

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

[1998-157]



New South Wales

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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 [21] (not commenced)
 - [Children Legislation Amendment \(Wood Inquiry Recommendations\) Act 2009 No 13](#), Sch 1.2 [24] and [25] (not commenced)
 - [Technical and Further Education Commission Amendment \(Staff Employment\) Act 2011 No 53](#) (not commenced)
 - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)
 - [Children \(Education and Care Services\) Supplementary Provisions Act 2011 No 70](#) (not commenced)

Authorisation

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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 officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

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.

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.

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

Children's Court Clinic means the Children's Court Clinic referred to in section 15B of the [Children's Court Act 1987](#).

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

children's service—see section 200.

children's service approval—see section 199.

contract breach notice—see section 38E.

Department means the Department of Community Services.

designated agency—see section 139.

direct legal representative—see section 99A (1).

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.

high level identification information, in relation to a child or young person who is in the care responsibility of the Director-General (whether under a temporary care arrangement or otherwise) or who is in out-of-home care, means the following:

- (a) the surnames of the authorised carer of the child or young person and of any other person living in the household of the authorised carer,
- (b) the street address and locality of the authorised carer of the child or young person,
- (c) the landline telephone number of the authorised carer of the child or young person,
- (d) details of the employment or activities of the authorised carer of the child or young person that would be sufficient to identify the authorised carer,
- (e) the name of the school that the child or young person is attending,
- (f) any other type of information prescribed by the regulations.

independent legal representative—see section 99A (2).

legal representative means an Australian legal practitioner.

non-court proceedings means any aspect of care proceedings that is not conducted before the Children’s Court and includes, but is not limited to, the following:

- (a) any counselling,
- (b) any dispute resolution conference under section 65,
- (c) any alternative dispute resolution process.

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.

parent responsibility contract—see section 38A.

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.

primary care-giver, in relation to a child or young person, means each person who is primarily responsible for the care and control, including the day-to-day care and control, of the child or young person (whether or not that person is the person with parental responsibility or care responsibility for the child or young person).

Registrar means the following:

- (a) a Children’s Registrar within the meaning of the [Children’s Court Act 1987](#),
- (b) a Registrar of the Children’s Court referred to in section 11 of that Act,
- (c) any authorised justice within the meaning of the [Bail Act 1978](#).

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

rules means rules made under the [Children’s Court Act 1987](#).

service provider licence—see section 199.

supervisor approval—see section 199.

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, having regard to the capacity 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 Principles for administration of Act

- (1) This Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.
- (2) Subject to subsection (1), the other principles to be applied in the administration of this Act are as follows:
 - (a) 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.
 - (b) 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.
 - (c) 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.
 - (d) 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.
 - (e) 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's 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.
 - (f) 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 statutory 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 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 statutory or supported 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 statutory or supported 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) (Repealed)
- (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 statutory 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

- (1) The government department or agency, or the non-government 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.
- (2) Subsection (1) does not, in the case of a non-government agency in receipt of government funding, limit any obligation imposed on the agency in accordance with the agreement under which it receives that funding.

19 Interagency co-operation and exchange of information

The provisions of this Part do not limit the operation of Chapter 16A or section 248.

Chapter 3 Requests for assistance and reports

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 by parent of child or young person or by funded non-government agency

- (1) 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.
- (2) Without limiting subsection (1), a non-government agency in receipt of government funding may, on behalf of a child or young person in respect of whom the agency provides services in accordance with the agreement under which it receives that funding, seek assistance from the Director-General in order to obtain other services for the child or young person.

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

- (1) If a person or non-government agency 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.
- (2) Subsection (1) does not, however, require the Director-General to take any action other than assessing the request for assistance.

Note—

The Director-General, in responding to a request for assistance, 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.

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 significant harm

- (1) For the purposes of this Part and Part 3, a child or young person is **at risk of significant harm** if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, 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,
 - (b1) in the case of a child or young person who is required to attend school in accordance with the [Education Act 1990](#)—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to

receive an education in accordance with that Act,

- (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,
- (f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Note—

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

- (2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions.

Note—

See also sections 154 (2) (a) and 156A (3) for other circumstances in which a child or young person is taken to be at risk of significant harm.

24 Report concerning child or young person at risk of significant 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 significant 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 significant harm after his or her birth may make a report to the Director-General.

Note—

The intentions of this section are:

- (a) to allow assistance and support to be provided to the expectant mother to reduce the likelihood that her child, when born, will need to be placed in out-of-home care, and
- (b) to provide early information that a child who is not yet born may be at risk of significant harm subsequent to his or her birth, and
- (c) in conjunction with section 23 (f) and section 27, to provide for mandatory reporting if there are reasonable

grounds to believe that the child is at risk of significant harm subsequent to his or her birth.

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 significant harm, and
- (b) those grounds arise during the course of or from the person's work,

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

(3) A person to whom this section applies satisfies his or her obligations under subsection (2) in relation to two or more children that constitute a particular class of children if the person reports that class of children to the Director-General together with:

- (a) a description that is sufficient to identify all the children who constitute the class, and
- (b) the grounds for suspecting that the children of that class are at risk of significant harm.

27A Alternative reporting arrangements

(1) In this section:

assessment officer, in relation to a relevant agency, means a person appointed or designated by the head of the agency as an assessment officer of the agency for the purposes of an arrangement under this section.

head of a relevant agency means:

(a) (subject to paragraph (b)) the person who is the chief executive officer, or who exercises the functions of chief executive officer, of the agency, or

(b) the person prescribed by the regulations.

relevant agency means any of the following:

(a) the NSW Health Service (including the Health Executive Service referred to in section 121B of the *Health Services Act 1997*),

(b) the NSW Police Force,

(c) the Teaching Service,

(d) the Department of Health,

(e) the Department of Education and Training,

(f) the TAFE Commission Division (including the TAFE Commission),

(g) the Department of Human Services,

(h) any other agency or organisation prescribed by the regulations for the purposes of this section.

(2) The Director-General and the head of a relevant agency may enter into an arrangement under which a person (**the staff member**) who:

(a) is employed in or engaged by the relevant agency, and

(b) is a person to whom section 27 applies,

may, in accordance with the terms of the arrangement, refer to an assessment officer of the agency any matter that the staff member would otherwise be required to report to the Director-General under that section.

(3) If the staff member refers such a matter to an assessment officer under any such arrangement, the assessment officer is, in accordance with the assessment guidelines issued by the Director-General for the purposes of this section, to assess whether the matter should be reported to the Director-General under section 27.

(4) If, in accordance with the assessment guidelines, the matter is assessed as a matter that should be reported to the Director-General under section 27, the assessment officer or the staff member is, as soon as practicable after the assessment, to report the matter to the Director-General under that section. Any such requirement applies in relation to the assessment officer as though the officer was a person to whom section 27 applies.

(5) If, in accordance with the assessment guidelines, the matter is assessed as a matter

that should not be reported to the Director-General under section 27, the assessment officer or the staff member may, if the officer or staff member has concerns for the well-being of the child to whom the matter relates, make such referral or take such action as the officer or staff member considers necessary or appropriate (or as is reasonably available) to safeguard or promote the safety, welfare and well-being of the child.

- (6) If a matter is referred to an assessment officer in accordance with an arrangement under this section, the staff member making the referral is taken to have satisfied his or her obligations under section 27 in relation to the matter concerned.
- (7) Section 29 applies in relation to a referral that is made to an assessment officer under this section in the same way as it applies to a report within the meaning of section 29. For that purpose, a reference in section 29 to the making of a report includes a reference to the referral of a matter to an assessment officer in accordance with an arrangement under this section.
- (8) A certificate purporting to be signed by an assessment officer that a document relating to a child is a referral that has been made to the assessment officer under this section is admissible in any proceedings and, in the absence of evidence to the contrary, is proof that the document is such a referral.
- (9) The following provisions apply in relation to the appointment or designation of assessment officers for the purposes of this section:
 - (a) more than one person may be appointed or designated as an assessment officer in relation to a relevant agency,
 - (b) any such appointment or designation may (without limitation) be made by reference to the holder of a specified position or to a specified class of persons,
 - (c) a person may be appointed or designated as an assessment officer in relation to a relevant agency even though the person is employed in or engaged by another agency.
- (10) The regulations may extend the operation of this section, with such exclusions and modifications as may be prescribed by the regulations, to any person (or a class of persons) who is a person (or class of persons) to whom section 27 applies but who is or are not employed in or engaged by a relevant agency.
- (11) For avoidance of doubt, the head of the NSW Health Service or the Health Executive Service is, for the purposes of this section, the Director-General of the Department of Health.

28 Record of reports and subsequent action

The Director-General must keep a record of:

- (a) any report made to the Director-General, and
- (b) any action taken as a direct consequence of the report that has a significant effect on the child or young person to whom the report relates.

29 Protection of persons who make reports or provide certain information

- (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 the following proceedings (and appeals arising from the following proceedings):
 - (i) care proceedings in the Children's Court,
 - (ii) proceedings in relation to a child or young person under the *Family Law Act 1975* of the Commonwealth,
 - (iii) proceedings in relation to a child or young person before the Supreme Court or the Administrative Decisions Tribunal,
 - (iv) proceedings before the Victims Compensation Tribunal or the Guardianship Tribunal,
 - (v) proceedings under the *Coroners Act 2009*, 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 or body, 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.
- (3A) The protections given by this section to a person who makes a report apply to:
- (a) any person who provided information on the basis of which the report was made, in good faith, to the person, and
 - (b) any person who otherwise was in good faith concerned in making such a report or causing such a report to be made,
- in the same way as they apply in respect of the person who actually made the report.
- (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.
- (4A) Subsection (1) (f) also does not prevent the disclosure to a law enforcement agency of the identity of the person who made the report (***the reporter***), or information from which the identity of the reporter could be deduced, if:
- (a) the identity of the reporter, or the information, is disclosed in connection with the investigation of a serious offence or reportable conduct alleged to have been committed or done against a child or young person, and
 - (b) the disclosure is necessary for the purposes of safeguarding or promoting the safety, welfare and well-being of any child or young person (whether or not the victim of the alleged offence).

(4B) However, subsection (4A) does not apply unless:

- (a) a senior officer of the law enforcement agency to which the disclosure is made has, before the disclosure is made, certified in writing that obtaining the reporter's consent would prejudice the investigation of the serious offence or reportable conduct concerned, or
- (b) the person or body that makes the disclosure has, before making the disclosure, certified in writing that it is impractical to obtain the consent of the reporter.

(4C) The person or body that discloses to a law enforcement agency the identity of the reporter, or the information from which the identity of the reporter could be deduced, is required to notify the reporter of the disclosure unless:

- (a) it is not reasonably practicable in the circumstances to do so, or
- (b) the law enforcement agency to which the disclosure is made has advised the person or body that notifying the reporter would prejudice the investigation of the serious offence or reportable conduct concerned.

(5) (Repealed)

(6) In this section:

court includes a court exercising federal jurisdiction.

law enforcement agency means any of the following:

- (a) the NSW Police Force,
- (b) the Australian Federal Police,
- (c) the police force of another State or Territory,
- (d) a person or body prescribed by the regulations for the purposes of this definition.

report includes a report under sections 24, 25, 27, 120, 121 and 122.

reportable conduct means:

- (a) reportable conduct within the meaning of section 33 (1) of the *Commission for Children and Young People Act 1998*, or
- (b) conduct occurring elsewhere than in New South Wales that, if occurring in New South Wales, would be reportable conduct under paragraph (a).

senior officer means:

- (a) in relation to the NSW Police Force—a commissioned police officer within the meaning of the *Police Act 1990*, or

- (b) in relation to any other law enforcement agency—a person (or class of persons) prescribed by the regulations as a senior officer of the agency.

serious offence means:

- (a) a serious indictable offence within the meaning of the *Crimes Act 1900*, or
- (b) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence under paragraph (a).

29A Person who makes report is not prevented from helping child or young person

For avoidance of doubt, it is declared that a person who is permitted or required by this Part to make a report is not prevented, by reason only of having made that report, from responding to the needs of, or discharging any other obligations in respect of, the child or young person the subject of the report in the course of that person's employment or otherwise.

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 significant 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 significant 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 significant 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, a local health district 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 significant 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 in that part of the Department comprising those members of staff who are principally involved in the administration of this Act, 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

Part 1 Action taken by Director-General

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,
 - (b1) development, in consultation with one or more primary care-givers for a child or young person, of a parent responsibility contract instead of taking a matter concerning the child's or young person's need for care and protection before the

Children's Court (except in the event of a breach of the contract),

- (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.

Part 2 Use of alternative dispute resolution

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) Participation in any such alternative dispute resolution is voluntary.
- (3) To avoid doubt, subsection (2) does not apply to any dispute resolution conducted by the Children's Registrar of the Children's Court, or ordered by the Children's Court, under this Act.

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.

Part 3 Care plans and parent responsibility contracts

Division 1 Care plans

38 Development and enforcement of care plans

- (1) A care plan, developed by agreement in the course of alternative dispute resolution, may be registered with 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.

Note—

Section 38F provides that a care plan or parent responsibility contract is taken to be registered with the Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.

- (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.
- (2A) Any such order may be made by the Children's Court 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 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 to which the proposed order will give effect.
- (3) The Children's Court may make such other orders by consent for the purpose of giving effect to a care plan (being orders of the same kind as it could make in a care application that is duly made under Part 2 of Chapter 5) without the need for a care application under that Part and without the need to be satisfied of the existence of any of the grounds under section 71 if the 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 to which the proposed order will give effect.

Division 2 Parent responsibility contracts

38A Parent responsibility contracts

- (1) A **parent responsibility contract** is an agreement between the Director-General and one or more primary care-givers for a child or young person that contains provisions aimed at improving the parenting skills of the primary care-givers and encouraging them to accept greater responsibility for the child or young person.
- (2) A parent responsibility contract must:
- (a) be in writing, and
 - (b) be signed by the Director-General and each primary care-giver who is to be a party to the contract, and
 - (c) be in the form (if any) prescribed by the regulations, and
 - (d) be registered with the Children's Court, and
 - (e) specify the period (not exceeding 6 months) during which the contract will be in force, commencing on the date on which the agreement is registered with the Children's Court, and
 - (f) specify the circumstances in which a breach of a term of the contract by a primary care-giver will authorise the Director-General to file a contract breach notice with

the Children's Court.

- (3) No more than one parent responsibility contract may be entered into within any period of 12 months between the Director-General and any of the same primary care-givers for a child or young person.
- (4) Before entering into a parent responsibility contract, the Director-General must give the other proposed parties to the contract a reasonable opportunity to obtain independent advice concerning the provisions of the contract.
- (5) Without limiting subsection (1), a parent responsibility contract may make provision for or with respect to any or all of the following:
 - (a) attendance of a primary care-giver for treatment for alcohol, drug or other substance abuse during the term of the contract,
 - (b) attendance of a primary care-giver for counselling,
 - (c) requirements relating to alcohol or drug testing that a primary care-giver must undergo during the term of the contract,
 - (d) permitting information about the contract (including compliance with the contract) to be shared between persons and agencies involved in the implementation of the provisions of the contract,
 - (e) participation in courses aimed at improving the parenting skills of the primary care-givers (including, for example, courses relating to behavioural management and financial management),
 - (f) monitoring of compliance with the terms of the contract.
- (6) However, a parent responsibility contract may not make provision for or with respect to any of the following:
 - (a) the allocation of parental responsibility for a child or young person,
 - (b) the placement of a child or young person in out-of-home care.

Note—

Care plans may make provision for the allocation of parental responsibility.

- (7) Any term of a parent responsibility contract that makes provision for or with respect to a matter referred to in subsection (6) has no effect.
- (8) A parent responsibility contract takes effect only if (and when) it is registered with the Children's Court.

Note—

Section 38F provides that a care plan or parent responsibility contract is taken to be registered with the

Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.

- (9) The Director-General is to cause a copy of the parent responsibility contract to be given to each other party to the contract as soon as is reasonably practicable after it is registered with the Children's Court.
- (10) A parent responsibility contract remains in force for the period specified in the contract, unless sooner terminated.

38B Amendment of parent responsibility contracts

- (1) The Director-General may, with the agreement of the other parties to a parent responsibility contract, vary any of the terms of the contract (but not so as to increase the period during which the contract is to be in force).
- (2) A varied parent responsibility contract has effect only if (and when) a copy of the contract that includes the variations made to it is registered with the Children's Court.
- (3) A registered varied parent responsibility contract has effect as such only from the date it is registered until the end of the period originally specified in the contract for its duration.

38C Termination of parent responsibility contracts

- (1) The Director-General may terminate a parent responsibility contract before the expiry of the period specified in the contract for its duration (the **contract period**) by:
 - (a) filing a contract breach notice with the Children's Court, or
 - (b) causing a notice terminating the contract (a **termination notice**) to be served on each other party to the contract.
- (2) The Director-General may cause a termination notice to be served on each other party to the contract for any reason and at any time during the contract period.
- (3) If a parent responsibility contract is terminated by service of a termination notice, the Director-General is to cause the registry of the Children's Court to be notified of the termination of the contract as soon as is reasonably practicable after its termination.

38D Effect of parent responsibility contract

- (1) A parent responsibility contract may be used as evidence of an attempt to resolve a matter concerning a child's or young person's need for care and protection without bringing a care application in accordance with Part 2 of Chapter 5.
- (2) A refusal by a primary care-giver for a child or young person to enter into a parent responsibility contract may also be used as evidence of an attempt to resolve a matter concerning the child's or young person's need for care and protection without bringing

a care application in accordance with Part 2 of Chapter 5.

- (3) Except to the extent that this Division or any other provision of this Act provides otherwise:
- (a) a parent responsibility contract does not create a legally enforceable agreement, and
 - (b) any failure to comply with the terms of such a contract (or any thing done or omitted to be done in connection with the negotiation of, or entry into, the contract) does not give rise to civil liability of any kind.

38E Contract breach notices

- (1) The Director-General may file a **contract breach notice** with the Children's Court in relation to a parent responsibility contract if:
- (a) a primary care-giver for a child or young person who is a party to the contract has breached a term of the contract, and
 - (b) the contract authorises the Director-General to file a contract breach notice with the Children's Court for breaches of the kind committed by the primary care-giver.
- (2) A contract breach notice must state the following matters:
- (a) the name of the primary care-giver for a child or young person who is alleged to have breached the parent responsibility contract,
 - (b) each provision of the parent responsibility contract that the primary care-giver is alleged to have breached,
 - (c) the manner in which the primary care-giver is alleged to have breached the provision,
 - (d) the care orders that the Director-General will seek from the Children's Court in respect of the child or young person concerned,
 - (e) such other matters as may be prescribed by the regulations.
- (3) The Director-General is to cause a copy of a contract breach notice filed with the Children's Court (along with a copy of the parent responsibility contract) to be served on each of the following persons as soon as is reasonably practicable after filing the notice:
- (a) each primary care-giver who is a party to the parent responsibility contract,
 - (b) the child or young person for whom the party breaching the contract is a primary care-giver.

- (4) In any care application that is made by the Director-General duly filing a contract breach notice with the Children's Court it is to be presumed (unless the presumption is rebutted by a party to the proceedings other than the Director-General) that the child or young person in respect of whom the application is made is in need of care and protection.

Note—

The filing of a contract breach notice with the Children's Court operates as a care application by the Director-General. See section 61A (1).

- (5) A reference in this Act to the Director-General duly filing a contract breach notice is a reference to the Director-General filing the notice in accordance with the provisions of this section.

