

Children (Care and Protection) Act 1987 No 54

[1987-54]



New South Wales

Status Information

Currency of version

Historical version for 22 August 2003 to 29 September 2004 (accessed 30 June 2024 at 4:22)

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 \(Care and Protection\) \(Personal and Family Violence\) Amendment Act 1987 No 186](#) (not commenced)
 - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
- **See also**
 - [Health Legislation Further Amendment Bill 2004](#)
- **Proposed repeal**

The Act is to be repealed on the whole commencement of sec 3 (1) of the [Children and Young Persons Legislation \(Repeal and Amendment\) Act 1998 No 158](#) (sec 3 (1) in so far as it repeals Div 1 of Part 3 and Part 4 to commence on 30.9.2004).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 22 September 2004

Children (Care and Protection) Act 1987 No 54



New South Wales

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Children (Care and Protection) Act 1987 No 54



New South Wales

An Act with respect to the care and protection of children.

Part 1

1 Name of Act

This Act may be cited as the *Children (Care and Protection) Act 1987*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

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

abuse, in relation to a child, means:

- (a) assault (including sexually assault) the child, or
- (b) ill-treat the child, or
- (c) expose or subject the child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child.

adult means a person who is of or above the age of 18 years.

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

authorised officer, in relation to any provision of this Act, means:

- (a) an officer who is declared to be an authorised officer for the purposes of that provision, or
- (b) an officer who belongs to a class of officers who are declared to be authorised officers for the purposes of that provision,

by an order in force under subsection (3).

authorised private fostering agency means the holder of a private fostering agency authority.

authorised supervisor, in relation to a licence for a child care service or the holder of such a licence, means the person for the time being specified under section 32 (1) (c) in the licence for that service.

child means a person who is under the age of 18 years.

child care service means:

- (a) any service that is provided by a person for the purpose of educating, minding or caring for (but without providing residential care for) one or more children (disregarding any children who are related to the person providing the service), or

- (b) (Repealed)

- (c) the organising or arranging of the provision of any such service,

but does not include any such service, or the organising or arranging of the provision of any such service, if the service is or is to be:

- (d) provided by a person at the premises at which the children for whom that person provides the service reside,

- (e) provided at a licensed residential child care centre,

- (f) provided at exempt premises, or

- (g) provided by the holder of a fostering authority in accordance with the authority.

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

children's employment licence means a licence in force under section 53.

control order means an order in force under section 33 (1) (g) of the [Children \(Criminal Proceedings\) Act 1987](#) whereby the Children's Court, or some other court exercising the functions of the Children's Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister administering the [Children \(Detention Centres\) Act 1987](#).

custody, in relation to a child, means custody of the child to which a person is entitled by law.

Department means the Department of Youth and Community Services.

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 1A and that is in force.

exempt premises means:

(a) the premises of:

- (i) a State school or a registered school within the meaning of the [Education and Public Instruction Act 1987](#),
- (ii) 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](#),
- (iii) a hospital or an authorised hospital within the meaning of the [Mental Health Act 1990](#),
- (iv) a statutory health corporation or affiliated health organisation under the [Health Services Act 1997](#), or
- (v) a public hospital or health service under the control of an area health service constituted under the [Health Services Act 1997](#) or a public hospital under the control of the Crown within the meaning of that Act,

(b) any premises belonging to a class of premises prescribed by the regulations, or

(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 in force under subsection (5).

facility has the same meaning as it has in the [Community Welfare Act 1987](#).

fostering authority means an authority that has been granted as a fostering authority under clause 3 of Schedule 1 and that is in force.

licence means a licence for a child care service or a residential child care centre that has been granted under clause 3 of Schedule 1 and that is in force.

licensed manager, in relation to a licensed residential child care centre, means the person for the time being specified under section 36 (1) (c) in the licence for that centre.

licensed residential child care centre means premises specified under section 36 (1) (b) in a licence for a residential child care centre.

maintenance includes the provision of clothing, support, training and education.

officer means an officer or temporary employee, within the meaning of the [Public Service Act 1979](#), employed in the Department.

parent, in relation to a child, includes:

- (a) a guardian of the child, and
- (b) a person who has the custody of the child,

but does not include the Minister or the Director-General, or the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child.

person responsible, in relation to a child, means:

- (a) a parent of the child,
- (b) a person (other than the Minister or the Director-General) who has the care of the child, or
- (c) in the case of a child who is in the care of the Minister or the Director-General—a person who had the care of the child immediately before the child came to be in the care of the Minister or the Director-General, as the case may be.

premises includes a structure, building, vehicle, vessel or place (including a public or other place), whether built on or not, and any part thereof.

principal officer, in relation to an authorised private fostering agency, means the person for the time being specified under section 41 (1) (b) in the private fostering agency authority held by that agency.

private fostering agency means a person who performs (whether or not for fee, gain or reward) private fostering services with respect to children (disregarding any children who are related to the person).

private fostering agency authority means an authority that has been granted as a private fostering agency authority under clause 3 of Schedule 1 and that is in force.

private fostering service means the activity of conducting negotiations or making arrangements with a view to the placement of children for fostering.

proprietor, in relation to premises, means:

- (a) if the premises are not leased—the owner, or (if there is more than one owner)

any of the owners, of the premises, or

- (b) if the premises are leased—the lessee, or (if there is more than one lessee) any of the lessees, who is entitled to immediate possession of the premises.

protected person means:

- (a) a child 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,
- (a1) a child 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](#),
- (b) a child of whom the Minister or the Director-General has the custody or guardianship pursuant to an order in force under the [Family Law Act 1975](#) of the Commonwealth,
- (c) a non-citizen child 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
- (d) a child who, having been a child referred to in paragraph (a), (b) or (c), is in the custody of a person referred to in section 91 (1) (d) (i) or (ii).

public place means:

- (a) a place (whether or not covered by water), or
- (b) a part of premises,

that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not it is ordinarily so open or used and whether or not the public to whom it is open consists of only a limited class of persons.

regulation means a regulation made under this Act.

residential child care centre means any premises at which one or more children (disregarding any children who are related to the person in charge of the premises) reside, but does not include any premises that are exempt premises.

vehicle includes:

- (a) a motor vehicle (whether or not still capable of being driven), and
- (b) a train or other vehicle used on a railway, and
- (c) a caravan or anything else constructed to be drawn by a vehicle or animal.

