

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

[1998-157]



New South Wales

## Status Information

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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**

[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#) (not commenced)

[Children and Young Persons \(Care and Protection\) Amendment Act 2018 No 81](#) (not commenced — to commence on 4.2.2019)

### 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

(1) In this Act:

**Aboriginal**—see section 5.

**accredited adoption service provider** has the same meaning as in the *Adoption Act 2000*.

**alternative dispute resolution**—see section 244A.

**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.

**carer applicant** means a person who has applied to a designated agency to be authorised as an authorised carer and whose application has not been withdrawn or finally determined.

**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 Registrar** means a Children's Registrar within the meaning of the [Children's Court Act 1987](#).

**contact order**—see section 86 (1).

**contract breach notice**—see section 38E.

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

**designated agency**—see section 139.

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

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

**guardian**—see section 79A.

**guardianship order**—see section 79A (2).

**high level identification information**, in relation to a child or young person who is in the care responsibility of the Secretary (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 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).

**kin** of a child or young person means a person who shares a cultural, tribal or community connection with the child or young person that is recognised by that child or young person's family or community.

**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 or 91D,
- (c) any other 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 capacity order**—see section 91A.

**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**—see section 10A (1).

**permanent placement principles**—see section 10A (3).

**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).

**principal officer**—see section 5A.

**prohibition order**—see section 90A (1).

**prospective guardian** means a person whose suitability to have parental responsibility for a child or young person allocated to the person under a guardianship order is being considered (whether by the Secretary, a designated agency or the Children’s Court) and who has agreed to an assessment of the person’s suitability under section 79B (1A).

**registered agency** means any of the following that is registered for the time being by the Children’s Guardian in accordance with section 181 (1) (f):

- (a) a Public Service agency (or part of a Public Service agency),
- (b) an organisation (or part of an organisation) that provides or arranges voluntary out-of-home care.

**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 2013](#).

**relative** of a child or young person means any of the following:

- (a) a parent, step-parent, or spouse of a parent or step-parent, of the child or young person,
- (b) a grandparent, brother, sister, step-brother, step-sister, cousin, niece or nephew, uncle or aunt (whether by blood, marriage, affinity or adoption) of the child or young person,
- (c) a person who has parental responsibility for the child or young person (not being the Minister, the Secretary or a person who has parental responsibility other than in his or her personal capacity),
- (d) a person who has care responsibility for the child or young person under the

*Adoption Act 2000* (not being the Minister, the Secretary or a person who has care responsibility other than in his or her personal capacity),

- (e) in the case of a child or young person who is an Aboriginal or Torres Strait Islander—a person who is part of the extended family or kin of the child or young person.

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

**rules** means rules made under the *Children's Court Act 1987*.

**Secretary** means the Secretary of the Department.

**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.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) In this section, **spouse** of a person means:

- (a) a person to whom the person is legally married (including a husband or wife of the person), or  
(b) the person's de facto partner,

but if more than one person would so qualify as a spouse, means only the latest person to so qualify.

**Note—**

**De facto partner** is defined in section 21C of the *Interpretation Act 1987*.

#### **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.

### 5A Meaning of “principal officer”

(1) In this Act, the **principal officer** of a designated agency means:

- (a) in the case of a designated agency that does not provide or arrange voluntary out-of-home care—the person who has the overall supervision of the agency’s arrangements for providing statutory out-of-home care and supported out-of-home care, or
- (b) in the case of any other designated agency:
  - (i) the person who has the overall supervision of the agency’s arrangements for providing statutory out-of-home care and supported out-of-home care, and
  - (ii) if a different person has the overall supervision of the agency’s arrangements for providing and arranging voluntary out-of-home care—that other person.



- (2) In this Act, the **principal officer** of a registered agency means the person who has the overall supervision of the agency's arrangements for providing and arranging voluntary out-of-home care.
- (3) If more than one person is the principal officer of a designated agency under subsection (1) (b), any reference in this or any other Act to the principal officer of the designated agency is a reference to each of those persons, unless the reference:
  - (a) relates only to statutory out-of-home care or supported out-of-home care (or both), in which case it is a reference to the person referred to in subsection (1) (b) (i), or
  - (b) relates only to voluntary out-of-home care, in which case it is a reference to the person referred to in subsection (1) (b) (ii).
- (4) Anything done by, or with the approval of, the principal officer of a designated agency or a registered agency in relation to out-of-home care is, for the purposes of this Act and the regulations, taken to be done by the designated agency or registered agency concerned.
- (5) Nothing in subsection (4) affects any personal liability of the principal officer.

## 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
  - (a1) recognition that the primary means of providing for the safety, welfare and well-being of children and young persons is by providing them with long-term, safe, nurturing, stable and secure environments through permanent placement in accordance with the permanent placement principles, 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.
- (g) If a child or young person is placed in out-of-home care, the permanent placement principles are to guide all actions and decisions made under this Act (whether by legal or administrative process) regarding permanent placement of the child or young person.

## **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 Secretary 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.

#### **10A Permanent placement principles**

- (1) In this Act:

***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 that provides a safe, nurturing, stable and secure environment for the child or young person.

- (2) Subject to the objects in section 8 and the principles in section 9, a child or young person who needs permanent placement is to be placed in accordance with the permanent placement principles.

- (3) The ***permanent placement principles*** are as follows:

- (a) if it is practicable and in the best interests of a child or young person, the first preference for permanent placement of the child or young person is for the child or young person to be restored to the care of his or her parent (within the meaning of section 83) or parents so as to preserve the family relationship,
- (b) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), the second preference for permanent placement of the child or young person is guardianship of a relative, kin or other suitable person,
- (c) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a) or (b), the next preference is (except in the case of an Aboriginal or Torres Strait Islander child or young person) for the child or young person to be adopted,
- (d) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), (b) or (c), the last preference is for the child or young person to be placed under the parental responsibility of the Minister under this Act or any other law,
- (e) if it is not practicable or in the best interests of an Aboriginal or Torres Strait Islander child or young person to be placed in accordance with paragraph (a), (b) or (d), the last preference is for the child or young person to be adopted.

## **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 Secretary 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.

**Note—**

The placement principles set out in this section also apply to the making of guardianship orders in relation to Aboriginal and Torres Strait Islander children and young persons (see section 79A (3) (c)).

- (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 Secretary 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 Secretary 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 Chapter 8 of the *Adoption Act 2000*.
- (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 Secretary

### 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 Secretary

(1) **Principal role** The Secretary 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 Secretary 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 Secretary'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 Secretary 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 Secretary.

#### **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 Secretary 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 Secretary 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 Secretary 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 Secretary's response to requests for assistance

- (1) If a person or non-government agency seeks assistance from the Secretary under this Part (whether or not a child or young person is suspected of being in need of care and protection), the Secretary must:
  - (a) provide whatever advice or material assistance, or make such referral, as the Secretary considers necessary, or
  - (b) take whatever other action the Secretary 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 Secretary to take any action other than assessing the request for assistance.

### Note—

The Secretary, 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 Secretary.

## **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 Secretary.

**Note—**

The intentions of this section are:

- (a) to allow assistance and support to be provided to an expectant parent to reduce the likelihood that the parent's 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 Secretary 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 Secretary 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 Ministry of Health,

(e) the Department of Education,

(f) the TAFE Commission,

(g) the Department of Family and Community Services,

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

(2) The Secretary 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 Secretary 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 Secretary for the purposes of this section, to assess whether the matter should be reported to the Secretary under section 27.