Division 3 Registration of care plans and parent responsibility contracts

38F When registration occurs

A care plan or parent responsibility contract is taken to be registered with the Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.

38G Registration does not make care plans and parent responsibility contracts court documents

- (1) The registration of a care plan or a parent responsibility contract with the Children's Court does not make the plan or contract a document of the Court.
- (2) Accordingly, a party to a registered care plan or registered parent responsibility contract does not require the leave or other consent of the Children's Court to provide a copy of the plan or contract to any other person or to use the plan or contract in any proceedings in another court or tribunal.

Part 4 Miscellaneous

39-41 (Repealed)

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 the production of child abuse material, 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 the production of child abuse material 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 responsibility of the Director-General, the person must be kept separately from any persons who are detained for committing offences, who are on remand or who are subject to an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.
- (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*.

child abuse material has the same meaning as it has in Division 15A of Part 3 of the *Crimes Act 1900*.

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

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 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 make a care application in the Children's Court 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.
- (1A) The care application must be made within 3 working days after the day (the **relevant day**) on which the removal or assumption of care responsibility occurs. If this would permit the care application to be made more than 5 days after the relevant day, the application must instead be made no later than on the fifth day after the relevant day or (if the fifth day is not a working day) no later than the first working day after that fifth day. A **working day** is any day that is not a Saturday, Sunday or public holiday.
- (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, 70 and 90A 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 the care responsibility of the Director-General, 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 officer under section 233, the authorised officer 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.
- (5) If an application is made for the extension of an order under this section before the order expires, the order remains in force until the Children's Court makes a final determination on the application, even if that occurs after the original expiry date.

47 (Repealed)

Division 3 Other removal authorised by the Children's Court

48 Removal of child or young person pursuant to order of 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 any one or more premises or places specified or described in the order, and
- (b) the Director-General or a police officer may, pursuant to the order, enter any premises or place so specified or described, 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 responsibility 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 responsibility 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 responsibility 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 responsibility 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:
 - (i) if the Director-General has no reason to believe that the disclosure of the child's whereabouts would be prejudicial to the safety, welfare, well-being or interests of the child—by disclosing the whereabouts of the child, or
 - (ii) if the Director-General has reason to believe that the disclosure of the child's whereabouts would be prejudicial to the safety, welfare, well-being or interests of the child—by disclosing only information about the whereabouts of the child that is not high level identification information.
- (2) The Children's Court, on the hearing of any application made in respect of a child high level identification information about whom has not been disclosed to a parent of the child, may order that the Director-General disclose such of the high level identification

information about 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.

Note—

If a child or young person is in the care responsibility of the Director-General, high level identification information about the child or young person may be released only on an order of the Children's Court under this section (or under section 154, if it is a temporary care arrangement).

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 Provision of assessment reports and other information

- (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 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 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.
- (3) The Children's Court may, of its own motion, order:
 - (a) the Children's Court Clinic, or
 - (b) a person appointed under subsection (2),to provide the Court with such other information as may be within the expertise of the Children's Court Clinic or the appointed person (as the case requires) to provide.
- (4) The Children's Court may order the Children's Court Clinic to provide any such information regardless of whether an assessment order has been made in relation to the child or young person concerned.
- (5) Any information provided to the Children's Court pursuant to an order under subsection (3) is taken to be a report to the Children's Court rather than evidence tendered by a party.

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:
 - (a) specify the particular care order sought and the grounds on which it is sought, and
 - (b) without limiting paragraph (a), be accompanied by a written report specifying such information as may be prescribed for the purposes of this section by the rules made under the *Children's Court Act 1987*.
- (3) The order sought may be varied:
 - (a) without the leave of the Children's Court at any time before a determination is made under section 72 in relation to the care application concerned, and
 - (b) after such a determination is made—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.

61A Applications for care orders by filing contract breach notices

- (1) If the Director-General duly files a contract breach notice with the Children's Court, the filing of the notice is an application for the care orders specified in the notice.
- (2) If a care application is made by filing a contract breach notice, references to a parent in the provisions of this Part relating to the making and determination of a care application in respect of a child or young person are to be read as including a reference to a primary care-giver for the child or young person who is a party to the parent responsibility contract concerned even if he or she is not a parent of the child or young person.
- (3) Accordingly, the Children's Court may make the same kinds of orders in respect of such a primary care-giver for a child or young person as the Court may make in respect of a parent of the child or young person.
- (4) Sections 63 (Evidence of prior alternative action) and 64 (Notification of care applications) do not apply to a care application that is made by filing a contract

breach notice.

Note—

Section 38E (3) requires the Director-General to notify the other parties to a parent responsibility contract and the children and young persons for whom they are primary care-givers that a contract breach notice has been filed with the Children's Court.

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 responsibility of the Director-General from that care responsibility,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 reports, 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.
- (7) **Notification not to be given in certain circumstances** Despite the other provisions of this section, the Children's Court may:
- (a) order the Director-General:
 - (i) not to notify a child or young person of any application, or
 - (ii) not to serve a copy of an application or any supporting documentary evidence on a particular parent of any child or young person, or
 - (b) order a parent not to show an application or documents, or any particular information in the application or documents, to the parent's child or young person and not to tell the child or young person about the application or document or any particular information in it.
- (8) The Children's Court may make an order under subsection (7) only if the Children's Court is of the opinion that:
- (a) the prejudicial effect of the child's or young person's being unaware of the application or information is outweighed by the psychological harm that is likely to be caused to the child or young person if the child or young person is notified or becomes aware of the application, or
 - (b) it would otherwise be detrimental to the safety, welfare or well-being of the child or young person if that child or young person is notified or becomes aware of 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 Dispute resolution 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 dispute

resolution 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 dispute resolution 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 dispute resolution conference, or
 - (b) the parties consent to dispense with the dispute resolution conference, or
 - (c) there are circumstances, identified by the Children's Court Rules, in which the requirement for a dispute resolution conference may be dispensed with.
- (2) The purpose of a dispute resolution conference is to provide the parties with an opportunity to agree on action that should be taken in the best interests of the child or young person concerned.
- (2A) In conducting a dispute resolution conference, a Children's Registrar is to act as a conciliator between the parties. In so doing:
- (a) the Children's Registrar should seek to encourage the parties to agree on action that should be taken in relation to the child or young person concerned (including the formulation of final or interim orders that may be made by consent), or
 - (b) if the parties cannot agree on the action to be taken in relation to the child or young person, the Children's Registrar should encourage the parties:
 - (i) to identify areas of agreement between the parties, and
 - (ii) to identify issues in dispute between the parties, and
 - (iii) to determine the best way of resolving any issues in dispute, including by referring the application to independent alternative dispute resolution, and
 - (iv) 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.
- (3) A party may be legally represented at a dispute resolution 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.

65A Referral of matters before the Court to ADR

- (1) The Children's Court may make an order that the parties to a care application attend an alternative dispute resolution service in relation to the proceedings before the Court or any aspect of those proceedings.
- (2) The Children's Court may make an order under this section:
 - (a) on its own initiative, or
 - (b) on the application of a party to the proceedings.

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

- (1) A party to proceedings may, with the leave of the Children's Court, file further documentary evidence in connection with a care application.
- (2) In particular, if documentary evidence has been filed in proceedings and the Children's Court subsequently determines under section 93 (3) that the rules of evidence, or specified rules of evidence, are to apply to the proceedings, the party that filed the documentary evidence may, with the leave of the Children's Court and for the purpose of complying with the relevant rules, file further evidence or may withdraw all or part of the evidence filed and file alternative evidence.
- (3) Before granting leave under this section, the Court must be satisfied that the grant of leave will not result in undue delay in the matter being finalised.
- (4) Section 64 applies in respect of any further documentary evidence filed under this section in the same way as it applies to the making of the care application concerned.

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.
- (1A) The Children's Court may make an interim care order prior to determining whether the child or young person is in need of care and protection, if the Court is satisfied that it is appropriate to do so.
- (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 reason including, without limitation, any of the following:
 - (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 or primary care-givers,
 - (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,
 - (i) in the case where the application for the order is made by filing a contract breach notice—any presumption arising from the operation of section 38E (4) that the child or young person is in need of care and protection has not been rebutted.
- (1A) If the Children's Court makes a care order in relation to a reason not listed in subsection (1), the Court may only do so if the Director-General pleads the reason in the care application.
- (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 or primary care-giver's disability, or
 - (b) poverty.
- (3) (Repealed)

Note—

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

71A Effect of conduct outside New South Wales

For the purposes of this Act, it does not matter whether the conduct constituting a reason for the purposes of section 71 occurred wholly or partly outside the State.

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 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 responsible person for 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.

(7) In this section:

responsible person for a child or young person means any of the following persons (other than the Director-General or the Minister):

- (a) a person having parental responsibility or care responsibility for the child or young person,
- (b) a person who is the birth mother or birth father of the child or young person (whether or not the person has parental responsibility or care responsibility for the child or young person),
- (c) a person who is a primary care-giver for the child or young person (whether or not the person has parental responsibility or care responsibility for the child or young person).

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.
- (1A) An order under this section may be made only in respect of a child who has exhibited sexually abusive behaviour.
- (1B) The Children's Court may, subject to this section, make an order requiring a parent of a child or young person:
 - (a) to attend a therapeutic program relating to sexually abusive behaviours, or
 - (b) to attend any other kind of therapeutic or treatment program,in accordance with such terms as are specified in the order.
- (2) An order cannot be made under this section if:
 - (a) in the case of an order under subsection (1)—the child is or has been convicted in criminal proceedings arising from the same sexually abusive behaviours, or
 - (b) in the case of an order under subsection (1B) (a)—the parent is or has been convicted in criminal proceedings arising from the same sexually abusive behaviours.
- (2A) A reference in this section to a therapeutic or treatment program includes a reference to a therapeutic or treatment program that requires a participant to reside at a particular location during the whole or part of the time when the program is being conducted.
- (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 or treatment program proposed for the child or parent (as the case may be).

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 in general terms 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 (2) (e), 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.
- (2A) A permanency plan need not provide details as to the exact placement in the long-term of the child or young person concerned but must be sufficiently clear and particularised so as to provide the Children's Court with a reasonably clear picture as to the way in which the child's or young person's needs, welfare and well-being will be met in the foreseeable future.
- (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 or persons jointly, or

(iii) to another suitable person or persons, 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 (2) (c) 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.

(5) The Children's Court may only make an order that allocates parental responsibility for

a child or young person to a designated agency if the designated agency (or principal officer of the agency) is the person specified in an emergency care and protection order made under section 46 in respect of the child or young person.

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 Report on suitability of arrangements concerning parental responsibility

- (1) The Children's Court may, when making an order in any care proceedings (the **relevant proceedings**) allocating parental responsibility of a child or young person to a person (including the Minister) other than a parent, order a party to the relevant proceedings to prepare a written report concerning the suitability of the arrangements for the care and protection of the child or young person.

- (2) The report must:
 - (a) be provided to the Children's Court within 12 months or such earlier period as the Court may specify, and
 - (b) include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement, and
 - (c) unless the Court orders otherwise, be given to each of the other parties to the relevant proceedings.
- (3) If, after considering the 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 concerned, the Court is, within 30 days of receiving the report, to notify each party to the relevant proceedings inviting the party to make an application under section 90 in relation to the order. Any such application must be made within 30 days of the party being notified by the Court.
- (4) The Children's Court cannot, however, rescind or vary the order, or make a new order allocating parental responsibility, on its own motion.
- (5) Subsection (3) does not limit the circumstances in which a party to the relevant proceedings may make an application under section 90.

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.
- (7A) For the purposes of subsection (7) (a), the permanency plan need not provide details as to the exact placement in the long term of the child or young person to whom the plan relates but must provide the further and better particulars which are sufficiently identified and addressed so the Court, prior to final orders being made, can have a reasonably clear plan as to the child's or young person's needs and how those needs are going to be met.
- (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 in that part of the Department comprising those members of staff who are principally involved in the administration of this Act 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.
- (1A) The Children's Court may order a person who makes an application under this section to notify those persons whom the Children's Court specifies of the making of the application.

Note—

Section 256A sets out the circumstances in which the Children's Court may dispense with service.

- (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, and
 - (f) matters concerning the care and protection of the child or young person that are identified in:

- (i) a report under section 82, or
- (ii) a report that has been prepared in relation to a review directed by the Children's Guardian under section 85A or in accordance with section 150.

(3) An application may be made by:

- (a) the Director-General, or
- (b) (Repealed)
- (b1) the child or young person, 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 of the application, and the Director-General is entitled to be a party 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 or opposed 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, or of

opposition to 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.

90A Order prohibiting action

The Children's Court may, at any stage in care 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.

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

Part 1 General

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.

- (4) In any proceedings before the Children's Court, the standard of proof is proof on the balance of probabilities.
- (5) Without limiting subsection (4), any requirement under this Act that the Children's Court be satisfied as to a particular matter is a requirement that the Children's Court be satisfied on the balance of probabilities.

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, parents and others

- (1) In proceedings before it with respect to a child or young person, the Children's Court may, on its own initiative or at the request of any party to the proceedings, require the attendance at the court house where the proceedings are conducted:
 - (a) of the child or young person and of any parent of the child or young person, or
 - (b) of any other person who has, or has had, care responsibility for the child or young person, or
 - (c) if the whereabouts of the child or young person is unknown to the Children's Court—of any other person the Children's Court has reasonable cause to believe knows, or has information concerning, the whereabouts 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.
- (2A) The fact that a child or young person is presumed by section 99C (1) to have the capacity to instruct his or her legal representative does not of itself mean that the child or young person is required to attend the Children's Court to give those instructions. Such a child or young person is required to attend only if required under this section.
- (3) A child or young person is not required (except as provided by subsection (4)) to give evidence in the Children's Court.
- (4) Despite subsection (3), the Children's Court may require a parent of the child or young person who is the subject of the proceedings who is himself or herself a child or young person to give evidence in the Children's Court.
- (5) A person referred to in subsection (1) (c) may be required to give to the Children's Court such information that the person has about where the child or young person is or may be located.
- (6) If the Children's Court decides to require any person to attend a court house under subsection (1) it may issue to the person a notice in accordance with Part 2 requiring the person to attend as directed in the notice (a **care proceedings attendance notice**).

Note—

Section 109B enables the Children's Court to issue a warrant for the arrest of a person who fails to attend as directed by a care proceedings attendance notice.

(7) In this section:

parent of a child or young person includes a birth parent, or an adoptive parent, of the child or young person who does not have parental responsibility for the child or young person.

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.

(2A) If the Children's Court is of the opinion that a party to the proceedings is incapable of giving proper instructions to a legal representative, the Children's Court is to appoint a guardian ad litem for the person under section 100 or 101 (as the case may require).

(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 Appointment of legal representative by Children's Court

(1) The Children's Court may appoint a legal representative to act 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) A legal representative for a child or young person who has not been appointed by the Children's Court may appear only with its leave.
- (3) The Children's Court may withdraw its leave at any time and for any reason (including the child or young person informing the Children's Court that he or she does not wish to be represented by the legal representative).

99A Legal representative to act as independent legal representative or direct legal representative

- (1) A legal representative for a child or young person is to act as a **direct legal representative** if:
 - (a) the child or young person is capable of giving proper instructions, and
 - (b) a guardian ad litem has not been appointed for the child or young person.
- (2) A legal representative for a child or young person is to act as an **independent legal representative** if:
 - (a) the child or young person is not capable of giving proper instructions, or
 - (b) a guardian ad litem has been appointed for the child or young person.

Note—

Section 100 (4) provides that 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.

99B Child under 12 presumed incapable of giving proper instructions

- (1) There is a rebuttable presumption that a child who is less than 12 years of age is not capable of giving proper instructions to his or her legal representative.
- (2) However, the Children's Court may, on the application of a legal representative for a child who is less than 12 years of age, make a declaration that the child is capable of giving proper instructions.

99C Child 12 or older and young person presumed capable of giving proper instructions

- (1) There is a rebuttable presumption that a child who is not less than 12 years of age, or a young person, is capable of giving proper instructions to his or her legal representative. This presumption is not rebutted merely because the child or young person has a disability.
- (2) However, the Children's Court may, on the application of a legal representative for a child who is not less than 12 years of age, or a young person, make a declaration that the child or young person is not capable of giving proper instructions.

99D Role of a legal representative

Without limiting the role of a legal representative for a child or young person in proceedings before the Children's Court:

- (a) the role of a direct legal representative includes the following:
 - (i) ensuring that the views of the child or young person are placed before the Children's Court,
 - (ii) ensuring that all relevant evidence is adduced and, where necessary, tested,
 - (iii) acting on the instructions of the child or young person, and
- (b) the role of an independent legal representative includes the following:
 - (i) if a guardian ad litem has been appointed for the child or young person—acting on the instructions of the guardian ad litem,
 - (ii) interviewing the child or young person after becoming the independent legal representative,
 - (iii) explaining to the child or young person the role of an independent legal representative,
 - (iv) presenting 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,
 - (v) presenting evidence of the child's or young person's wishes (and in doing so the independent legal representative is not bound by the child's or young person's instructions),
 - (vi) ensuring that all relevant evidence is adduced and, where necessary, tested,
 - (vii) cross-examining the parties and their witnesses,
 - (viii) making 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,
 - (ix) lodging an appeal against an order of the Children's Court if considered appropriate.

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 or that the child or young person is, for any reason, not capable of giving proper instructions to a legal representative.
- (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.

101A Guardian ad litem—exclusion of personal liability

- (1) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed by the Children’s Court as a guardian ad litem does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions as a guardian ad litem under this Act.

(2) However, any such liability attaches instead to the Crown.

(3) In this section:

Guardian Ad Litem Panel means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

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 child or young person from proceedings

- (1) At any time while the Children's Court is hearing proceedings with respect to a child or young person, the Children's Court may direct the child or young person to leave the place where the proceedings are being heard.
- (2) If any non-court proceedings are to be held with respect to a child or young person, the Children's Court may direct that the child or young person is not to be present at the place where the non-court proceedings are to be held at any particular time during

the proceedings.

- (3) The Children's Court may give a direction under this section only 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 caused to the child or young person if the child or young person were to remain or be present.
- (4) If the Children's Court gives a direction under subsection (1) with respect to a child or young person, and if it is of the opinion that it is in the interests of the child or young person to do so, it must also give a direction with respect to all persons who are engaged in preparing reports of the proceedings for dissemination through a public news medium to leave the place where the proceedings are being heard.

104A Exclusion of particular persons from proceedings

- (1) At any time while the Children's Court is hearing proceedings with respect to a child or young person, 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.
- (2) If any non-court proceedings are to be held with respect to a child or young person, the Children's Court may direct any person (other than the child or young person) not to be present at the place where the proceedings are to be held at any time during the proceedings concerned.
- (3) The Children's Court may give a direction under this section only 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.
- (4) The powers exercisable by the Children's Court under this section may be exercised even if the person to whom a direction is given is directly interested in the proceedings concerned.

104B Exclusion of general public from proceedings

At any time while the Children's Court is hearing proceedings with respect to a child or young person, any person 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.

104C Entitlement of media to hear proceedings

At any time while the Children's Court is hearing proceedings with respect to a child or young person, 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.

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
- (a1) who is involved, or is reasonably likely to be involved, in any capacity in any non-court 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 or in any non-court proceedings, or
- (d) who is the subject of a report under section 24, 25, 27, 120, 121 or 122,

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

(1A) The prohibition in subsection (1) applies to the publication or broadcast of the name of the child or young person concerned until:

- (a) the child or young person attains the age of 25 years, or
- (b) the child or young person dies,

whichever occurs first.