Visitor has the same meaning as it has in the *Community Welfare Act 1987*.

ward means:

- (a) a child declared to be a ward under this Act by an order in force under section 72 (1) (c) (iii),
 - (b) a child declared to be a ward under this Act by a declaration under section 95 (4), or
 - (c) a child declared to be a ward under this Act by an order in force under the *Adoption of Children Act 1965*.
- (2) In this Act:
- (a) a reference to a function includes a reference to a power, authority and duty, and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) For the purposes of the definition of **authorised officer** in subsection (1), the Minister may, by order published in the Gazette:
- (a) declare any officer to be an authorised officer, or
 - (b) declare any class of officers to be authorised officers,
- for the purposes of any provision of this Act.
- (4) (Repealed)
- (5) For the purposes of paragraph (c) of the definition of **exempt premises** in subsection (1), the Minister may, by order published in the Gazette, declare any premises to be exempt premises for the purposes of any provision of this Act.
- (6), (7) (Repealed)
- (8) In this Act:
- (a) a reference to a person who has the care of a child is a reference to a person who has the care of the child, whether or not the person has the custody of the child, and
 - (b) a reference to a child who is or has been placed in the care of a person includes a reference to a child who is or has been placed in the custody of the person.
- (9) In this Act, a reference to a child's having been sexually assaulted is a reference to any of the following offences having been committed with or upon the child:
- (a) an offence under section 61B, 61C, 61D, 61E, 61F, 61I, 61J, 61JA, 61K, 61L, 61M,

61N, 61O, 61P, 65A, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78J, 78K, 78L, 78M, 78N, 78O, 78P or 78Q of the *Crimes Act 1900*,

- (b) an offence under section 67, 68, 71, 72, 73, 74, 78A or 78B of that Act, as in force before the commencement of Schedule 2 to the *Crimes (Child Assault) Amendment Act 1985*,
- (c) an offence under section 63, 65, 76 or 76A of that Act, as in force before the commencement of Schedule 1 to the *Crimes (Sexual Assault) Amendment Act 1981*.

(9A) For the purposes of this Act, a person who is in a vehicle in any place shall be taken to be in that place.

(10) Except in so far as the context or subject-matter otherwise indicates or requires, a word or expression used in a Schedule has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter of that Schedule.

4 Related persons

For the purposes of this Act, a child is related to another person:

- (a) if the child is the child, step-child, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person,
- (b) if the other person is the guardian of the child, or
- (c) if the child has been placed in the care or custody of the other person in accordance with the provisions of the *Adoption of Children Act 1965*.

5-11 (Repealed)

Part 2

12-18 (Repealed)

19 Children in alternative care

- (1) The Director-General shall maintain a register in which shall be entered particulars of every child who has been a child in alternative care for a continuous period of 14 days or more.
- (2) The Director-General may, in respect of any child in alternative care other than a ward or protected person, grant an allowance to any person having the care of the child for any period during which the child is in that person's care.
- (3) If an allowance under subsection (2) was being paid 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 for periods not exceeding 6 months at any one time, continue to pay an allowance in respect of the person for any period during which the person is residing in the home of the person to whom the allowance is granted.

(4) In this section, a reference to a child in alternative care is a reference to:

- (a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there,
- (b) a child who has been placed in the care or custody of a person under Part 5 or 6,
- (c) a child who is in the care of the Director-General under Part 5,
- (d) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there,
- (e) a child who is in the care of a person in whose care the child has been placed by an authorised private fostering agency, or
- (f) a child (other than a child referred to in paragraph (a), (b), (c), (d) or (e)) who:
 - (i) is in the care 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.

20-20B (Repealed)

21 Special medical examinations

(1) This section applies to:

- (a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there, and
- (b) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there.

(2) A special medical examination of a child to whom this section applies shall not be carried out:

- (a) in the case of a child who is under the age of 16 years—unless the Minister 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—unless the Minister has informed the child of the rights of a child under this section.
- (3) If a medical practitioner has advised the Minister that the medical practitioner considers that it is medically necessary to carry out a special medical examination of a child 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,
 - (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 child who is of or above the age of 16 years—the child.
- (4) A special medical examination of a child to whom this section applies shall not be carried out:
- (a) unless the Minister (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,
 - (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,
 - (iii) in the case of a child who is of or above the age of 16 years—the child 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 or parent by whom the consent was given, or
 - (b) the child has not been counselled as referred to in subsection (8).
- (6) The Children’s Court, on the application of the Minister, 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 otherwise) to obtain consent to a special medical examination, or
- (c) it is more probable than not that the child 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 Minister is satisfied that it is medically necessary to carry out a special medical examination of a child 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,
 - (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 child who is of or above the age of 16 years—the child,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 to whom this section applies is carried out, the child shall 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 to whom this section applies shall not be carried out otherwise than:
 - (a) by the medical practitioner nominated under subsection (7),
 - (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 Minister in accordance with the preference so stated,
 - (c) if no medical practitioner has been so nominated and a preference has not been so stated—by a medical practitioner nominated by the Minister, or

(d) if the Minister 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 Minister.