(4) If, in accordance with the assessment guidelines, the matter is assessed as a matter that should be reported to the Secretary under section 27, the assessment officer or the staff member is, as soon as practicable after the assessment, to report the matter to the Secretary 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 Secretary 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) Sections 29 and 29AA apply in relation to a referral that is made to an assessment officer under this section in the same way as they apply to a report to which those sections apply. For that purpose, a reference in section 29 or 29AA 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 Secretary of the Ministry of Health.
- (12) A staff member of a relevant agency may, in accordance with the terms of an arrangement under this section, refer any of the following matters to an assessment officer of the agency:
  - (a) a matter relating to a young person that the staff member would otherwise report to the Secretary under section 24,

- (b) a matter relating to an unborn child that the staff member would otherwise report to the Secretary under section 25.

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

The Secretary must keep a record of:

- (a) any report made to the Secretary, 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 Secretary 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 Civil and Administrative Tribunal,
    - (iv) proceedings before the Civil and Administrative Tribunal that are allocated to the Guardianship Division of the Tribunal or are commenced under the *Victims Rights and Support Act 2013*,
    - (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 Secretary 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 Part 3A of the *Ombudsman Act 1974* or conduct referred to in clause 2 of Schedule 1 to the *Child Protection (Working with Children) Act 2012*, 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).

**Note—**

It is an offence under section 254 for a person to disclose any information obtained in connection with the administration or execution of this Act, except in certain circumstances. The maximum penalty is 10 penalty units (currently \$1,100) or imprisonment for up to 12 months, or both.

**29AA Special provision relating to Royal Commissions**

- (1) Despite section 17 of the *Royal Commissions Act 1923*, that section does not authorise or compel the disclosure to a Royal Commission of the identity of a person who made a report to which section 29 applies, or information from which the identity of that person could be deduced, except with:
  - (a) the consent of the person who made the report, or
  - (b) the leave of a person who is a commissioner within the meaning of Division 2 of Part 2 of the *Royal Commissions Act 1923*.
- (2) A commissioner cannot grant leave under this section unless the commissioner is satisfied that the report or information concerned is of significant importance to the inquiry.
- (3) The protection given by this section to a person who made a report (a **reporter**) applies to:
  - (a) any person who provided information to the reporter on the basis of which the report was made, and
  - (b) any person who otherwise was concerned in making such a report or causing such a report to be made,

in the same way as it applies in respect of the reporter.

### **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 Secretary'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 Secretary is to make such investigations and assessment as the Secretary considers necessary to determine whether the child or young person is at risk of significant harm, or
- (b) the Secretary may decide to take no further action if, on the basis of the information provided, the Secretary 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 Secretary may direct certain bodies, including the NSW Police Force, a government department or agency, a public authority, a school, a local health district and a hospital to furnish the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary must arrange for the report to be

investigated in accordance with arrangements made between the Secretary and the Ombudsman.

- (2) A person appointed in accordance with those arrangements may exercise the functions of the Secretary 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 Secretary 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 Secretary**

#### **34 Taking of action by Secretary**

- (1) If the Secretary forms the opinion, on reasonable grounds, that a child or young person is in need of care and protection, the Secretary 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 Secretary 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 Secretary'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 Secretary 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 Secretary may decide to take no action if the Secretary 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 Secretary decides to take no action, the Secretary 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 Secretary 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 by Secretary**

- (1) In responding to a report, the Secretary is to consider the appropriateness of using alternative dispute resolution processes 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) (Repealed)

**Note—**

Within this provision, models for 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 Secretary, 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 Secretary, 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 either or both of the following:
  - (a) an agreement between the Secretary 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,
  - (b) an agreement between the Secretary and either or both expectant parents whose unborn child is the subject of a pre-natal report under section 25 that contains provisions aimed at improving the parenting skills of the prospective parent and reducing the likelihood that the child will be at risk of significant harm after birth.
- (2) A parent responsibility contract must:
  - (a) be in writing, and
  - (b) be signed by the Secretary and each primary care-giver or each expectant parent 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 12 months) during which the contract will (unless varied under section 38B) 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 party to the contract will authorise the Secretary 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 18 months between the Secretary and any of the same primary care-givers for a child or young person.
- (4) Before entering into a parent responsibility contract, the Secretary 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 party to the contract for treatment for alcohol, drug or other substance abuse during the term of the contract,
  - (b) attendance of a party to the contract for counselling,
  - (c) requirements relating to alcohol or drug testing that a party to the contract 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 any party to the contract (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 Secretary 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.
- (11) The period for which the parent responsibility contract has effect may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

### **38B Amendment of parent responsibility contracts**

- (1) The Secretary 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 beyond 12 months).
- (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 or for the period as varied by agreement under this section.

### **38C Termination of parent responsibility contracts**

- (1) The Secretary 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 Secretary 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 Secretary 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 Secretary may file a **contract breach notice** with the Children's Court in relation to a parent responsibility contract if:
  - (a) a party to the contract has breached a term of the contract, and
  - (b) the contract authorises the Secretary to file a contract breach notice with the Children's Court for breaches of the kind committed by any party to the contract.
- (2) A contract breach notice must state the following matters:
  - (a) the name of the party to the contract who is alleged to have breached the parent responsibility contract,
  - (b) each provision of the parent responsibility contract that the party to the contract is alleged to have breached,
  - (c) the manner in which the party to the contract is alleged to have breached the provision,
  - (d) the care orders that the Secretary 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 Secretary 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 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) (Repealed)
- (5) A reference in this Act to the Secretary duly filing a contract breach notice is a reference to the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary, 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 Secretary may assume care responsibility of child or young person in hospital or other premises**

- (1) If the Secretary:
- (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 Secretary 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 Secretary and served on the person (whether or not a parent of the child or young person) who appears to the Secretary 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 Secretary 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 Secretary 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 Secretary is not required to apply for any order of the Children's Court if the Secretary considers that no order is necessary, but the Secretary 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 Secretary 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 Secretary, 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary or the designated agency that made the delegation.

#### **50 Discharge of child or young person from Secretary's care responsibility**

- (1) The Secretary may, at any time, discharge a child or young person from the Secretary'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 Secretary 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 Secretary 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 Secretary to exercise that power is likely to endanger the safety, welfare and well-being of any other person.
- (4) If the Secretary discharges the child or young person from the Secretary's care responsibility following an order of the Children's Court, the Secretary must explain to the Children's Court at the next sitting day of the Court why the Secretary'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 Secretary to give information to certain persons**

- (1) If a child or young person is in the care responsibility of the Secretary under this Part or a warrant issued under section 233, the Secretary:
  - (a) must, as soon as practicable, cause notice of the fact that the child or young person is in the care responsibility of the Secretary, and the fact that an application may be made to the Secretary for the discharge of the child or young person from the care responsibility of the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary, 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 Secretary, 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 Secretary.
- (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 but does not include a parent capacity order.

***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 Secretary, except as

provided by this Chapter.

- (1A) A care application must specify the particular care order sought and the grounds on which it is sought.
- (2) A care application must 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*.
- (2A) However, a written report is not required to accompany a care application if:
  - (a) the application is for the rescission or variation of a care order under section 90, or
  - (b) such a report has previously been provided to the Children's Court in relation to the child or young person concerned.
- (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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary in relation to the child or young person.
- (2) **Children and young persons** The Secretary 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 Secretary 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 Secretary:
    - (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 Secretary considers it would be inappropriate for the parents of the child or young person to be given a copy of the recording,

the Secretary 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 Secretary 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 Secretary 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) If it considers it appropriate, the Children's Court may, before or at any stage during the hearing of a care application, refer the application to a Children's Registrar to be dealt with under this section.