(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 Director-General if the Director-General is of the opinion that the publication or broadcasting may be seen to be to the benefit of the child or young person, or
 - (iv) in any case—if the child or young person has died.
- (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.
- (6) This section does not apply in relation to criminal proceedings.

Note—

See section 15A of the *Children (Criminal Proceedings) Act 1987*.

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,and the child was given (before the statement or information was made or given) an opportunity to consult with the adult in private, or
- (b) 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.

106A Admissibility of certain other evidence

- (1) The Children’s Court must admit in proceedings before it any evidence adduced that a parent or primary care-giver of a child or young person the subject of a care

application:

(a) is a person:

- (i) from whose care and protection a child or young person was previously removed by a court under this Act or the *Children (Care and Protection) Act 1987*, or by a court of another jurisdiction under an Act of that jurisdiction, and
- (ii) to whose care and protection the child or young person has not been restored, or

(b) is a person who has been named or otherwise identified by the coroner or a police officer (whether by use of the term “person of interest” or otherwise) as a person who may have been involved in causing a reviewable death of a child or young person.

(2) Evidence adduced under subsection (1) is prima facie evidence that the child or young person the subject of the care application is in need of care and protection.

(3) A parent or primary care-giver in respect of whom evidence referred to in subsection (1) has been adduced may rebut the prima facie evidence referred to in subsection (2) by satisfying the Children’s Court that, on the balance of probabilities:

- (a) the circumstances that gave rise to the previous removal of the child or young person concerned no longer exist, or
- (b) the parent or primary care-giver concerned was not involved in causing the relevant reviewable death of the child or young person,

as the case may require.

(4) This section has effect despite section 93 and despite anything to the contrary in the *Evidence Act 1995*.

(5) In this section, **reviewable death of a child or young person** means a death of a child or young person that is reviewable by the Ombudsman under Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

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.
- (3A) **Certain questions** For the purposes of this section, questions to a witness who is a parent or a primary care-giver of a child or young person the subject of a care application concerning the witness's previous history of dealings with any child or young person are taken not to be intrinsically offensive, scandalous or oppressive.
- (4) **Definition** In subsection (1), a reference to a Children's Magistrate includes a reference to a Magistrate within the meaning of section 13 (2) 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.

Part 2 Attendance of witnesses and others and production of documents

Division 1 Preliminary

109 Definitions

- (1) In this Part:

arrest warrant means a warrant to arrest a person issued in accordance with this Part.

care proceedings attendance notice means a care proceedings attendance notice issued under section 96.

correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

detention centre has the same meaning as it has in the *Children (Detention Centres) Act 1987*.

party means the Director-General, a child or young person or parent or any other party in proceedings to which this Chapter applies.

subpoena includes any of the following:

- (a) a subpoena to give evidence,
- (b) a subpoena for production,
- (c) a subpoena both to give evidence and for production.

subpoena both to give evidence and for production means a written order requiring the person to whom the subpoena is addressed to attend as directed by the order as a witness to give evidence and to produce a document or thing.

subpoena for production means a written order requiring the person to whom the subpoena is addressed to attend as directed by the order and produce a document or thing.

subpoena to give evidence means a written order requiring the person to whom the subpoena is addressed to attend as directed by the order as a witness to give evidence.

warrant of commitment means a warrant to commit a person to a correctional centre, detention centre or other place of security issued under Division 5.

- (2) In this Part, a reference to a Children's Magistrate includes a reference to the President of the Children's Court.

Division 2 Compelling attendance at proceedings

109A Form and service of care proceedings attendance notice

- (1) A care proceedings attendance notice must be in writing and in the form prescribed by the rules.
- (2) A care proceedings attendance notice must:
 - (a) require the person to whom it is addressed to attend at the court house where the proceedings before the Children's Court are conducted at a specified date, time and place, and
 - (b) state that failure to attend may result in the arrest of the person and, in the case of the child, young person or parent to which the proceedings relate, the matter being dealt with in his or her absence.

- (3) Notice of the date, time and place set is to be given to each other party in the proceedings in accordance with the rules.
- (4) The rules may prescribe additional matters to be included in care proceedings attendance notices.
- (5) A care proceedings attendance notice is to be served in accordance with the rules.

109B Issue of arrest warrant to compel attendance at proceedings

- (1) The Children's Court may, in accordance with Division 4, issue a warrant to arrest a person if it is satisfied that there are substantial reasons to do so and that it is in the interests of the safety, welfare or well-being of a child or young person with respect to whom proceedings before it are conducted to do so.
- (2) Without limiting the circumstances in which a warrant may be issued, it may be issued if:
 - (a) the person fails to attend as required by a care proceedings attendance notice, or
 - (b) the person is a child, young person or parent who absconds from any care proceedings with respect to the child or young person.
- (3) The police officer or other person executing the warrant is to bring the person before the Children's Court, or if this is not practicable before a Registrar, as soon as possible after the arrest.
- (4) The Children's Court or Registrar may:
 - (a) in the case of an adult—if bail is not dispensed with or granted, issue a warrant of commitment in accordance with Division 5 committing the person to a correctional centre or other place of security, or
 - (b) in the case of a young person—if bail is not dispensed with or granted, issue a warrant of commitment in accordance with Division 5 committing the young person to a detention centre or other place of security, or
 - (c) in the case of a child—place the child in the care responsibility of the Director-General at a place approved by the Minister for the purposes of this section, and order the adult, young person or child to be brought before the Children's Court at the date, time and place specified in the order.
- (5) Notice of the date, time and place set is to be given to each other party in the proceedings in accordance with the rules.
- (6) In this section:

parent of a child or young person includes a birth parent, or an adoptive parent, of

the child or young person who does not have parental responsibility for the child or young person.

Division 3 Subpoenas for attendance of witnesses to give evidence and produce documents

109C Issue of subpoenas

- (1) The Children's Court, a Children's Magistrate or a Registrar, if requested to do so by a party to proceedings before it, may, subject to and in accordance with the rules, issue to a person named in the subpoena any of the following subpoenas:
 - (a) a subpoena to give evidence,
 - (b) a subpoena for production,
 - (c) a subpoena both to give evidence and for production.
- (2) A subpoena to give evidence and a subpoena for production may be issued to the same person in the same proceedings.
- (3) A party may require a subpoena for production to be returnable:
 - (a) on any day on which the proceedings are listed before the Children's Court, or any day not more than 21 days before any such day, or
 - (b) with the leave of the Children's Court, on any other day.

109D Time for service of subpoenas

- (1) A subpoena must be served within a reasonable time and at least 5 days before the last day on which it must be complied with.
- (2) The Children's Court, a Children's Magistrate or a Registrar may, on application by the party concerned, permit a subpoena to be served later than the time permitted by subsection (1). The later time must be endorsed on the subpoena by the Children's Court, Children's Magistrate or Registrar.
- (3) A subpoena may be served by delivering it personally to the person to whom it is addressed or in any other manner prescribed by the rules.

109E Conduct money

A person to whom a subpoena issued at the request of a party is addressed is not required to attend the Children's Court, or to produce any document or thing on any day on which attendance is required, unless an amount sufficient to meet the reasonable expenses of complying with the subpoena in relation to that day is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that day.

109F Limits on obligations under subpoenas

The person to whom a subpoena is addressed is not required to produce any document or thing if:

- (a) it is not specified or sufficiently described in the subpoena, or
- (b) the person would not be required to produce the document or thing on a subpoena for production in the Supreme Court.

109G Production by non-party

- (1) If the person to whom a subpoena for production is addressed is not a party to the proceedings, the subpoena is, unless the Children's Court otherwise orders, to permit the person to produce the document or thing to the Court not later than the day before the first day on which the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena.
- (2) The rules may make provision for or with respect to the production of documents or things produced to the Children's Court under subsection (1), and the return of the document or thing, and any related matters.
- (3) Nothing in this Part affects the operation of Division 1 (Requests to produce documents or call witnesses) of Part 4.6 of Chapter 4 of the *Evidence Act 1995* to the extent (if any) that Division 1 is, under section 93, applicable in proceedings in the Children's Court.

109H Subpoena may be set aside

- (1) The Children's Court may, on application by the person to whom a subpoena is addressed, set aside the subpoena wholly or in part.
- (2) Notice of an application under this section is to be filed and served as prescribed by the rules on the party on whose request the subpoena was issued.

109I Inspection of subpoenaed documents and things

- (1) A party may, if the Children's Court so orders:
 - (a) inspect documents or things produced in compliance with a subpoena, and
 - (b) take copies of any documents so inspected.
- (2) Any such order may be made on such terms and conditions as the Children's Court thinks fit.
- (3) A Registrar may exercise the function of the Children's Court to make an order under this section with the consent of the parties to the proceeding.

- (4) Subsection (3) does not apply if any party, the person to whom the subpoena is addressed or a person claiming privilege in respect of the document has objected to a party inspecting the documents or things produced in compliance with the subpoena.

109J Action that may be taken if person does not comply with subpoena

- (1) A party who requested a subpoena may apply to the Children's Court for the issue of a warrant in accordance with Division 4 for the arrest of the person to whom the subpoena is addressed if the person has not complied with the subpoena.
- (2) The Children's Court may issue the warrant if satisfied that:
- (a) the subpoena was issued in accordance with this Division, and
 - (b) the person to whom the subpoena is addressed has failed, without reasonable excuse, to comply with the subpoena.
- (3) The police officer or other person executing the warrant is to bring the person before the Children's Court, a Children's Magistrate or a Registrar, as soon as possible after the arrest.
- (4) The Children's Court, Children's Magistrate or Registrar before whom a person who is a child or young person is brought on arrest on a warrant issued under this section may:
- (a) place the child or young person in the care responsibility of the Director-General at a place approved by the Minister for the purposes of this section, and
 - (b) order the child or young person to be brought before the Children's Court at the date, time and place specified in the order.
- (5) The Children's Court, Children's Magistrate or Registrar before whom a person who is an adult is brought on arrest on a warrant issued under this section may:
- (a) if bail is not dispensed with or granted, issue a warrant under Division 5 committing the person to a correctional centre or other place of security, and
 - (b) order the person to be brought before the Children's Court at the date, time and place specified in the order.
- (6) Notice of the date, time and place set is to be given to the party who requested the subpoena in accordance with the rules.

109K Action that may be taken if person refuses to give evidence

- (1) This section applies to a person who:
- (a) appears before the Children's Court on a subpoena to give evidence, or produce any document or thing, or both, or

- (b) appears before the Children's Court on bail after being arrested under a warrant after failing to comply:
 - (i) with a subpoena to give evidence, or produce any document or thing, or both, or
 - (ii) with a care proceedings attendance notice, or
 - (c) is brought before the Children's Court under a warrant of commitment after being so arrested.
- (2) The Children's Court may order that a warrant be issued for the committal of a person to whom this section applies to a correctional centre, detention centre or other place of security for a period not exceeding 7 days if the person refuses, without offering any just cause or reasonable excuse:
- (a) to be examined on oath, or
 - (b) to take an oath, or
 - (c) to answer, after having taken an oath, any questions that are put to the person concerning the subject-matter of the proceedings, or
 - (d) to produce the document or thing.

Note—

Division 5 sets out procedures for warrants of commitment generally.

- (3) However, the person is to be released before the expiration of those 7 days if the person:
- (a) consents to be examined on oath and to answer questions concerning the subject-matter of the proceedings, or
 - (b) produces the document or thing.
- (4) This Part applies in relation to a subpoena to the exclusion of section 194 (Witnesses failing to attend proceedings) of the *Evidence Act 1995*.
- (5) In this section, a reference to a person who appears before the Children's Court on bail after being arrested under a warrant after failing to comply with a subpoena includes a reference to a person in respect of whom the requirement for bail has been dispensed with after being so arrested.

Division 4 Arrest warrants

109L When arrest warrants may be issued

A warrant to arrest a person may be issued on any day of the week.

109M Form of arrest warrant

- (1) A warrant to arrest a person must be in the form prescribed by the rules.
- (2) Without limiting subsection (1), the warrant must be directed to a person permitted by section 109O to execute the warrant and must do the following things:
 - (a) name or describe the person to be arrested,
 - (b) briefly state the reason for the arrest,
 - (c) order that the person be arrested and brought before the Children's Court to be dealt with according to law or to give evidence or produce documents or things, as appropriate.
- (3) A warrant to arrest a person must be signed by the person issuing it and sealed with the seal of the Children's Court.

109N Duration of arrest warrants

- (1) A warrant to arrest a person must be returnable at a stated date, time and place.
- (2) The warrant to arrest a person may be returned and cancelled, and a further warrant may be obtained, if the person is not arrested before the warrant must be returned.

109O Persons who may execute arrest warrant

- (1) A warrant to arrest a person must be directed to:
 - (a) a named police officer, or
 - (b) a person authorised by law to execute a warrant to arrest, or
 - (c) the senior police officer of the area where the court is located, or
 - (d) the senior police officer and all other police officers, or
 - (e) generally all police officers.
- (2) A warrant to arrest a person may be executed by arresting the person at any place in New South Wales.

109P Procedure after arrest

A person who is arrested under a warrant must be brought before the Children's Court, a Children's Magistrate or a Registrar as soon as practicable.

109Q Revocation of warrants

- (1) Any party to proceedings before the Children's Court may apply to the Court to revoke a warrant for the arrest of a person issued by the Court in relation to the proceedings.

- (2) The Children's Court may, on the application of a person under subsection (1) or on its own motion, revoke any warrant to arrest a person issued by it if the Children's Court considers it to be appropriate to do so.

Division 5 Warrants of commitment

109R Form of warrants of commitment

- (1) A warrant to commit a person must be in the form prescribed by the rules.
- (2) Without limiting subsection (1), the warrant must be directed to a police officer and must do the following things:
 - (a) name or describe the person to be committed,
 - (b) direct and authorise the police officer to take and safely convey the named person to a correctional centre, detention centre or other place of security,
 - (c) direct the police officer to deliver the named person to the officer in charge of the place,
 - (d) direct and authorise the officer in charge of the place to receive the named person in custody and to keep the named person in custody for the period specified, or in the circumstances specified, or until the named person is otherwise lawfully released from custody.

Note—

A warrant of commitment must not require a person to be kept in custody for more than 7 days—see section 109K (2).

109S Procedure for taking person to correctional centre, detention centre or other place of security

- (1) The police officer to whom a warrant of commitment is issued must take the named person to the correctional centre, detention centre or other place of security specified in the warrant and deliver the named person to the person in charge of the place.
- (2) The police officer must obtain a receipt for the delivery of the named person setting out the condition of the named person when delivered into the custody of the person in charge.

109T Defects in warrants of commitment

A warrant of commitment may not be held void because of any defect in the warrant if the warrant states that:

- (a) the person has been ordered to do any act or thing required to be done, and
- (b) there is a good and valid order to sustain the warrant.

Division 6 Bail

109U Application of [Bail Act 1978](#)

- (1) The [Bail Act 1978](#) (other than Part 6) applies to a person who is brought before the Children's Court, a Children's Magistrate or a Registrar after being arrested on a warrant issued under this Part in relation to proceedings before the Children's Court in the same way as it applies to an accused person, and for that purpose, bail may be granted to the person with respect to the period between the person's being brought before the Children's Court, a Children's Magistrate or a Registrar and his or her attendance at those proceedings.
- (2) For the purposes of subsection (1):
 - (a) the Children's Court, a Children's Magistrate and a Registrar may grant bail in accordance with the [Bail Act 1978](#) to a person who is brought before the Court, Children's Magistrate or Registrar, and
 - (b) a reference in Part 4 (other than section 22A and Divisions 3-7), 5 or 7 of the [Bail Act 1978](#) to a court is to be read as a reference to the Children's Court, and
 - (c) a reference to an authorised justice includes a reference to a Registrar.
- (3) A power to issue a warrant of commitment under this Part is subject to the provisions of the [Bail Act 1978](#), as applied by this section.
- (4) Without limiting section 9, in taking any action or making any decision under the [Bail Act 1978](#) as applied by this section concerning a particular child or young person, the safety, welfare and well-being of the child or young person must be the paramount consideration.

109V Review of bail decisions

- (1) The District Court may review any decision made by the Children's Court or a Children's Magistrate in relation to bail under this Division.
- (2) The Children's Court may review any decision made by a Registrar in relation to bail under this Division.
- (3) The power to review a decision under this section:
 - (a) may be exercised only at the request of the child, young person, parent or other person held in custody or the Director-General, and
 - (b) includes the power to affirm or vary the decision or to substitute another decision.
- (4) A decision as varied or substituted must be in conformity with the [Bail Act 1978](#) as applied by section 109U.

- (5) The review of a decision is to be by way of rehearing, and evidence or information in addition to, or in substitution for, the evidence or information obtained on the making of the decision may be given or obtained on the review.
- (6) If, on review of a decision under this Division, the Children's Court or District Court varies the decision or substitutes another decision, section 38 of the *Bail Act 1978* applies to and in relation to the decision as varied or substituted as if originally made by the court.
- (7) If, on review of a decision under this Division, bail for a parent or other person in custody is revoked, the Children's Court or other reviewing body may:
 - (a) if the person is an adult—issue a warrant in accordance with Division 5 committing the person to a correctional centre or other place of security, or
 - (b) if the person is a child or young person—issue a warrant in accordance with Division 5 committing the person to a detention centre,and order the person to be brought before the Children's Court at the date, time and place specified in the warrant.
- (8) The Children's Court or other reviewing body may refuse a request to review a decision under this Division if it is satisfied that the request is frivolous or vexatious.
- (9) The regulations may make provision for or with requests for reviews, and reviews, under this Division.
- (10) Nothing in this section limits the rights of a person held in custody under this Part to apply for bail, and the person may so apply for bail even if the power to review a decision already made in relation to bail to the person has not been, or has not been sought to be, exercised under this section.

Division 7 General

109W Warrants

- (1) A printed representation of a seal or signature on a warrant issued under this Part is sufficient to comply with a requirement under this Act that a warrant be sealed or signed.
- (2) A copy of a warrant issued under this Act (being a copy produced by means of a photographic or electronic process or facsimile transmission):
 - (a) is as valid and effectual as the original warrant, and
 - (b) confers the same functions as the original warrant.

109X Rules relating to subpoenas

Without limiting section 23 of the *Children's Court Act 1987*, rules may be made for or with respect to the following matters:

- (a) the form of subpoenas,
- (b) the production and inspection of documents or things in accordance with subpoenas and the return or destruction of such documents or things,
- (c) the return of subpoenas to parties,
- (d) conduct money,
- (e) hearing of objections to subpoenas,
- (f) allowances for witnesses.

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.
- (4) The Children's Court may order a person who makes an application under this section

to notify those persons whom the Children's Court specifies of the making of the application.

Note—

Section 256A sets out the circumstances in which the Children's Court may dispense with service.

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 has reasonable grounds to suspect:

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

must, as soon as practicable, 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

123-133B (Repealed)

Chapter 8 Out-of-home care

Part 1 Introduction

134 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.

135 Definition and types of “out-of-home care”

- (1) For the purposes of this Act, **out-of-home care** means residential care and control of a child or young person that is provided:
 - (a) by a person other than a parent of the child or young person, and
 - (b) at a place other than the usual home of the child or young person, whether or not for fee, gain or reward.
- (2) There are 3 types of out-of-home care for the purposes of this Act, as follows:
 - (a) **statutory out-of-home care**—see section 135A,
 - (b) **supported out-of-home care**—see section 135B,
 - (c) **voluntary out-of-home care**—see section 135C.
- (3) For the purposes of this Act, **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 provided by a relative of a child or young person unless:
 - (i) the Minister has parental responsibility for the child or young person by virtue of an order of the Children’s Court, or
 - (ii) the child or young person is in the care of the Director-General, or
 - (iii) it is provided pursuant to a supported out-of-home care arrangement as referred to in section 153, or
 - (c) anything prescribed by the regulations not to be out-of-home care.