(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 shall be deemed, 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.

(10A) 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.

(11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application under subsection (6) in the same way as they apply to and in respect of the hearing of a care application under that Division.

(12) In this section:

parent, in relation to a child to whom this section applies, includes the person in whose care the child was immediately before the child became a child 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 23.

22-29 (Repealed)

Part 3 Licensing of child care arrangements

Division 1 Child care services

30 Application of Division

This Division applies to such class of child care services as may be prescribed by the regulations for the purposes of this Division.

31 Unlicensed persons not to provide child care services

- (1) A person who provides a child care service to which this Division applies, or who advertises himself or herself or holds himself or herself out as being willing to provide such a child care service, is guilty of an offence unless the person is the licensee under a licence for the child care service.
- (2) The licensee under a licence for a child care service is guilty of an offence unless the authorised supervisor under the licence has the overall supervision of the provision of the child care service to which the licence relates.
- (3) A person who has the overall supervision of the provision of the child care service to which a licence for a child care service relates is guilty of an offence unless the person is the authorised supervisor under that licence.
- (4) A person who is the licensee or authorised supervisor under a licence for a child care service is guilty of an offence if the person contravenes or fails to comply with any condition of the licence that applies to the person.
- (5) A person who wilfully publishes any advertisement with respect to a child care service to which this Division applies, being a child care service that is not licensed, is guilty of an offence.
- (6) A person who is the authorised supervisor under a licence for a child care service but is not the licensee under the licence is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in the course of supervising the provision of the child care service to which the licence relates.
- (7) A person is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in accordance with directions given by the licensee under a licence for a child care service or by the authorised supervisor under such a licence if that thing is done by the person in the course of providing or assisting in providing the child care service to which the licence relates.
- (8) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

32 Licences

- (1) A licence for a child care service shall specify:
 - (a) the person or body to whom or to which it is granted,
 - (b) the child care 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 child care service to which it relates.
- (2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then:
 - (a) except as provided by paragraph (b)—the applicant for the licence, or
 - (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment and of the person's full name and residential address—the person so appointed,shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.
- (3) Schedule 1 applies to a licence for a child care service.

33 Termination of illegal child care services

- (1) If a child care service is being provided for a child and an offence under section 31 is being committed in relation to the child care service (whether or not a person has been proceeded against for the offence), any person responsible for the child shall, on the request of an officer, forthwith cease to provide the child with the service.

Maximum penalty: 5 penalty units.
- (2) Subsection (1) does not apply to or in respect of a child who is related to the person by whom the offence under section 31 is being committed.

Division 2 Residential child care centres

33A Application of Division

This Division applies to such class of residential child care centres as may be prescribed by the regulations for the purposes of this Division.

34 Unauthorised persons not to conduct residential child care centres

- (1) A person who conducts a residential child care centre to which this Division applies, or who advertises himself or herself or holds himself or herself out as being willing to conduct a residential child care centre, is guilty of an offence unless the centre is licensed and the person is the licensed manager of the centre.

- (2) A person who is the licensed manager of a licensed residential child care centre is guilty of an offence if the person contravenes or fails to comply with any condition of the licence for the centre that applies to the person.
- (3) For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of a residential child care centre shall be deemed to have the conduct of the centre.
- (4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

35 Unlicensed premises etc not to be used as residential child care centres

- (1) The proprietor of a residential child care centre to which this Division applies is guilty of an offence if the centre is not licensed.
- (2) The licensee of a licensed residential child care centre is guilty of an offence if:
 - (a) the centre does not comply with any condition of the licence for the centre that applies to the centre, or
 - (b) the licensee contravenes or fails to comply with any condition of the licence for the centre that applies to the licensee.
- (3) The licensee of a licensed residential child care centre shall produce the licence for the centre to an officer requesting the licensee to do so.

Maximum penalty: 2 penalty units.

- (4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

36 Licences

- (1) A licence for a residential child care centre shall specify:
 - (a) the person or body to whom or to which it is granted,
 - (b) the premises to which it relates, and
 - (c) the person who is authorised by the licence to have the conduct of the centre.
- (2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then:
 - (a) except as provided by paragraph (b)—the applicant for the licence, or
 - (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment, and of the person's full name and residential address—the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 1 applies to a licence for a residential child care centre.

37 Removal of children from unlicensed residential child care centres

(1) If:

(a) a child resides:

(i) at a residential child care centre to which this Division applies that is not licensed, or

(ii) at a licensed residential child care centre that is conducted otherwise than by the licensed manager of the centre,

(b) an officer requests a person responsible for the child to remove the child from the residential child care centre, and

(c) the child is not forthwith so removed,

the child shall be deemed to be a child in need of care.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person who has the care of the child at that centre.

38 Notification of deaths at licensed residential child care centres

(1) If a child dies at a licensed residential child care centre, the licensed manager of the centre shall forthwith cause notice of the death to be given to:

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

(b) a member of the police force, and

(c) the Director-General.

Maximum penalty: 5 penalty units.

(2) Subsection (1) does not apply to or in respect of a child who is related to the licensed manager of the licensed residential child care centre.

39 Entry without warrant into premises of residential child care centres

(1) For the purpose of:

(a) making an inquiry in relation to an application under this Act with respect to the premises of any residential child care centre,

(b) ensuring that the provisions of this Act and the regulations with respect to the

premises of any licensed residential child care centre, and of any conditions imposed on a licence with respect to any such premises, are being complied with, or

(c) ensuring that the conditions of any exemption relating to the premises of a residential child care centre are being complied with,

any authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

(2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied:

(a) by a medical practitioner, or

(b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in subsection (2) authorises:

(a) the examination of a child in contravention of section 20 or 21, or

(b) the examination of any other person against that person's will.

