person must not remain in voluntary out-of-home care (otherwise than under a temporary care arrangement) for a period in excess of 21 days unless the designated agency having supervisory responsibility for the child or young person is satisfied, following appropriate assessment, that the child or young person is unable to remain with his or her parent or parents.
- (2) Within 7 days after the expiration of the 21-day period, the designated agency:
  - (a) must:
    - (i) develop and implement a permanency plan involving restoration, or

(ii) develop a care plan,  
in respect of the child or young person, and

(b) must:

- (i) notify the Children's Guardian of the out-of-home care arrangements concerning the child or young person, and
- (ii) provide such information (including copies of documents) as the Children's Guardian may require concerning the arrangements made to provide for the safety, welfare and well-being of the child or young person.

(3) The failure by a designated agency to notify the Children's Guardian of the out-of-home care arrangements concerning a child or young person in accordance with subsection (2) is an offence.

Maximum penalty: 200 penalty units.

(4) The Children's Guardian is to formulate intake procedures and procedures relating to assessments and inter-agency co-ordination in order to ensure:

- (a) that children and young persons are not placed in voluntary out-of-home care if adequate services can be provided to enable them to remain with their families, and
- (b) that proper case planning occurs for all children and young persons placed in voluntary out-of-home care.

### **156 Review of voluntary out-of-home care arrangements**

- (1) If a child or young person has been subject to a voluntary out-of-home care arrangement for a period, or for periods in the aggregate, exceeding 3 months in any period of 12 months, the Director-General must, within 21 days after the expiration of the 3-month period, conduct a review of the arrangement.
- (2) A review, in considering the needs of the child or young person, is to have regard to the following:
  - (a) the number of periods and the total time the child or young person has spent in voluntary out-of-home care,
  - (b) the number and outcome of previous reviews of the care arrangements,
  - (c) the legal status of the child or young person,
  - (d) the issues that need to be addressed while the child or young person is in voluntary out-of-home care, what is to be done and who is to undertake responsibility,

- (e) the responsibilities of all parties concerning care,
  - (f) any special requirements of the child or young person relating to culture, language, religion or disability,
  - (g) the appropriateness of making a care application.
- (3) At the conclusion of the review, the Director-General is to determine:
- (a) whether restoration of the child or young person to family care is possible and, if not, how the parenting needs of the child or young person are to be met, and
  - (b) whether a care application should be made in order to provide for the reallocation of parental responsibility in relation to the child or young person.
- (4) Other reviews concerning the child or young person are to be conducted by the Director-General:
- (a) after the death of the authorised carer, and
  - (b) before a planned change of placement, and
  - (c) after an unplanned change of placement,
- and, in any event, at least once in every period of 12 months.

## **Part 4 Daily care and control**

### **157 Care responsibility**

- (1) The authorised carer of a child or young person has authority to do any of the following:
- (a) to consent to medical and dental treatment, not involving surgery, for the child or young person on the advice of a medical practitioner or dentist,
  - (b) to consent to medical and dental treatment involving surgery that a medical practitioner or dentist certifies in writing needs to be carried out as a matter of urgency in the best interests of the child or young person,
  - (c) to correct and manage the behaviour of the child or young person, subject to the regulations,
  - (d) to give permission to participate in activities, such as school excursions, that are organised for the child or young person,
  - (e) to make other decisions that are required in the day-to-day care and control of the child or young person.
- (2) The authorised carer of a child or young person has authority to exercise any aspects

of parental responsibility that are delegated to the authorised carer in accordance with this Act.

**Note—**

Aspects of parental responsibility that may be delegated include:

- (a) the power to give consent to medical and dental treatment involving surgery, other than urgent treatment, and
  - (b) the power to make decisions concerning the education and training of the child or young person, and
  - (c) the power to give a consent on behalf of the child or young person, or to make an application on his or her behalf, for any purpose for which the consent or authorisation of a parent is required, other than:
    - (i) an application for a passport, or
    - (ii) consent to marriage.
- (3) The exercise of a function under this section by an authorised carer is subject to any written direction given by the designated agency that placed the child or young person in the daily care and control of the authorised carer, or the Children's Guardian.
- (4) An authorised carer:
- (a) may provide a child or young person with whatever religious instruction (if any) the authorised carer considers to be appropriate, and
  - (b) may allow the child or young person to participate in religious activities,
- unless a direction to the contrary has been given to an authorised carer by the designated agency responsible for the placement of the child or young person or the Children's Guardian.

**158 Physical restraint of child or young person**

- (1) This section applies if, in the opinion of a parent of a child or young person or the authorised carer of a child or young person, the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person.
- (2) In circumstances to which this section applies, the parent or the authorised carer:
- (a) may restrain the child or young person, but only on a temporary basis and only to the extent necessary to prevent injury to any person, and
  - (b) may seize and take from the child or young person:
    - (i) any weapon or other thing that is being used by the child or young person in a dangerous manner, and
    - (ii) any alcohol, and

- (iii) any illegal substance, and
  - (iv) any other thing, the deprivation of which is necessary to prevent the child or young person from causing injury to any person.
- (3) If a child or young person is restrained under this section, the restraint must be consistent with any behaviour management requirements of a care plan applying to the child or young person, otherwise reasonable force may be used.
- (4) The Director-General may specify procedures that may be followed for the purposes of this section.
- (5) A parent or an authorised carer who acts in accordance with this section or any procedure specified by the Director-General for the purposes of this section, and who is able to satisfy the court on the balance of probabilities that his or her actions were reasonable in all the circumstances of the case, is immune from any criminal or civil liability that arises as a consequence of so acting.

## **Part 5 Arrangements during out-of-home care**

### **159 Maintenance of register**

The Director-General is to maintain a register in which there are entered particulars of every child or young person who has been in out-of-home care for a continuous period of 28 days or more.

### **160 Maintenance of records**

Each designated agency must ensure that written, photographic and other records relating to the development, history and identity of a child and young person for whom the Minister has parental responsibility and for whom it has supervisory responsibility are maintained and are accessible to the child or young person.

### **161 Financial assistance for children and young persons in out-of-home care**

- (1) The Director-General may, in respect of any child or young person in out-of-home care, grant financial assistance to any person having the care of the child or young person for any period during which the child or young person is in that person's care.
- (1A) Without limiting subsection (1), financial assistance may take the form of a grant, an allowance or a refund of expenditure, or any other form of financial assistance that the Director-General may approve generally, or in a particular case or class of cases.
- (2) In this section, a reference to a child or young person in out-of-home care is a reference to:
- (a) a child or young person who resides in accordance with this Act with an authorised carer, or

- (b) a child or young person in respect of whom parental responsibility has been allocated pursuant to an order of the Children's Court, or
  - (c) a child or young person (other than a child or young person referred to in paragraph (a) or (b)) who:
    - (i) is in the care and protection of a person (other than a person to whom the child is related) belonging to such class of persons as may be prescribed by the regulations, or
    - (ii) is residing at such premises, or at premises belonging to such class of premises, as may be prescribed by the regulations, otherwise than as a member of the household of any other person who resides there.
- (3) If financial assistance under this section was being provided in respect of a person immediately before the person attained the age of 18 years, the Director-General may:
- (a) for the purpose of securing education or vocational training on a full-time basis for the person, and
  - (b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may determine,
- from time to time, and until the person reaches the age of 25 years, continue to provide financial assistance in respect of the person for any period during which the person is residing in the home of the person to whom the financial assistance is provided.

#### **162 Rights of children and young persons in out-of-home care**

- (1) Within 12 months after the commencement of this Chapter, the Minister must prepare a Charter of Rights for all children and young persons in out-of-home care.
- (2) The Minister must promote compliance with the Charter of Rights by all designated agencies and authorised carers.
- (3) Each designated agency and authorised carer has an obligation to uphold the rights conferred by the Charter of Rights.

#### **163 Parents' right to information concerning progress and development of their children**

- (1) The designated agency having supervisory responsibility for a child or young person in out-of-home care must inform the parents of the child or young person as to the progress and development of the child or young person.
- (2) In this section, **parent**, in relation to the child or young person concerned, means:
  - (a) the person (other than the Minister or the Director-General) who had parental responsibility for the child or young person immediately before the child or young

person was placed in out-of-home care, and

- (b) if the person referred to in paragraph (a) (including the Minister and the Director-General) had parental responsibility for the child or young person pursuant to an order of the Children's Court—the person who had parental responsibility for the child or young person immediately before the order was made.

#### **164 Parental responsibility of Minister**

The Minister is responsible for the provision of accommodation for any child or young person for whom the Minister has parental responsibility.

### **Part 6 Arrangements on leaving out-of-home care**

#### **165 Provision of assistance after leaving out-of-home care**

- (1) The Minister is to provide or arrange such assistance for children of or above the age of 15 years and young persons who leave out-of-home care until they reach the age of 25 years as the Minister considers necessary having regard to their safety, welfare and well-being.
- (2) Appropriate assistance may include:
  - (a) provision of information about available resources and services, and
  - (b) assistance based on an assessment of need, including financial assistance and assistance for obtaining accommodation, setting up house, education and training, finding employment, legal advice and accessing health services, and
  - (c) counselling and support.
- (3) The Minister has a discretion to continue to provide or arrange appropriate assistance to a person after he or she reaches the age of 25 years.

**Note—**

The assistance may be provided under section 166 by a designated agency.

#### **166 Leaving out-of-home care**

- (1) The designated agency having supervisory responsibility for a child or young person must prepare a plan, in consultation with the child or young person, before the child or young person leaves out-of-home care.
- (2) A plan is to include reasonable steps that will prepare the child or young person and, if necessary, his or her parents, the authorised carer and others who are significant to the child or young person for the child's or person's leaving out-of-home care.
- (3) The designated agency is to implement the plan when the child or young person

leaves out-of-home care.

### **167 Records concerning Aboriginal and Torres Strait Islander children and young persons**

The Director-General and each designated agency that supervises the placement of an Aboriginal or Torres Strait Islander child or young person in out-of-home care must make a record of:

- (a) the date of entry of the child or young person into out-of-home care, and
- (b) the period of time spent by the child or young person in out-of-home care, and
- (c) the plan for the child's or young person's leaving out-of-home care.

### **168 Access to personal information**

- (1) On leaving, or after having left, out-of-home care, a child or young person is entitled to have access, free of charge, to personal information relating directly to the child or young person in any records kept by:
  - (a) the designated agency that had supervisory responsibility for the child or young person, or
  - (b) his or her authorised carer.
- (2) The designated agency is to provide an appropriate person to support and assist the child or young person at the time when access to the information occurs.

### **169 Entitlement to certain documents**

On leaving, or after having left, out-of-home care, a child or young person is entitled to possession, free of charge, of the originals of documents held in a file of personal information by the designated agency that had supervisory responsibility for the child or young person or his or her authorised carer, including his or her birth certificate, school reports, medical reports, and personal photographs.