- (4) However, a child or young person who is in out-of-home care does not cease to be in that care merely because the child or young person becomes subject to any care or control referred to in subsection (3).

135A Statutory out-of-home care

- (1) **Statutory out-of-home care** is out-of-home care that is provided in respect of a child or young person for a period of more than 14 days:
- (a) pursuant to a care order of the Children's Court, or
 - (b) by virtue of the child or young person being a protected person.
- (2) Any statutory out-of-home care provided in respect of a child or young person is taken to commence:
- (a) immediately on the making of a care order for a period of more than 14 days in respect of the child or young person, or
 - (b) in any other case—immediately the child or young person is placed with an authorised carer.
- (3) In this section, **protected person** means:
- (a) a person who is a ward of the Supreme Court, or subject to an order of the Supreme Court in its *parens patriae* jurisdiction, 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 person who is under the parental responsibility of the Director-General pursuant to Part 6 (Parental responsibility for children awaiting adoption) of Chapter 4 of the [Adoption Act 2000](#), or
 - (c) a 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 person who, having been a 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.

135B Supported out-of-home care

Supported out-of-home care is out-of-home care in respect of a child or young person that is, as a result of the Director-General forming the opinion that the child or young person is in need of care and protection, arranged, provided or otherwise supported by the Director-General under Part 3 of this Chapter.

135C Voluntary out-of-home care

- (1) **Voluntary out-of-home care** is out-of-home care in respect of a child or young person that is arranged by a parent of the child or young person, but does not include:
 - (a) out-of-home care that is provided by an individual in a private capacity, or
 - (b) out-of-home care that is provided outside New South Wales.
- (2) Out-of-home care is provided by an individual **in a private capacity** if it is provided by an individual who is not acting on behalf of, or pursuant to an arrangement with, a body or organisation.

136 Restriction on who may provide statutory out-of-home care

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

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

Note—

The provision of supported or voluntary out-of-home care is regulated by Parts 3 and 3A of this Chapter.

- (3) This section does not prevent a child or young person who:

- (a) has been placed in statutory out-of-home care, and
- (b) is the subject of a permanency plan involving restoration,

from living with his or her parents, in accordance with the arrangements under a care plan approved by the Children's Court, at any time during the period of 6 months before the date on which the child or young person is to be restored to his or her parents in accordance with the permanency plan.

137 Authorised carers

- (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.
- (1A) If, in relation to a child or young person who is the subject of a care order, the

Children's Court has accepted that there is no realistic possibility of the child or young person being restored to his or her parents, a parent of the child or young person cannot:

- (a) be given care responsibility for the child or young person, or
- (b) be authorised by a designated agency as an authorised carer in respect of the child or young person,

unless the decision of the Court that there is no possibility of restoration is rescinded under section 90.

(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.

(3) In the case of an authorised carer who is authorised by a designated agency, it is a condition of the authorisation that the carer must notify the designated agency if any person (other than the carer) who is of or above the age of 18 years is residing at the carer's home on a regular basis and has been doing so for a period of at least 3 months.

Note—

See section 45 of the [Commission for Children and Young People Act 1998](#) which provides for background checking under Division 3 of Part 7 of that Act of adult household members of authorised carers.

(4) Without limiting subsection (3), any such requirement to notify the designated agency applies even though the adult person who is residing at the carer's home was at any time residing at that home as a minor.

138 Persons who may arrange for provision of statutory or supported out-of-home care

(1) Arrangements for the provision of statutory or supported 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 statutory or supported 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 statutory or supported 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 Division of the Government Service (or branch or other part of a Division), or

(b) an organisation (or branch or other part of an organisation) that arranges the provision of out-of-home care,

if the Division or organisation (or branch or other part of the Division 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.
- (1A) The Department, in supervising the placement of a child or young person in out-of-home care under this section, does not take or assume any assets, rights or liabilities of the designated agency.
- (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 or young person 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 (Repealed)

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.
- (4A) The Children's Court may order a person who makes an application under this section to notify those persons whom the Children's Court specifies of the making of the application.

Note—

Section 256A sets out the circumstances in which the Children's Court may dispense with service.

- (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.

149AA Care plan and other relevant information to be presented before order made under section 149

- (1) The authorised carer applying for an order under section 149 awarding sole parental responsibility to the carer must present the following to the Children's Court before the order is made:
 - (a) a care plan prepared, in accordance with this section, by the authorised carer or the principal officer of the designated agency that supervised the placement of the child or young person with the authorised carer,
 - (b) a copy of any report on the health, educational or social well-being of the child or young person that is available to the authorised carer and that is relevant to the care plan.
- (2) Without limiting the information that must be contained in a care plan, it must contain information about the following:
 - (a) the residence of the child or young person,

- (b) if the Children's Court has made any contact order under section 86 in relation to contact of the child or young person with his or her parents, relatives, friends or other persons—the arrangements for contact,
 - (c) the education and training of the child or young person,
 - (d) the religious upbringing of the child or young person,
 - (e) the health care of the child or young person,
 - (f) the resources required to provide any services that need to be provided to the child or young person and the availability of those resources,
 - (g) any views the child or young person has expressed about any aspect of the care plan.
- (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.

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 1A Disclosure to parents and significant persons of information concerning placement in out-of-home care

149B Definitions

- (1) In this Division, **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), or the Minister or 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 of the Children's Court was made.
- (2) A reference in this Division to a person who is **significant** to a child or young person is a reference to a person referred to in section 9 (2) (f).

149C Disclosure to parents and significant persons

- (1) The designated agency responsible for the placement of a child or young person in out-of-home care must, in accordance with this Division, disclose information concerning the placement of the child or young person to the following persons:
- (a) any parent of the child or young person,
 - (b) any other person who is significant to the child or young person and who makes a written request for the information.
- (2) The information must be disclosed as soon as practicable after the placement of the child or young person.
- (3) This section is subject to sections 149E (Consent of authorised carer to disclosure of

high level identification information) and 149I (Refusal to disclose information concerning placement).

149D Type and amount of information to be disclosed

When considering the type and amount of information to be disclosed under this Division, the designated agency must have regard to:

- (a) the wishes of the child or young person and authorised carer concerned, and
- (b) any guidelines prepared by the Children's Guardian in relation to disclosure, which may include, but are not limited to, any guidelines relating to the following:
 - (i) particular classes of people, in addition to parents and including persons significant to the child or young person, who should normally receive information concerning placement,
 - (ii) particular types of information concerning placement that should normally be disclosed,
 - (iii) guidance as to any persons who should not receive information concerning placement,
 - (iv) guidance as to how the child or young person concerned is to participate in any decision-making processes relating to the disclosure of information concerning the authorised carer of the child or young person.

149E Consent of authorised carer to disclosure of high level identification information

- (1) Except as provided by this section (and despite section 149C), a designated agency must not disclose high level identification information concerning the placement of a child or young person unless:
 - (a) the designated agency has contacted the authorised carer of the child or young person concerned and requested the consent of that authorised carer to the disclosure, and
 - (b) the authorised carer has consented in writing to the disclosure.
- (2) The information may be disclosed even though the authorised carer of the child or young person concerned has refused to consent to the disclosure, or has not consented to the disclosure within 28 days after being requested to do so under this section, if the designated agency:
 - (a) believes on reasonable grounds that the disclosure will not pose any risk to the safety, welfare or well-being of:
 - (i) the child or young person concerned, or

- (ii) the authorised carer of the child or young person, or
 - (iii) any member of the family or household of the authorised carer of the child or young person, and
- (b) complies with sections 149F and 149G.

149F Disclosure of high level identification information without consent of authorised carer

- (1) Before disclosing high level identification information without the consent of the authorised carer of the child or young person concerned, the designated agency:
- (a) must provide written reasons to the authorised carer as to why it believes that the disclosure of the information will not pose any risk of the kind referred to in section 149E (2) (a), and
 - (b) if the child or young person concerned is 12 years of age or older—must provide a copy of the written reasons to the child or young person (unless the agency considers that it is not in the child or young person’s best interests to do so), and
 - (c) if the child concerned is less than 12 years of age—must supply a copy of the written reasons to any person nominated by the child (unless the agency considers that it is not in the child’s best interests to do so or that the child is too young to nominate a person), and
 - (d) must ensure that a copy of the written reasons is retained on the designated agency’s file for the purpose of disclosing them to the child after he or she reaches the age of 12 (unless the agency considers that it is not in the child’s best interests to do so).
- (2) The designated agency must also give the authorised carer a written notice stating:
- (a) that the information will not be disclosed within the period of 21 days after the date of the notice, and
 - (b) that the decision to disclose the information may be reviewed by the Administrative Decisions Tribunal:
 - (i) on the application of the authorised carer, or
 - (ii) on the application of the designated agency (on behalf of the authorised carer) at the request of the authorised carer made before the expiry of the 21-day period referred to in paragraph (a).

149G Application for review of decision to disclose high level identification information

- (1) If a designated agency decides to disclose high level identification information under this Division despite the authorised carer’s refusing, or failing to give, consent to the

disclosure, the authorised carer:

- (a) may apply to the Administrative Decisions Tribunal for a review of the decision to disclose the information, or
 - (b) may, within the time allowed under section 149F (2) (b) (ii), request the designated agency to apply to the Administrative Decisions Tribunal, on behalf of the authorised carer, for a review of the decision to disclose the information.
- (2) The designated agency must comply with any request made in accordance with subsection (1) (b) and, before doing so, must carry out an internal review of the decision in accordance with section 53 of the *Administrative Decisions Tribunal Act 1997* as modified by section 149H and the regulations (if any).
- (3) If an application is made to the Administrative Decisions Tribunal under this section, the designated agency must not disclose the information to which the application relates otherwise than in accordance with the final determination of the application (unless the application is withdrawn by or at the request of the authorised carer).

149H Modification of *Administrative Decisions Tribunal Act 1997*

- (1) If an application for a review of a decision to disclose high level identification information under this Division is to be made by a designated agency at the request of, and on behalf of, an authorised carer:
- (a) the designated agency is taken to be an **interested person** for the purposes of the ADT Act, and
 - (b) the following provisions of the ADT Act do not apply in relation to the application:
 - (i) Division 2 (Duty to give reasons on request) of Part 2 of Chapter 5,
 - (ii) section 53 (2) (Requirements for an application),
 - (iii) Division 2 (Effect of pending applications on reviewable decisions) of Part 3 of Chapter 5, and
 - (c) a reference in section 58 (1) of the ADT Act to receiving notice of an application is to be construed as a reference to the making of an application, and
 - (d) a reference in section 58 of the ADT Act to the giving of reasons under section 49 of that Act is to be construed as a reference to the provision of reasons to the authorised carer under section 149F of this Act, and
 - (e) the application is taken, after it is made, to have been made by the authorised carer.
- (2) The regulations may further modify the application of the ADT Act in relation to an application referred to in subsection (1).

- (3) In this section, **the ADT Act** means the *Administrative Decisions Tribunal Act 1997*.

149I Refusal to disclose information concerning placement

- (1) Despite section 149C, a designated agency must refuse to disclose information concerning placement under this Division, or must impose conditions on the disclosure, if it believes on reasonable grounds that the disclosure of the information would adversely affect the safety, welfare or well-being of:
- (a) the child or young person concerned, or
 - (b) an authorised carer of that child or young person, or
 - (c) any member of the family or household of the authorised carer of that child or young person.
- (2) If a designated agency decides to refuse to disclose information concerning placement under this Division, it must give written notification of the decision:
- (a) to the parents of the child or young person, and
 - (b) to any other person who is significant to the child or young person and who has made a written request for the information.
- (3) For the purposes of deciding whether or not to refuse to disclose information concerning placement, or to disclose such information subject to conditions, the designated agency must have regard to:
- (a) the wishes of the child or young person concerned, and
 - (b) any guidelines prepared by the Children's Guardian (as referred to in section 149D (b)).

149J Disclosure not contravention of confidentiality or contravention of privacy law

A disclosure of information concerning placement made in good faith under this Division does not constitute a contravention of any provision as to confidentiality in this Act or a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*.

149K No conflict with court order

- (1) This Division does not authorise a disclosure of information concerning placement if that disclosure is prevented by an order of any court or tribunal.
- (2) This Division does not prevent a disclosure of information concerning placement if that disclosure is required by an order of any court or tribunal.

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) (Repealed)
- (6) Despite subsection (1), a review may be conducted at any time by the Children's Guardian.

Part 3 Supported out-of-home care

Division 1 Temporary care arrangements

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:

(a) has the care responsibility of a child or young person who is the subject of a temporary care arrangement, and

(b) may delegate that care responsibility only to an authorised carer.

(3) The Director-General must not, in the case of a child, make a temporary care arrangement in respect of the child unless:

(a) a parent of the child consents to the arrangement and a permanency plan involving restoration is in place in relation to the child, or

(b) the parents of the child are, in the opinion of the Director-General, incapable of consenting to the arrangement.

(4) The regulations may make provision for or with respect to temporary care arrangements under this Division.

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 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:
 - (a) 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, or
 - (b) renewed in respect of a child or young person if the temporary care arrangement was made in the circumstances described in section 151 (3) (b).
- (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, terminate a temporary care arrangement in respect of a child or young person if:
 - (a) the Director-General is of the opinion that the child or young person is no longer in need of care and protection, or
 - (b) a care application is made in respect of the child or young person.
- (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.

Division 2 Other supported out-of-home care arrangements

153 Operation of other arrangements

- (1) The Director-General may provide support in respect of the placement of a child or young person in out-of-home care that has been arranged otherwise than under a temporary care arrangement as referred to in Division 1.
- (2) If a child or young person has been placed in out-of-home care under any such other arrangement supported by the Director-General, the child or young person must not remain in the out-of-home care provided under the 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.
- (3) Within 7 days after the expiration of the 21-day period, the designated agency must:

- (a) develop and implement a permanency plan involving restoration, or
 - (b) develop a care plan,
- in respect of the child or young person.

Division 3 General provisions

154 Restriction on who may provide supported out-of-home care

- (1) Supported out-of-home care may be provided in respect of a child or young person only by the Director-General or an authorised carer.
- (2) If a person, other than the Director-General or an authorised carer, provides out-of-home care in respect of a child or young person:
 - (a) the child or young person is, for the purposes of Parts 2 and 3 of Chapter 3, taken to be at risk of significant harm, and
 - (b) the Director-General may direct the person, by notice in writing, to cease providing the out-of-home care within the time specified in the notice.
- (3) A person who fails to comply with a notice given to the person under subsection (2) (b) is guilty of an offence.

Maximum penalty: 200 penalty units.

155 Review of supported out-of-home care arrangements

- (1) If a child or young person has been in supported out-of-home care for a period, or for periods in the aggregate, exceeding 3 months in any period of 12 months, the designated agency having supervisory responsibility for the child or young person must conduct a review of the out-of-home care arrangements at least once in every period of 12 months.
- (2) Any such annual 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 supported out-of-home care,
 - (b) the number and outcome of previous reviews of the supported out-of-home 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 supported 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 annual review, the designated agency 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) In addition to the annual review under subsection (1), reviews concerning the child or young person are to be conducted by the designated agency:
- (a) within 21 days after the death of the authorised carer, and
 - (b) before a planned change of placement, and
 - (c) within 21 days after an unplanned change of placement.

Part 3A Voluntary out-of-home care

156 Preliminary

- (1) In this Part:

relevant agency means:

- (a) a designated agency, or
 - (b) any Division of the Government Service or other organisation (or branch or other part of a Division or organisation) that provides or arranges out-of-home care in respect of children or young persons and that is registered for the time being by the Children's Guardian for the purposes of this Part.
- (2) The regulations may make provision for or with respect to:
- (a) arrangements for voluntary out-of-home care, and
 - (b) the registration of Divisions of the Government Service or organisations (or branches or other parts of Divisions or organisations) for the purposes of this Part.

156A Provision of voluntary out-of-home care

- (1) A child or young person must not remain in voluntary out-of-home care for more than a total of 90 days in any period of 12 months unless the care is:

- (a) provided by or supervised by a designated agency, or
 - (b) supervised by the Children's Guardian.
- (2) A child or young person must not remain in voluntary out-of-home care for more than a total of 180 days in any period of 12 months unless the designated agency responsible for providing or supervising the care of the child or young person, or the Children's Guardian, has ensured that a plan has been prepared that meets the needs of the child or young person under the arrangement.
- (3) A child or young person is, for the purposes of Parts 2 and 3 of Chapter 3, taken to be at risk of significant harm if:
- (a) the child or young person remains in voluntary out-of-home care in contravention of subsection (1) or (2), and
 - (b) the Children's Guardian has determined, in accordance with any guidelines issued by the Director-General for the purposes of this section, that the contravention is significant.
- (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.

156B Restrictions on who may provide or arrange voluntary out-of-home care

- (1) A person must not provide voluntary out-of-home care for a child or young person unless the person is:
- (a) a relevant agency, or
 - (b) an individual who is authorised by a relevant agency or the Children's Guardian to provide voluntary out-of-home care.
- (2) A person, other than a relevant agency or the Children's Guardian, must not:
- (a) arrange with a parent of a child or young person for the child or young person to be placed in voluntary out-of-home care, or
 - (b) advertise or hold himself, herself or itself out as being willing to arrange for a child or young person to be placed in voluntary out-of-home care.

Maximum penalty: 200 penalty units.

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 treatment, not involving surgery, for the child or young person on the advice of a medical practitioner,
 - (b) to consent to medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency in the best interests of the child or young person,
 - (b1) to consent to dental treatment (including treatment involving minor dental surgery) that a dentist has advised needs to be carried out for the child or young person,
 - (b2) to consent to dental treatment involving dental surgery other than minor dental surgery that a 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.

(5) In this section:

minor dental surgery means a tooth extraction, the filling of a decayed tooth, root canal work or a repair to a broken or chipped tooth.

Note—

Section 177 gives protection to medical and dental practitioners in relation to children in respect of whom consent is given by the authorised carer under this section, but not in relation to young persons in respect of whom such consent is given. In the case of young persons, the young person's consent is also required.

158 Physical restraint of child or young person

(1) This section applies if, in the opinion of the relevant 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 relevant 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 relevant 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.
- (6) In this section, the **relevant carer** of a child or young person means:
 - (a) a parent of the child or young person, or
 - (b) the authorised carer of the child or young person, or
 - (c) a person who is providing voluntary out-of-home care in respect of a child or young person.

Part 5 Arrangements during statutory or supported out-of-home care

159A Part applies to statutory and supported out-of-home care only

A reference in this Part to out-of-home care is a reference only to statutory or supported 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) (Repealed)
- (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.
- (4) For the purposes of this section, **out-of-home care** is taken to include residential care and control of a child or young person that is provided:
- (a) by a relative of the child or young person who has, pursuant to an order of the Children's Court, parental responsibility for the child or young person at a place other than the usual home of the child or young person, or
 - (b) by a person in accordance with an emergency care and protection order made under section 46.

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 Responsibility of Minister to accommodate certain children and young persons

The Minister is responsible for the provision of accommodation for any child or young person for whom the Minister has sole parental responsibility or parental responsibility in relation to residence.