Division 3 Private fostering agencies

40 Unauthorised private fostering agencies prohibited

(1) A person who carries on private fostering services, or who advertises himself or herself or holds himself or herself out as being willing to carry on private fostering services, is guilty of an offence unless the person is an authorised private fostering agency.

(2) An authorised private fostering agency is guilty of an offence unless the principal officer of the agency has the overall supervision of the private fostering services carried on by it.

(3) A person who has the overall supervision of the private fostering services carried on by an authorised private fostering agency is guilty of an offence unless the person is the principal officer of the agency.

(4) A person who is an authorised private fostering agency or the principal officer of such an agency is guilty of an offence if the person contravenes or fails to comply with any condition of the agency's private fostering agency authority that applies to the person.

- (5) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

41 Private fostering agency authorities

- (1) A private fostering agency authority may be granted only to a non-Government organisation and shall specify:
- (a) the non-Government organisation to which it is granted, and
 - (b) the person who is authorised by the authority to have the overall supervision of the provision of the private fostering services carried on under the authority.
- (2) Schedule 1 applies to a private fostering agency authority.

Division 4 Fostering

42 Unauthorised fostering prohibited

- (1) A person (other than the holder of a fostering authority) who, for a period, or for periods in the aggregate, exceeding 28 days in any period of 12 months, has in his or her care one or more children for the purpose of fostering the children (whether or not for fee, gain or reward) is guilty of an offence.
- (2) Subsection (1) does not apply to or in respect of:
- (a) a child who has been placed in the care of the person by an authorised private fostering agency,
 - (b) a child who has been placed in the care of the person by, or with the written approval of, the Minister or the Director-General,
 - (c) a child who is related to the person, or
 - (d) a person who, at any licensed residential child care centre, acts as a foster parent to any children.
- (3) The holder of a fostering authority is guilty of an offence:
- (a) if the holder acts as a foster parent:
 - (i) to more children (other than children who are related to the holder) than the maximum number of children specified in the authority,
 - (ii) where the fostering authority specifies the maximum number of children in any age group to whom it applies—to more children (other than children who are related to the holder) in any such age group than the maximum number of children so specified,
 - (iii) where the fostering authority specifies the child or children to whom it

applies—to any child (other than a child who is related to the holder) other than the child or children so specified, or

(iv) where the fostering authority specifies the maximum period for which the person to whom it is granted may act as a foster parent in respect of any child or children or in respect of any child or children so specified—to any child (other than a child who is related to the holder) for a period exceeding the maximum period so specified, or

(b) if the holder contravenes or fails to comply with any condition of the fostering authority.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that provision under section 48.

43 Fostering authorities

(1) A fostering authority:

(a) shall specify the person to whom it is granted,

(b) shall specify the maximum number (not exceeding 5) of children to whom it applies,

(c) may specify the maximum number of children in any age group to whom it applies,

(d) may specify the child or children to whom it applies, and

(e) may specify the maximum period for which the person to whom it is granted may act as a foster parent in respect of:

(i) any child or children, or

(ii) where it specifies the child or children to whom it applies—the child or any of the children so specified.

(2) Schedule 1 applies to a fostering authority.

44 Unauthorised foster placements prohibited

(1) If:

(a) a person places a child in the care of another person (other than the holder of a fostering authority) for the purpose of the child's being fostered by the other person, and

(b) the other person has the care of the child (whether or not for fee, gain or reward) for a period, or for periods in the aggregate, exceeding 28 days in the period of 12

months after the child was placed in the person's care,
the person who so placed the child is guilty of an offence.

(2) Subsection (1) does not apply to or in respect of:

- (a) the placement of a child by an authorised private fostering agency,
- (b) the placement of a child by, or with the written approval of, the Minister or the Director-General, or
- (c) the placement of a child in the care of a person to whom the child is related.

45 Lump sum payments for care of children

(1) Except pursuant to an order of a court specifying the terms on which the person may do so, a person shall not, in consideration of the receipt by the person of any sum of money or other valuable consideration, other than periodical payments of money:

- (a) calculated at not more than the rate per week prescribed by the regulations, and
- (b) made for not more than 4 weeks in advance,

act as a foster parent to any child unless the child is being cared for at the place where a guardian of the child resides.

(2) Subsection (1) does not apply to or in respect of:

- (a) the person in charge of a non-Government children's home for the time being approved by order of the Minister for the purposes of this subsection, or
- (b) the person in charge of a facility.

(3) The Director-General shall, if requested to do so by any person wishing to place a child in a non-Government children's home or in the care of the holder of a fostering authority, accept from that person a sum of money from which shall be made such payments, not exceeding periodical payments of money calculated in accordance with subsection (1) (a), as may be agreed upon to the person in charge of that home or to the holder of the fostering authority, as the case may be.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

46 Proceedings for offences

Proceedings for an offence under section 42 or 44 shall not be commenced otherwise than by, or with the written approval of, the Director-General.

Division 5 General

47 Reports

- (1) The Director-General shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the activities of each licensee under a licence for a child care service or a residential child care centre.
- (2) A report shall deal with such matters as the Minister directs and with such other matters as the Director-General considers appropriate to include in the report.

48 Exemptions

- (1) The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of section 31 (1), (2), (3) or (4), 34 (1) or (2), 35 (1) or (2), 40 (1), (2), (3) or (4), 42 (1) or (3) or 45 (1).
- (2) A person on whom a notice has been served under this section is exempted from the operation of any provision specified in the notice, but only while the person does not contravene or fail to comply with any condition so specified to which the exemption is subject.
- (3) The regulations may make provision for or with respect to the exemption of persons from the operation of the provisions referred to in subsection (1).