### **170 Retention of records**

- (1) Each designated agency must keep the records made by it in relation to the placement of a child or young person in out-of-home care for 7 years after the designated agency ceases to be responsible for the placement of the child or young person.
- (2) At the expiration of the 7-year period or, if, within that period, the agency ceases to be a designated agency, it must deliver the records required to be kept under this section to the Director-General.
- (3) Records delivered to the Director-General in accordance with this section are State records for the purposes of the [State Records Act 1998](#).



**Note—**

Section 14 makes provision with respect to records concerning Aboriginals and Torres Strait Islanders.

## **Part 7 Miscellaneous**

### **171 Removal of children and young persons from unauthorised out-of-home care**

(1) If:

(a) a child or young person resides:

(i) in out-of-home care that is not authorised by this Act, or

(ii) with an authorised carer who is in breach of the carer's authorisation, and

(b) the Director-General requests a person responsible for the child or young person to remove the child or young person from the out-of-home care, and

(c) the child or young person is not removed from the out-of-home care immediately, the child or young person is taken to be a child or young person in need of care and protection.

(2) Subsection (1) does not apply to or in respect of a child or young person who is related to the person who has the care of the child or young person in the out-of-home care.

### **172 Notification of deaths of children and young persons in out-of-home care**

If a child or young person dies while in out-of-home care, the principal officer of the designated agency having supervisory responsibility for the child or young person must immediately cause notice of the death to be given to the following persons:

(a) such of the parents of the child or young person as can reasonably be located,

(b) the Children's Guardian,

(c) the Coroner.

## **Chapter 9 Medical examination and treatment**

### **Part 1 Medical examination of children and young persons in need of care and protection**

#### **173 Medical examination of children in need of care and protection**

(1) If the Director-General or a police officer believes on reasonable grounds (which may consist wholly or partly of information received by that person) that a child is in need of care and protection, the Director-General or the police officer, as the case may be,

may serve a notice, in such form as may be prescribed by the regulations:

- (a) naming or describing the child, and
- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or some other place so specified for the purpose of the child being medically examined,

on the person (whether or not a parent of the child) who appears to the Director-General or the police officer to have the care of the child for the time being.

- (2) A person who fails to comply with the requirement contained in a notice served on the person under subsection (1) is guilty of an offence unless it is proved that the person did not have the care of the child at the time the notice was served.

Maximum penalty: 200 penalty units.

- (3) If a person fails to comply with the requirement contained in a notice served on the person under subsection (1), the Director-General or a police officer may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or elsewhere for the purpose of the child being medically examined.

- (4) When a child is presented to a medical practitioner under subsection (1) or (3):

- (a) the medical practitioner may carry out or cause to be carried out such medical examination of the child as the medical practitioner thinks fit, including examination at a hospital or place that is not the hospital or place specified in the notice referred to in subsection (1) in respect of the child,

- (b) the Director-General is taken, from the time at which the child is presented to the medical practitioner until the expiration of:

- (i) such period of time as is reasonably necessary for the child to be examined in accordance with paragraph (a), or

- (ii) 72 hours,

whichever period first expires, to be the parent of the child for the purpose only of enabling the examination to be carried out, and

- (c) the medical practitioner or other person by whom any such medical examination has been carried out must prepare a written report of the examination for transmission to the Director-General.

- (5) The carrying out of a medical examination under this section is not limited to an examination made only by use of the senses but includes the taking and analysis of samples and the use of any machine or device that enables or assists in the

examination of a person.

- (6) No proceedings lie against the Director-General, medical practitioner, police officer or person employed at any hospital or other place at which a child is examined for or on account of any act, matter or thing done or ordered to be done by that person, and purporting to be done for the purpose of carrying out or assisting in carrying out the provisions of this section, if that person has acted in good faith and with reasonable care.
- (7) If a medical practitioner or other person transmits a report to the Director-General pursuant to subsection (4) (c):
  - (a) the transmission of the report must not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) no liability for defamation is incurred because of the making of the report.

#### **174 Emergency medical treatment**

- (1) A medical practitioner may carry out medical treatment on a child or young person without the consent of:
  - (a) the child or young person, or
  - (b) a parent of the child or young person,if the medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the child or young person in order to save his or her life or to prevent serious damage to his or her health.
- (2) A registered dentist may carry out dental treatment on a child or young person without the consent of:
  - (a) the child or young person, or
  - (b) a parent of the child or young person,if the dentist is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the child or young person in order to save his or her life or to prevent serious damage to his or her health.
- (3) Medical or dental treatment carried out on a child or young person under this section is taken, for all purposes, to have been carried out with the consent of:
  - (a) in the case of a child—a parent of the child, or
  - (b) in the case of a young person—the young person.

- (4) Nothing in this section relieves a medical practitioner or registered dentist from liability in respect of the carrying out of medical or dental treatment on a child or young person, being a liability to which the medical practitioner or dentist would have been subject had the treatment been carried out with the consent of:
- (a) in the case of a child—a parent of the child, or
  - (b) in the case of a young person—the young person.

### **175 Special medical treatment**

- (1) A person must not carry out special medical treatment on a child otherwise than in accordance with this section.

Penalty on indictment: imprisonment for 7 years.

- (2) A medical practitioner may carry out special medical treatment on a child if:
- (a) the medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the child in order to save the child's life or to prevent serious damage to the child's health, or
  - (b) the Guardianship Tribunal, in the case of special medical treatment described in paragraph (a), (b) or (c) of the definition of **special medical treatment** in subsection (5), consents to the carrying out of the treatment, or
  - (c) consent is granted to the carrying out of the treatment in accordance with the regulations.
- (3) Consent to the carrying out of special medical treatment on a child must not be given by the Guardianship Tribunal unless the Guardianship Tribunal is satisfied that it is necessary to carry out the treatment on the child in order to save the child's life or to prevent serious damage to the child's psychological or physical health.
- (4) A child is entitled to be legally represented in proceedings under this section before the Guardianship Tribunal.

- (5) In this section:

**Guardianship Tribunal** means the Guardianship Tribunal constituted under the [Guardianship Act 1987](#).

**medical treatment** includes:

- (a) any medical procedure, operation or examination, and
- (b) any treatment, procedure, operation or examination that is declared by the regulations to be medical treatment for the purposes of this section.

**special medical treatment** means:

- (a) any medical treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out, not being medical treatment:
    - (i) that is intended to remediate a life-threatening condition, and
    - (ii) from which permanent infertility, or the likelihood of permanent infertility, is an unwanted consequence, or
  - (b) any medical treatment that involves the administration of a long-acting injectable hormonal substance (such as medroxyprogesterone acetate in aqueous suspension) for the purpose of contraception or menstrual regulation, or
  - (c) any medical treatment in the nature of a vasectomy or tubal occlusion, or
  - (d) any other medical treatment that is declared by the regulations to be special medical treatment for the purposes of this section.
- (6) Any thing that was done before the commencement of a regulation made for the purposes of subsection (2) (c) and that would have been lawful if the regulation had been in force at the time the thing was done is taken to have been lawfully done at the time that it was done.

## **Part 2 Treatment of children and young persons in out-of-home care ordered by the Children's Court**

### **176 Special medical examinations**

- (1) This section applies to a child or young person who resides in out-of-home care in accordance with an order of the Children's Court.
- (2) A special medical examination of a child or young person to whom this section applies must not be carried out:
  - (a) in the case of a child—unless the Children's Guardian has informed such of the parents of the child as can reasonably be located of the rights of a parent under this section, and
  - (b) in the case of a child who is of or above the age of 14 years or a young person—unless the Children's Guardian has informed the child or young person of the rights of a child or young person under this section.
- (3) If a medical practitioner has advised the Children's Guardian that the medical practitioner considers that it is medically necessary to carry out a special medical examination of a child or young person to whom this section applies, a second independent medical opinion as to whether the examination is medically necessary shall be obtained on the request of:

- (a) in the case of a child who is under the age of 14 years—a parent of the child, or
  - (b) in the case of a child who is 14 or 15 years of age—either a parent of the child or the child, or
  - (c) in the case of a young person—the young person.
- (4) A special medical examination of a child or young person to whom this section applies must not be carried out:
- (a) unless the Children’s Guardian (after considering the advice of the medical practitioner referred to in subsection (3) and, if a second independent medical opinion was obtained under that subsection, that second opinion) is satisfied that the examination is medically necessary, and
  - (b) unless:
    - (i) in the case of a child who is under the age of 14 years—a parent of the child has consented in writing to the examination being carried out, or
    - (ii) in the case of a child who is 14 or 15 years of age—both a parent of the child and the child have consented in writing to the examination being carried out, or
    - (iii) in the case of a young person—the young person has consented in writing to the examination being carried out, or
    - (iv) the Children’s Court has, under subsection (6), ordered that the examination be carried out.
- (5) A consent is void if:
- (a) subsection (2) has not been complied with in relation to the child, young person or parent by whom the consent was given, or
  - (b) the child or young person has not been counselled as referred to in subsection (8).
- (6) The Children’s Court, on the application of the Children’s Guardian, and on being satisfied that:
- (a) consent to a special medical examination is unreasonably refused, or
  - (b) it is impracticable for any reason (including the need for a special medical examination to be carried out as soon as practicable, whether because of the medical condition of the child or young person or otherwise) to obtain consent to a special medical examination, or
  - (c) it is more probable than not that the child or young person has been sexually assaulted by a parent whose consent to a special medical examination would

otherwise be required to be sought,

may order that the examination be carried out without the necessity for any such consent.

(7) If the Children's Guardian is satisfied that it is medically necessary to carry out a special medical examination of a child or young person to whom this section applies and the consent or consents referred to in subsection (4) has or have been obtained or the Children's Court has, under subsection (6), ordered that the examination be carried out:

- (a) in the case of a child who is under the age of 14 years—a parent of the child, or
- (b) in the case of a child who is 14 or 15 years of age—either a parent of the child or the child, or
- (c) in the case of a young person—the young person,

may nominate a medical practitioner to carry out the examination or may state a preference as to whether the examination shall be carried out by a male or female medical practitioner.

(8) Before a special medical examination of a child or young person to whom this section applies is carried out, the child or young person is to be counselled in relation to:

- (a) the nature of the examination and its effects, and
- (b) such other matters as may be prescribed by the regulations,

by a suitable person other than the medical practitioner who is to carry out the examination.

(9) A special medical examination of a child or young person to whom this section applies must not be carried out otherwise than:

- (a) by the medical practitioner nominated under subsection (7), or
- (b) if no medical practitioner has been so nominated but a preference has been stated under subsection (7)—by a medical practitioner nominated by the Children's Guardian in accordance with the preference so stated, or
- (c) if no medical practitioner has been so nominated and a preference has not been so stated—by a medical practitioner nominated by the Children's Guardian, or
- (d) if the Children's Guardian is of the opinion that it is impracticable for the examination to be carried out by the medical practitioner so nominated or in accordance with the preference so stated—by a medical practitioner nominated by the Children's Guardian.