Part 6 Arrangements on leaving statutory out-of-home care

165A Part applies to statutory out-of-home care only

A reference in this Part to out-of-home care is a reference only to statutory 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.

- (4) The Minister may cause to be published guidelines specifying the circumstances in which assistance may be granted under this section.

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 person is entitled to have access, free of charge, to personal information relating directly to the person in any records kept by:
 - (a) the designated agency that had supervisory responsibility for the person, or
 - (b) his or her authorised carer, or
 - (c) the Director-General, if the person was under the parental responsibility of the Minister and the Department was not the designated agency that had supervisory responsibility for the person.
- (1A) In this section, a reference to records kept by a designated agency includes a reference to records formerly kept by the agency and delivered to the Director-General as referred to in section 170 (2A).
- (2) The designated agency is to provide an appropriate person to support and assist the person seeking access to information at the time when access to the information occurs.
- (3) Information under this section is to be provided orally or in writing, as the person concerned elects.

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, by his or her authorised carer or by the Director-General, if the child or young person was under the parental responsibility of the Minister, 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.
- (2A) The Director-General must ensure that the designated agency that was responsible for supervising a child or young person in out-of-home care is given access to the records of that child or young person:
 - (a) that have been delivered to the Director-General, or
 - (b) that have been authorised by the Director-General to be deposited in the records repository nominated by the Director-General,if the designated agency requests the records in order to comply with a request under section 168 or 169.
- (3) Records delivered to the Director-General in accordance with this section are State records for the purposes of the [State Records Act 1998](#). However, subsection (2A) applies despite the provisions of that Act.

Note—

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

170A Application of [State Records Act 1998](#)

- (1) This Part has effect despite the provisions of the [State Records Act 1998](#).
- (2) Accordingly, the provision of information or documents in accordance with this Part does not constitute an offence under that Act.

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 statutory or supported 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 statutory or supported out-of-home care, and
- (c) the child or young person is not removed from the statutory or supported 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 statutory or supported out-of-home care.

172 Notification of deaths of children and young persons in statutory or supported out-of-home care

If a child or young person dies while in statutory or supported 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 for the purpose of contraception or menstrual regulation declared by the regulations to be a special medical treatment for the purposes of this section, 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 (Repealed)

177 Ordinary medical and dental treatment

- (1) This section applies to a child, being:
- (a) a child who resides in out-of-home care in accordance with this Act, or
 - (b) a child (other than a child 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, 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 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 the *Coroners Act 2009* 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 out-of-home care

(1) The Children's Guardian has the following functions:

- (a) (Repealed)
- (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) (Repealed)
- (e) to accredit designated agencies and to monitor their responsibilities under this Act and the regulations,
- (f) to register organisations that provide or arrange voluntary out-of-home care and to monitor their responsibilities under this Act and the regulations.

(2) (Repealed)

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 (Repealed)

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

(1A) The functions referred to in subsection (1) may be exercised by the Children's Guardian for any one or more of the following purposes:

- (a) for the purposes of providing information to, or exchanging information with, a prescribed person,
- (b) for the purpose of exercising the functions of the Children's Guardian.

(1) 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 a 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 a 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) (being the Director-General or a Department of the Public Service) to comply promptly with the requirements of the direction.
- (2A) A prescribed person (other than the Director-General or a Department of the Public Service) must comply with a direction of the Children's Guardian given under subsection (1) (b) within such reasonable time as is specified in the direction.
- Maximum penalty: 10 penalty units.
- (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, or

(d) a relevant agency within the meaning of section 156.

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 this power of delegation.
- (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

191-198 (Repealed)

Chapter 12 Children's services

Part 1 Preliminary

199 Definitions

(1) In this Chapter:

approval means a children's service approval or a supervisor approval.

approved children's service means a children's service the operation of which is authorised by a children's service approval.

authorised supervisor means a person who holds a supervisor approval.

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.

children's service approval means a children's service approval granted under this Chapter and which is in force.

children's services register means the children's services register kept under Part 7.

compliance notice—see Division 1 of Part 5.

exempt premises means:

- (a) any premises belonging to a class of premises prescribed by the regulations for the purposes of this paragraph, and
- (b) in relation to any provision of this Chapter, 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.

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 by the carer 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).

licensed service provider means a licensee under a service provider licence.

licensee under a service provider licence means a person or persons specified in the

service provider licence as the licensee or any person appointed as licensee by variation of the licence.

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.

service provider licence or **licence** means a service provider licence granted under this Chapter and which is in force.

supervisor approval means a supervisor approval granted under this Chapter and which is in force.

- (2) The Minister may make orders of the kind referred to in paragraph (b) of the definition of **exempt premises** in subsection (1).
- (3) In this Chapter, a reference to the licensee of a children's service, or of an approved children's service, is a reference to the licensed service provider that provides the children's service.

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 service involving medical or clinical care provided by a hospital,
- (d1) a regular child-minding service:
 - (i) that is provided in connection with a hospital, health service or a recreational or commercial facility, and
 - (ii) that is provided by or on behalf of the person conducting the hospital, health service or recreational or commercial facility, and
 - (iii) that is provided to care for children only:
 - (A) while a sibling of the child being cared for is being treated at the hospital or health service, or
 - (B) while the children's parents or authorised carers are visiting or being treated at the hospital or health service or are using the recreational or commercial 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:

hospital means:

- (a) a private health facility licensed under the [Private Health Facilities Act 2007](#), or
- (b) a hospital or an authorised hospital within the meaning of the [Mental Health Act 1990](#), or
- (c) a public hospital within the meaning of the [Health Services Act 1997](#).

(4) (Repealed)

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) children's services should assist the development and education of the children who attend them,
- (d) children's services should be planned and operated in a manner that recognises the diversity of the children who attend them and of the communities that they serve,
- (e) parents have a right to information about the children's services which their children attend,
- (f) 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 be operated in accordance with any relevant 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 Regulation of children's services

Division 1 Service provider licences

204 Prescribed children's services to be provided only by licensed service providers

A prescribed children's service may be provided only by a person who is authorised to provide the type of service concerned by a service provider licence.

Note—

For offences see Division 4.

205 Service provider licences

- (1) The Director-General may, on application, grant a licence (a **service provider licence**) that authorises a person or persons to provide a specified type or types of prescribed children's service.
- (2) A service provider licence is to specify the person or persons to whom the licence is granted.
- (3) Any person so specified is a licensee under the service provider licence.

Note—

The regulations may provide for information and evidence to accompany an application for a licence and the probity checks to be conducted in respect of the application.

206 Refusal to grant licence

- (1) The Director-General may refuse to grant a service provider licence:
 - (a) if the Director-General is of the opinion that a person proposed as licensee or any relevant person in relation to the application is not a suitable person to be involved in the provision of children's services, or
 - (b) on any other grounds prescribed by the regulations.
- (2) Each of the following persons is a **relevant person** in relation to an application:
 - (a) if the proposed licensee is not a natural person—any person involved in the control or management of the proposed licensee (such as a chief executive officer, director or majority shareholder of a corporation),
 - (b) if the proposed licensee applies for the licence for or on behalf of an association, partnership or trust—a member of the management committee or other office holder of the association, a member of the partnership or a trustee of the trust (as

the case requires),

(c) any other person prescribed by the regulations.

207 Duration of licence

- (1) A service provider licence may be granted for a fixed term or for no fixed term.
- (2) If a service provider licence is granted for a fixed term, the licence remains in force for the term specified in the licence, unless sooner revoked.
- (3) If a service provider licence is granted for no fixed term, it remains in force until it is revoked.
- (4) In any case, a service provider licence ceases to have effect during any period in which it is suspended.

208 Conditions of licences

- (1) A service provider licence is subject to the following conditions:
 - (a) any conditions imposed by this Act or prescribed by the regulations,
 - (b) any conditions imposed by the Director-General.
- (2) The Director-General may impose conditions on a licence:
 - (a) at the time of the grant of the licence, or
 - (b) subsequent to the grant of the licence by variation of the licence.
- (3) A licensee under a service provider licence must not contravene a condition of the licence.

Maximum penalty: 200 penalty units.

209 Variation of licence

- (1) The Director-General may, by notice in writing, vary a service provider licence (including any conditions of the licence imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on a licence, the substitution of a condition, or the omission or amendment of a condition.

Note—

The regulations may make provision for the grounds on which a licence may be varied, and the manner in which the variation is to be notified.

210 Appointment of additional or substitute licensee

- (1) The Director-General may vary a service provider licence to appoint a person as

licensee under the service provider licence in place of, or in addition to, the existing licensee.

- (2) Any such variation may be made only:
 - (a) if the licence was granted to authorise the provision of children's services by a person for or on behalf of an association, partnership or trust and, as a result of a change in circumstances, it is no longer appropriate for the person to be the licensee for or on behalf of that association, partnership or trust, or
 - (b) if the existing licensee has died, or
 - (c) in other circumstances prescribed by the regulations.
- (3) A person appointed by the Director-General as licensee is taken to be a licensee under the licence for the period (if any) specified by the Director-General in the appointment.

211 Revocation or suspension of licences

- (1) The Director-General may revoke or suspend a service provider licence:
 - (a) if the Director-General is of the opinion that a licensee under the licence or any relevant person in relation to the licence is no longer a suitable person to be involved in the provision of children's services, or
 - (b) if the Director-General is of the opinion that the continued provision of children's services by a licensee under the licence would constitute an unacceptable risk to the safety, welfare or well-being of any child or class of children attending the service, or
 - (c) on any other grounds specified in the regulations.
- (2) Each of the following persons is a **relevant person** in relation to a licence:
 - (a) if the licensee is not a natural person—any person involved in the control or management of the licensee (such as a chief executive officer, director or majority shareholder of a corporation),
 - (b) if the licence authorises the provision of children's services by a person for or on behalf of an association, partnership or trust—a member of the management committee, or other office holder, of the association, a member of the partnership or a trustee of the trust (as the case requires),
 - (c) any other person prescribed by the regulations.

212 Special condition—home based children's service

It is a condition of a service provider licence for a home based children's service that the licensee under the licence provide that children's service only at the licensee's home.

Division 2 Approval of operation of children's services

213 Prescribed children's service to be operated only with approval

- (1) A prescribed children's service may be provided only if the operation of the particular children's service is authorised by a children's service approval.
- (2) An approved children's service (other than a home based children's service) may be provided by any licensed service provider authorised by its service provider licence to provide the type of children's service concerned.
- (3) A home based children's service may be provided only by a licensed service provider authorised by a service provider licence to provide that particular home based children's service.

Note—

For offences see Division 4.

214 Children's service approval

The Director-General may, on application, grant an approval (a ***children's service approval***) that authorises the operation of a particular prescribed children's service.

215 Refusal to grant approval

The Director-General may refuse to grant a children's service approval:

- (a) if the Director-General is of the opinion that the operation of the children's service would constitute an unacceptable risk to the safety, welfare or well-being of children who would attend the service, or
- (b) on any grounds prescribed by the regulations.

216 Duration of approval

- (1) A children's service approval may be granted for a fixed term or for no fixed term.
- (2) If a children's service approval is granted for a fixed term, the approval remains in force for the term specified in the approval, unless sooner revoked.
- (3) If a children's service approval is granted for no fixed term, the approval remains in force until it is revoked.
- (4) In any case, a children's service approval ceases to have effect during any period in which it is suspended.

217 Conditions of approvals

- (1) A children's service approval is subject to the following conditions:

- (a) any conditions imposed by this Act or prescribed by the regulations,
 - (b) any conditions imposed by the Director-General.
- (2) The Director-General may impose conditions on a children's service approval:
- (a) at the time of the grant of the approval, or
 - (b) subsequent to the grant of the approval by varying the children's service approval.
- (3) A licensee of a children's service must not contravene a condition of the children's service approval relating to the children's service.

Maximum penalty: 200 penalty units.

218 Variation to approval

- (1) The Director-General may, by notice in writing, vary a children's service approval (including any conditions of the approval imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on an approval, the substitution of a condition, or the omission or amendment of a condition.

Note—

The regulations may make provision for the grounds on which an approval may be varied, and the manner in which the variation is to be notified.

219 Revocation and suspension of approvals

The Director-General may revoke or suspend a children's service approval:

- (a) if the Director-General is of the opinion that the continued operation of the children's service 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 exceptional circumstances arise as a result of which the Director-General considers it contrary to the best interests of the children attending the service for the service to continue, or
- (c) if the Director-General revokes or suspends the licence of the licensed service provider that is providing the children's service, or
- (d) on any other grounds specified in the regulations.

Division 3 Approval of supervisors

219A Children's services to be operated under supervision of authorised supervisor

- (1) A licensee of an approved children's service must ensure that at least one authorised

supervisor is appointed by the licensee as authorised supervisor of the approved children's service.

- (2) The person appointed must be a person authorised by his or her supervisor approval to supervise the operation of the approved children's service or type of approved children's service concerned.
- (3) A contravention of this section is a contravention of a provision of this Chapter.

Note—

Under Part 5, the Director-General may serve a compliance notice on a person requiring the person to remedy a contravention of a provision of this Chapter.

- (4) In this Chapter, a reference to the authorised supervisor of a children's service, or of an approved children's service, is a reference to the authorised supervisor appointed for the time being as authorised supervisor of the approved children's service, in accordance with any requirements of the regulations.
- (5) An authorised supervisor is not required in respect of a home based children's service.

219B Supervisor approvals

The Director-General may, on application, grant an approval (a **supervisor approval**) that authorises a person to supervise the operation of a specified children's service or a specified type or types of children's services.

219C Refusal to grant approval

The Director-General may refuse to grant a supervisor approval:

- (a) if the Director-General is of the opinion that the applicant is not a suitable person to be involved in the supervision or operation of children's services, or
- (b) on any grounds prescribed by the regulations.

219D Duration of approval

- (1) A supervisor approval may be granted for a fixed term or for no fixed term.
- (2) If a supervisor approval is granted for a fixed term, the approval remains in force for the term specified in the approval, unless sooner revoked.
- (3) If a supervisor approval is granted for no fixed term, the approval remains in force until it is revoked.
- (4) In any case, a supervisor approval ceases to have effect during any period in which it is suspended.

219E Conditions of approvals

- (1) A supervisor approval is subject to the following conditions:
 - (a) any conditions imposed by this Act or prescribed by the regulations,
 - (b) any conditions imposed by the Director-General.
- (2) The Director-General may impose conditions on an approval:
 - (a) at the time of the grant of the approval, or
 - (b) subsequent to the grant of the approval by variation to the approval.
- (3) A person who is an authorised supervisor must not contravene a condition of the person's supervisor approval.

Maximum penalty: 200 penalty units.

219F Variation to approval

- (1) The Director-General may, by notice in writing, vary a supervisor approval (including any conditions of the approval imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on an approval, the substitution of a condition, or the omission or amendment of a condition.

Note—

The regulations may make provision for the grounds on which an approval may be varied, and the manner in which the variation is to be notified.

219G Revocation and suspension of approval

The Director-General may revoke or suspend a supervisor approval:

- (a) if the Director-General is of the opinion that the authorised supervisor is no longer a suitable person to be involved in the supervision or operation of a children's service, or
- (b) on any other grounds specified in the regulations.

219H Special provision for school-based children's services

- (1) For an approved children's service that is provided by a government school or registered non-government school, the principal of the school for the time being, or a person acting in the position of principal:
 - (a) is taken to hold a supervisor approval that authorises the principal or acting principal to supervise the operation of the children's service, and
 - (b) is taken to have been appointed to supervise the operation of the approved

children's service.

(2) In this section:

government school has the same meaning as it has in the [Education Act 1990](#).

registered non-government school has the same meaning as it has in the [Education Act 1990](#).

Division 4 Offences

219I Unauthorised provision of children's service

(1) A person must not provide a prescribed children's service unless:

- (a) the person is a licensee under a service provider licence that authorises the person to provide the children's service or type of children's service, and
- (b) the children's service is an approved children's service.

Maximum penalty: 200 penalty units.

(2) An authorised supervisor of a children's service who is not the licensee of the children's service does not commit an offence against this section in respect of anything done in the course of supervising that service in accordance with the person's supervisor approval.

(3) An employee or other person who provides or assists in providing a children's service (other than an authorised supervisor of the children's service) does not commit an offence against this section if the employee or other person is acting in accordance with directions given by the licensee of the children's service or an authorised supervisor of the children's service.

219J Advertising of unauthorised children's services

(1) A person must not advertise or hold out that the person is willing to provide a prescribed children's service unless:

- (a) the person is a licensee under a service provider licence that authorises the person to provide the type of children's service concerned, and
- (b) the particular children's service being advertised is an approved children's service.

Maximum penalty: 5 penalty units.

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

Maximum penalty: 5 penalty units.

- (3) A person is not guilty of an offence under this section if:
- (a) the prescribed children's service is a service that is proposed to be provided in the future, and
 - (b) the person has duly applied for any service provider licence or children's service approval required to authorise the person to provide the proposed children's service, and
 - (c) the application has not been finally determined.

Part 4 Investigation powers

219K Definition—person involved in provision of children's services

- (1) In this Part, a ***person involved in the provision of children's services*** means:
- (a) a person who is, or was formerly, a licensed service provider, or
 - (b) a person who is, or was formerly, an authorised supervisor of a children's service, or
 - (c) a person who is, or was formerly, an employee of a licensed service provider or otherwise engaged to provide or assist in providing a prescribed children's service, or
 - (d) a person who, under the regulations, is, or was formerly, a family day care carer, or
 - (e) a person who is, or was formerly, involved in the control or management of a licensed service provider (such as a director, chief executive officer or majority shareholder), or
 - (f) a person who is, or was formerly, a member of a management committee or other office holder of an association, or a member of a partnership, involved in the provision of children's services, or
 - (g) a person who is, or was formerly, a trustee of a trust involved in the provision of children's services, or
 - (h) any other person the Director-General has reasonable cause to believe is involved, or has formerly been involved, in the provision, management or operation of a prescribed children's service.
- (2) In this section:

employee includes a person engaged under a contract for services.

219L Power to require provision of documents

- (1) The Director-General may, by notice in writing served on a person involved in the provision of children's services, require the person to provide to the Director-General such relevant documents as the Director-General specifies in the notice.
- (2) The following documents are **relevant documents**:
 - (a) any record that a person is required to keep by or under this Chapter (including under the regulations),
 - (b) such other documents as the Director-General reasonably requires for the purposes of the administration or enforcement of this Chapter.
- (3) A notice under this section must specify the manner in which the documents are required to be provided and a reasonable time by which the documents are required to be provided.
- (4) A notice under this section may only require a person to provide existing documents that are in the person's possession or that are within the person's power to obtain lawfully.
- (5) If any document required to be provided under this section is in electronic, mechanical or other form, the notice requires the document to be provided in written form, unless the notice otherwise provides.
- (6) If any document required to be provided under this section is not in the English language, the notice requires a written translation of its content to be provided with the document, unless the notice otherwise provides.
- (7) The Director-General may take copies of any documents provided under this section.
- (8) If the Director-General has reason to believe that any documents provided under this section are evidence of an offence against this Act or the regulations, the Director-General may retain the documents until proceedings for the offence have been heard and determined.

219M Power to require answers to questions

- (1) The Director-General may, by notice in writing served on a person involved in the provision of children's services, require the person to answer questions about any matters in respect of which information is required for the administration or enforcement of this Chapter.
- (2) The Director-General may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.

- (3) Answers given by a person nominated by the corporation bind the corporation.
- (4) The Director-General may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend to answer questions under this section is to be:
 - (a) a place or time nominated by the person, or
 - (b) if the place or time nominated is not reasonable in the circumstances or a place or time is not nominated by the person, a place and time nominated by the Director-General that is reasonable in the circumstances.