49 Revocation of exemptions

- (1) If the Minister intends to revoke an exemption given under section 48 (1), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.
- (2) When 28 days have expired after a notice has been served on a person under this section, the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

Part 4 Employment of children

50 Definitions

- (1) In this Part:

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 Part, 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 Part, taken to employ the child or children of the class to which the child belongs.

51 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.

52 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.

53 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.

54 Employers' authorities

Schedule 1A applies to an employer's authority.

54A 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 Part at any place, and
- (b) an officer requests a person responsible for the child to remove the child from the place, and

- (c) the child is not immediately so removed.

54B Entry without warrant in certain circumstances

- (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,

an authorised officer may, at any time, without any authority other than this subsection, enter the premises and inspect them and observe and converse with any person apparently employed there.

- (2) In exercising the powers conferred by this section, an authorised officer may be accompanied by:

- (a) a medical practitioner, or
- (b) a member of the police service,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently employed there.

- (3) Nothing in this section authorises:

- (a) the entry of a dwelling, or
- (b) the examination of a person in contravention of section 20 or 21 or against the person's will.

Part 5

55-82 (Repealed)

83 Entry without warrant into certain premises

- (1) For the purpose of inspecting any premises subject to inspection under section 82, an authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.
- (2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied:
 - (a) by a medical practitioner, or

(b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in subsection (2) authorises:

(a) the examination of a child in contravention of section 20 or 21, or

(b) the examination of any other person against that person's will.

84-88 (Repealed)

Part 6 Wards and protected persons

89 Administration

(1) In the administration of this Part, the welfare and interests of wards and protected persons shall be given paramount consideration.

(2) In determining any matter relevant to the welfare or interests of a ward or protected person, regard shall be had to the wishes of the ward or protected person.

90 Guardianship of wards

(1) The Minister is the guardian of a ward, and, subject to this Act, has the custody of a ward to the exclusion of any other person, until:

(a) the ward attains the age of 18 years,

(b) the guardianship of the Minister:

(i) is terminated by the Minister under subsection (2), or

(ii) is terminated by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children, or

(c) the ward ceases to be a ward by virtue of any other provision of this Act, whichever first occurs.

(2) The Minister may terminate the Minister's guardianship of a ward.

(3) Where the Minister terminates the Minister's guardianship of a child who is a ward, the child ceases to be a ward.

(4) The guardianship of a child who has ceased to be a ward shall be determined as if the child had never been a ward.

91 Functions of the Minister in relation to wards and protected persons

(1) The Minister:

- (a) shall provide for the accommodation, care and maintenance of wards and protected persons,
- (b) may make payments, at such rates as may be prescribed by the regulations, to persons having the care of wards or protected persons,
- (c) may direct the removal of any ward or protected person from one place to another,
- (d) may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, place any ward or protected person:
 - (i) in the custody of a person in charge of a non-Government organisation, or
 - (ii) for the purpose of the ward or protected person being fostered, in the custody of any person approved by the Minister,being a person who is willing to undertake the custody of the ward or protected person,
- (e) may terminate the custody of a ward or protected person who has been placed in the custody of a person referred to in paragraph (d) (i) or (ii), and
- (f) may direct that a ward be restored to the custody of a parent of the ward or be placed in the custody of any other person.

(2) Payment to a person in respect of a ward or protected person shall not continue after the ward or protected person has attained the age of 15 years unless:

- (a) the payment is made for the purpose of securing education or vocational training on a full-time basis for the ward or protected person,
- (b) the ward or protected person is an invalid or is otherwise incapacitated, or
- (c) the case possesses unusual features which, in the opinion of the Minister, call for special consideration,

and the Minister authorises the making of the payment.

(3) This section is subject, in relation to a ward or protected person, to the requirements imposed by the provisions of this or any other Act or of any declaration, order or other thing under which the person became a ward or protected person.

92 Functions of the Minister in relation to former wards and protected persons

- (1) The Minister may give to, or provide for, any person who has ceased to be a ward or protected person:
 - (a) such assistance as the Minister was empowered to give to, or provide for, the person while the person was a ward or protected person, and
 - (b) such other assistance (whether financial or other),as, in the Minister's opinion, is reasonable having regard to the circumstances of the case.
- (2) For the purpose of securing education or vocational training on a full-time basis for any person who has ceased to be a ward or protected person, the Minister may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, from time to time and for periods not exceeding 6 months at any one time, authorise the making of payments for that purpose as if the person were a ward or protected person.
- (3) Any payment continued under the provisions of subsection (2) may, at the discretion of the Minister, be discontinued or varied at any time.

93 Wards or protected persons leaving custody etc

If a ward or protected person has, without lawful excuse, left, or been removed from, proper custody and the Minister is of the opinion that the ward or protected person should be returned to that custody, or be placed in the custody of some other person, the Minister may, by order in writing, direct that the ward or protected person be returned to proper custody, or be placed in the custody of that other person, as the Minister may specify in the order.

94 Search warrants

- (1) An officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing that a ward or protected person the subject of an order in force under section 93 may be found in any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or officers named in the warrant:
 - (a) to enter any premises specified in the warrant,
 - (b) to search the premises for the presence of the ward or protected person,
 - (c) to remove the ward or protected person from the premises, and
 - (d) to return the ward or protected person to, or to place the ward or protected

person in, the custody of the person specified in the order in force under section 93 in respect of the ward or protected person.

- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 18 of the *Search Warrants Act 1985*, a member of the police force:
 - (a) may accompany an officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.
- (5) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a ward or protected person pursuant to the warrant, use all reasonable force.