(10) If a special medical examination of a child to whom this section applies is carried out:

- (a) pursuant to a consent referred to in subsection (4) (b) given by a parent of the child, or
- (b) pursuant to an order of the Children's Court under subsection (6),

and the special medical examination is carried out in accordance with the provisions of this section, it is taken, for the purposes of section 49 of the *Minors (Property and Contracts) Act 1970*, that a parent or guardian of the person of the child consented to the examination being carried out.

(11) Nothing in this section requires:

- (a) any consent to a special medical examination to be obtained, or
  - (b) any nomination or preference referred to in subsection (7) to be sought,
- from a parent against whom criminal proceedings have been commenced but not concluded, or a parent who has been found guilty of an offence, in relation to an alleged sexual assault on the child or young person.

(12) In this section:

**parent**, in relation to a child or young person to whom this section applies, includes the person in whose care the child or young person was immediately before the child or young person became a child or young person to whom this section applies.

**special medical examination** means:

- (a) a vaginal or anal examination (including any examination involving the insertion of any thing into the vagina or anus), or
- (b) a penile examination involving the insertion of any thing into the penis,

and includes any such examination carried out in the course of a medical examination under section 173.

### **177 Ordinary medical and dental treatment**

(1) This section applies to a child or young person, being:

- (a) a child or young person who resides in out-of-home care in accordance with this Act, or
- (b) a child or young person (other than a child or young person referred to in paragraph (a)) who is in the care of a person (other than the parent or guardian of the person of the child or young person, as referred to in section 49 (1) of the *Minors (Property and Contracts) Act 1970*) pursuant to any law, whether or not of



New South Wales.

- (2) If a person authorised by this Act consents to medical or dental treatment of a child or young person to whom this section applies being carried out, it is taken, for the purposes of section 49 of the *Minors (Property and Contracts) Act 1970*, that a parent or guardian of the person of the child consented to the treatment being carried out.
- (3) This section does not affect:
  - (a) such operation as a consent (whether or not a consent referred to in subsection (2) or in section 49 of the *Minors (Property and Contracts) Act 1970*) may have otherwise than as provided by this section, or
  - (b) the circumstances in which medical or dental treatment may be justified in the absence of consent.

## **Chapter 10 Children's Guardian**

### **Part 1 Appointment**

#### **178 Children's Guardian**

- (1) The Governor may appoint a Children's Guardian.
- (2) The employment of the Children's Guardian is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (3) The Children's Guardian may not be appointed for a term that exceeds 5 years and may not be appointed for more than two successive terms of office, despite anything to the contrary in section 42F of the *Public Sector Management Act 1988*.
- (4) The Governor may remove the Children's Guardian from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 42Q of the *Public Sector Management Act 1988*.

#### **179 Acting Children's Guardian**

- (1) The Governor may, from time to time, appoint a person to act in the office of the Children's Guardian during the illness or absence of the Children's Guardian (or during a vacancy in the office of the Children's Guardian) and a person, while so acting, has all the functions of the Children's Guardian.
- (2) The Governor may, at any time, remove a person from the office of acting Children's Guardian.
- (3) The acting Children's Guardian is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

## **Part 2 Functions**

### **180 Functions—generally**

- (1) The Children’s Guardian has the functions conferred or imposed on the Children’s Guardian by or under this or any other Act or law.
- (2) Despite any provision of this or any other Act, the Children’s Guardian is not entitled to carry out any of the following functions:
  - (a) an investigation into the death of a child that is subject to investigation by the coroner under section 13A or 13AB of the *Coroners Act 1980* or review or investigation by the Ombudsman,
  - (b) the investigation or resolution of a dispute that is the subject of a community services complaint within the meaning of Part 4 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

### **181 Functions relating to parental responsibility**

- (1) The Children’s Guardian has the following functions:
  - (a) to exercise, subject to any direction of the Minister, the parental responsibilities of the Minister for a child or young person for the benefit of the child or young person,
  - (b) to promote the best interests of all children and young persons in out-of-home care,
  - (c) to ensure that the rights of all children and young persons in out-of-home care are safeguarded and promoted,
  - (d) to examine a copy of the case plan for each child or young person in out-of-home care and a copy of each report made following the regular review of the case plan,
  - (e) to accredit designated agencies and to monitor their responsibilities under this Act and the regulations.
- (2) This section does not prevent the Minister from exercising any function relating to the parental responsibility of the Minister.

### **182 Removal of responsibility for daily care and control from an authorised carer**

The Children’s Guardian may, by notice in writing given to an authorised carer, remove the responsibility for the daily care and control of a child or young person from the authorised carer.

### **183 Power of Children's Guardian to resolve disputes**

The Children's Guardian may use his or her best endeavours to resolve, in an informal manner, disputes that may arise in the administration of this Act and the regulations between any of the following:

- (a) a child or young person,
- (b) a parent, relative or other person connected with the child or young person,
- (c) a designated agency,
- (d) an authorised carer.

### **184 Application for review of order of the Children's Court**

The Children's Guardian may apply to the Children's Court at any time for the rescission or variation of any order made under this Act by the Children's Court as if the Children's Guardian were a party to the proceedings in respect of which the order was made.

### **185 Provision and exchange of information**

- (1) For the purposes of providing information to, or exchanging information with, a prescribed person, the Children's Guardian may do either or both of the following:
  - (a) the Children's Guardian may, in accordance with the requirements (if any) prescribed by the regulations, furnish the prescribed person with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons,
  - (b) the Children's Guardian may, in accordance with the requirements (if any) prescribed by the regulations, direct the prescribed person to furnish the Children's Guardian with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons.
- (2) It is the duty of a prescribed person to whom a direction is given under subsection (1)
  - (b) to comply promptly with the requirements of the direction.
- (3) If information is furnished under subsection (1):
  - (a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) no liability for defamation is incurred because of the furnishing of the information, and
  - (c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.

- (4) A reference in subsection (3) to information furnished under subsection (1) extends to any information so furnished in good faith and with reasonable care.
- (5) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the furnishing of information (or affect a duty to furnish information) under this section. Nothing in this subsection affects any obligation or power to provide information apart from this subsection.
- (6) In this section:

***prescribed person*** means:

- (a) the Director-General, or
- (b) a designated agency, or
- (c) an authorised carer.

### **186 Delegation of functions**

- (1) The Children's Guardian may delegate to an authorised person any of the functions of the Children's Guardian, other than the following functions:
  - (a) this power of delegation,
  - (b) the granting of consent to the marriage of a child or young person,
  - (c) the granting of permission to remove a child or young person from New South Wales,
  - (d) the making of an application on behalf of a child or young person for a passport,
  - (e) the granting of consent to medical and dental treatment of a kind prescribed by the regulations,
  - (f) such other functions as may be prescribed by the regulations.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Children's Guardian if the delegate is authorised in writing to do so by the Children's Guardian.
- (3) In this section, ***authorised person*** means:
  - (a) a designated agency, or
  - (b) an officer within a designated agency, or
  - (c) an authorised carer, or
  - (d) a person of a class approved by the Children's Guardian or prescribed by the

regulations.

### **Part 3 Reports**

#### **187 Annual reports to Parliament**

- (1) The Children's Guardian is required to prepare, within the period of 4 months after 30 June in each year, a report of the operations of the Children's Guardian during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Children's Guardian under this section must include the following:
  - (a) a description of the activities of the Children's Guardian during that year in relation to the functions of the Children's Guardian,
  - (b) an evaluation of the response of relevant authorities to the recommendations of the Children's Guardian,
  - (c) any recommendations for changes in the laws of the State, or for administrative action, that the Children's Guardian considers should be made as a result of the exercise of the functions of the Children's Guardian.

#### **188 Special reports to Parliament and to Minister**

- (1) The Children's Guardian may, at any time, make a special report on any particular issue or general matter relating to the functions of the Children's Guardian and furnish the report to the Presiding Officer of each House of Parliament.
- (2) The Children's Guardian is to make such a special report to the Minister on any particular issue or general matter requested by the Minister. The special report may be furnished to the Presiding Officer of each House of Parliament.

#### **189 Furnishing of draft reports to Minister**

- (1) The Children's Guardian is to provide the Minister with a draft of each of the reports that are to be furnished to the Presiding Officers under this Part.
- (2) The draft reports are to be provided to the Minister at least one month (or other period agreed by the Minister) before they are furnished to the Presiding Officers.
- (3) The Minister may provide the Children's Guardian with any comments the Minister wishes to make in relation to a draft report, and may require the Children's Guardian to consult further in relation to it.
- (4) The Children's Guardian is not bound to amend the report in light of any comments made by the Minister, but must, before finalising the report, consider any comment that was provided to the Children's Guardian by the Minister before the report is

furnished to the Presiding Officers.

### **190 Provisions relating to reports to Parliament**

- (1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (2) The Children's Guardian may include in a report a recommendation that the report be made public forthwith.
- (3) If a report includes a recommendation by the Children's Guardian that the report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (4) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (5) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.
- (6) The *Annual Reports (Departments) Act 1985* is, in its application to the annual report of the Children's Guardian, modified to the extent necessary for the purposes of this Part.

## **Chapter 11 Child Death Review Team**

### **191 Constitution of Child Death Review Team**

- (1) There is established by this Act a body corporate to be known as the Child Death Review Team.
- (2) The Team is to consist of:
  - (a) persons appointed by the Minister, and
  - (b) the Commissioner for the Commission for Children and Young People.
- (3) The Team is to include representatives of each of the following:
  - (a) the Department of Community Services,
  - (b) the Department of Health,
  - (c) the Police Service,

- (d) the Department of Education and Training,
  - (e) the Attorney General's Department,
  - (f) the Office of the Coroner.
- (4) Each representative referred to in subsection (3) is to be nominated by the Minister responsible for the organisation concerned.
- (5) In addition, the Team is to include persons who, in the opinion of the Minister, are experts in child care and protection aspects of paediatrics, law, social work or psychology.
- (6) For the purpose of any review, analysis or other work to be undertaken by the Team that involves consideration of the deaths of Aboriginal or Torres Strait Islander children, the Minister is to appoint 2 persons who are Aboriginals or Torres Strait Islanders as additional members of the Team. For the purpose of any other particular review, analysis or other work to be undertaken by the Team, the Minister may appoint other persons having qualifications or experience that the Minister considers valuable as additional members of the Team.
- (7) Schedule 1 applies to the Team.
- (8) The Team must not consist of more than 20 members at any one time.
- (9) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.