219N Functions may be exercised outside this State

- (1) A notice may be given under this Part to a person involved in the provision of children's services even though the person is outside the State, as long as the children's services concerned are or were provided in this State.
- (2) The Director-General, or a delegate of the Director-General, may attend at a place outside this State for the purpose of obtaining answers to questions asked of a person under this Part.

219O Revocation or variation of notices

- (1) A notice given under this Part may be revoked or varied by the Director-General by further notice in writing served on the person to whom the notice was issued.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) The revocation or variation has effect when notice of the revocation or variation is given to the person to whom the notice was issued.
- (4) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (5) The revocation of a notice does not prevent the issue of another notice.

219P Failure to comply with requirement to provide documents or information or answer questions

A person who, without reasonable excuse, fails to comply with a requirement made of the person under this Part is guilty of an offence.

Maximum penalty: 200 penalty units.

219Q False and misleading information

- (1) A person who provides any document or information or does any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 200 penalty units.

- (2) A person cannot be found guilty of both an offence against this section and an offence against section 253 in respect of the same act or omission.

219R Provisions relating to requirements to provide documents or information or answer questions

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Part to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Part to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made** However, any information provided or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Documents admissible** Any document provided by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
- (5) **Further information** Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
 - (a) that the document or information had to be provided or the answer had to be given, or
 - (b) that the document or information provided or answer given might incriminate the

person.

219S Effect on other functions

- (1) This Part does not affect any functions conferred by any other provision of this Act or by any other Act.
- (2) In particular, this Part does not affect the functions conferred by Chapter 15.
- (3) This Part does not limit the conditions that can be attached to a licence or approval.

Part 5 Enforcement and compliance

Division 1 Compliance notices

219T Issue of compliance notices by Director-General

- (1) If the Director-General is of the opinion that a person is contravening a provision of this Chapter or the regulations under this Chapter, the Director-General may serve on the person a notice (a **compliance notice**) requiring the person to remedy the contravention within the period specified in the notice.
- (2) A compliance notice must:
 - (a) give particulars of the alleged contravention, and
 - (b) include information about rights to seek a review of the Director-General's decision to issue the notice.
- (3) A compliance notice may include directions as to the measures to be taken to remedy any contravention to which the notice relates or to otherwise comply with the notice.
- (4) A compliance notice may offer the person to whom it is issued a choice of ways in which to remedy the contravention or to comply with the notice.
- (5) A compliance notice is to be in a form approved by the Director-General.

219U Revocation and variation of compliance notices

- (1) A compliance notice may be revoked or varied by the Director-General by further notice in writing given to the person to whom the compliance notice was issued.
- (2) The revocation or variation has effect when notice of the revocation or variation is given to the person to whom the notice was issued.
- (3) A notice may be varied by modification of, or addition to, its terms and specifications.
- (4) Without limiting the above, a notice may be varied by extending the time for complying with the notice.

- (5) The revocation of a compliance notice does not prevent the issue of another compliance notice.

219V Failure to comply with compliance notice

A person who, without reasonable excuse, fails to comply with a requirement imposed by a compliance notice issued to the person is guilty of an offence.

Maximum penalty: 100 penalty units.

219W Proceedings for offences not affected by compliance notices

- (1) The issue, variation or revocation of a compliance notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.
- (2) However, a person cannot be convicted of both an offence of failing to comply with a compliance notice and another offence against this Act or the regulations in respect of the same act or omission.

Division 2 Enforceable undertakings

219X Enforceable undertakings

- (1) The Director-General may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Director-General has a function under this Chapter.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Director-General. The consent of the Director-General is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The Director-General may apply to the District Court for an order under this section if the Director-General considers that the person who gave the undertaking has contravened any of its terms.
- (4) The District Court may make all or any of the following orders if it is satisfied that the person has contravened a term of the undertaking:
 - (a) an order directing the person to comply with that term of the undertaking,
 - (b) an order suspending or revoking any licence or approval that authorises the person to provide or supervise a children's service,
 - (c) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the contravention,

- (d) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the contravention,
 - (e) any other order the Court considers appropriate.
- (5) Proceedings in the District Court under this section are to be heard in its civil jurisdiction.
- (6) The maximum total amount that the District Court may direct a person to pay to the State or as compensation is the jurisdictional limit of the Court (within the meaning of the *District Court Act 1973*).

Division 3 Other enforcement powers

219Y Advice to parents using illegal children's services

If the Director-General has reason to believe that a children's service is being provided or operated in contravention of this Chapter or the regulations under this Chapter, the Director-General may inform the parent of a child enrolled in the children's service that it is inadvisable for the child to continue to attend the service.

219Z Exclusion of persons from premises of children's service

- (1) The Director-General may, by notice in writing (an **exclusion notice**) served on a person involved in, or connected with, the provision of an approved 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.

219ZA Information to licensee concerning exclusion notice

- (1) The Director-General is to give a copy of any exclusion notice to the licensee of the children's service to which the notice relates.
- (2) The Director-General may impose a condition on a licence or approval, or revoke a

licence or approval, following the issue of an exclusion notice.

Part 6 Rights and responsibilities of parents

219ZB Information to be provided by licensee

- (1) The licensee of an approved children's service must provide parents of children enrolled in the service with ready access to the following information (**service information**):
 - (a) all written policies required to be provided by the regulations and other policies and procedures relating to the conduct of the service developed by the licensee,
 - (b) details of procedures for dealing with parents' concerns and complaints about the service,
 - (c) such other information relating to the service, or to the safety, welfare or well-being of children who attend the service, as the Director-General, by notice in writing to the licensee, requires the licensee to provide.
- (2) Service information is to be provided in a language and manner that can be understood by the parents of the children enrolled in the service.
- (3) The licensee of an approved children's service must inform parents of the availability of service information.

Maximum penalty: 2 penalty units.

219ZC Parental contact with children

- (1) A licensee of an approved 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, a licensee of an approved children's service 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.
- (3) This section applies to an authorised supervisor of an approved children's service in the same way as it applies to the licensee of the children's service.

Note—

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

Part 7 Children's services register

219ZD Register of children's services

- (1) The Director-General is to keep a register of information about children's services (the ***children's services register***).
- (2) The children's services register may be kept in such form as the Director-General considers appropriate.
- (3) The Director-General must ensure that information on the children's services register is kept accurate and up-to-date.

219ZE Information to be recorded on register

- (1) The Director-General may record any of the following information in the children's services register in relation to each approved children's service:
 - (a) particulars of the children's service approval applying to the children's service,
 - (b) the name and address of the place of business of the licensee of the approved children's service,
 - (c) particulars of the service provider licence under which the licensee is authorised to provide children's services,
 - (d) the name of any person who is an authorised supervisor of the children's service and particulars of that person's supervisor approval,
 - (e) particulars of any compliance notices issued against the licensee or authorised supervisor of the approved children's service (whether in connection with the children's service to which the entry relates or in connection with another children's service),
 - (f) particulars of any other power exercised by the Director-General under this Chapter in relation to the approved children's service, or in relation to the licensee of the approved children's service or an authorised supervisor of the approved children's service (whether in connection with the children's service to which the entry relates or in connection with another children's service),
 - (g) if the licensee or authorised supervisor of the approved children's service has been convicted of an offence under this Chapter or the regulations under this Chapter, particulars of that offence,
 - (h) such other matters as may be prescribed by the regulations.
- (2) The children's services register may also contain such information of a general nature as the Director-General considers appropriate in relation to licensing and approval of

children's services, compliance with this Chapter and the enforcement of this Chapter.

- (3) Information relating to a conviction for a particular offence is not to be published on the children's services register until after the last day on which an appeal may be made against the conviction.
- (4) If an appeal is made against the conviction, information relating to the conviction is not to be published on the children's services register unless a final order has been made on appeal affirming the conviction.
- (5) The Director-General must remove information about a conviction for a particular offence from the children's services register as soon as practicable if the Director-General becomes aware that the conviction has been quashed or annulled or has become spent (within the meaning of the *Criminal Records Act 1991*).
- (6) For the purposes of this section:
 - (a) a conviction for an offence includes a finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction, and
 - (b) section 8 (2) and (4) of the *Criminal Records Act 1991* do not apply.

219ZF Publication of information on register

- (1) The children's services register is to be made available for public inspection on the Internet.
- (2) Information recorded in the children's services register may also be provided to members of the public in any other manner approved by the Director-General.

Part 8 Miscellaneous

219ZG Special condition—family day care and home based children's services

- (1) It is a condition of a children's service approval for a family day care children's service or a home based children's service that the licensee of the children's service must notify the Director-General if any person (other than the relevant children's service provider) who is of or above the age of 18 years is residing at the children's service provider's home on a regular basis and has been doing so for a period of at least 3 months.

Note—

See section 45 of the *Commission for Children and Young People Act 1998* which provides for background checks to be carried out in relation to adult household members of children's service providers.

- (2) Without limiting the above, any such requirement to notify the Director-General applies even though the adult person who is residing at the children's service provider's home was at any time residing at that home as a minor.

- (3) In this section, **children's service provider** means:
- (a) in the case of a family day care children's service—the person who, under the regulations, is the family day care carer for the service, or
 - (b) in the case of a home based children's service—the licensee of the children's service.

219ZH Records

- (1) A licensee of an approved children's service must keep such records as the regulations require in relation to the approved children's service.
- (2) The licensee must keep the records in such a manner that they are readily accessible if the licensed service provider is required to produce them to the Director-General, or to any other person who is authorised to inspect them, under this Act.
- (3) It is a condition of a service provider licence that the licensee comply with this section.

219ZI Application of [State Records Act 1998](#) to certain children's services

- (1) The [State Records Act 1998](#) does not apply to a private children's service and such a service is not a public office for the purposes of that Act.
- (2) In this section:

private children's service means a person or body providing a children's service to the community, being a person or body other than:

- (a) a department, office, commission, board, corporation, agency, service or instrumentality exercising any function of any branch of the Government of the State, or
- (b) a council or county council under the [Local Government Act 1993](#).

220 Regulations relating to children's services

General

- (1) The regulations may make provision for or with respect to the matters set out in this section.
- (2) This section does not limit the generality of section 264 (Regulations).

Licences and approvals

- (3) Classes of licences and approvals.
- (4) The matters to be specified in a licence or approval.

(5) Prescribed conditions of licences and approvals.

Applications for licences and approvals

(6) The persons who may apply for licences and approvals.

(7) The form and manner in which, and the time within which, an application for a licence or approval may be made.

(8) The information and evidence required to be provided in connection with an application (which may include, without limitation, personal information about the applicant and proposed staff and any relevant person in relation to the application).

(9) Requiring that an application (and its supporting documents and information) be lodged in stages as specified in the regulations.

(10) The consideration and determination of applications, including (but not limited to) the following:

- (a) the time within which an application (or a particular stage of an application) is to be dealt with,
- (b) the grounds on which an application (or a particular stage of an application) may be rejected,
- (c) the grounds on which the Director-General may refuse to grant a licence or approval,
- (d) 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.

Probity checks

(11) The probity checks that may be made on the following:

- (a) a person who is a licensee or proposed licensee,
 - (a1) a person who is involved in the control and management of a licensee or proposed licensee,
- (b) a person who is involved in the control and management of the majority shareholder corporation of a licensee or proposed licensee,
- (c) a person who is, or who is proposed to be, an authorised supervisor for a children's service.

Variation, suspension and revocation of licences and approvals

(12) The grounds on which a licence or approval may be varied, suspended or revoked.

- (13) Requiring the giving of notice of an intention to vary, suspend or revoke a licence or approval.
- (14) Allowing a licensed service provider or an authorised supervisor time to make submissions in relation to any such intention.
- (15) The effect of a variation, suspension or revocation of a licence or approval.
- (16) The restoration of a licence or approval that has been suspended or revoked.
- (17) The manner in which the variation, suspension or revocation of a licence or approval is to be notified.

Licensed service providers

- (18) Functions of licensed service providers.
- (19) Requiring a licensed service provider to notify the Director-General of the particular approved children's service or services that the licensed service provider provides or intends to provide.
- (20) The appointment by the Director-General of a person as licensee under a service provider licence in addition to, or in substitution for, an existing licensee.

Authorised supervisors

- (21) The appointment and functions of authorised supervisors.
- (22) The maximum number of approved children's services in respect of which the same authorised supervisor may be appointed as authorised supervisor.
- (23) The maximum number of persons who may be appointed as authorised supervisor of an approved children's service.
- (24) The authorisation by the Director-General of another person to act as the authorised supervisor of an approved children's service during the absence (because of illness or otherwise) of the authorised supervisor of the approved children's service.

Compliance notices

- (25) The internal review of a decision to issue a compliance notice.
- (26) The stay of a decision to issue a compliance notice pending the determination of such an internal review.

Records

- (27) The records that are to be kept by licensed service providers, including (but not limited to) the following:

- (a) the information that the records are to contain,
- (b) the form in which they are to be made,
- (c) the person responsible for making and maintaining them,
- (d) the persons who may inspect them,
- (e) the period for which they are to be retained.

Children's services register

- (28) The particulars to be recorded in the children's services register.
- (29) Providing for applications to the Director-General for the correction of information recorded on the children's services register.

Exemptions

- (30) Exempting specified centre based children's services, or centre based children's services of a specified class, from the requirement that they be provided by a licensed service provider or the subject of a children's service approval (or both).
- (31) Regulating the services so exempted (including, without limitation, establishing standards to be met by those services).

Fees

- (32) The charging of fees in connection with the administration of this Chapter.
- (33) The waiver, reduction, deferral or refund of fees charged in connection with the administration of this Chapter.

Chapter 12A Out of school hours care services

220A Meaning of "out of school hours care service"

- (1) In this Chapter:

children who are at school means children who ordinarily attend school and includes children enrolled at a school but not yet attending the school by reason of the fact that the first term of the school year has not commenced.

out of school hours care service means a service that provides, outside school hours on school days, or at any time during school vacations, care to children who are at school.

school means a government school established under, or a non-government school registered under, the [Education Act 1990](#).

- (2) However, **out of school hours care 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 to the general public,
 - (d) a regular child-minding service:
 - (i) that is provided in connection with a hospital, health service or a recreational or commercial facility (such as a gymnasium or a casino), and
 - (ii) that is provided by or on behalf of the person conducting the hospital, health service or facility, and
 - (iii) that is provided to care for children only:
 - (A) while the children are being treated at the hospital or health service, or
 - (B) while the children's parents or authorised carers are visiting or being treated at the hospital or health service or are using the recreational or commercial 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, or
 - (iii) youth support programs, or
 - (iv) respite care, or
 - (v) residential accommodation (whether or not provided by, or in association with, a school) for children attending a school,
 - (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.
- (3) In this section, **exempt premises** means:
- (a) any premises belonging to a class of premises prescribed by the regulations for

the purposes of this section, or

(b) in relation to any provision of this Act or the regulations, 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) (b).

220B Regulations for or with respect to out of school hours care services

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

Standards for out of school hours care services

- (a) imposing standards for out of school hours care services, creating the offence of failure to meet those standards and creating defences to that offence,
- (b) the evidence that may be required to be provided to prove compliance with any such standard,

Registration of out of school hours care services

- (c) imposing a prohibition on the provision of an out of school hours care service unless the service is registered, and creating the offence of breaching that prohibition,

Applications for registration

- (d) the persons who may apply for registration,
- (e) the manner in which, and the time within which, an application may be made,
- (f) (Repealed)
- (g) requiring that supporting documents and information in relation to an application be lodged (before or after the time of registration),
- (h) 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 an application may be refused,
 - (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,

Probity checks

- (i) the probity checks that may be made on all persons who are, or who are proposed to be, managing an out of school hours care service (or proposed out of school hours care service) or who will have unsupervised direct access to children,
- (j) (Repealed)

Registration

- (k) the duration of registration,
- (l) providing for the imposition of conditions on out of school hours care services, including the following conditions:
 - (i) conditions regulating the premises from which the service is to be provided,
 - (ii) conditions regulating the times during which the service is to be available,
 - (iii) conditions regulating the number of children, and the age groups of the children, for whom the service may be provided,
 - (iv) conditions requiring the provision of information to parents or authorised carers,
- (m) creating penalties for breach of a condition,

Variation, suspension and revocation of registration

- (n) the grounds on which registration may be suspended, varied (including by the imposition, amendment or withdrawal of conditions) or revoked,
- (o) requiring the giving of notice of an intention to suspend, vary or revoke registration,
- (p) allowing a registered out of school hours care service provider time to make submissions in relation to any such intention,
- (q) the effect of a suspension, variation or revocation of registration,
- (r) the restoration of registration that has been suspended or revoked,
- (s) (Repealed)

Registered providers

- (t) the functions of the registered out of school hours care service provider under registration,
- (u) the carrying out of self-assessments by registered out of school hours care service providers,

- (v) the supervision of volunteers who assist registered out of school hours care service providers,

Records

- (w) the records that are to be maintained in relation to an out of school hours care service that a person is registered to provide, 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,
 - (vi) creating penalties for failure to maintain records,

Investigation

- (x) the investigative power of the authority responsible for issuing registration, including the power to inspect premises, require the production of documents or information and to require questions to be answered or required,

OSHCS co-ordinator

- (y) requiring the appointment of a person to act as the Out of School Hours Care Service co-ordinator of the provider of out of school hours care service the subject of registration,
- (z) the qualifications and experience of the person to be so appointed,

Registration authority

- (za) the person or body that will issue registrations and give effect to the regulations,

Applying other provisions

- (zb) applying provisions of Chapter 12, or the regulations made under Chapter 12, to out of school hours care services,

Fees

- (zc) the charging of fees in connection with the administration of the registration scheme under this Chapter (including the waiver, reduction, deferral and refund of any such fees).

Chapter 13 Children's employment

221 Definitions

(1) In this Chapter:

child means:

- (a) a person under the age of 15 years (except as provided by paragraph (b)), or
- (b) a person under the age of 16 years (in the case of employment as a model).

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: 100 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 and protection 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 Children's Guardian 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 or care responsibility 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.

(1A) A person must not, by any conduct carried out within the State, without lawful excuse remove 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 a child protection order, or an interim order, within the meaning of Chapter 14A (other than an order under this Act).

(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

(1) In this section, **tattooing** means any procedure the purpose of which is to make a permanent mark on the skin of a person, and includes the procedures known as scarification, branding and beading.

(2) A person must not perform tattooing on any part of a child's or young person's body unless the person has first obtained the consent of a parent of the child or young person, given in accordance with this section, to the tattooing of 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.

(3) The consent of a parent to the tattooing must be given in person by a parent accompanying the child or young person or in writing.

230A Body piercing of children

(1) In this section, **body piercing** means piercing a part of the body of a person to insert a ring, bar or other thing through that body part.

(2) A person must not perform body piercing on any part of:

(a) the genitalia of a child, or

(b) the nipples of a child.

Maximum penalty: 200 penalty units.

- (3) It is not a defence to a prosecution for an offence under subsection (2) that the child or a parent of the child consented to the body piercing of the child.
- (4) A person must not perform body piercing on any other part of a child's body unless the person has first obtained the consent of a parent of the child, given in accordance with this section, to the body piercing of that part of the child's body.

Maximum penalty: 30 penalty units.

- (5) The consent of a parent to the body piercing must be given in person by a parent accompanying the child or in writing.
- (6) This section does not apply in relation to any body piercing performed for a medical purpose.