95 (Repealed)

96 Jurisdiction of Supreme Court not affected

Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

Parts 7, 7A

97-111 (Repealed)

Part 8 Miscellaneous

112 Decisions that are reviewable by Administrative Decisions Tribunal

For the purposes of section 28 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, any of the following decisions are reviewable by the Administrative Decisions Tribunal:

- (a) a decision of the Minister or the Director-General, as the case may be:
 - (i) to grant a licence or authority,
 - (ii) to grant a consent,
 - (iii) to impose a condition on a licence or authority,
 - (iv) to revoke or vary any condition of, or to impose a further condition on, a licence or authority,
 - (v) to grant an application to vary a fostering authority, or

- (vi) to suspend or revoke a licence or authority,
as referred to in Schedule 1,
- (b) 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,
- (c) a decision of the Minister to grant an exemption under section 48 (1) or 53, to limit the extent of any such exemption or to impose conditions on any such exemption,
- (d) a decision of the Minister or the Director-General to give an approval referred to in section 42 (2) or 44 (2),
- (e) a decision of the Minister or the Director-General, as the case may be, to fail or refuse to make a decision referred to in paragraph (a), (b), (c) or (d) that the Minister or Director-General, as the case may be, is empowered and has been requested to make,
- (f) a decision of the Minister to declare under section 50 (2) that a person is taken to be the employer of a child,
- (g) a decision of the Minister to refuse to terminate the Minister's guardianship of a ward under section 90 (2),
- (h) a decision of the Minister to terminate the custody of a ward or protected person under section 91 (1) (e),
- (i) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations.

113 Service of notices etc

- (1) Any 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,
 - (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) where 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 shall be deemed 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 shall be deemed 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.

114 Notices etc 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 any 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 shall, in so far as it is reasonably practicable, cause the notice or other instrument to be written in that other language.

(2) Failure to comply with subsection (1) does not vitiate any thing done under any other provision of this Act.

115 Disclosure of information

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,

(b) in connection with the administration or execution of this Act,

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,

(d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), or

(e) with other lawful excuse.

116 Search warrants

(1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force 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, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force 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, and
 - (c) to observe and converse with any person apparently residing there.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 18 of the *Search Warrants Act 1985*, a member of the police force:
- (a) may accompany an officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this Act or the regulations.

117 Obstruction of officers

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.

118 Person falsely representing as an officer

A person, not being an officer, who:

- (a) assumes or uses the designation of officer 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.

119 False or misleading statements

A person shall not, in any application under this Act or in connection with an inquiry made by an officer 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.

120 Penalties

A person who is guilty of an offence under this Act is, for every such offence, liable to a penalty not exceeding the penalty expressly imposed or, if no penalty is expressly imposed, to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

121 Proceedings for offences

- (1) Except as provided by subsection (2), proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court.
- (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 20B (1).

122 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 to whom an offence against this Act or the regulations relates would be injurious or dangerous to the child's health, the justice may take in writing the statement of the child in pursuance of section 284 of the *Criminal Procedure Act 1986* as if the child were dangerously ill, whereby the child's evidence would probably be lost if not forthwith taken.
- (2) If, in any proceedings for an offence against this Act or the regulations relating to a child, a court is satisfied by the evidence of a medical practitioner that the attendance before the court of the child would be injurious or dangerous to the child's health, any deposition taken under section 284 of the *Criminal Procedure Act 1986*, or any statement of the child taken under subsection (1), may be read in evidence, and shall have effect in the same manner as if it were proved that the child 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 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, a court is satisfied by the evidence of a medical practitioner that the attendance of the child for the purpose of giving evidence before the court would be injurious or dangerous to the child's health, and it is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

123 Procedural matters

- (1) In the absence of proof to the contrary, the authority of the Minister, the Director-General or any officer to exercise any function conferred or imposed on the Minister, the Director-General or any such officer by or under this Act, or to take any proceedings for the purposes of this Act, shall be presumed.

- (2) In any proceedings under this Act with respect to a child, the Minister, the Director-General or any authorised officer shall be entitled to appear and to be heard.
- (3) An averment in any court attendance notice issued 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,
 - (b) that any officer has been appointed, authorised or directed, for the purposes of this Act or the regulations, by the Minister as stated in the averment,
 - (c) that any person was, on a date specified in the averment, a ward or protected person, or
 - (d) that any person was, on a date specified in the averment, an officer,
- shall be prima facie evidence of the facts averred.

124 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 and, in particular, for or with respect to:
- (a) the control and regulation of child care services and authorised supervisors of licensed child care services,
 - (b) the control and regulation of residential child care centres and licensed managers of licensed residential child care centres,
 - (c) the control and regulation of private fostering agencies and principal officers of authorised private fostering agencies,
 - (d) the control and regulation of holders of fostering authorities,
 - (d1) the fostering of children,
 - (e) the control and regulation of the employment of children,
 - (f) the making of care applications under Part 5,
 - (g) the undertakings that may be given by or with respect to a child for the purposes of Part 5,
 - (h) the control and regulation of wards and protected persons, and
 - (i) the keeping and inspection of records and registers for the purposes of this Act.

(2) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

125 Savings and transitional provisions

Schedule 3 has effect.

Schedule 1 Provisions relating to certain licences and authorities

(Sections 32, 36, 41, 43)

1 Definitions

In this Schedule:

approved person means:

- (a) in relation to a licence for a child care service—the authorised supervisor under the licence,
- (b) in relation to a licence for a residential child care centre—the licensed manager under the licence, or
- (c) in relation to a private fostering agency authority—the principal officer under the authority.

authority means a private fostering agency authority or a fostering authority.

licence means a licence for a child care service or a residential child care centre.

2 Eligible applicants

A person is not eligible to make an application for a licence unless:

- (a) the person is the proprietor of the premises for which the licence is applied for, or
- (b) the Minister consents to the making of that application by the person.