## **192 Functions of Child Death Review Team**

- (1) The Team has the following functions:
- (a) to formulate recommendations as to policies and practices to be implemented by government and private agencies and by the community for the prevention or reduction of child deaths, and for that purpose:
    - (i) to identify, and undertake a detailed review of information concerning, deaths of children in circumstances of a kind prescribed by the regulations, and
    - (ii) to maintain a register of child deaths occurring in New South Wales after a date prescribed by the regulations, classifying such deaths according to cause, demographic criteria or other factors prescribed by the regulations, and
    - (iii) to analyse data accumulated with respect to the causes of child deaths reviewed or registered, and to identify patterns and trends relating to those deaths,
  - (b) to identify areas requiring further research by the Team or other agencies,

(c) to undertake such research or other projects as the Minister may require concerning the causes of child death.

(2) The Team has and may exercise such other functions as may be given to it by or under this or any other Act.

(3) The Team may not undertake a detailed review of a reviewable death (within the meaning of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*).

### **193 Duty of government agencies to assist the Team**

(1) It is the duty of each of the following persons, namely:

(a) the Director-General,

(b) the Department Head, chief executive officer or senior member of any department of the government, statutory body or local authority,

(c) the Commissioner of Police,

(d) the State Coroner,

(e) the holder of any office prescribed by the regulations,

to provide the Team with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Team reasonably requires access for the purpose of exercising its functions.

(2) Access to which the Team is entitled under subsection (1) includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record.

(3) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection.

(4) The Minister is to enter into arrangements with Ministers responsible for other government agencies so as to settle procedures for the furnishing of information as required by this section.

### **194 Reports of findings and recommendations of the Team**

(1) On or before 30 September in each year, the Team is to prepare a draft report containing recommendations for the purposes of section 192 (1) (a) and submit the draft report to the Minister for comment.



- (2) The Minister may provide the Team with any comment the Minister wishes to make in relation to the draft report, and may require the Team to consult the Minister further in relation to it.
- (3) The Team is not bound to amend its report in light of any comment made by the Minister, but must, before finalising its report, consider any comment that was furnished to it by the Minister on or before 15 October next following the preparation of the draft report. The Team is to finalise its report in the same month, and submit it to the Minister on or before 31 October.
- (4) At the time the report is submitted to the Minister it is also to be furnished to the Presiding Officer of each House of Parliament in accordance with the requirements of Part 5 of the *Commission for Children and Young People Act 1998* relating to annual reports of the Commission for Children and Young People (and that Part applies to it accordingly). The report may be combined with a report of the Commission for Children and Young People under that Part.
- (5) The Team is to publish at least once each year, for the information of the public, a report consisting of data collected and information relating to child deaths that occurred in the State during the period covered by the report.
- (6) In each of the reports prepared under this section, the Team is to provide details of the extent to which its previous recommendations have been accepted and may comment on the extent to which those recommendations have been implemented in practice.

### **195 Confidentiality of information**

- (1) A person who is a member of the Team or of its staff must not, except for the purpose of the exercise of the functions of the Team or in such other circumstances as the regulations may prescribe, make a record of, or directly or indirectly reveal to any person, any information (including the contents of any document) that was acquired by the person by reason of being a member of the Team or of its staff.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person who is a member of the Team or of its staff is not required:
  - (a) to produce to any court any document or other thing that has come into the person's possession, custody or control, or
  - (b) to reveal to any court any information that has come to the person's notice, by reason of being a member of the Team or of its staff.
- (3) Any authority or person to whom any information referred to in subsection (1) is revealed, and any person or employee under the control of that authority or person:

- (a) is subject to the same obligations and liabilities under subsection (1), and
- (b) enjoys the same rights and privileges under subsection (2),

in respect of that information as if he or she were a member of the Team or of its staff who had acquired the information for the purpose of the exercise of the functions of the Team. Failure to comply with obligations and liabilities referred to in this subsection is taken to be a contravention of subsection (1).

(4) In this section:

- (a) **court** includes any tribunal or person having power to require the production of documents or the answering of questions,
- (b) **produce** includes permit access to,
- (c) a reference to a member of staff of the Team is a reference to any person engaged to assist the Team in the exercise of its functions.

#### **196 Guidelines for operations of the Team**

- (1) The Minister is to draw up guidelines for the operations of the Team.
- (2) The guidelines must include provisions designed to secure:
  - (a) confidentiality of medical and other information obtained by the Team, and
  - (b) protection of the privacy of individuals in reports or information published by the Team (including any report prepared under section 194) and in other aspects of the Team's activities, and
  - (c) any other matters prescribed by the regulations.
- (3) Provisions to which subsection (2) (b) applies are to be drawn up in consultation with the Privacy Committee.

#### **197 Administrative support**

The Commission for Children and Young People is to provide administrative support to the Team.

#### **198 Review of Chapter**

- (1) The Minister is to review this Chapter to determine whether the policy objectives of this Chapter remain valid and whether the terms of this Chapter remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Chapter.

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Chapter 12 Children's services

### Part 1 Preliminary

#### 199 Definitions

In this Chapter:

**authorised supervisor**, in relation to a children's service, means the person specified as the authorised supervisor in the licence for the service.

**centre based children's service** means a children's service that is provided at a fixed premises (other than the home of the licensee of the service).

**children's service** has the meaning given it by section 200.

**family day care children's service** means a children's service that organises or arranges for the care to be provided at the home of a carer other than the licensee of a home based children's service.

**home based children's service** means a children's service in which the care (not being care organised or arranged by a family day care children's service) is provided at the home of the carer, not being the home of any of the children receiving the care (other than a child related to the carer).

**licence** means a licence for a children's service that has been granted under this Act and is in force.

**licensee**, in relation to a children's service, means the person specified as the licensee in the licence for the service.

**majority shareholder**, in relation to a corporation, means a person holding 50% or more of the shares of the corporation.

**mobile children's service** means a children's service that visits specific premises, areas or places at specific times for the purpose of providing the care.

**prescribed children's service** means the following:

- (a) a centre-based children's service,
- (b) a family day care children's service,
- (c) a home-based children's service,
- (d) a mobile children's service,

and includes any other children's service prescribed by the regulations but does not include any children's service excluded by the regulations.

## **200 Meaning of "children's service"**

- (1) For the purposes of this Act, a **children's service** is a service that provides education or care (other than residential care), or both education and care, whether directly or indirectly, for one or more children under the age of 6 years and who do not ordinarily attend school (disregarding any children who are related to the person providing the care).
- (2) However, a **children's service** does not include any of the following:
  - (a) a service provided by a designated agency,
  - (b) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned,
  - (c) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised,
  - (d) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium or a casino), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility,
  - (e) a service that is concerned primarily with the provision of:
    - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
    - (ii) private tutoring,
  - (f) a service under which formal education in accordance with the school curriculum set out in Part 3 of the [Education Act 1990](#) is provided by a government school or a registered non-government school within the meaning of that Act,
  - (g) a service provided at exempt premises, but only if the service is established, registered or licensed as part of the institution operating on those premises.
- (3) In this section, **exempt premises** means:
  - (a) the premises of any of the following:
    - (i) a private hospital or day procedure centre licensed under the [Private Hospitals and Day Procedure Centres Act 1988](#) or a nursing home licensed under the [Nursing Homes Act 1988](#),

- (ii) a hospital or an authorised hospital within the meaning of the *Mental Health Act 1990*,
  - (iii) a statutory health corporation or an affiliated health organisation under the *Health Services Act 1997*,
  - (iv) a public hospital or health service controlled by an area health service constituted under the *Health Services Act 1997* or a public hospital controlled by the Crown within the meaning of that Act,
- (b) any premises belonging to a class of premises prescribed by the regulations for the purposes of this paragraph,
- (c) in relation to any provision of this Act, any premises declared to be exempt premises for the purposes of that provision by an order of the Minister published in the Gazette, being an order that is in force.
- (4) The Minister may make orders of the kind referred to in subsection (3) (c).

**Note—**

Various specific kinds of children’s services are defined in section 199. They consist of centre based children’s services, family day care children’s services, home based children’s services and mobile children’s services.

## **Part 2 Purpose of Chapter**

### **201 Objects of Chapter**

The objects of this Chapter are:

- (a) to ensure the safety, welfare and well-being of children in children’s services, and
- (b) to promote certain standards for those services, and
- (c) to ensure, as far as possible, that all persons working in children’s services are suitable for such work.

### **202 Principles underlying the provision of children’s services**

The provision of children’s services should be based on the following principles:

- (a) the paramount consideration in the provision of children’s services is the best interests of children,
- (b) children should receive services that meet their individual needs (including the needs of children with a disability) and enhance their physical, emotional, cognitive, social and cultural development,
- (c) parents have both a right and a responsibility to be involved in the making of decisions by a children’s service in so far as those decisions affect their children.

**Note—**

Children's services must also have regard to the provisions of the [Anti-Discrimination Act 1977](#).

**203 Role of objects and principles**

- (1) The objects set out in section 201, and the principles set out in section 202, are intended to give guidance and direction in the administration of this Chapter. They do not create, or confer on any person, any right or entitlement enforceable at law.
- (2) However, this section does not prevent any disciplinary proceedings against a public servant.

**Part 3 Licensing of children's services**

**204 Person not to provide prescribed children's service without licence**

- (1) A person must not provide a prescribed children's service unless the person is the licensee for the children's service.

Maximum penalty: 200 penalty units.

- (2) However, a person is not guilty of an offence under subsection (1):
  - (a) if the person is the authorised supervisor for the children's service but is not the licensee—in respect of any thing he or she does in the course of supervising the provision of that service, or
  - (b) in any other case—in respect of any thing he or she does in the course of providing (or assisting in providing) the children's service if the thing is done in accordance with directions given by the licensee or authorised supervisor for that service.

**205 No advertising of unlicensed services**

- (1) A person must not advertise himself or herself (or hold himself or herself out) as being willing to provide a prescribed children's service unless the person is the licensee for the children's service.

Maximum penalty: 5 penalty units.

- (2) A person must not knowingly publish any advertisement inviting the attendance of children at a children's service that is not licensed.

Maximum penalty: 5 penalty units.

- (3) However, a person is not guilty of an offence under this section if:
  - (a) the prescribed children's service concerned is a service that is proposed to be provided in the future, and

- (b) the person proposing to provide the service has duly applied for a licence for it, and
- (c) the application has not been finally dealt with.

## **206 Application for licence**

- (1) An application for a licence is to be accompanied by such documents and information (including personal information concerning the applicant and proposed staff) as may be prescribed by the regulations.
- (2) If the applicant is not a natural person, any personal information concerning the applicant that is required by the regulations is required of each person involved in the control and management of the applicant (such as a chief executive officer, a director and a majority shareholder of a corporation, and a trustee of a trust).
- (3) If a majority shareholder of an applicant corporation is another corporation, subsection (2) applies in respect of that corporation in the same way as it applies in respect of the applicant corporation.
- (4) The Director-General may require an applicant for a licence to furnish such further particulars with respect to the application as the Director-General may specify in a written notice to the applicant.