(1A) The Children's Registrar is to arrange and conduct a dispute resolution conference between the parties to the care application.

(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 or persons specified in section 86 (1A) (b). In so doing:
- (a) the Children's Registrar should seek to encourage the parties or persons specified in section 86 (1A) (b) 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 or persons specified in section 86 (1A) (b) cannot agree on the action to be taken in relation to the child or young person, the Children's Registrar should encourage the parties or persons specified in section 86 (1A) (b):
    - (i) to identify areas of agreement between the parties or persons specified in section 86 (1A) (b), and
    - (ii) to identify issues in dispute between the parties or persons specified in section 86 (1A) (b), and
    - (iii) to determine the best way of resolving any issues in dispute, and
    - (iv) to set a timetable for the hearing of the application by the Children's Court.
- (3) A party or person specified in section 86 (1A) (b) may be legally represented at a dispute resolution conference.
- (4), (5) (Repealed)

#### **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 participate in an alternative dispute resolution process 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.

#### **67A Consecutive care orders**

- (1) A care order has effect for the period specified in the order commencing on the date on which the Children's Court makes the order (or a later date specified in the order).
- (2) The period may be specified by reference to the occurrence of a future event described in the order.
- (3) Without limiting subsection (2), the Children's Court may specify that a care order is to take effect at the end of the period for which another care order has effect.

#### **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 Secretary, 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) (Repealed)

- (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 Secretary 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) This section does not apply to or in respect of a contact order made under section 86 (1A) (b).

**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 (other than an application for a guardianship order), 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 Secretary 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 Secretary 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, birth father, adoptive mother or adoptive 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 a child or young person (other than a child or young person the subject of an application for a guardianship order) 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 Secretary 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 treatment**

- (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).
- (4) An order cannot be made under this section in proceedings in relation to an application for a guardianship order.

## **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 (other than an application for a guardianship order) has been made under the supervision of the Secretary 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.

- (3A) Despite subsection (3), the Children's Court may specify a maximum period of supervision that is longer than 12 months (but that does not exceed 24 months) if the Children's Court is satisfied that there are special circumstances that warrant the making of an order of that length and that it is appropriate to do so.
- (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 Secretary, and after giving the parties an opportunity to be heard, extend the period of a supervision order for such further period, that together with the period specified under subsection (3) or (3A) does not exceed 24 months in total, as it considers appropriate in all the circumstances.
- (7) The Children's Court may, of its own motion or on application by the Secretary, and after giving the parties an opportunity to be heard, revoke an order before the end of the period of supervision specified under subsection (3A) at any time after the expiration of the first 12 months of that period if it considers that there is no longer need for supervision in order to protect the child or young person.

## **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 Secretary, and
  - (b) the Secretary may meet and talk with the child or young person, and



- (c) the child or young person must:
  - (i) accept the supervision of the Secretary, and
  - (ii) obey all reasonable directions of the Secretary.
- (2) The Secretary 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 Secretary 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 Secretary 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 principles set out in section 9 (2) (e) and (g), 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 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 Family and Community Services and the Minister for Aboriginal Affairs.

**79 Order (other than guardianship order) allocating parental responsibility**

- (1) The Children's Court may make an order under this section allocating all aspects of parental responsibility, or one or more specific aspects of parental responsibility, for a child or young person who it finds is in need of care and protection for a period specified in the order:
  - (a) to one parent to the exclusion of the other, or to both parents jointly, or
  - (b) solely to the Minister, or
  - (c) to one or both parents and to the Minister jointly, or
  - (d) to one or both parents and to another person or persons jointly, or
  - (e) to the Minister and another suitable person or persons jointly, or
  - (f) to a suitable person or persons jointly.
- (2) The specific aspects of parental responsibility that may be allocated by an order of the Children's Court under subsection (1) 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 and cultural upbringing of the child or young person,
  - (e) the medical and dental 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 permanent placement principles and is satisfied that the order is in the best interests of the child or young person.
- (4) Without limiting subsection (3), the Children's Court must not make an order under this section if, taking into account the permanent placement principles, it would be more appropriate to make a guardianship order than an order under this section.

- (4A) The Children's Court must not make an order under this section allocating any aspect of parental responsibility to an organisation or to the principal officer of a designated agency (other than the Secretary).
- (5) 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:
  - (a) any order made with respect to the child or young person by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children, or
  - (b) a guardianship order with respect to the young person made by the Guardianship Tribunal.
- (6) If an order allocates all aspects of parental responsibility for a child or young person to 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.
- (7) If aspects of parental responsibility are allocated jointly between the Minister and another person or persons, 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.
- (8) The Children's Court must not make an order allocating parental responsibility jointly between two or more persons unless it is satisfied that the persons can work together co-operatively in the best interests of the child or young person.

**79A Allocation of parental responsibility by guardianship order**

- (1) In this Act:

**guardian** means a person who has been allocated all aspects of parental responsibility for a child or young person until the child or young person reaches 18 years of age by a guardianship order made under this section.

- (2) An order may be made by the Children's Court allocating to a suitable person all aspects of parental responsibility for a child or young person who is in statutory out-of-home care or supported out-of-home care or who it finds is in need of care and protection until the child or young person reaches 18 years of age (a **guardianship order**).
- (3) The Children's Court must not make a guardianship order unless it is satisfied that:
  - (a) there is no realistic possibility of restoration of the child or young person to his or her parents, and

- (b) that the prospective guardian will provide a safe, nurturing, stable and secure environment for the child or young person and will continue to do so in the future, and
  - (c) if the child or young person is an Aboriginal or Torres Strait Islander child or young person—permanent placement of the child or young person under the guardianship order is in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles that apply to placement of such a child or young person in statutory out-of-home care under section 13, and
  - (d) if the child or young person is 12 or more years of age and capable of giving consent—the consent of the child or young person is given in the form and manner prescribed by the regulations.
- (4) A guardianship order may allocate parental responsibility jointly to more than one person.
  - (5) The Children’s Court must not make a guardianship order with respect to a child or young person if the order would be inconsistent with:
    - (a) any order made with respect to the child or young person by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children, or
    - (b) a guardianship order with respect to the young person made by the Guardianship Tribunal.
  - (6) A guardianship order remains in force (unless sooner varied or rescinded under section 90) until the child or young person concerned reaches 18 years of age.
  - (7) A guardianship order may only be made as a final order.

**79B Applications for guardianship orders**

- (1) Despite section 61 (1), an application for a guardianship order may be made by the following:
  - (a) the Secretary,
  - (b) with the written consent of the Secretary—the designated agency responsible for supervising the placement of the child or young person,
  - (c) with the written consent of the Secretary—a person who is seeking to be allocated all aspects of parental responsibility for the child or young person.

**Note—**

An authorised carer may be such a person.

- (1A) The Secretary must not make an application, or give consent to the making of an

application, under subsection (1) unless satisfied that the person to whom parental responsibility for the child or young person is to be allocated has agreed to undergo, and has satisfied, such suitability assessments as may be prescribed by the regulations.

- (2) The Children's Court may order an applicant for a guardianship order to notify those persons specified by the Children's Court of the making of the application.