3 Grant of licences or authorities

- (1) When a person makes an application to the Minister for a licence or authority, the Minister shall cause an inquiry to be made with respect to the application by officers and a report on the application to be made and furnished to the Minister by an officer.
- (2) Upon receipt of the report, the Minister shall:
 - (a) grant the licence or 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 licence or authority on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the licence or authority should not be refused.
- (3) When 28 days have expired after a notice has been served under subclause (2) (b), the Minister shall, after considering any submissions made during that period by the applicant:
 - (a) grant the licence or authority to the applicant, or
 - (b) refuse the licence or authority and cause to be served on the applicant a notice stating the grounds on which the licence or authority has been refused.
- (4) (Repealed)

4 Change of approved persons under licences or private fostering agency authorities

- (1) A licensee or holder of a private fostering agency authority may apply for the Minister's consent to the replacement of the approved person under the licence or authority by another person.
- (2) When the Minister receives an application under subclause (1), the Minister shall, by notice served on the applicant, the approved person and the other person specified in the application:
 - (a) if the Minister considers the other person suitable to act as the approved person under the licence or authority—consent to the other person's becoming the approved person under the licence or authority, or
 - (b) refuse the application.
- (3) When the Minister has consented to another person's becoming the approved person under a licence or authority:
 - (a) any person who was the approved person under the licence or authority immediately before the consent was given ceases to be the approved person under the licence or authority, and

(b) the other person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority.

(4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than such conditions as may be prescribed by the regulations, which are in force when the notice is served and to which the licence or authority to which it relates is subject.

5 Duration of licences and authorities

(1) Unless sooner revoked, a licence or private fostering agency authority shall remain in force for such period, not exceeding 3 years, as is specified in the licence or authority, commencing on the date on which it is granted, or such later date as is specified in the licence or authority, as the case may be.

(2) If an application for a further licence or private fostering agency authority in relation to the same child care service, residential child care centre or private fostering agency, as the case may be, as that to which the licence or authority relates is made by the licensee under the licence or the holder of the authority while the licence or authority is in force, the licence or authority shall remain in force until the application is finally dealt with.

(3) Subject to any condition specified in the authority under section 43 (1) (e), a fostering authority shall remain in force until it is revoked.

6 Conditions of licence or authority

A licence or authority is subject to:

(a) any condition prescribed by the regulations for licences or authorities or for a class of licences or authorities to which the licence or authority belongs, and

(b) any other condition in force in relation to the licence or authority, being a condition that the Minister thought fit to impose on the licence or authority and that was:

(i) specified in the licence or authority when it was granted, or

(ii) subsequently imposed on the licence or authority under clause 7.

7 Revocation, variation or addition of conditions on licences and authorities

(1) If the Minister intends to revoke or vary any condition of a licence or authority or to impose a further condition on a licence or authority, the Minister shall cause to be served on:

(a) the licensee under the licence or the holder of the authority, and

(b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence or authority specified in the notice or to impose on the licence or authority a further condition specified in the notice, as the case may be, unless it has been established to the Minister's satisfaction that the Minister should not do so.

- (2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made during that period by the person or persons on whom the notices were served:
- (a) revoke or vary the condition specified in the notices, or
 - (b) impose the further condition, as specified in the notices, on the licence or authority to which the notices relate,
- by a further notice served on that person or those persons.
- (3) Notwithstanding subclauses (1) and (2), if the licensee under a licence or the holder of an authority has requested that a condition of the licence or authority be revoked or varied or that a further condition be imposed on the licence or authority, the Minister may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority:
- (a) revoke or vary the condition, or
 - (b) impose the further condition,
- as the case may require.

8 Application for variation of matters specified in a fostering authority

Any matter specified in a fostering authority pursuant to section 43 (1) (b)-(e) shall, for the purposes of clauses 5 and 7, be deemed to be a condition of the fostering authority.

9 Suspension and revocation of licence or authority

- (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence, are that:
- (a) the licensee under the licence has requested that the licence be suspended or revoked,
 - (b) either the licensee or the approved person under the licence is no longer a fit and proper person to be concerned in the provision of the child care service or the conduct of the residential child care centre to which the licence relates,
 - (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person,

- (d) in the case of a licence for a child care service:
 - (i) any premises on which the child care service is provided do not comply with any provision of this Act or the regulations, or of a condition of the licence, that applies to them, or
 - (ii) the authorised supervisor under the licence does not have the overall supervision of the provision of the child care service to which the licence relates, or
- (e) in the case of a licence for a residential child care centre:
 - (i) the premises of the centre do not comply with a provision of this Act or the regulations, or of a condition of the licence, that applies to them,
 - (ii) the premises of the centre are not being used as a residential child care centre,
 - (iii) the licensee (not being a person deemed to have been granted the licence under section 36 (2)) is not the proprietor of the premises of the centre, or
 - (iv) the licensed manager does not conduct the centre.
- (2) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a private fostering agency authority, are that:
 - (a) the authorised private fostering agency under the authority has requested that the authority be suspended or revoked,
 - (b) either the authorised private fostering agency or the principal officer under the authority is no longer a fit and proper person to be concerned in the carrying on of private fostering services, or
 - (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.
- (3) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering authority, are that:
 - (a) the holder of the authority has requested that the authority be suspended or revoked,
 - (b) the holder of the authority is no longer a fit and proper person to hold the authority, or
 - (c) the holder of the authority has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.
- (4) If the Director-General intends to suspend or revoke a licence or authority, the

Director-General shall cause to be served on:

- (a) the licensee under the licence or the holder of the authority, and
- (b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Director-General intends to suspend the licence or authority for a period (not exceeding 6 months) specified in the notice or to revoke the licence or authority, as the case may be, on the prescribed grounds specified in the notice, unless it has been established to the Director-General's satisfaction that the Director-General should not do so.