## **207 Refusal to grant licence**

- (1) The Director-General may refuse to grant a licence if the Director-General is of the opinion that the operation of the proposed children's service to which the application for the licence relates would constitute an unacceptable risk to the safety, welfare or well-being of children who would attend the service.
- (2) This section does not limit the grounds on which the Director-General may refuse to grant a licence.

## **208 Licences**

- (1) A licence for a children's service must specify:
  - (a) the person or body to whom or to which it is granted (who is, except as provided by subsections (2) and (3), the licensee), and
  - (b) the children's service to which it relates, and
  - (c) the person who is authorised by the licence to have the overall supervision of the provision of the children's service concerned (the authorised supervisor), and
  - (d) the premises from which the service is to be provided, and
  - (e) the times during which the service is to be available, and

- (f) the number of children, and the age groups of the children, for whom it may cater, and
  - (g) any conditions imposed on the licence at the time it was granted, and
  - (h) the period for which the licence is in force unless sooner suspended or revoked.
- (2) If a licence is granted to an unincorporated body, the applicant for the licence is taken to be the licensee under the licence.
- (3) However, if the unincorporated body has appointed a person to be the licensee under the licence, and that person has given written notice to the Minister of the appointment and of his or her full name and residential address, that person (and not the applicant) is taken to be the licensee.
- (4) A licence must not specify more than one person as an authorised supervisor for the children's service to which it relates.

### **209 Conditions of licences**

A licence is subject to the following:

- (a) any condition prescribed by the regulations for the licence (or for a class of licences to which the licence belongs),
- (b) any other condition in force in relation to the licence, being a condition that the Minister thought fit to impose on the licence and that was:
  - (i) specified in the licence at the time it was granted, or
  - (ii) subsequently imposed on the licence in accordance with the regulations.

### **210 Licensee and authorised supervisor**

- (1) A person who is the licensee or authorised supervisor under a licence for a children's service must not contravene or fail to comply with any condition of the licence that applies to the person.

Maximum penalty: 200 penalty units.

- (2) It is not essential that the authorised supervisor be on the premises at which the children's service is being provided at all times that the service is operating. However, the functions of the authorised supervisor cannot be delegated to any other person.

### **211 Revocation of licence**

- (1) A licence may be revoked:
- (a) if the Director-General is of the opinion that the continued operation of the children's service to which the licence relates would constitute an unacceptable



risk to the safety, welfare or well-being of any child or class of children attending the service, or

- (b) if there arise exceptional circumstances in which the Director-General considers it contrary to the best interests of the children attending the service for the service to continue, or
- (c) in the case of a licence granted otherwise than to a natural person—if the Director-General is of the opinion that any person involved in the control and management of the grantee (such as the chief executive officer, a director and a majority shareholder, if the grantee is a corporation, and a trustee if the grantee is a trust) is no longer a suitable person to hold a licence.

(2) This section does not limit the grounds on which a licence may be revoked.

### **212 Death of licensee**

- (1) This section applies only in respect of a children's service having only one licensee.
- (2) On the death of the licensee, the Director-General may appoint the executor of the licensee's will (or any other person that the Director-General considers suitable) as licensee of the service for a period not exceeding 2 months (or such longer period as the Director-General may determine in a particular case).

### **213 Application of Part to certain pre-school services**

Despite the other provisions of this Part, this Part does not apply to a prescribed children's service, being a service for pre-school children conducted by a school within the meaning of the [Education Act 1990](#), until such day as may be appointed by proclamation for the purposes of this section.

## **Part 4 Matters relating to parents**

### **214 Information to be provided**

- (1) The licensee of a children's service must provide parents of children enrolled for the service with ready access to:
  - (a) copies of all written policies required by the regulations or other policies and procedures relating to the conduct of the service developed by the service, and
  - (b) details of procedures for dealing with parents' concerns and complaints about the service.
- (2) The information referred to in subsection (1) is to be provided in a language and manner that can be understood by the parents of the children enrolled at the service.
- (3) The licensee must inform parents of the availability of the information referred to in

subsection (1).

Maximum penalty: 2 penalty units.

### **215 Parental contact with children**

- (1) The licensee of a children's service must afford any parent contact with his or her child at any time that the service is being provided to the child.
- (2) However, the licensee may deny a parent contact with his or her child (until the parent's right to contact has been established):
  - (a) if the licensee has reason to believe that a court has denied the parent that contact, or
  - (b) if the licensee is requested to do so by the Director-General, an officer of the Department of Health, a police officer, or any other appropriate authority.

#### **Note—**

The regulations may require, as a condition of a licence to provide a children's service, the development of policies and procedures relating to parental contact with children enrolled with the service.

## **Part 5 Miscellaneous**

### **216 Exclusion of persons from premises of children's service**

- (1) The Director-General may, by notice in writing (an **exclusion notice**) addressed and given to a person in any way involved in, or connected with, the provision of a licensed children's service (whether as an owner, manager, licensee, authorised supervisor, employee, contractor, volunteer, parent or otherwise) direct the person to refrain from entering the premises on which the service is provided.
- (2) The Director-General may give a person an exclusion notice only if the Director-General is of the opinion that the continued presence of the person on those premises would constitute an unacceptable risk to the safety, welfare or well-being of a child or class of children enrolled with the service.
- (3) The exclusion notice must specify the reasons for the Director-General's opinion.
- (4) An exclusion notice has effect for a period not exceeding 28 days.
- (5) A person must not enter any premises in contravention of an exclusion notice.

Maximum penalty: 200 penalty units.

- (6) The Director-General's power under this section cannot be delegated.

### **217 Information to licensee concerning exclusion notice**

- (1) The Director-General is to give a copy of any exclusion notice to the licensee of the relevant children's service at the same time as the notice is given to the person to whom it is addressed.
- (2) The copy is to be accompanied by a further notice to the effect that the Director-General intends to impose a condition on the licence, or to revoke the licence, in consequence of the issue of the exclusion notice.

### **218 Termination of illegal children's services**

- (1) If the Director-General has reason to believe that an offence under section 204 or 210 (or under a provision of the regulations relating to the functions of licensees and authorised supervisors) is being committed in relation to a children's service, the Director-General may inform the parent of a child enrolled with the children's service that it is inadvisable for the child to continue to attend the service.
- (2) If the child of a parent who has been given the information referred to in subsection (1) continues to attend the children's service concerned, the Director-General may direct the parent to withdraw the child from the service.
- (3) A person who receives such a direction must comply with it as soon as is reasonably practicable.

Maximum penalty: 5 penalty units.

- (4) Subsection (1) does not apply to or in respect of a child who is related to the person by whom the offence is being committed.

### **219 Time for instituting proceedings**

Proceedings for an offence against this Chapter, or against any regulations made in relation to children's services, may be commenced not later than 2 years after the Director-General became aware of the alleged offence.

### **220 Regulations**

Without limiting section 264 (Regulations) or the other provisions of this Part, the regulations may make provision for or with respect to the following:

#### **Probity checks**

- (a) the probity checks that may be made on all persons who are, or who are proposed to be, engaged in the operation or management of a children's service (or a proposed children's service),
- (b) the fees that may be charged for carrying out such checks,

**Applications for licences**

- (c) the persons who may apply for a licence,
- (d) the manner in which, and the time within which, an application may be made,
- (e) requiring that an application (and its supporting documents and information) be lodged in stages as specified in the regulations,
- (f) the consideration and determination of applications, including (but not limited to) the following:
  - (i) the time within which an application (or a particular stage of an application) is to be dealt with,
  - (ii) the grounds on which an application (or a particular stage of an application) may be rejected,
  - (iii) the grounds on which the Director-General may refuse to grant a licence,
  - (iv) the way in which the rejection or determination of the application (or a particular stage of an application) is to be communicated to the applicant,

**Licences**

- (g) the duration of licences,

**Variation, suspension and revocation of licences**

- (h) the grounds on which a licence may be suspended, varied (including by the imposition, amendment or withdrawal of conditions) or revoked,
- (i) requiring the giving of notice of an intention to suspend, vary or revoke a licence,
- (j) allowing a licensee time to make submissions in relation to any such intention,
- (k) the effect of a suspension, variation or revocation of a licence,
- (l) the restoration of a licence that has been suspended or revoked,

**Licensees and authorised supervisors**

- (m) the functions of the licensee and authorised supervisor under a licence,
- (n) the replacement (with the Minister's consent) of the person specified in the licence as the authorised supervisor for the relevant children's service by another person,
- (o) the authorisation by the Minister of another person to act as the authorised supervisor of a children's service during the absence (because of illness or otherwise) of the authorised supervisor specified in the licence,

## **Records**

- (p) the records that are to be maintained in relation to a licensed children's service, including (but not limited to) the following:
  - (i) the information that the records are to contain,
  - (ii) the format in which they are to be made,
  - (iii) the person responsible for making and maintaining them,
  - (iv) the persons who may inspect them,
  - (v) the period for which they are to be retained.

## **Chapter 13 Children's employment**

### **221 Definitions**

- (1) In this Chapter:

**child** means a child under the age of 15 years.

**employment** means paid employment or employment under which some other material benefit is provided.

- (2) Even though a relationship of employment may not otherwise exist, a person is taken, for the purposes of this Chapter, to employ a child if:
  - (a) the regulations declare that persons of the class to which the person belongs are taken to employ children of the class to which the child belongs, or
  - (b) the Minister has, by notice in writing served on the person, declared that the person is, for the purposes of this Chapter, taken to employ the child or children of the class to which the child belongs.

### **222 Endangering children in employment**

A person who causes or allows a child to take part in any employment in the course of which the child's physical or emotional well-being is put at risk is guilty of an offence.

Maximum penalty: 200 penalty units.

### **223 Certain employers of children to be authorised**

- (1) A person (other than the holder of an employer's authority) must not employ a child:
  - (a) to take part in an entertainment or exhibition, or
  - (b) to take part in a performance which is recorded for use in a subsequent entertainment or exhibition, or

- (c) to offer anything for sale from door-to-door, or
  - (d) to do anything else that is prescribed for the purposes of this section by the regulations.
- (2) The holder of an employer's authority must not employ a child in contravention of the conditions of the authority.
  - (3) A person must not cause or procure a child to be employed knowing that the child will be employed in contravention of this section.
  - (4) A person having the care of a child must not consent to or otherwise allow the child to be employed knowing that the child will be employed in contravention of this section.

Maximum penalty: 10 penalty units.