**Note—**

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

- (3) Subject to any order the Children's Court may make, the applicant for a guardianship order is to make reasonable efforts to notify each parent of the child or young person of the making of the application for the order.
- (4) Each parent must be given a reasonable opportunity to obtain independent legal advice about the application and is entitled to be heard at the hearing of the matter.
- (5) Without limiting section 90 (1A), an applicant for variation or rescission of a guardianship order made in respect of a child or young person must notify the principal officer of the designated agency that was supervising the placement of the child or young person in out-of-home care immediately before the guardianship order was made of the making of the application.
- (6) Without limiting subsection (2), an applicant for a guardianship order other than the Secretary is to notify the Secretary of the making of the application for the order on the day the application is filed and the Secretary is entitled to be a party to the proceedings.
- (7) An application cannot be made under subsection (1) (c) by a person who is an authorised carer solely in his or her capacity as the principal officer of a designated agency.
- (8) Subject to any order the Children's Court may make, an applicant for a guardianship order must present the following to the Children's Court before the order is made:
- (a) copies of any written consent required to be given in relation to the applicant by subsection (1),
  - (b) a care plan prepared by the applicant,
  - (c) a copy of any report on the health, educational or social well-being of the child or young person that is available to the applicant and that is relevant to the care plan.
- (9) 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) the arrangements for contact between the child or young person and his or her parents, relatives and friends and other persons connected with the child or young person (including where relevant, any contact order made under section 86 by the Children's Court or contact variation agreement made under section 86A),
  - (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.
- (10) Other requirements and the form of care plan under this section may be prescribed by the regulations.
- (11) 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.
- (12) In this section:

***care plan*** means a plan to meet the needs of a child or young person that represents a set of proposals to be considered by the Children's Court.

**79C Financial assistance for children and young persons in respect of whom guardianship orders are made**

- (1) The Secretary may, after the making of the guardianship order, continue to provide financial assistance to the guardian of a child or young person who, immediately before the guardianship order was made, was being provided with financial assistance in respect of the child or young person under section 161 as if (for this purpose only) the child or young person were still in out-of-home care.
- (2) The Secretary may grant financial assistance to the guardian of a child or young person in respect of whom a guardianship order is made who was not being provided with financial assistance under section 161 before the guardianship order was made:
  - (a) if the Secretary considers it is appropriate to provide the financial assistance for the purpose of achieving the objects of the Act, or
  - (b) in such other circumstance as may be prescribed by the regulations.
- (3) Without limiting subsection (2), 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 Secretary may approve generally, or in a particular case or class of cases.

- (4) A guardian who is provided with financial assistance under this section must make an annual report to the Secretary (in the form required by the Secretary) concerning such matters as may be required by the Secretary relating to the provision of that financial assistance.

#### **79D Prospective guardian must notify Secretary of resident**

- (1) A prospective guardian must, as soon as reasonably practicable, notify the Secretary:
  - (a) if any person (other than the prospective guardian and any other prospective guardian of the child or young person) resides on the same property as the prospective guardian for 3 weeks or more, or
  - (b) if a person residing on the same property as the prospective guardian attains the age of 18 years.
- (2) This section does not apply to a prospective guardian who is authorised as an authorised carer by a designated agency if the designated agency is also responsible for supervising the placement of the child or young person for whom parental responsibility is being sought by the prospective guardian.

**Note—**

See section 137 (3) in the case of authorised carers authorised by a designated agency.

- (3) For the purposes of this section:

**reside on a property** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

#### **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 Secretary or, in the case of an application for a guardianship order, by the applicant for the order.

#### **81 (Repealed)**

#### **82 Report on suitability of arrangements concerning parental responsibility**

- (1) The Children's Court may, when making an order other than a guardianship 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 Secretary 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 Secretary 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 Secretary assesses that there is a realistic possibility of restoration, the Secretary is to prepare a permanency plan involving restoration and submit it to the Children's Court for its consideration.
- (3) If the Secretary assesses that there is not a realistic possibility of restoration, the Secretary 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 Secretary must consider whether adoption is the preferred option for the child or young person.

**Note—**

See section 10A (3) (e) in relation to adoption of Aboriginal and Torres Strait Islander children and young persons.

- (5) The Children's Court is to decide whether to accept the Secretary's assessment of whether or not there is a realistic possibility of restoration:
- (a) in the case of a child who is less than 2 years of age on the date the Children's Court makes an interim order allocating parental responsibility for the child to a person other than a parent—within 6 months after the Children's Court makes the interim order, and
  - (b) in the case of a child or young person who is 2 or more years of age on the date the Children's Court makes an interim order allocating parental responsibility for the child or young person to a person other than a parent—within 12 months after the Children's Court makes the interim order.
- (5A) However, the Children's Court may, having regard to the circumstances of the case and if it considers it appropriate and in the best interests of the child or young person, decide, after the end of the applicable period referred to in subsection (5), whether or not there is a realistic possibility of restoration.
- (6) If the Children's Court does not accept the Secretary's assessment, it may direct the Secretary 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) the child's or young person's birth parent, or
  - (b) if the child or young person has been adopted—the child's or young person's adoptive 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 Secretary 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 Secretary 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) An order may be made by the Children's Court doing any one or more of the following:
  - (a) stipulating minimum requirements concerning the frequency and duration of contact between a child or young person and his or her parents, relatives or other persons of significance to the child or young person,
  - (b) requiring contact with a specified person to be supervised,

- (c) denying contact with a specified person if contact with that person is not in the best interests of the child or young person.

(1A) A contact order may be made by the Children's Court:

- (a) on application made by any party to proceedings before the Children's Court with respect to a child or young person, or
- (b) with leave of the Children's Court—on application made by any of the following persons who were parties to care proceedings with respect to a child or young person:
  - (i) the Secretary,
  - (ii) the child or young person,
  - (iii) a person having parental responsibility for the child or young person,
  - (iv) a person from whom parental responsibility for the child or young person has been removed,
  - (v) any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person, or
- (c) with leave of the Children's Court—on application made by any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.

(1B) The Children's Court may grant leave under subsection (1A) (b) or (c) if it appears to the Court that there has been a significant change in any relevant circumstances since a final order was made in the proceedings.

(1C) 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 (1A) (c) unless it considers the person to have a sufficient interest in the welfare of the child or young person.

(1D) Before granting leave under subsection (1A) (b) or (c), the Children's Court:

- (a) must take into consideration whether the applicant for the contact order and persons to whom the contact order applies have attempted, or been ordered by the Children's Court to try, to reach an agreement about contact arrangements by participating in alternative dispute resolution, and
- (b) may order the applicant and those persons to attend a dispute resolution conference conducted by a Children's Registrar under section 65 or alternative dispute resolution process under section 65A.

(1E) Subject to any order the Children's Court may make, an applicant for a contact order

under subsection (1A) (b) who was a party to care proceedings must notify other persons who were parties to the proceedings of the making of the application.

**Note—**

Section 256A sets out the circumstances in which the Children's Court may dispense with the requirement to give notice.

- (1F) A contact order made under subsection (1A) (b) on application of a person who was a party to proceedings in which an earlier contact order was made that has expired may be made in the same or different terms to the expired order.
- (2) The Children's Court may make an order that contact be supervised by the Secretary 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 Secretary's or person's consent and must not be made in relation to contact with a child or young person who is the subject of a guardianship order.
- (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.
- (5) A contact order made under this section has effect for the period specified in the order, unless the order is varied or rescinded under section 86A or 90.
- (6) Despite subsection (5), if the Children's Court decides (whether by acceptance of the Secretary's assessment under section 83 or otherwise) that there is no realistic possibility of restoration of a child or young person to his or her parent, the maximum period that may be specified in a contact order made under subsection (1A) concerning the child or young person is 12 months.
- (7) Subsection (6) does not apply to a contact order made on the application of a former party to proceedings in which an earlier contact order was made that has expired.