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 14A Transfer of child protection orders and proceedings

Part 1 Introductory

231A Purpose of Chapter

The purpose of this Chapter is to provide for the transfer of child protection orders and proceedings between New South Wales and another State or a Territory of Australia or between New South Wales and New Zealand:

- (a) so that children and young persons who are in need of protection may be protected despite moving from one jurisdiction to another, and
- (b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child or young person.

231B Definitions

- (1) In this Chapter:

child protection order, in relation to a child or young person, means a final order made under a child welfare law or an interstate law that gives:

- (a) a Minister of the Crown in right of a State, or
- (b) a government department or statutory authority, or
- (c) a person who is the head of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority, or
- (d) an organisation or the chief executive (by whatever name called) of an organisation,

responsibility in relation to the parental or care responsibility for, supervision of, or contact with, the child or young person, however that responsibility is described.

child protection proceeding means any proceeding brought in a court under a child welfare law for:

- (a) the making of a finding that a child or young person is in need of protection or any other finding (however described) the making of which is under the child welfare law a prerequisite to the exercise by the court of a power to make a child protection order, or
- (b) the making of a child protection order or an interim order or for the variation or revocation or the extension of the period of such an order.

child welfare law means:

- (a) this Act, or
- (b) a law of another State that, under an order in force under subsection (2), is declared to be a child welfare law for the purposes of this Chapter, or
- (c) a law of another State that substantially corresponds to this Act.

Children's Court:

- (a) in relation to New South Wales—means the Children's Court of New South Wales, and
- (b) in relation to a State other than New South Wales—means the court with jurisdiction to hear and determine a child protection proceeding at first instance.

home order means a child protection order made in New South Wales.

interim order means:

- (a) an order made under section 231N, or

(b) an equivalent order made under an interstate law.

interstate law means:

- (a) a law of another State that, under an order in force under subsection (3), is declared to be an interstate law for the purposes of this Chapter, or
- (b) a law of another State that substantially corresponds to this Chapter.

interstate officer, in relation to a State other than New South Wales, means:

- (a) the holder of an office or position that, under an order in force under subsection (4), is declared to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Chapter, or
- (b) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children and young persons in that State.

participating State means a State in which an interstate law is in force.

proposed interstate order means a home order in the form in which it is proposed to be transferred to another State.

sending State means the State from which a child protection order or proceeding is transferred under this Chapter or an interstate law.

State means:

- (a) a State or a Territory of Australia, or
- (b) New Zealand.

working day:

- (a) in relation to a court, means a day on which the offices of the court are open, and
 - (b) in relation to the Director-General, means a day on which the principal office of the Department is open.
- (2) The Governor may, by order published in the Gazette, declare a law of a State (other than New South Wales) to be a child welfare law for the purposes of this Chapter.
 - (3) The Governor may, by order published in the Gazette, declare a law of a State (other than New South Wales) to be an interstate law for the purposes of this Chapter.
 - (4) The Governor may, by order published in the Gazette, declare an office or position in a State (other than New South Wales) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Chapter.

Part 2 Transfer of child protection orders

Division 1 Administrative transfers

231C When Director-General may transfer order

- (1) The Director-General may transfer a home order to a participating State if:
 - (a) in his or her opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State, and
 - (b) the home order is not the subject of an appeal to the District Court, and
 - (c) the relevant interstate officer has consented in writing to the transfer and to the terms of the proposed interstate order, and
 - (d) any person whose consent to the transfer is required under section 231D has so consented, and
 - (e) the child or young person who is the subject of the order has not given written notice of opposition to the decision to transfer the order in accordance with section 231F (3) (b) and the Director-General certifies in writing that he or she made all reasonable efforts to ensure that the child or young person had an opportunity to seek legal advice in relation to the decision.
- (2) The Director-General may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.
- (3) In determining whether a child protection order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Director-General must disregard the period for which it is possible to make such an order in that State.
- (4) The Director-General must determine, and specify in the proposed interstate order:
 - (a) the type of order under the child welfare law of the participating State that the proposed interstate order is to be, and
 - (b) the period for which it is to remain in force.
- (5) The period must be:
 - (a) if the same period as that of the home order is possible for the proposed interstate order under the child welfare law of the participating State—that period (commencing on, and including, the date of the registration of the interstate order in that State), or
 - (b) in any other case—as similar a period as is possible under that law, but in no case

longer than the period of the home order.

231D Persons whose consent is required

- (1) If the home order is an order granting parental responsibility wholly or partly to the Minister, an order granting care responsibility to the Director-General, or an order for supervision, consent to a transfer under this Division is required from:
 - (a) the parents of the child or young person, and
 - (b) any other person who is granted contact with the child or young person under the order, and
 - (c) any person who holds, solely or jointly, any aspect of parental responsibility for the child or young person.
- (2) However, if any of the persons referred to in subsection (1) (a), (b) or (c) is residing, or intending to reside, in the relevant participating State, consent to the transfer is not required from that person or from any other of the persons referred to in those paragraphs who consents to the child or young person residing in that State.

231E Director-General to have regard to certain matters

In determining whether to transfer a child protection order to a participating State under this Division, the Director-General must have regard to:

- (a) the principles in section 9, and
- (b) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child or young person, and
- (c) the fact that it is preferable that a child or young person is subject to a child protection order made under the child welfare law of the State where the child or young person resides, and
- (d) any sentencing order under any Act, other than a fine, in force in respect of the child or young person or any criminal proceedings pending against the child or young person in any court.

231F Notification to child or young person and his or her parents

- (1) If the Director-General has decided to transfer a child protection order to a participating State under this Division, the Director-General must cause:
 - (a) the parents of the child or young person who is the subject of the order, and
 - (b) any person having parental responsibility for the child or young person who is the subject of the order, and

(c) if the child or young person concerned is of or above the age of 12 years, the child or young person,

to be served with a notice of the decision as soon as practicable but in any event no later than 3 working days after making it.

(2) A notice under subsection (1) served on a parent of, or a person having parental responsibility for, the child or young person must, in addition to providing notice of the decision, inform the parent or person that:

(a) the parent or person may make a written request under Division 2 of Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* for a written statement of reasons for the decision, and

(b) the decision may be reviewed by the Administrative Decisions Tribunal, whose decision may be appealed against to the Appeal Panel of that Tribunal, and

(c) the parent or person may make an application for review (and the notice must also provide details of how such an application may be made).

(3) A notice under subsection (1) served on the child or young person must, in addition to providing notice of the decision, inform the child or young person that:

(a) the child or young person may seek legal advice in relation to the decision, and

(b) the child or young person may oppose the decision by writing to the Director-General, within 28 days after the date of service of the notice, and stating that the child or young person opposes the decision, and

(c) if notice of opposition is given in accordance with paragraph (b), the order cannot be transferred by the Director-General under this Division.

(4) The Director-General must make all reasonable efforts to ensure that a child or young person on whom a notice is served under subsection (1) has an opportunity to seek legal advice in relation to the decision to transfer the child protection order.

(5) Service of a notice on a person is not required under subsection (1) if it cannot be effected after making all reasonable efforts.

Division 2 Judicial transfers

231G When Children's Court may make order under this Division

The Children's Court may make an order under this Division transferring a child protection order to a participating State if:

(a) an application for the making of the order is made by the Director-General, and

(b) the child protection order is not subject to an appeal to the District Court, and

- (c) the relevant interstate officer has consented in writing to the transfer and to the provisions of the proposed interstate order.

231H Service of application

The Director-General must as soon as possible cause a copy of an application for an order under this Division to be served on each party to the proceedings in relation to the child protection order concerned.

231I Type of order

- (1) If the Children's Court determines to transfer a home order under this Division, the terms of the proposed interstate order must be terms that could be terms of a child protection order made under the child welfare law of the participating State and that the Children's Court believes to be:
 - (a) to the same or a similar effect as the terms of the home order, or
 - (b) otherwise in the best interests of the child or young person.
- (2) The Children's Court may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.
- (3) In determining whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Children's Court must disregard the period for which it is possible to make such an order in that State.
- (4) The Children's Court must determine, and specify in the proposed interstate order, the period for which it is to remain in force.
- (5) The period must be any period that is possible for a child protection order of the type of the proposed interstate order under the child welfare law of the participating State and that the Children's Court considers to be appropriate (commencing on, and including, the date of its registration in that State).

231J Children's Court to have regard to certain matters

- (1) The Children's Court must not make an order under this Division unless it has received and considered:
 - (a) an updated care plan, if a care plan under section 78 was prepared in relation to the original care order, or
 - (b) in any other case, a report by the Director-General that contains the matters required by the regulations to be included in the report.
- (2) In determining what order to make on an application under this Division, the

Children's Court must have regard to:

- (a) the principles in section 9, and
 - (b) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child or young person, and
 - (c) the fact that it is preferable that a child or young person is subject to a child protection order made under the child welfare law of the State where the child or young person resides, and
 - (d) any information given to the Children's Court by the Director-General or otherwise concerning any sentencing order under any Act, other than a fine, in force in respect of the child or young person or any criminal proceedings pending against the child or young person in any court.
- (3) The Director-General must provide to the Children's Court an updated care plan or report referred to in subsection (1), in accordance with the rules of the Children's Court.
- (4) Other requirements concerning the hearing and the making of an application, and the form of a care plan, under this Division may be prescribed by the regulations.

231K Appeals

- (1) A party to an application for an order under this Division who is dissatisfied with an order of the Children's Court transferring, or refusing to transfer, a child protection order to a participating State, may, in accordance with the rules of the District Court, appeal to the District Court against the order.
- (2) An appeal under subsection (1):
 - (a) must be instituted, and (except where instituted by the Director-General) written notice of it must be served on the Director-General, within 10 working days after the day on which the order complained of was made, and
 - (b) operates as a stay of an order transferring the child protection order to a participating State.
- (3) The District Court cannot extend the time limit fixed by subsection (2) (a).
- (4) Section 91 (2)–(6) and (8) apply to an appeal under this section as if the appeal were an appeal under section 91 and as if the term "order" in section 91 (2) referred to the order to transfer or refuse to transfer the child protection order.

Part 3 Transfer of child protection proceedings

231L When Children's Court may make order under this Part

- (1) The Children's Court may make an order under this Part transferring a child protection proceeding pending in the Children's Court to the Children's Court in a participating State if:
 - (a) an application for the making of the order is made by the Director-General, and
 - (b) the relevant interstate officer has consented in writing to the transfer.
- (2) The proceeding is discontinued in the Children's Court on the registration in the Children's Court in the participating State, in accordance with the interstate law, of an order referred to in subsection (1).

231M Children's Court to have regard to certain matters

In determining whether to make an order transferring a proceeding under this Part, the Children's Court must have regard to:

- (a) the principles in section 9, and
- (b) whether any other proceedings relating to the child or young person are pending, or have previously been heard and determined, under the child welfare law in the participating State, and
- (c) the place where any of the matters giving rise to the proceeding in the Children's Court arose, and
- (d) the place of residence, or likely place of residence, of the child or young person, his or her parents and any other people who are significant to the child or young person (as referred to in section 9 (2) (f)), and
- (e) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child or young person, and
- (f) the fact that it is preferable that a child or young person is subject to a child protection order made under the child welfare law of the State where the child or young person resides, and
- (g) any information given to the Children's Court by the Director-General or otherwise concerning any pending criminal proceedings or sentencing order that is currently in force (other than a fine) in respect of the child or young person.

231N Interim order

- (1) If the Children's Court makes an order transferring a proceeding under this Part, the Children's Court may also make an interim order.

- (2) An interim order:
 - (a) may allocate parental responsibility for the child or young person to any person solely or jointly, and
 - (b) may give responsibility for the supervision of the child or young person to the interstate officer in the participating State or any other person in that State to whom responsibility for the supervision of a child or young person could be given under the child welfare law of that State, and
 - (c) remains in force for the period (not exceeding 30 days) specified in the order.
- (3) The Children's Court in the participating State may revoke an interim order in accordance with the relevant interstate law.

2310 Appeals

- (1) A party to an application for an order under this Part who is dissatisfied with an order of the Children's Court transferring, or refusing to transfer, a child protection proceeding may, in accordance with the rules of the District Court, appeal to the District Court against the order.
- (2) An appeal under subsection (1):
 - (a) must be instituted, and (except where instituted by the Director-General) written notice of it must be served on the Director-General, within 10 working days after the day on which the order complained of was made, and
 - (b) operates as a stay of an order transferring the child protection proceeding to a participating State.
- (3) The District Court cannot extend the time limit fixed by subsection (2) (a).
- (4) Section 91 (2)–(6) and (8) apply to an appeal under this section as if the appeal were an appeal under section 91 and as if the term "order" in section 91 (2) referred to the order to transfer or refuse to transfer the child protection proceeding.

Part 4 Registration

231P Filing and registration of interstate documents

- (1) Subject to subsection (3), the Director-General must as soon as possible file in the Children's Court for registration a copy of a child protection order transferred to New South Wales under an interstate law.
- (2) Subject to subsection (3), the Director-General must as soon as possible file in the Children's Court for registration a copy of an order under an interstate law to transfer a child protection proceeding to New South Wales, together with a copy of any interim

order made in relation to that order.

- (3) The Director-General must not file in the Children's Court a copy of a child protection order or of an order to transfer a child protection proceeding if:
- (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to appeal or review or a stay, or
 - (b) the time for instituting an appeal or seeking a review has not expired, under the interstate law.

231Q Notification by Registrar of Children's Court

The Registrar of the Children's Court must immediately notify the appropriate officer of the Children's Court in the sending State and the interstate officer in that State of:

- (a) the registration of any document filed under section 231P, or
- (b) the revocation under section 231R of the registration of any document so filed.

231R Revocation of registration

- (1) An application for the revocation of the registration of any document filed under section 231P may be made to the Children's Court by:
- (a) the Director-General, or
 - (b) the child or young person concerned, or
 - (c) a parent of the child or young person concerned, or
 - (d) a party to the proceeding in the Children's Court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.
- (2) The Registrar of the Children's Court must cause a copy of an application under subsection (1) to be sent by post or given as soon as possible to:
- (a) the relevant interstate officer, and
 - (b) any person by whom such an application could have been made.
- (3) The Children's Court may revoke the registration of a document filed under section 231P only if satisfied that it was inappropriately registered because:
- (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to appeal or review or a stay, or
 - (b) the time for instituting an appeal or seeking a review had not expired,

under the interstate law.

- (4) The Registrar of the Children's Court must cause any document filed in the Children's Court under section 231P to be sent to the Children's Court in the sending State if the registration of the document is revoked.
- (5) The revocation of the registration of a document does not prevent the later re-registration of that document.

Part 5 Miscellaneous

231S Effect of registration of transferred order

- (1) On an order being registered in a participating State under an interstate law, the child protection order made by the Children's Court under this Act ceases to have effect.
- (2) Despite subsection (1), an order that has ceased to have effect by force of that subsection is revived if the registration of the child protection order transferred from New South Wales is revoked in the participating State under the interstate law.
- (3) The period for which a child protection order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

231T Transfer of Children's Court file

The Registrar of the Children's Court must, subject to and in accordance with the rules of the Children's Court (if any), cause all documents filed in the Children's Court in connection with a child protection proceeding, and an extract from any part of the register that relates to a child protection proceeding, to be sent to the Children's Court in a participating State if:

- (a) the child protection order or proceeding is transferred to the participating State, and
- (b) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is not subject to appeal or review or a stay, and
- (c) the time for instituting an appeal or seeking a review has expired,

under this Chapter.

231U Hearing and determination of transferred proceeding

In hearing and determining a child protection proceeding transferred to the Children's Court under an interstate law, the Children's Court:

- (a) is not bound by any finding of fact made in the proceeding in the Children's Court in the sending State before its transfer, and

- (b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

231V Disclosure of information

- (1) Despite anything to the contrary in this Act, the Director-General may disclose to an interstate officer any information that has come to his or her notice in the exercise of functions under this Act if the Director-General considers that it is necessary to do so to enable the interstate officer to exercise functions under a child welfare law or an interstate law.
- (2) Any information disclosed to the Director-General under a provision of a child welfare law or an interstate law that substantially corresponds to subsection (1) must be taken for the purposes of any provision of this Act relating to the disclosure of information to have been information given directly to the Director-General in New South Wales instead of to an interstate officer.

231W Discretion of Director-General to consent to transfer

- (1) If, under an interstate law, there is a proposal to transfer a child protection order to New South Wales, the Director-General may consent or refuse to consent to the transfer and the terms of the proposed interstate order.
- (2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the Children's Court in New South Wales, the Director-General may consent or refuse to consent to the transfer.

231X Evidence of consent of relevant interstate officer

A document, or a copy of a document, purporting:

- (a) to be the written consent of the relevant interstate officer to:
 - (i) the transfer of a child protection order to a participating State and to the terms of the proposed interstate order, or
 - (ii) the transfer of a child protection proceeding pending in the Children's Court to the Children's Court in a participating State, and
- (b) to be signed by the relevant interstate officer or his or her delegate,

is admissible in evidence in any proceedings under this Chapter and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

Part 6 Reciprocity generally

231Y Definitions

In this Part:

appropriate authority means a person who, pursuant to a child protection order made under a child welfare law other than this Act, is competent to take action equivalent to action that may be taken pursuant to a child protection order made under this Act.

interstate ward means a child who is in New South Wales and who, immediately before entering New South Wales, was subject to a child protection order made under a child welfare law other than this Act, being a child protection order that has not been transferred to New South Wales under this Chapter.

231Z Arrangements for care

(1) The Minister:

- (a) may make financial and other arrangements with an appropriate authority for the care of:
 - (i) an interstate ward, or
 - (ii) a child or young person who is 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.

(2) The Minister is to provide for the accommodation, care and maintenance, in accordance with the arrangements referred to in subsection (1), of any interstate ward to whom such an arrangement applies.

231ZA Declarations concerning parental responsibility: interstate ward

- (1) 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.
- (2) The Minister may revoke a declaration made under this section if:
 - (a) the child protection order to which the child or young person concerned is subject is transferred to New South Wales under this Chapter, or
 - (b) an order of a court of competent jurisdiction provides for the future care and protection of the child or young person by a person other than the Minister, or

(c) the Minister has reasonable grounds to believe that the child or young person has left New South Wales and will not return.

(3) A declaration under this section ceases to have effect (despite any other provision of this Act):

(a) on the day the declaration is revoked by the Minister, or

(b) on the rescission or variation of the child protection order to which the child or young person is subject, or

(c) on the expiration of the period (if any) specified in that child protection order, whichever first occurs.

231ZB Declaration under law of jurisdiction other than NSW

(1) Any functions exercisable under this Act by any person in relation to a child or young person who is subject to a child protection order made under this Act are taken to be suspended while a declaration concerning the child or young person is in force under a provision of a child welfare law other than this Act that corresponds to section 231ZA (1).

(2) However, those functions are taken not to be suspended in so far as they may be exercised in accordance with any provision of the child welfare law concerned.

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 responsibility of the Minister and the Minister is of the opinion that the person should be returned to that care responsibility, the Minister may, by order in writing, direct that the person be returned to that care responsibility.

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 officer 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 at risk of serious harm, 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 officer 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 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) An application for a warrant or warrant may specify one or more addresses or other descriptions of premises. However, 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 responsibility 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 officer 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 officer 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.

(1A) A person who is authorised under this Act or the regulations, or under a search warrant issued under this Act, to search for, apprehend or remove a person in or from any premises or place may take such photographs and films, and audio, video and other recordings, as the person considers necessary.