## **224 Exemptions**

- (1) A person who employs a child is not required to hold an employer's authority if:
  - (a) the child is employed for the purpose of a fundraising appeal (within the meaning of the *Charitable Fundraising Act 1991*) by a person lawfully conducting the appeal, or
  - (b) the child is employed for the purpose of an occasional entertainment or exhibition the net proceeds of which are to be applied wholly for a charitable object, or
  - (c) the person is exempt by the regulations from being required to hold an employer's authority, or
  - (d) the person is exempt by the Minister from being required to hold an employer's authority.
- (2) A person is exempt by the Minister from being required to hold an employer's authority only if written notice of the exemption has been served on the person setting out the conditions (if any) on which the exemption was granted and only while the person has not contravened any such condition.
- (3) The Minister may revoke an exemption by a written notice of revocation served on the exempted person, but only after:
  - (a) written notice of intention to revoke the exemption has been served on the person setting out the reason for which it is intended to revoke the exemption, and
  - (b) the Minister has taken into consideration any representation made to the Minister by the person within 28 days after service of the notice of intention.
- (4) Without limiting the reasons for which an exemption may be revoked, an exemption may be revoked if any condition to which it is subject is contravened.

(5) The Minister may revoke an exemption:

- (a) which applies because the employer is lawfully conducting a fundraising appeal, but only with the concurrence of the Minister administering the *Charitable Fundraising Act 1991*, or
- (b) granted by the regulations, but only if the regulations allow the Minister to revoke the exemption.

## **225 Employers' authorities**

Schedule 2 applies to an employer's authority.

## **226 Removal of child from place of unlawful employment**

A child is taken to be a child in need of care if:

- (a) a person (other than a relative of the child) is employing the child in contravention of this Chapter at any place, and
- (b) the Director-General requests a person responsible for the child to remove the child from the place, and
- (c) the child is not immediately so removed.

## **Chapter 14 Offences involving children and young persons**

### **227 Child and young person abuse**

A person who intentionally takes action that has resulted in or appears likely to result in:

- (a) the physical injury or sexual abuse of a child or young person, or
- (b) a child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged, or
- (c) the physical development or health of a child or young person being significantly harmed,

is guilty of an offence.

Maximum penalty: 200 penalty units.

### **228 Neglect of children and young persons**

A person, whether or not the parent of the child or young person, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child or young person in his or her care, is guilty of an offence.

Maximum penalty: 200 penalty units.

## **229 Unauthorised removal of children and young persons**

(1) A person who, without lawful excuse:

(a) removes a child or young person from the care of a person into whose care and protection the child or young person has been placed under this Act, or

(b) causes or procures a child or young person to be so removed,

is guilty of an offence.

(2) A person who:

(a) is in charge of any hospital or other premises used for the purpose of receiving (whether or not for fee, gain or reward) more than one woman who is at the premises for the purposes of giving birth, and

(b) permits a child who is not in the charge of the child's mother to be taken from the premises without first obtaining the consent of the Director-General,

is guilty of an offence.

Maximum penalty: 200 penalty units.

## **230 Tattooing of children and young persons**

A person who in any manner tattoos any part of the body of a child or young person is guilty of an offence unless the person has first obtained the written consent of a parent of the child or young person to tattoo the child or young person in that manner and on that part of the child's or young person's body.

Maximum penalty: 200 penalty units.

## **231 Leaving children and young persons unsupervised in motor vehicles**

A person who leaves any child or young person in the person's care in a motor vehicle without proper supervision for such period or in such circumstances that:

(a) the child or young person becomes or is likely to become emotionally distressed, or

(b) the child's or young person's health becomes or is likely to become permanently or temporarily impaired,

is guilty of an offence.

Maximum penalty: 200 penalty units.



## **Chapter 15 Removal of persons and entry of premises and places**

### **Part 1 Removal of persons**

#### **232 Persons under the parental responsibility of the Minister leaving or being removed from care**

If a person under the parental responsibility of the Minister has, without lawful excuse, left, or been removed from, the care and protection of the Minister and the Minister is of the opinion that the person should be returned to that care and protection, the Minister may, by order in writing, direct that the person be returned to that care and protection.

#### **233 Power of search for and removal of children and young persons in need of care and protection**

- (1) The Director-General or a police officer may apply to an authorised justice for a search warrant if the Director-General or police officer has reasonable grounds for believing:
  - (a) that there is in any premises a child or young person in need of care and protection, or
  - (b) that a person on whom a notice has been served under section 173 (Medical examination of children in need of care and protection) has failed to comply with the requirement contained in the notice, or
  - (c) that a person the subject of an order in force under section 232 may be found in any premises.
- (2) An authorised justice to whom such an application is made may issue a search warrant:
  - (a) in the case of an application under subsection (1) (a), if satisfied on reasonable grounds:
    - (i) that a child or young person is or may be at immediate risk of serious harm, and
    - (ii) that the making of an apprehended violence order would not be sufficient to protect the child or young person from that risk, or
  - (b) in the case of an application under subsection (1) (b) or (c), if satisfied that there are reasonable grounds for doing so.
- (3) A search warrant authorises the person named in the warrant:
  - (a) in the case of a warrant issued following an application under subsection (1) (a):
    - (i) to enter such premises, if any, as may be specified in the warrant, and
    - (ii) to search those premises for the presence of the child or young person, and

- (iii) to remove the child or young person from those premises or from any place, or
- (b) in the case of a warrant issued following an application under subsection (1) (b):
  - (i) to enter the premises (if any) specified in the warrant, and
  - (ii) to search the premises (if any) or elsewhere, or at large, for the presence of the child the subject of the notice under section 173 (1), and
  - (iii) to remove the child, and
  - (iv) to present the child to a medical practitioner under section 173 (3), or
- (c) in the case of a warrant issued following an application under subsection (1) (c):
  - (i) to enter the premises (if any) specified in the warrant, and
  - (ii) to search the premises (if any) or elsewhere, or at large, for the presence of the person the subject of the order in force under section 232, and
  - (iii) to remove the person, and
  - (iv) to return the person to, or to place the person in, the custody of the custodian specified in the order in force under section 232 in respect of the person.
- (4) It is not necessary to specify an address or other description of premises in an application for a warrant or in a warrant.
- (5) It is not necessary in any search warrant issued under this section to name any particular child or young person.

#### **234 Reasons for removal and other information to be given to certain persons**

- (1) A person who removes a child or young person from any premises or place under this Act must cause notice of:
  - (a) the person's name and the nature of his or her authority, and
  - (b) the reasons for which the child or young person is being removed from the premises or place, and
  - (c) the fact that the law authorises the person to remove the child or young person from the premises or place, and
  - (d) what is likely to happen in relation to the care and protection of the child or young person as a consequence of his or her being removed from the premises or place,to be given to the person (if any) on the premises or at the place who appears to the person to have the care and protection of the child or young person for the time being

and, in the case of a child who is of or above the age of 10 years or a young person, to the child or young person.

- (2) Any such notice may be given verbally at the time the child or young person is removed from the premises or place.
- (3) However, if verbal notice is given, the person must cause written notice to be given as soon as practicable after the child or young person is removed.
- (4) In giving such notice to a child or young person, the person must do so in language and in a manner the child or young person can understand having regard to his or her development and the circumstances.
- (5) At the time the child or young person is removed from the premises or place, the person must, in the case of a child who is of or above the age of 10 years or a young person:
  - (a) inform the child or young person that he or she may choose to contact any person, and
  - (b) ensure that the child or young person is given a reasonable opportunity and appropriate assistance to contact any such person.

## **Part 2 Entry of premises and places**

### **235 Entry without warrant into premises—generally**

- (1) This section applies to any premises that are subject to control or regulation under this Act or the regulations, whether by means of a licence or otherwise, other than premises to which section 236 applies.
- (2) The Director-General may, at any time, enter and inspect any premises to which this section applies without the need for any authority other than that conferred by this section for any of the following purposes:
  - (a) making an inquiry in relation to an application under this Act with respect to the premises,
  - (b) ensuring that the provisions of this Act and the regulations with respect to the premises, and of any conditions imposed on a licence or other authority with respect to the premises, are being complied with,
  - (c) ensuring that the conditions of any exemption relating to the premises are being complied with.

### **236 Entry without warrant into premises—places of employment**

- (1) For the purpose of:

- (a) ensuring that the provisions of this Act and the regulations and of any conditions imposed on an employer's authority are being complied with at premises that are a place of employment of a person who is the holder of an employer's authority, or
- (b) ensuring that the conditions of any exemption from holding an employer's authority are being complied with at premises that are a place of employment of an exempted employer,

the Director-General may, at any time, enter and inspect the premises without the need for any authority other than that conferred by this section.

- (2) Nothing in this section authorises the entry of a dwelling.

### **237 Entry and inspection under search warrant**

- (1) The Director-General or a police officer may apply to an authorised justice for a search warrant if the Director-General or police officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.
- (2) An authorised justice to whom such an application is made may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (3) A search warrant authorises the person named in the warrant:
  - (a) to enter the premises, and
  - (b) to inspect the premises for evidence of a contravention of this Act or the regulations.

## **Part 3 Ancillary functions**

### **238 Application of Part**

This Part applies to the exercise of any function under this Act or the regulations, or under a search warrant issued under this Act, relating to:

- (a) the searching for, apprehension or removal of a person in or from any premises or place, or
- (b) the entry, searching or inspection of any premises or place.

### **239 Attendance of police or medical practitioner**

- (1) A person in exercising a function to which this Part applies may be accompanied by a police officer or a medical practitioner, or both.
- (2) The police officer or medical practitioner may take all reasonable steps to assist the person in the exercise of the person's functions.

**240 Use of reasonable force**

- (1) A person in exercising a function to which this Part applies may use all reasonable force.
- (2) No compensation is payable for any damage done or loss incurred in the use of reasonable force.

**241 Powers exercisable on entry and inspection**

- (1) A person who is authorised under this Act or the regulations, or under a search warrant issued under this Act, to enter and inspect any premises, may do any one or more of the following:
  - (a) enter the premises,
  - (b) inspect the premises,
  - (c) make such examination and inquiry as the person thinks necessary in order to exercise functions under this Act and the regulations,
  - (d) take such photographs and films, and audio, video and other recordings, as the person considers necessary,
  - (e) make copies of, or take extracts or notes from, any records, books, documents or other things,
  - (f) for the purpose of further examination, take possession of, and remove, any of those records, books, documents or other things,
  - (g) require the owner or occupier of the premises to provide the person with such assistance and facilities as is or are reasonably necessary to enable the person to exercise functions under this Act or the regulations,
  - (h) require any person in or about the premises to answer questions or otherwise furnish information,
  - (i) require any person to produce any records, books, documents or other things in the possession or under the control of the person that relate to, or that the person making the entry and inspection believes on reasonable grounds relate to, the operation or administration of the premises or any activity conducted on or from the premises,
  - (j) if the person making the entry and inspection considers it necessary to do so for the purpose of obtaining evidence of the commission of an offence, seize any document or other thing inspected.
- (2) A person must comply with any requirement under this section of the person making the entry and inspection.

Maximum penalty: 200 penalty units.