**86A Variation of contact orders by agreement**

- (1) A **contact variation agreement** is an agreement to vary the terms of a contact order in the light of a change in any relevant circumstances since the contact order was made or last varied.
- (2) A contact variation agreement must:
  - (a) be in writing, and
  - (b) be signed and dated by those parties to the proceedings in which the contact

order was made who are affected by the variation and, if the contact variation agreement is made less than 12 months after the contact order was made, the legal representative of the child or young person, and

(c) be registered with the Children's Court by those parties within 28 days after the date on which the agreement was signed.

- (3) The contact variation agreement is taken to be registered with the Children's Court when filed with the registry of the Court without the need for any order or other action by the Court.
- (4) The contact variation agreement takes effect only if (and when) it is registered.
- (5) The contact variation agreement has effect from the date of registration until the end of the period specified in the variation agreement.
- (6) Nothing in this section prevents the variation of a contact order under section 90.

#### **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) Subject to any order the Children's Court may make, a person who makes an application under this section must give notice of the application to the persons who

were parties to the proceedings in which the care order was made.

**Note—**

Section 256A sets out the circumstances in which the Children's Court may dispense with the requirement to give notice.

- (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 Secretary, 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 Secretary) 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 Secretary is not a party to the proceedings,

the applicant must notify the Secretary of the application, and the Secretary 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 Secretary, 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 Secretary.

### **90A Prohibition orders**

- (1) The Children's Court may, at any stage in care proceedings, make an order (a **prohibition order**) prohibiting any person, including a parent of a child or young person or any person who is not a party to the care proceedings, 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.
- (2) A party to care proceedings during which a prohibition order is made may notify the Children's Court of an alleged breach of the prohibition order.
- (3) The Children's Court, on being notified of an alleged breach of a prohibition order:
  - (a) must give notice of its intention to consider the alleged breach to the person alleged to have breached the prohibition order, and
  - (b) must give that person an opportunity to be heard concerning the allegation before it determines whether or not the order has been breached, and
  - (c) is to determine whether or not the order has been breached, and
  - (d) if it determines that the order has been breached—may make such orders (including a parent capacity order) as it considers appropriate in all the circumstances.
- (4) The person who is alleged to have breached the prohibition order is entitled to be heard, and may be legally represented, at the hearing of the matter.

### **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.

### **Part 3 Parent capacity orders**

#### **91A Interpretation**

In this Part:

**parent**, in relation to a child or young person, means the following:

- (a) the child's or young person's birth parent,
- (b) if the child or young person has been adopted—the child's or young person's adoptive parent.

**parent capacity order** means an order requiring a parent or primary care-giver of a child or young person to attend or participate in a program, service or course or engage in therapy or treatment aimed at building or enhancing his or her parenting skills.

#### **91B When parent capacity orders may be made**

A parent capacity order may be made in relation to a parent or primary care-giver of a child or young person by the Children's Court:

- (a) on the application of the Secretary, or

- (b) on the Children's Court's own initiative if it determines under section 90A that a prohibition order has been breached by the parent or primary care-giver.

### **91C Applications for parent capacity orders**

- (1) The Secretary is to cause a copy of an application made under section 91B (a) to be served on the parent or primary care-giver in relation to whom the order is sought to be made as soon as is reasonably practicable after the application is filed.
- (2) The copy of the 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.

### **91D Dispute resolution conferences**

- (1) If it considers it appropriate, the Children's Court may, before or at any stage during the hearing of an application by the Secretary for a parent capacity order, or after it finds a prohibition order has been breached in proceedings under section 90A, refer the matter to a Children's Registrar to be dealt with under this section.
- (2) The Children's Registrar is to arrange and conduct a dispute resolution conference between the Secretary and the parent or primary care-giver in relation to whom the order is sought (the **parties**).
- (3) The purpose of a dispute resolution conference is to provide the parties with an opportunity to agree on action that should be taken to build or enhance the parenting skills of the parent or primary care-giver.
- (4) 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 (including the formulation of an order that may be made by consent under section 91F), or
  - (b) if the parties cannot agree on the action to be taken, 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, and
    - (iv) to set a timetable for the hearing of the matter by the Children's Court.
- (5) A party may be legally represented at a dispute resolution conference.

### **91E Making of parent capacity orders**

- (1) The Children's Court may make a parent capacity order in relation to a parent or primary care-giver of a child or young person (including a parent or primary care-giver found to have breached a prohibition order under section 90A) if it is satisfied that:
  - (a) there is an identified deficiency in the parenting capacity of the parent or primary care-giver that has the potential to place the child or young person at risk of significant harm and it is reasonable and practicable to require the parent or primary care-giver to comply with the order, and
  - (b) the parent or primary care-giver is unlikely to attend or participate in the program, service or course or engage in the therapy or treatment required by the order unless the order is made.
- (2) A parent capacity order may be made whether or not a care application or care order has been made and at any stage in care proceedings.

### **91F Orders made by consent**

- (1) The Children's Court may, with the consent of the Secretary and the parent or primary care-giver who will be subject to a parent capacity order, make that order by giving effect to the terms of an agreement reached between the Secretary and the parent or primary care-giver concerning his or her attendance or participation in a program, service or course or engagement in therapy or treatment aimed at building or enhancing his or her parenting skills (a **consent order**).
- (2) A consent order may be made following the conclusion of a dispute resolution conference or at any stage of proceedings on an application for a parent capacity order.
- (3) A consent order may be made by the Children's Court if it considers it reasonable and practicable to do so and that the terms of the order are appropriate in the circumstances.
- (4) The functions conferred on the Children's Court by this section in relation to an application made under section 91B (a) may be exercised by a Children's Registrar.

**Note—**

See section 93A (Powers exercised by Children's Registrar).

### **91G Duration of parent capacity orders**

- (1) A parent capacity order has effect for the period specified in the order, unless the order is varied or revoked under section 91H.
- (2) The period for which a parent capacity order has effect may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified

future event.

### **91H Variation or revocation of parent capacity order**

- (1) The Children's Court may at any time vary or revoke a parent capacity order (including a parent capacity order made after a breach of a prohibition order) on application by:
  - (a) the Secretary, or
  - (b) the parent or primary care-giver to whom it relates.
- (2) The Children's Court may vary or revoke a parent capacity order if the Court is satisfied there has been a significant change in any relevant circumstances since the order was made or last varied.
- (3) Subject to any order the Children's Court may make, a person who makes an application under this section must notify other persons who were parties to the proceedings for the making of the parent capacity order of the making of the application.

**Note—**

Section 256A sets out the circumstances in which the Children's Court may dispense with the requirement to give notice.

- (4) The Children's Court must, before varying or revoking a parent capacity order under this section:
  - (a) allow all parties a reasonable opportunity to be heard on the matter, and
  - (b) have regard to the factors that the Children's Court is required to have regard to under section 91E in considering whether or not to make a parent capacity order and in considering the terms of a parent capacity order.