- (5) When 28 days have expired after notices have been served under subclause (4), the Director-General may, after considering any submissions made during that period by the person or persons on whom the notices were served:

- (a) suspend the licence or authority to which the notices relate for the period (not exceeding 6 months) specified in the notices, or
- (b) revoke the licence or authority to which the notices relate,

by a further notice served on that person or those persons, which further notice shall specify the prescribed grounds on which the licence or authority is suspended or revoked, as the case may be.

- (6) Notwithstanding subclauses (4) and (5), if the licensee under a licence or the holder of an authority has requested that the licence or authority be suspended or revoked, the Director-General may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority:

- (a) suspend the licence or authority for the period (not exceeding 6 months) specified in the notice, or
- (b) revoke the licence or authority,

as the case may require.

- (7) A licence or authority shall be deemed not to be in force during any period for which it is suspended.

- (8) If a licence or authority has been suspended under this clause for a period, the Director-General may, at any time during that period, restore the licence or authority by serving on both the person who was the licensee under the licence or the holder of the authority, and the person who was the approved person, if any, under the licence or authority, immediately before it was suspended a notice stating that the licence or authority is restored.

10 Temporary authorised supervisors and licensed managers

- (1) The Minister may, by an instrument in writing, authorise a person specified in the instrument to act as the approved person under a licence or private fostering agency authority for a period so specified that occurs during an absence (by reason of illness or otherwise) of the approved person under the licence or authority.
- (2) While a person is authorised by an instrument referred to in subclause (1) to act as an approved person under a licence or authority:
 - (a) that person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority, and
 - (b) the conditions of the licence or authority that apply to the approved person under the licence or authority shall, for the purposes of section 31 (4), 34 (2) or 40 (4), as the case may require, be deemed to apply to the person so authorised as if that person were the approved person under the licence or authority.
- (3) The Minister may, by notice served on the person specified in an instrument referred to in subclause (1) by which that person was authorised to act as the approved person under a licence or authority, revoke the instrument on any ground that the Minister considers sufficient.

Schedule 1A Provisions relating to employers' authorities

(Section 54)

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 Part 4 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 Part 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 officers and a report on the application to be made and furnished to the Minister by an officer.

- (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.

Schedules 2, 2A (Repealed)

Schedule 3 Savings, transitional and other provisions

(Section 125)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Children (Care and Protection) Further Amendment Act 1988

Children (Care and Protection) (Child Employment) Amendment Act 1992

Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996

Children (Care and Protection) Amendment (Disclosure of Information) Act 1996

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on 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.

Part 2 Provisions consequent on the enactment of the [Children \(Care](#)

and Protection) Further Amendment Act 1988

2 Definition

In this Part:

amending Act means the *Children (Care and Protection) Further Amendment Act 1988*.

3 Current care applications

The amendment made by Schedule 1 (7) (a) to the amending Act does not apply to any proceedings on a care application made in accordance with Part 5 of this Act before the commencement of that amendment.

4 Orders for the removal of children from premises

The amendment made by Schedule 1 (8) (a) to the amending Act does not apply to any order made by the Children's Court under section 59 of this Act before the commencement of that amendment.

5 Consents for publication of names etc

The amendments made by Schedule 1 (15) to the amending Act do not apply to any consent given by the Minister under section 68 of this Act before the commencement of those amendments.

Part 3 Saving consequent on the enactment of the Children (Care and Protection) (Child Employment) Amendment Act 1992

6 Saving of certain child employment licences

- (1) If, immediately before the repeal of Part 13 of the *Child Welfare Act 1939* by the *Children (Care and Protection) (Child Employment) Amendment Act 1992*, the employment of a person was authorised by a licence in force under that Part:
 - (a) the *Child Welfare Act 1939*, as in force immediately before the repeal of that Part, continues to apply to the employment of the person, and
 - (b) Part 4 of this Act does not apply to that employment,until the licence expires or otherwise ceases to have effect under the *Child Welfare Act 1939* or until the transitional period expires, whichever occurs first.
- (2) In this clause, **the transitional period** means the period of 3 months after the commencement of Part 4, as substituted by the *Children (Care and Protection) (Child Employment) Amendment Act 1992*.

Part 4 Provisions consequent on disallowance of Centre Based and

Mobile Child Care Services Regulation 1996

7 Definitions

In this Part:

affected authorised supervisor means a person who, immediately before 23 October 1996, was the authorised supervisor of an affected service.

affected licence means a licence for an affected service that was in force immediately before 23 October 1996.

affected licensee means a person who, immediately before 23 October 1996, was a licensee of an affected service.

affected service means a service within the meaning of the disallowed Regulation.

disallowed Regulation means the [Centre Based and Mobile Child Care Services Regulation 1996](#) published in Gazette No 99 on 30 August 1996 commencing at page 5132.

8 Saving of affected licences

- (1) An affected licence is taken to be a licence for the child care service to which it relates granted under clause 3 of Schedule 1 and to be in force (unless sooner suspended or revoked under this Act) for the remainder of the period that it would have been in force had the disallowed Regulation not ceased to have effect.
- (2) Accordingly, the affected licensee who held the licence and the affected authorised supervisor specified (or deemed to be specified) in it immediately before the disallowed Regulation ceased to have effect are, for the purposes of this Act and the regulations, the licensee and authorised supervisor of that service during the remainder of the period.

9 Validation

Any act, matter or thing done by an affected licensee or affected authorised supervisor, the Director-General, an officer or any other person during the period beginning on 23 October 1996 and ending with the date of commencement of clause 8 that would have been validly done had clause 8 been in force when it was done is taken to have been validly done.

Schedule 4 (Repealed)