#### **242 Observing and conversing with persons**

- (1) A person in exercising a function to which this Part applies, and a police officer or medical practitioner accompanying the person, may observe and converse with any person present in any premises or at any place entered by the person.
- (2) Nothing in subsection (1) authorises:
  - (a) the examination of a child or young person in contravention of section 176 (Special medical examinations) or section 177 (Ordinary medical and dental treatment), or
  - (b) the examination of any other person against the person's will.

#### **243 Application of [Search Warrants Act 1985](#)**

Part 3 of the [Search Warrants Act 1985](#) (sections 12A (1) (c) and 15 (2) (b) (iv) excepted) applies to a search warrant issued under this Act.

#### **244 Effect of failure to properly exercise function**

The failure to exercise a function to which this Part applies in accordance with the provision of this Act or the regulations by which the function is conferred or imposed does not invalidate any thing done under any other provision of this Act or the regulations.

### **Chapter 16 Administrative review**

#### **245 Decisions that are reviewable by Administrative Decisions Tribunal**

- (1) For the purposes of section 28 (1) (a) of the [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#), any of the following decisions made under or for the purposes of this Act or the regulations are reviewable by the Administrative Decisions Tribunal:
  - (a) a decision of the relevant decision-maker to authorise or not to authorise a person as an authorised carer, to impose conditions of an authorisation, or to cancel or suspend a person's authorisation as an authorised carer,
  - (b) a decision of the relevant decision-maker to accredit or not to accredit a department or organisation as a designated agency,
  - (c) a decision of the relevant decision-maker to grant to, or to remove from, an authorised carer the responsibility for the daily care and control of the child or young person,
  - (d) a decision of the Minister to grant an employer's authority or to impose a condition on, to revoke or vary any condition of, to impose a further condition on

or to suspend or revoke any such authority,

- (e) a decision of the Minister to declare under section 221 (2) that a person is taken to be the employer of a child,
- (f) a decision of the Minister to grant an exemption under section 224 (1), to limit the extent of any such exemption or to impose conditions on any such exemption,
- (g) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations,
- (h) a decision of the Minister or the Director-General under section 246 with respect to the accommodation of a child or young person,
- (i) a decision of a relevant decision-maker to refuse to make a decision referred to in this section that the decision-maker is empowered and has been requested to make.

- (2) In this section, **relevant decision-maker**, in relation to a decision, means the person or body authorised by or under this Act or the regulations to make the decision, not being the Children's Court.

## Chapter 17 Miscellaneous

### 246 Separation of children and young persons from offenders

A child or young person who is in the care and protection of the Director-General or the Minister under this Act must not be accommodated in:

- (a) premises for the accommodation of persons who have committed offences, or
- (b) premises for the accommodation of persons who are on remand awaiting proceedings in respect of offences alleged to have been committed by them.

#### **Note—**

This provision does not prevent a child or young person who has committed an offence from being accommodated in a residential facility (as distinct from a juvenile justice facility or an adult facility).

If a child or young person is detained by the police on a warrant issued for their attendance at court, the child or young person cannot be held in a juvenile justice centre pending his or her appearance in court.

### 247 Jurisdiction of Supreme Court

Nothing in this Act limits the jurisdiction of the Supreme Court.

### 248 Provision and exchange of information

- (1) For the purposes of providing information to, or exchanging information with, a prescribed body, the Director-General may do either or both of the following:

- (a) the Director-General may, in accordance with the requirements (if any) prescribed by the regulations, furnish the prescribed body with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons,
  - (b) the Director-General may, in accordance with the requirements (if any) prescribed by the regulations, direct the prescribed body to furnish the Director-General with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons.
- (2) It is the duty of a prescribed body to whom a direction is given under subsection (1) (b) to comply promptly with the requirements of the direction.
- (3) If information is furnished under subsection (1):
- (a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) no liability for defamation is incurred because of the furnishing of the information, and
  - (c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.
- (4) A reference in subsection (3) to information furnished under subsection (1) extends to any information so furnished in good faith and with reasonable care.
- (5) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the furnishing of information (or affect a duty to furnish information) under this section. Nothing in this subsection affects any obligation or power to provide information apart from this subsection.
- (6) In this section:

**prescribed body** means:

- (a) the Police Service, a government department or a public authority, or
- (b) a government school or a registered non-government school within the meaning of the [Education Act 1990](#), or
- (c) a TAFE establishment within the meaning of the [Technical and Further Education Commission Act 1990](#), or
- (d) a public health organisation within the meaning of the [Health Services Act 1997](#), or
- (e) a private hospital within the meaning of the [Private Hospitals and Day Procedure](#)



*Centres Act 1988*, or

- (f) any other body or class of bodies (including an unincorporated body or bodies) prescribed by the regulations for the purposes of this section.

#### **249 Delegation by Minister**

- (1) The Minister may delegate to the Director-General or any other person any of the Minister's functions, other than this power of delegation.
- (2) A delegate may sub-delegate to any person any function delegated by the Minister if the delegate is authorised in writing to do so by the Minister.

#### **250 Delegation by Director-General**

- (1) The Director-General may delegate to any person any of the Director-General's functions, other than:
  - (a) this power of delegation, and
  - (b) the power to apply for an order under section 124 (Application for compulsory assistance order or interim compulsory assistance order).
- (2) A delegate may sub-delegate to any person any function delegated by the Director-General if the delegate is authorised in writing to do so by the Director-General.

#### **251 Obstruction of persons**

A person who wilfully hinders, obstructs, delays, assaults or threatens with violence any person in the exercise of that person's functions under this Act is guilty of an offence.

Maximum penalty: 200 penalty units.

#### **252 Person falsely representing as employee of Department**

A person, not being an employee of the Department, who:

- (a) assumes or uses the designation of such an employee or falsely represents himself or herself to be officially associated in any capacity with the Department, or
- (b) uses, for any fraudulent purpose, any designation which that person previously held in the Department,

is guilty of an offence.

Maximum penalty: 200 penalty units.

#### **253 False or misleading statements**

A person must not, in any application under this Act or the regulations or in connection with an inquiry made by the Director-General in relation to any such application:

(a) make a statement, or

(b) furnish information,

that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

#### **254 Disclosure of information**

(1) A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made:

(a) with the consent of the person from whom the information was obtained, or

(b) in connection with the administration or execution of this Act or the regulations, or

(c) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of any such proceedings, or

(d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), or

(e) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

(2) It is not an offence under this section for the Director-General to disclose information to a person who has made a report concerning any action taken as a consequence of the report if the Director-General is of the opinion that disclosure of the information is not inconsistent with the objects and principles of this Act.

#### **255 Reciprocity between States and Territories**

(1) In this section:

**appropriate authority** means a person who, under:

(a) the law of a State of the Commonwealth other than New South Wales, or

(b) the law of a Territory,

corresponding to this Act, is competent to take action equivalent to the undertaking by the Minister of parental responsibility for a child or young person under this Act.

**interstate ward** means a child who is in New South Wales and who, immediately before entering New South Wales, was under the parental responsibility of an appropriate authority.

**Territory** means Territory of the Commonwealth, including a Territory under the

trusteeship of the Commonwealth.

(2) The Minister:

- (a) may make financial and other arrangements with an appropriate authority for the care of an interstate ward or a child or young person under the parental responsibility of the Minister under this Act, and
- (b) may, at the Minister's discretion, or in accordance with any such arrangements, return an interstate ward to the care of the appropriate authority for the interstate ward, and
- (c) must, if the appropriate authority for an interstate ward requests the Minister to do so, return the interstate ward to the care of that appropriate authority.

(3) The Minister is to provide for the accommodation, care and maintenance of an interstate ward to whom an arrangement referred to in subsection (2) applies as if the interstate ward were a child or young person under the parental responsibility of the Minister under this Act.

(4) The Minister may, at the request of an appropriate authority, declare an interstate ward to be a child or young person under the parental responsibility of the Minister under this Act.

(5) If an interstate ward who was placed under the parental responsibility of the Minister for a specified period is declared to be a child or young person under the parental responsibility of the Minister under this Act pursuant to subsection (4), then, notwithstanding any other provision of this Act, that person if, on the expiration of that period, he or she is a child or young person under the parental responsibility of the Minister, ceases to be under the parental responsibility of the Minister under this Act by virtue of that declaration.

(6) If, in the opinion of the Minister:

- (a) the law of a State, other than New South Wales, or
- (b) the law of a Territory,

contains a provision corresponding to subsection (4) and, on the request of the Minister, a child or young person under the parental responsibility of the Minister under this Act is declared, under that provision, to be a ward for the purposes of the law of that other State or that Territory, the functions conferred or imposed by or under this Act on the Minister and any other person are taken to have been suspended in relation to that ward while the ward remains under guardianship by virtue of the declaration under that provision, except in so far as those functions may be exercised in accordance with arrangements made under subsection (2) (a).

## **256 Service of notices**

- (1) A notice or other instrument required or authorised by this Act to be served on a person is sufficiently served if the notice or other instrument is:
  - (a) delivered personally to the person, or
  - (b) left with a person who is apparently of or above the age of 16 years at, or sent by prepaid post to, the address last known to the Director-General of the person on whom the notice or other instrument is to be served, or
  - (c) if no address of the person is known to the Director-General, published or otherwise dealt with as may be prescribed by the regulations.
- (2) If such a notice or instrument is:
  - (a) sent by post as referred to in subsection (1) (b), it is taken to have been served at the time it would be delivered in the ordinary course of post, or
  - (b) published or otherwise dealt with as referred to in subsection (1) (c), it is taken to have been served at such time as may be prescribed by the regulations.
- (3) Subsection (1) does not affect any other provision of this Act relating to the service of notices or other instruments.

## **257 Notices and other instruments to be written in other languages**

- (1) If:
  - (a) the Director-General is required, by or under this Act, to cause a notice or other instrument to be served on a person, and
  - (b) it appears to the Director-General that the person is not literate in the English language but is literate in another language,the Director-General must, in so far as it is reasonably practicable, cause the notice or other instrument to be written in that other language.
- (2) The notice or other instrument must be written in such a form that there is a reasonable expectation that its contents will be understood by the person on whom it is served.
- (3) Failure to comply with subsection (1) does not invalidate any thing done under any other provision of this Act.

## **258 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same

provision unless the person satisfies the court that:

- (a) the corporation contravened the provision without the knowledge actual, imputed or constructive of the person, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
  - (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
  - (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of the corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

### **259 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before a Local Court, except as provided by subsection (2), or before the Supreme Court in its summary jurisdiction.
- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 105 (2) (Publication of names and identifying information) or 175 (1) (Special medical treatment).
- (3) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum monetary penalty the Local Court may impose is, despite any provision of this Act to the contrary, 100 penalty units or the maximum monetary penalty provided by this Act for the offence, whichever amount is the smaller.
- (4) If proceedings for an offence against this Act or the regulations are taken before the Supreme Court, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations for the offence.