### **91I Right of appeal**

- (1) A party to proceedings under this Part who is dissatisfied with a parent capacity order of the Children's Court (including a parent capacity order made under section 90A) may, in accordance with the rules of the District Court, appeal to the District Court on a question of law.
- (2) The District Court is to hear and determine the appeal and make such order as it thinks appropriate by reason of its decision, including, without limiting the Court's power to make such orders, an order confirming, varying or setting aside the decision of the Children's Court.
- (3) 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.

- (4) 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.

#### **93A Powers exercised by Children's Registrar**

- (1) A power conferred by this Act when exercised by a Children's Registrar is taken to have been exercised by the Children's Court.
- (2) The exercise by a Children's Registrar of a power conferred by this Act does not prevent the exercise of the power by the Children's Court.
- (3) No matter or thing done or omitted to be done by a Children's Registrar under section 65, 91D or 244C subjects the Children's Registrar to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of that section.

#### **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 Secretary, 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 Secretary of the Department of Justice.

### **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.

(1B) This section applies to the publication or broadcast of a child or young person's name to the public, or a section of the public, by publication in a newspaper or periodical publication, by radio or television broadcast or other electronic broadcast, by the internet, or by any other means of dissemination.

(1C) The publication of information to a website that provides the opportunity for, or facilitates or enables, dissemination of information to the public or a section of the public (whether or not the particular publication results in the dissemination of information to the public or a section of the public) constitutes the publication of information to the public or a section of the public for the purposes of this section.

(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.

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

(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 Secretary if the Secretary 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 Secretary, 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 Secretary 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 Secretary 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 Bail decision may be made under [Bail Act 2013](#)

- (1) The Children's Court, a Children's Magistrate or a Registrar may make a bail decision under the [Bail Act 2013](#) in respect of a person who is brought before the Court, Magistrate or Registrar after being arrested on a warrant issued under this Part in relation to proceedings before the Children's Court.
- (2) The [Bail Act 2013](#) applies in respect of the person as if:
  - (a) the person were accused of an offence, and
  - (b) the proceedings before the Children's Court were proceedings for that offence.
- (3) For the purpose of applying the [Bail Act 2013](#):
  - (a) the Children's Court or a Children's Magistrate has the same functions as the Local Court under that Act, and
  - (b) a Registrar has the same functions as an authorised justice under that Act, and
  - (c) section 74 of the [Bail Act 2013](#) (Multiple release or detention applications to same court not permitted) does not apply.
- (4) A power to issue a warrant of commitment under this Part is subject to the provisions of the [Bail Act 2013](#), as applied by this section.
- (5) Without limiting section 9, in taking any action or making any decision under the [Bail Act 2013](#), 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 Powers of District Court and Children's Court to hear fresh bail application

- (1) If the Children's Court or a Children's Magistrate makes a bail decision under section 109U, the District Court has power to hear a fresh bail application in relation to the matter.
- (2) If a Registrar makes a bail decision under section 109U, the Children's Court has power to hear a fresh bail application in relation to the matter.
- (3) A power to hear a bail application conferred by this section may be exercised only if the bail application is made by:
  - (a) the person who is the subject of the bail decision, or
  - (b) the Secretary (who is taken to be the prosecutor for the purposes of the bail application).

**Note—**

Section 75 of the *Bail Act 2013* provides that a fresh bail application is to be dealt with as a new hearing.

- (4) If bail is refused or revoked on an application under this section, the District Court or Children’s Court 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.
- (5) The regulations may make provision for bail applications, and the powers of the District Court and Children’s Court in respect of bail applications, under this Division.
- (6) A detention application or variation application under the *Bail Act 2013* cannot be made in relation to a matter after a bail decision in relation to that matter is made under section 109U, except as provided for by this section.
- (7) Nothing in this section limits the rights of a person held in custody under this Part to make a release application under the *Bail Act 2013*.
- (8) In this section:

***bail application*** has the same meaning as in the *Bail Act 2013*.

## **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 Secretary 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 Secretary 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 Secretary to attempt to resolve those differences.
- (2) On receiving a request, the Secretary must seek to resolve the differences, by any form of alternative dispute resolution the Secretary 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 Secretary must formulate an alternative parenting plan if the Secretary is a party to the proceedings, and
- (b) any party may formulate an alternative parenting plan if the Secretary 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 Secretary 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) Subject to any order the Children's Court may make, a person who makes an application under this section must notify the other persons referred to in subsection (1) of the making of the application.

#### **Note—**

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



to give notice.

### **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 alternative dispute resolution 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 Secretary.
- (2) On receipt of a report, the Secretary must conduct such investigation and assessment concerning the child as the Secretary considers necessary.
- (3) The Secretary may provide or arrange for the provision of services, including residential accommodation, where appropriate, for a child whose homelessness has been reported to the Secretary.

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

Any person may, with the consent of the young person, report the homelessness of a young person to the Secretary.

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

- (1) A person (other than an excluded 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 Secretary of the child's whereabouts.

Maximum penalty: 200 penalty units.

#### **Note—**

The police will notify the Secretary of the details of children who have been reported to the police as missing. If the Secretary becomes aware that a child reported as missing is safe, the Secretary 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 Secretary.

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 Secretary.

- (2) In this section:

***excluded person*** means a person who:

- (a) is a friend or relative of the child who maintains both a close personal relationship with the child through frequent personal contact and a personal interest in the child's welfare, and

- (b) does not provide support to the child wholly or substantially on a commercial basis.

## 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 an approved provider of education and care services under the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*, or
  - (b) any care provided by a relative or kin 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 Secretary, or
  - (iii) it is provided pursuant to a supported out-of-home care arrangement as referred to in section 153, or
  - (b1) any care of a child or young person provided by a person who has parental responsibility for the child or young person under a guardianship order, 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 Secretary 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 Secretary 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 Secretary 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 Secretary forming the opinion that the child or young person is in need of care and protection, arranged, provided or otherwise supported by the Secretary 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.

#### **Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

- (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, or
- (d) subject to the regulations, a person who is assessed to be suitable to be approved to adopt a child under section 45 of the [Adoption Act 2000](#).

(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,
- (b1) the authorisation of persons, by designated agencies, as authorised carers on a provisional basis,
- (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, including prescribing events, the occurrence of which, raise a presumption that an authorisation is to be cancelled.
- (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, as soon as reasonably practicable, notify the designated agency:
- (a) if any person (other than the carer) resides on the same property as the carer for 3 weeks or more, or
  - (b) if a person residing on the same property as the carer attains the age of 18 years.

**Note—**

See section 10 of the *Child Protection (Working with Children) Act 2012* which requires that an adult person who resides on the same property as an authorised carer for more than 3 weeks must hold a working with children check clearance.

- (4) For the purposes of this section:

**reside on a property** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

**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.

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

### **139 Designated agencies**

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

(a) a Public Service agency (or part of a Public Service agency), or

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

if the agency or organisation (or part of the agency 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.

**148-149A (Repealed)**

**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 Secretary) 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 Secretary, 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 administratively reviewed by the Civil and Administrative Tribunal under the [Administrative Decisions Review Act 1997](#):
    - (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 administrative 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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 Civil and Administrative Tribunal, on behalf of the authorised carer, for an administrative review under the *Administrative Decisions Review Act 1997* 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 Review Act 1997* as modified by section 149H and the regulations (if any).
- (3) If an application is made to the Civil and Administrative 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 Review 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 ADR Act, and
  - (b) the following provisions of the ADR Act do not apply in relation to the application:
    - (i) Division 2 (Duty to give reasons on request) of Part 2 of Chapter 3,
    - (ii) section 53 (2) (Requirements for an application),
    - (iii) Division 2 (Effect of pending applications on reviewable decisions) of Part 3 of Chapter 3, and
  - (c) a reference in section 58 (1) of the ADR 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 ADR 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 ADR Act in relation to an application referred to in subsection (1).