(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 provisions

Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (sections 62 (1) (c) and 67 (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 Division of the Government Service or organisation (or branch or other part of a Division 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,
 - (f1) a decision of the Director-General to transfer a child protection order to a participating State under Division 1 of Part 2 of Chapter 14A,
 - (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,
 - (j) a decision of a designated agency to disclose high level identification information concerning the placement of a child or young person,
 - (k) a decision of a designated agency to refuse to disclose information concerning the placement of a child or young person,
 - (l) a decision of the Director-General to refuse to grant a service provider licence, children's service approval or supervisor approval,
 - (m) a decision of the Director-General to impose a condition on the grant of a service provider licence, children's service approval or supervisor approval (not being a condition imposed by this Act or the regulations),
 - (n) a decision of the Director-General to vary, refuse to vary, suspend or revoke a service provider licence, children's service approval or supervisor approval.
- (1A) Sections 29–31 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* do not apply in respect of a review of a decision referred to in subsection (1) (j) or (k).
- (1B) For the avoidance of doubt, subsection (1) (c) does not extend to any decision in relation to:
- (a) the preparation of a permanency plan, or
 - (b) the enforcement of a permanency plan that has been embodied in, or approved by, an order or orders of the Children's Court.
- (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 16A Exchange of information and co-ordination of services

245A Object and principles of Chapter

- (1) The object of this Chapter is to facilitate the provision of services to children and young persons by agencies that have responsibilities relating to the safety, welfare or well-being of children and young persons:
- (a) by authorising or requiring those agencies to provide, and by authorising those

agencies to receive, information that is relevant to the provision of those services, while protecting the confidentiality of the information, and

(b) by requiring those agencies to take reasonable steps to co-ordinate the provision of those services with other such agencies.

(2) The principles underlying this Chapter are as follows:

(a) agencies that have responsibilities relating to the safety, welfare or well-being of children or young persons should be able to provide and receive information that promotes the safety, welfare or well-being of children or young persons,

(b) those agencies should work collaboratively in a way that respects each other's functions and expertise,

(c) each such agency should be able to communicate with each other agency so as to facilitate the provision of services to children and young persons and their families,

(d) because the safety, welfare and well-being of children and young persons are paramount:

(i) the need to provide services relating to the care and protection of children and young persons, and

(ii) the needs and interests of children and young persons, and of their families, in receiving those services,

take precedence over the protection of confidentiality or of an individual's privacy.

245B Interpretation

(1) In this Chapter:

prescribed body means any body or organisation specified in section 248 (6) or that is prescribed by the regulations for the purposes of that section.

(2) A reference in this Chapter to a prescribed body includes a reference to the person who is the chief executive officer (however described) of the prescribed body.

(2A) In this Chapter:

(a) a reference to a prescribed body includes a reference to any part (however described) of the prescribed body, and

(b) a reference to another prescribed body includes a reference to another part of the same prescribed body.

(3) A reference in this Chapter to information relating to the safety, welfare or well-being

of a child or young person includes a reference to information about the following:

- (a) an unborn child who is the subject of a pre-natal report under section 25,
- (b) the family of an unborn child the subject of such a report,
- (c) the expected date and place of birth of an unborn child the subject of such a report.

245C Provision of information

- (1) A prescribed body (the **provider**) may provide information relating to the safety, welfare or well-being of a particular child or young person or class of children or young persons to another prescribed body (the **recipient**) if the provider reasonably believes that the provision of the information would assist the recipient:
 - (a) to make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons, or
 - (b) to manage any risk to the child or young person (or class of children or young persons) that might arise in the recipient's capacity as an employer or designated agency.
- (2) Information may be provided under this section regardless of whether the provider has been requested to provide the information.

245D Request for information

- (1) A prescribed body (the **requesting agency**) may request another prescribed body to provide the requesting agency with any information held by the other body that relates to the safety, welfare or well-being of a particular child or young person or class of children or young persons.
- (2) Any such request may be made for the purposes of assisting the requesting agency:
 - (a) to make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons, or
 - (b) to manage any risk to the child or young person (or class of children or young persons) that might arise in the agency's capacity as an employer or designated agency.
- (3) If a prescribed body receives a request under this section, the prescribed body is required to comply with the request if it reasonably believes, after being provided with sufficient information by the requesting agency to enable the other body to form that belief, that the information may assist the requesting agency for any purpose referred

to in subsection (2).

- (4) A prescribed body is not required to provide any information that it has been requested to provide if the body reasonably believes that to do so would:
- (a) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or
 - (b) prejudice a coronial inquest or inquiry, or
 - (c) prejudice any care proceedings, or
 - (d) contravene any legal professional or client legal privilege, or
 - (e) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or
 - (f) endanger a person's life or physical safety, or
 - (g) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law, or
 - (h) not be in the public interest.
- (5) If a prescribed body refuses to provide information in accordance with a request under this section, the prescribed body must, at the time it notifies the requesting agency of the refusal, provide the requesting agency with reasons in writing for refusing the request.

245E Co-ordination of services

Prescribed bodies are, in order to effectively meet their responsibilities in relation to the safety, welfare or well-being of children and young persons, required to take reasonable steps to co-ordinate decision-making and the delivery of services regarding children and young persons.

245F Restriction on use of information provided under this Chapter

If any information is provided to a prescribed body under this Chapter, the prescribed body must not, except as otherwise required or permitted by any law, use or disclose the information for any purpose that is not associated with the safety, welfare or well-being of the child or young person (or class of children or young persons) to whom the information relates.

245G Protection from liability for providing information

- (1) This section applies if a person, acting in good faith, provides any information in accordance with this Chapter.

- (2) Any such person is not liable to any civil or criminal action, or any disciplinary action, for providing the information.
- (3) In providing the information, the person cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

245H Interaction with other laws

- (1) A provision of any other Act or law (whether enacted or made before or after the commencement of this section) that prohibits or restricts the disclosure of information does not operate to prevent the provision of information (or affect a duty to provide information) under this Chapter.
- (2) This Chapter does not limit the operation of Part 3 of Chapter 2 or sections 185 and 248.

245I Commonwealth agencies

Nothing in this Chapter is to be construed as imposing a requirement on any of the following bodies:

- (a) the Federal Court of Australia,
 - (a1) the Family Court of Australia,
- (b) the Federal Magistrates Court of Australia,
- (c) Centrelink,
- (d) the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs.

Chapter 17 Miscellaneous

246 Separation of children and young persons from offenders

- (1) A child or young person who is in the care responsibility of the Director-General or in the parental responsibility of 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).

- (2) Subsection (1) does not apply in respect of a child or young person who:
- (a) is on remand, or
 - (b) is subject to an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.
- (3) If a child or young person in the care responsibility of the Director-General or in the parental responsibility of the Minister under this Act is detained by the police on a warrant issued for his or her arrest, the child or young person cannot be held in a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*) 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

- (1AA) The functions referred to in subsection (1) may be exercised by the Director-General for any one or more of the following purposes:
- (a) for the purposes of providing information to, or exchanging information with, a prescribed body,
 - (b) for the purpose of exercising the functions of the Director-General.
- (1) 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 a 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 a 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.
- (1A) Information about the following may be furnished under this section in the same way as information about a child or young person or class of children or young persons may be furnished:
- (a) an unborn child who is the subject of a pre-natal report under section 25,
 - (b) the family of an unborn child the subject of such a report,
 - (c) the expected date of birth of an unborn child the subject of such a report.
- (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) or (1A):

(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) or (1A) 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 NSW Police Force, a Division of the Government Service 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 health facility within the meaning of the *Private Health Facilities Act 2007*, 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,

and a reference in this section to any such prescribed body includes a reference to any part (however described) of the prescribed body.

248A Collection of information by Director-General and Children's Court

- (1) The regulations may make provision for or with respect to the collection by the Director-General or the Children's Court of such information (or such classes of information) as may be prescribed by the regulations.
- (2) Without limiting subsection (1), the regulations may require the Director-General or the Children's Court:
 - (a) to collect any such information, and
 - (b) to keep any such information that is collected by, or that is provided to, the Director-General or the Children's Court, and
 - (c) to make any such information publicly available, and
 - (d) to provide any such information to the Minister.
- (3) Nothing in this or any other Act prevents the Director-General or the Children's Court from doing anything in accordance with the regulations made under 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) (Repealed)
- (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 Use of optical surveillance devices

Section 8 (1) of the *Surveillance Devices Act 2007* does not apply to the installation, use

or maintenance of an optical surveillance device:

- (a) in connection with the removal of a child or young person from a place or premises under section 43 or 48, or
- (b) in the execution of a search warrant issued under section 233 (including the use of an optical surveillance device to record any activity in connection with the execution of the warrant), or
- (c) in exercising a function under section 241 (1) (d).

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
 - (b1) if a notice of address for service has been filed in accordance with the rules of the Children's Court—delivered, or sent by pre-paid post, to that address, 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) or (b1), 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.

256A Children's Court may dispense with service

- (1) If the Children's Court is satisfied that an unacceptable threat to the safety, welfare or well-being of a child or young person or a party to any proceedings would arise if any notice or other instrument required or authorised by this Act was given to, or any document served on, a particular person, the Children's Court may make an order dispensing with the giving of notice or instrument to, or service on, the person concerned.
- (2) An order under this section excuses every other person from the requirement to

comply with any provision of this Act that requires notification to, or service on, that person.

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 (other than section 219J or 219ZB) 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.

(1A) If a corporation contravenes, whether by act or omission, section 219J or 219ZB, 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 if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) or (1A) 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.

258A Time for instituting proceedings

- (1) Proceedings for an offence under this Act or the regulations may be commenced not later than 6 months after the offence was alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced:
 - (a) in the case of an offence against Chapter 12 or against a regulation made in relation to children's services—within but not later than 2 years after the Director-General became aware of the alleged offence, or
 - (b) in any other case—within but not later than 6 months after the Director-General became aware of the alleged offence.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the alleged offence first came to the attention of the Director-General and need not contain particulars of the date on which the offence was alleged to have been committed. The date on which evidence first came to the attention of the Director-General is the date specified in the court attendance notice or application, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) In this section:

evidence of an offence means evidence of any act or omission constituting the offence.

259 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before the 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 the Local Court, the maximum monetary penalty the Local Court may impose is, despite any provision of this Act to the contrary, 200 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.

259A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(10) In this section, **authorised officer** means:

- (a) an employee of the Department authorised in writing by the Director-General as an authorised officer for the purposes of this section, or
- (b) a police officer.

260 Evidence of young children

- (1) If an authorised officer 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 officer 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, dispute resolution 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,
- (j) providing for the review by the Administrative Decisions Tribunal of a decision, or failure to make a decision, in relation to a family day care children's service of a class prescribed by the regulations,
- (k) the licensing of principal and other officers of designated agencies.

(1B) A regulation may not be made for the purposes of subsection (1A) (i) or (j) 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.
- (3) The regulations may apply, adopt or incorporate, wholly or in part and with or without modifications, any standard, rule, code, specification or other document prescribed or published by any person or body (whether of New South Wales or elsewhere) and as in force at a particular time or from time to time.

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 (Repealed)

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 Children's Guardian and a report on the application to be made and furnished to the Minister by the Children's Guardian.
- (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)

Part 1 Regulations

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

Children and Young Persons (Care and Protection) Amendment Act 2005

Children and Young Persons (Care and Protection) Amendment Act 2006

Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Act 2006

Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2006

Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tattooing) Act 2008

Children and Young Persons (Care and Protection) Amendment (Children's Employment) Act 2009

Children and Young Persons (Care and Protection) Amendment Act 2009

Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009, to the extent that it amends this Act

Courts Legislation Amendment Act 2010, to the extent that it amends this Act

Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010

Children and Young Persons (Care and Protection) Amendment Act 2010

- (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.

Part 2 Provision consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment Act 2005](#)

2 Provision consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment Act 2005](#)

Section 233, as in force immediately before the commencement of this clause, continues to apply to and in respect of a search warrant applied for under that section as in force before that commencement.

Part 3 Provisions consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment Act 2006](#)

3 Definition

In this Part:

amending Act means the [Children and Young Persons \(Care and Protection\) Amendment Act 2006](#).

4 Protection of persons who make reports or provide certain information

- (1) The amendment made to section 29 (1) (f) by the amending Act extends to any information disclosed to a body before the commencement of the amendment.
- (2) Section 29 (3A) extends to reports made, actions taken or information provided before the commencement of the subsection.
- (3) Section 29 extends to any report made under section 120 or 121 before the amendment of section 29 (6) by the amending Act.

5 Emergency care and protection orders

Section 46 (5) extends to an application made before the commencement of the subsection.

6 Variation of care orders

Section 61 (3), as repealed and re-enacted by the amending Act, extends to any order sought before that repeal and re-enactment.

7 Notification of care applications

Section 64 (7) and (8) extend to any application made before the commencement of the subsections.

8 Leave to file further documentary evidence or amend application

Section 68 (2) extends to documentary evidence filed before the commencement of the

subsection.

9 Care proceedings

The amendments made to sections 71, 75, 79 and 90 by the amending Act extend to care proceedings not finally determined when the respective amendments commence.

10 Court procedure

(1) The amendments made to sections 93, 96 and 99, and section 104 as repealed and re-enacted, by the amending Act extend to proceedings not finally determined when the respective amendments and section 104 as re-enacted commence.

(2) The amendments made to section 105 by the amending Act extend to proceedings conducted before the commencement of the amendments.

11 Application for order for alternative parenting plan

Section 116 (4) extends to any application made before the commencement of the subsection.

12 Order for sole parental responsibility

Section 149 (4A) extends to any application made before the commencement of the subsection.

13 Regulations concerning probity checks

A regulation for or with respect to probity checks referred to in section 220 (a1) may apply so as to require probity checks on persons residing at a certain home immediately before the regulation commences.

Part 4 Provisions consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment \(Parent Responsibility Contracts\) Act 2006](#)

14 Definition

In this Part:

amending Act means the [Children and Young Persons \(Care and Protection\) Amendment \(Parent Responsibility Contracts\) Act 2006](#).

15 Effect of re-enactment of section 38 (3)

Section 38 (3) (as substituted by Schedule 1 [8] to the amending Act) extends to proceedings before the Children's Court that were pending (but not finally determined) immediately before the commencement of Schedule 1 [8] to that Act.

16 Registration of care plans

A care plan that was duly registered immediately before the commencement of section 38F (as inserted by the amending Act) is taken to have been duly registered for the purposes of that section.

Part 5 Provisions consequent on enactment of **Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2006**

17 Definition

In this Part:

amending Act means the *Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2006*.

18 Legal representation

Section 99 as in force before its repeal and re-enactment by the amending Act continues to apply to any proceedings before the Children's Court that were pending (but not finally determined) before that repeal and re-enactment.

19 Admissibility of certain evidence

Sections 106A and 107 (3A), as inserted by the amending Act, extend to apply in respect of proceedings before the Children's Court that were pending (but not finally determined) immediately before the commencement of the section concerned.

20 Exempt premises

Premises that were exempt premises within the meaning of section 200 (3) (b) or (c) immediately before the repeal of those paragraphs by the amending Act are taken to be exempt premises within the meaning of section 199 as amended by the amending Act.

21 Institution of proceedings

Section 258A, as inserted by the amending Act, extends to apply in respect of offences alleged to have been committed before the commencement of that section.

Part 6 Provision consequent on enactment of **Children and Young Persons (Care and Protection) Amendment (Children's Employment) Act 2009**

22 Application of amendment

The amendment to the definition of **child** in section 221 made by the *Children and Young Persons (Care and Protection) Amendment (Children's Employment) Act 2009* extends to the employment of a person on or after the commencement of that amendment, even if

the contract or other arrangement under which the person is employed was entered into or made before that commencement.

Part 7 Provisions consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment \(Children's Services\) Act 2010](#)

23 Definitions

In this Part:

amending Act means the [Children and Young Persons \(Care and Protection\) Amendment \(Children's Services\) Act 2010](#).

existing licence means a licence for a children's service granted under Part 3 of Chapter 12 before the commencement of the new licensing scheme, and which was in force immediately before the commencement of the new licensing scheme.

new licensing scheme means Part 3 of Chapter 12, as substituted by the amending Act.

24 Pending licence applications

An application for a licence that was made under Chapter 12 before the commencement of the new licensing scheme, and which has not been granted or refused by that commencement, is to be treated as:

- (a) an application for a service provider licence by the applicant in respect of the type of children's service to which the application relates, and
- (b) an application for a children's service approval in respect of the children's service to which the application relates, and
- (c) an application for a supervisor approval in respect of any person nominated in the application as the proposed supervisor for the service.

25 Conversion of existing licences

- (1) An existing licence is taken, on the commencement of the new licensing scheme:
 - (a) to be a service provider licence that authorises the licensee under the licence to provide the children's services to which the existing licence relates (a **corresponding service provider licence**), and
 - (b) to be a children's service approval that authorises the operation of the children's service to which the existing licence relates (a **corresponding children's service approval**), and
 - (c) to be a supervisor approval that authorises any person specified in the existing licence as an authorised supervisor to supervise the children's service to which the

existing licence relates (a ***corresponding supervisor approval***).

- (2) A licensee under an existing licence is taken to be the licensee under a corresponding service provider licence.
- (3) A person specified in an existing licence as an authorised supervisor for a children's service is taken:
 - (a) to be the holder of a corresponding supervisor approval, and
 - (b) to have been appointed as the authorised supervisor of the children's service to which the existing licence relates.
- (4) If an existing licence was granted for a specified period of 5 years, a corresponding service provider licence, children's service approval or supervisor approval remains in force until it is revoked by the Director-General under the new licensing scheme.
- (5) If an existing licence was granted for a specified period of less than 5 years, a corresponding service provider licence, children's service approval or supervisor approval remains in force for the balance of that period, unless sooner revoked by the Director-General under the new licensing scheme.
- (6) A corresponding service provider licence, children's service approval or supervisor approval has effect subject to any conditions that applied to the existing licence immediately before the commencement of the new licensing scheme. This subclause does not prevent the imposition of new conditions or the variation of conditions.
- (7) Chapter 12, as amended by the amending Act, applies to a corresponding service provider licence, children's service approval or supervisor approval, subject to this Part and to any modifications prescribed by the regulations.
- (8) This clause does not prevent the Director-General from issuing a new service provider licence, children's service approval or supervisor approval for the purpose of replacing a corresponding service provider licence, children's service approval or supervisor approval.

26 Suspended licences

- (1) A licence for a children's service granted under Part 3 of Chapter 12 before the commencement of the new licensing scheme that was the subject of a suspension on that commencement is taken to be an existing licence for the purposes of this Part.
- (2) However, the suspension continues to apply in respect of a corresponding service provider licence, children's service approval or supervisor approval.

27 Other applications

An application to vary an existing licence that was made before the commencement of

the new licensing scheme, and which has not been granted or refused by that commencement, may be dealt with by the Director-General as an application or notification under the new licensing scheme, as the Director-General considers appropriate.

28 References to former licence or approval holders

In Chapter 12, a reference to a person who was formerly a licensed service provider or authorised supervisor of a children's service includes a reference to a person who was formerly a licensee or authorised supervisor under Chapter 12 as in force before the commencement of the new licensing scheme.

Part 8 Provision consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment Act 2010](#)

29 Provision of voluntary out-of-home care

A child or young person who was, immediately before the substitution of section 156A by the [Children and Young Persons \(Care and Protection\) Amendment Act 2010](#), in voluntary out-of-home care is taken for the purposes of that section to have been placed in voluntary out-of-home care on the date of substitution of that section.