### **260 Evidence of young children**

- (1) If an authorised justice is satisfied by the evidence of a medical practitioner that the attendance before a court of a child or young person to whom an offence against this Act or the regulations relates would be injurious or dangerous to the child's or young

person's health, the justice may take in writing the statement of the child or young person under section 406 of the *Crimes Act 1900* as if the child or young person were dangerously ill, whereby the child's or young person's evidence would probably be lost if not taken immediately.

- (2) If, in any proceedings for an offence against this Act or the regulations relating to a child or young person, a court is satisfied by the evidence of a medical practitioner that the attendance before the Children's Court of the child or young person would be injurious or dangerous to the child's or young person's health, any deposition taken under section 406 of the *Crimes Act 1900*, or any statement of the child or young person taken under subsection (1), may be read in evidence, and has effect in the same manner as if it were proved that the child or young person were so ill as not to be able to travel or (in the case of any such statement) that there was no reasonable probability that the child or young person would ever be able to travel or give evidence.
- (3) If, in any proceedings for an offence against this Act or the regulations relating to a child or young person, a court:
  - (a) is satisfied, by the evidence of a medical practitioner, that the attendance of the child or young person for the purpose of giving evidence before the Children's Court would be injurious or dangerous to the child's or young person's health, and
  - (b) is satisfied that the evidence of the child or young person is not essential to the just hearing of the case,

the case may be proceeded with and determined in the absence of the child or young person.

## **261 Procedural matters**

- (1) In the absence of proof to the contrary, the authority of the Minister or the Director-General to exercise any function conferred or imposed on the Minister or the Director-General by or under this Act, or to take any proceedings for the purposes of this Act, is to be presumed.
- (2) An averment in any complaint or information made or laid under this Act:
  - (a) that any instrument, purporting to have been made under this Act and specified in the averment, was or was not, at a time or during a period so specified, in force under this Act and was or was not made, granted or issued subject to conditions so specified, or
  - (b) that a person has been appointed, authorised or directed by, or is a delegate of, the Minister or the Director-General for the purposes of this Act or the regulations, as stated in the averment, or

(c) that a person was, on a date specified in the averment, a child or young person under the parental responsibility of the Minister,

is prima facie evidence of the facts averred.

## **262 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **263 Savings, transitional and other provisions**

Schedule 3 has effect.

## **264 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(1A) In particular, the regulations may make provision for or with respect to the following:

- (a) defining the meanings of the words “related” and “relative” where used in this Act or in a specified provision of this Act,
- (b) specifying persons, or classes of persons, as being persons to whom section 27 (Mandatory reporting) applies or does not apply,
- (c) regulating or prohibiting the use or availability of evidence given or produced during the course of alternative dispute resolution under section 37, preliminary conferences under section 65 or alternative dispute resolution under section 114,
- (d) specifying matters that may or may not be taken into consideration by the Children’s Court in determining whether there has been significant change in any relevant circumstances within the meaning of section 90 (2) (Rescission and variation of care orders),
- (e) the requirements and form of an alternative parenting plan under section 115,
- (f) regulating or prohibiting conduct of authorised carers,
- (g) prescribing a code of conduct for authorised carers,
- (h) regulating the application of section 168 (Access to personal information),
- (i) providing for the review by the Administrative Decisions Tribunal of a decision of, or the failure or refusal to make a decision by, the Children’s Guardian.

(1B) A regulation may not be made for the purposes of subsection (1A) (i) except with the concurrence of the Minister administering the *Administrative Decisions Tribunal Act*

1997.

- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

## 265 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 4 years from the date of assent to the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001*.
- (2A) The review is to consider, in particular, the effects of the provisions in this Act for permanency planning on Aboriginal and Torres Strait Islander children and young persons.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 4 years.

## Schedule 1 Child Death Review Team

(Section 191 (7))

### 1 Definitions

In this Schedule:

**Convener** means the Convener of the Team.

**member** means a member of the Team, but in clauses 2–7 does not include the Convener.

### 2 Convener and Deputy Convener

- (1) The Commissioner for the Commission for Children and Young People is to be the Convener of the Team.
- (2) The Team is to elect one of its members as the Deputy Convener of the Team. The member so elected may be removed from that office by the Team at any time.
- (3) A person holding the office of Deputy Convener vacates that office if the person:
  - (a) is removed from that office, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.



### **3 Term of office of members**

- (1) A member referred to in section 191 (2) or (4) holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A member referred to in section 191 (5) holds office for the duration of such projects or undertakings as are specified in the member's instrument of appointment, and may be re-appointed at any time in accordance with that subsection.

### **4 Remuneration**

A member, other than a representative of a department of the government, the Police Service or a statutory body, is entitled to be paid such remuneration and allowances (including travelling or subsistence allowances) as may be agreed by and between the Minister and the member or, in default of such agreement, as may be determined by the Minister.

### **5 Vacancies in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office in writing addressed to the Minister, or
  - (d) is absent from 4 consecutive meetings of the Team of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Team or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales or elsewhere of an offence punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (h) is removed from office by the Minister, or
  - (i) is the subject of a communication in writing to the Minister by the Minister that nominated the member, stating that he or she no longer represents that

organisation.

- (2) If the office of any member becomes vacant, another person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Removal from office**

The Minister may remove a member from office for incapacity, incompetence or misbehaviour.

## **7 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,that provision does not operate to disqualify that person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **8 General procedure**

- (1) The procedure for the calling of meetings of the Team and for the conduct of business at those meetings is to be as determined by the Team.
- (2) The Team is to meet as often as the demands of its business require, but must in any case meet not less frequently than once every 2 months.

## **9 Quorum for meetings**

A majority of persons for the time being holding office as members of the Team constitutes a quorum for any meeting of the Team.

## **10 Presiding member**

- (1) The Convener, or in the absence of the Convener, the Deputy Convener, is to preside at any meeting of the Team.
- (2) If both the Convener and the Deputy Convener are absent from any meeting, a member elected by the members present at the meeting is to preside at that meeting.

- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Team at which a quorum is present is the decision of the Team.

### **12 Protection from personal liability**

No act or thing done or omitted by the Team, a member of the Team or a person acting under the direction of the Team subjects a member or a person so acting to any personal liability if the act or thing was done or omitted in good faith and with reasonable care, and in the exercise or purported exercise of the functions of the Team.

### **13 Execution of documents**

A document required to be executed by the Team in the exercise of its functions is sufficiently executed if it is signed by the Convener or another member authorised by the Team.

## **Schedule 2 Provisions relating to employers' authorities**

(Section 225)

### **1 Applications for authorities or exemptions**

- (1) An application for an employer's authority or for an exemption from the requirement to hold such an authority is to be made in a form approved by the Minister and is to be accompanied by the prescribed fee.
- (2) The regulations may provide for the reduction or rebating of fees for applications in prescribed circumstances.

### **2 Requirements for applicants for authorities**

An applicant for an authority may be granted the authority only if:

- (a) the applicant has the capacity to comply with Chapter 13 and the conditions on which the authority is to be granted, and
- (b) the applicant establishes to the satisfaction of the Minister that the applicant will comply with that Chapter and those conditions while the authority is in force.

### **3 Grant or refusal of authority**

- (1) When a person applies to the Minister for an employer's authority, the Minister must cause an inquiry to be made concerning the application by the Director-General and a report on the application to be made and furnished to the Minister by the Director-General.

- (2) On receipt of the report, the Minister must:
  - (a) grant the authority to the applicant, or
  - (b) cause to be served on the applicant a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the authority on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the authority should not be refused.
- (3) When the 28 days have expired, the Minister must, after considering any submissions made during that period by the applicant:
  - (a) grant an employer's authority to the applicant, or
  - (b) refuse the authority and cause to be served on the applicant a notice stating the ground on which the authority has been refused.
- (4) The period of 28 days referred to in this clause may be varied or waived by agreement between the Minister and the applicant.

#### **4 Duration of authority**

- (1) Unless sooner revoked, an employer's authority remains in force for such period, not exceeding 12 months, as is specified in the authority, commencing on the date on which it is granted, or such later date as may be specified in the authority.
- (2) If an application is made by the holder of such an authority for a further employer's authority while the other authority is still in force, the other authority remains in force until the application is finally dealt with (whether or not on appeal).

#### **5 Conditions of authority**

An employer's authority is subject to:

- (a) any condition prescribed by the regulations for all employers' authorities or for a class of employers' authorities to which the authority belongs, and
- (b) any other condition imposed by the Minister:
  - (i) specified in the authority when it was granted, or
  - (ii) subsequently imposed on the authority under clause 6.

#### **6 Revocation, variation or addition of conditions on authorities**

- (1) The Minister may (whether or not at the request of the holder of the authority):
  - (a) revoke or vary any condition of an employer's authority, or
  - (b) impose a further condition on an employer's authority,

by causing to be served on the holder of the authority a notice stating that the condition specified in the notice is revoked or varied as specified or that the further condition specified in the notice is imposed on the authority.

- (2) This clause does not apply to a condition of an authority that is prescribed by the regulations unless the regulations provide otherwise.

## **7 Suspension and revocation of authority**

- (1) The Minister may suspend or revoke an employer's authority on the ground that the holder of the authority has contravened a provision of this Act or the regulations or a condition of the authority.
- (2) The Minister may suspend or revoke an employer's authority at the request of the holder of the authority.
- (3) If the Minister intends to suspend or revoke an employer's authority, the Minister must cause to be served on the holder of the authority a notice stating that, when 28 days have expired after service of the notice, the Minister intends to suspend the authority for a period (not exceeding 6 months) specified in the notice or to revoke the authority, as the case may be, on the ground specified in the notice, unless it has been established to the Minister's satisfaction that the Minister should not suspend or revoke the authority.
- (4) When 28 days have expired after a notice has been served under subclause (3), the Minister may, after considering any submissions made during that period by the holder of the authority:
- (a) suspend the authority to which the notice relates for the period (not exceeding 6 months) specified in the notice, or
  - (b) revoke the authority to which the notice relates,
- by a further notice served on the holder, which further notice must specify the ground on which the authority is suspended or revoked, as the case may be.
- (5) Despite subclauses (3) and (4), if the holder of an employer's authority has requested that the authority be suspended or revoked, the Minister may, by notice served on the holder of the authority:
- (a) suspend the authority for the period (not exceeding 6 months) specified in the notice, or
  - (b) revoke the authority,
- as the case may require.
- (6) An employer's authority is taken not to be in force during any period for which it is

suspended.

- (7) If an employer's authority has been suspended under this clause for a period, the Minister may, at any time during that period, restore the authority by serving on the holder of the authority immediately before it was suspended a notice stating that the authority is restored.

## **Schedule 3 Savings, transitional and other provisions**

(Section 263)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Children and Young Persons Legislation (Repeal and Amendment) Act 1998*

*Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2000*

*Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.