(3) In this section, the **ADR Act** means the *Administrative Decisions Review 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 Secretary 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 Secretary, in need of care and protection.
- (2) The Secretary:
  - (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 Secretary 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 Secretary, 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 Secretary 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 Secretary has renewed the arrangement pursuant to subsection (2)—6 months,  
after the making of the arrangement, or
  - (d) on its termination by the Secretary 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 Secretary 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 Secretary may, whether on the application of the child or young person, or a parent of the child or young person, or on the Secretary's own motion, terminate a temporary care arrangement in respect of a child or young person if:
  - (a) the Secretary 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 Secretary 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 Secretary 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 (other than a child or young person referred to in subsection (3)) has been placed in out-of-home care under any such other arrangement

supported by the Secretary, 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) A child or young person who has been placed in out-of-home care with a relative or kin otherwise than by a court ordered placement under an arrangement under this section supported by the Secretary must not remain in the out-of-home care provided under the arrangement for more than 2 years.

(4) In this section:

***court ordered placement*** means the placement of a child or young person with a relative or kin of the person who has been allocated all aspects of parental responsibility for the child or young person by virtue of an order of the Children's Court or a parenting order in favour of the relative or kin under the *Family Law Act 1975* of the Commonwealth.

## **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 Secretary or an authorised carer.
- (2) If a person, other than the Secretary 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 Secretary 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.

#### **Note—**

An offence against subsection (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

### **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.
- (3A) Subsection (1) does not require the designated agency having supervisory responsibility for a child or young person who is in a court ordered placement (within the meaning of section 153), and in respect of whom supported out-of-home care is provided, to conduct an annual review if a review of the placement of the child or young person conducted under another provision of this Act has determined that the placement is safe and secure.
- (3B) The authorised carer of a child or young person determined to be in a safe or secure placement as referred to in subsection (3A) must submit a self-assessment report to the designated agency having supervisory responsibility for the child or young person at least once in every period of 12 months after the child or young person is placed in supported out-of-home care.
- (3C) The self-assessment report is to address such matters as may be required by the

designated agency (including verification that the child or young person resides with the authorised carer and of the need for on-going provision of support).

- (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 designated agency or a registered agency.

- (2) The regulations may make provision for or with respect to:

- (a) arrangements for voluntary out-of-home care, and
- (b) the registration of a Public Service agency or an organisation (or part of any such agency or organisation) as a registered agency 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 Secretary 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.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

## **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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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, or
  - (c) in other circumstances prescribed by the regulations.

#### **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 Secretary) 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 Secretary) 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 Secretary 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 Secretary, 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 Secretary 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 Secretary, 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 Secretary.

(2A) The Secretary 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 Secretary, or
- (b) that have been authorised by the Secretary to be deposited in the records repository nominated by the Secretary,

if the designated agency requests the records in order to comply with a request under section 168 or 169.

(3) Records delivered to the Secretary 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 Secretary 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.

**171A Principal officer of designated agency must not reside with children under agency's care**

- (1) The principal officer of a designated agency must not reside on the same property as a child or young person who is in out-of-home care supervised by the designated agency.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply if the principal officer resides with the child or young person at a facility of the designated agency at which out-of-home care is provided.

- (3) In this section:

**reside on a property** has the same meaning as in the [Child Protection \(Working with Children\) Act 2012](#).

**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.

**172A Secretary to report annually on deaths of children and young persons**

- (1) The Secretary must make a written report to the Minister every year on the reportable deaths known to the Secretary that occurred during the previous calendar year.

- (2) In this section:

**reportable death** means the death of any child or young person:

- (a) who was the subject of a risk of significant harm report made during the period of 3 years immediately preceding the death of the child, or
- (b) who was a sibling of a child or young person who was the subject of a risk of significant harm report made during the period of 3 years immediately preceding the death of the sibling, or

- (c) for whom the Minister has parental responsibility under this Act, or
- (d) who is in statutory out-of-home care or supported out-of-home care, or
- (e) for whom the Secretary or a designated agency has care responsibility under section 49, or
- (f) who is the subject of a sole parental responsibility order made under section 149 (as in force immediately before its repeal by the *Child Protection Legislation Amendment Act 2014*).

**risk of significant harm report** means a report given to the Secretary under this Act that, in the assessment of the Secretary, indicates that a child or young person is at risk of significant harm (within the meaning of Part 2 of Chapter 3).

**Note—**

See section 23 (Child or young person at risk of significant harm).

- (3) A report under this section must include the following:
  - (a) the number of reportable deaths that occurred during the calendar year to which the report relates,
  - (b) the general circumstances of each of those reportable deaths, if known,
  - (c) details relating to the implementation of any Departmental practice changes in response to, or resulting from, those reportable deaths.
- (4) A report under this section is to be made to the Minister as soon as practicable after the end of the calendar year to which the report relates.
- (5) The Minister is to cause a copy of the report made to the Minister under this section to be tabled in each House of Parliament as soon as practicable after the report is made to the Minister.

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

### **Part 1 Medical examination of children and young persons**

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

- (1) If the Secretary 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 Secretary 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 Secretary 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.

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

- (3) If a person fails to comply with the requirement contained in a notice served on the person under subsection (1), the Secretary 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 Secretary 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 Secretary.
- (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 Secretary, 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 Secretary 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.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

- (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 Civil and Administrative 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, or
  - (d) the Secretary, in the case of special medical treatment described in paragraph (c1) of the definition of **special medical treatment** in subsection (5), grants an exemption under subsection (4A).
- (3) Consent to the carrying out of special medical treatment on a child must not be given by the Civil and Administrative Tribunal unless the Civil and Administrative 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) (Repealed)
- (4A) The Secretary may, by order in writing, grant an exemption (either generally or in a particular case) in relation to the administration of a drug referred to in paragraph (c1) of the definition of **special medical treatment** in subsection (5) on the written

request of the Secretary of the Ministry of Health.

**Note—**

A copy of the general exemption issued by the Secretary can be accessed at the Department's website.

(4B) If the Secretary of the Ministry of Health makes a written request under subsection (4A) for an exemption in relation to the administration of a particular drug to a particular child and does not receive notification of the decision of the Secretary of the Department within 21 days after the making of the request, the exemption is taken to have been granted on the expiration of the 21-day period.

(5) In this section:

**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
- (c1) any medical treatment that involves the administration of a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966* over a period or periods totalling more than 10 days in any period of 30 days, or

**Note—**

A drug of addiction is a substance specified in Schedule Eight of the Poisons List proclaimed under the *Poisons and Therapeutic Goods Act 1966*. The Poisons List adopts by reference, with certain modifications, Schedules 1-8 of the Poisons Standard under the *Therapeutic Goods Act 1989* of the Commonwealth. See also the Poisons List information available at [www.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons\\_list\\_pdf.asp](http://www.health.nsw.gov.au/resources/publichealth/pharmaceutical/poisons_list_pdf.asp).

- (c2) any medical treatment that involves an experimental procedure that does not conform to the document entitled *National Statement on Ethical Conduct in*

*Human Research 2007* published by the National Health and Medical Research Council in 2007 and updated in 2013, or

**Note—**

A copy of the *National Statement on Ethical Conduct in Human Research 2007* can be found at [www.nhmrc.gov.au/guidelines/publications/e72](http://www.nhmrc.gov.au/guidelines/publications/e72).

- (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.

## **Part 3 Miscellaneous**

### **177A Regulations**

- (1) The regulations may make provision for or with respect to the procedures to be followed by the designated agency having supervisory responsibility for a child or young person in out-of-home care in authorising, consenting to or monitoring the physical, psychological, psychiatric or other medical examinations, treatment and control of the behaviour of the child or young person under this Chapter.
- (2) Without limiting subsection (1), the regulations may require a designated agency to carry out such procedures in accordance with any publicly available guidelines that may be prescribed by the regulations.

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

### **Part 1 Appointment**

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

- (1) The Governor may appoint a Children's Guardian.
- (2)-(4) (Repealed)

#### **178A Term of office**

- (1) The Children's Guardian holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to be appointed for more than 2 terms of office as Children's Guardian (whether or not consecutive terms).

#### **178B Full-time office**

The office of Children's Guardian is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

#### **178C Employment and remuneration**

- (1) The employment of the Children's Guardian is (subject to this Part) to be governed by a contract of employment between the Children's Guardian and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the Children's Guardian (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):
  - (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,

- (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

#### **178D Vacancy in office**

- (1) The office of Children's Guardian becomes vacant if the holder:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is removed from office under section 178E.
- (2) If the office of Children's Guardian becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **178E Removal from office**

- (1) The Governor may remove the Children's Guardian from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Children's Guardian cannot be removed from office under Part 6 of the [Government Sector Employment Act 2013](#).

#### **178F Children's Guardian not Public Service employee**

The office of Children's Guardian is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by section 178C).

#### **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 Principal functions of Children's Guardian**

- (1) The principal functions of the Children's Guardian are as follows:
  - (a) to exercise functions relating to persons engaged in child-related work, including working with children check clearances, under the *Child Protection (Working with Children) Act 2012*,
  - (b) to promote the best interests of all children and young persons in out-of-home care,
  - (c) to ensure that the rights of all children and young persons in out-of-home care are safeguarded and promoted,
  - (d) to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, in accordance with the regulations,
  - (e) to accredit designated agencies and to monitor the carrying out of their responsibilities under this Act and the regulations,
  - (f) to register organisations that provide or arrange voluntary out-of-home care and to monitor the carrying out of their responsibilities under this Act and the regulations,

- (g) to exercise functions relating to the employment of children, including the making and revocation of exemptions from the requirement to hold an employer's authority,
- (h) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children,
- (i) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children,
- (j) to encourage organisations to develop their capacity to be safe for children as referred to in section 38 of the *Child Protection (Working with Children) Act 2012*,
- (k) to accredit adoption service providers under the *Adoption Act 2000* and to monitor the carrying out of the responsibilities with respect to the provision of adoption services under that Act and the regulations of those providers and the Secretary.

(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 Appointment of advisory committees**

- (1) The Children's Guardian may appoint such advisory committees as the Children's Guardian considers appropriate to assist the Children's Guardian in the exercise of the Children's Guardian's functions. The Children's Guardian may disband any such advisory committee at any time.
- (2) The procedure of such an advisory committee is to be determined by the Children's Guardian or (subject to any determination of the Children's Guardian) by the committee.
- (3) A member of such an advisory committee is entitled to such allowances in connection with the work of the committee as the Minister approves in respect of the member.

#### **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 Secretary or a Public Service agency) to comply promptly with the requirements of the direction.

(2A) A prescribed person (other than the Secretary or a Public Service agency) 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.

**Note—**

An offence against subsection (2A) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

(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 Secretary, 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.

### **186A Referral of matters to police and other investigative agencies**

- (1) This section applies to any information obtained by the Children's Guardian in the course of exercising any functions (other than information obtained in the course of exercising functions under section 40A of the [Child Protection \(Working with Children\) Act 2012](#)), being information relating to a possible criminal offence under any law or to grounds for possible disciplinary action under any law.
- (2) The Children's Guardian may refer any such information to the Commissioner of Police, the Ombudsman, the Secretary or any other investigative or government agency that the Children's Guardian considers appropriate.
- (3) Nothing in this section limits or affects the operation of Chapter 16A.

### **186B Protection from liability**

A matter or thing done or omitted to be done by the Children's Guardian, an advisory committee of the Children's Guardian, a member of any such advisory committee or any person acting under the direction of the Children's Guardian or the advisory committee does not, if the matter or thing was done or omitted in good faith for the purposes of executing this or any other Act, subject the Children's Guardian, member of the advisory committee or a person so acting personally to any action, liability, claim or demand.

## **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.

## **Chapters 11-12A**

### **191-220B (Repealed)**

## **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 Children’s Guardian 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.

### **Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

## **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.

### **Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

## 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 Children's Guardian from being required to hold an employer's authority.
- (2) A person is exempt by the Children's Guardian 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 Children's Guardian 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 Children's Guardian has taken into consideration any representation made to the Children's Guardian 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 Children's Guardian 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 Children's Guardian 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.

## **226A Enforcement of undertakings**

- (1) The Children's Guardian 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 Children's Guardian has a function under this Act.
- (2) Without limiting subsection (1), an undertaking that the Children's Guardian may accept includes an undertaking to carry out a restorative justice activity.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Children's Guardian. The consent of the Children's Guardian is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (4) The Children's Guardian may apply to the Supreme Court for an order under subsection (5) if the Children's Guardian considers that the person who gave the undertaking has breached any of its terms.
- (5) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) 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 breach,
  - (c) 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 breach,
  - (d) an order suspending or revoking any employer's authority,
  - (e) any other order the Court considers appropriate.

## **226B Power to compel production of information**

- (1) The Children's Guardian may, by notice in writing, request that a person provide the

Children's Guardian with information (including documents) relevant to the exercise of its functions relating to the employment of children.

- (2) A notice under subsection (1) may be given for the purposes of:
  - (a) preparing submissions to the Supreme Court under this Act, or
  - (b) investigating a complaint relating to the employment of children.
- (3) A person to whom any such request is given is by this section authorised to provide the Children's Guardian with the information requested.
- (4) A notice under this section may specify a day on or before which the notice is to be complied with.
- (5) If documents are given to the Children's Guardian under this section, the Children's Guardian:
  - (a) may take possession of, and make copies of or take extracts from, the documents, and
  - (b) may keep possession of the documents for such period as is necessary for the purposes of preparing the submission or investigating the complaint, and
  - (c) during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Children's Guardian.

## **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.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

## **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 Secretary,

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.

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

- (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.

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

- (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 Secretary, 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 Secretary may transfer order**

- (1) The Secretary 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 Secretary 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 Secretary 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 Secretary must disregard the period for which it is possible to make such an order in that State.
- (4) The Secretary 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 Secretary, 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 Secretary to have regard to certain matters**

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

- (a) the principles in section 9, and
- (b) whether the Secretary 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 Secretary has decided to transfer a child protection order to a participating State under this Division, the Secretary 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 3 of the *Administrative Decisions Review Act 1997* for a written statement of reasons for the decision, and
  - (b) the decision may be administratively reviewed by the Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997*, whose decision may be appealed against to an 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 Secretary, 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 Secretary under this Division.
- (4) The Secretary 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 Secretary, 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary) written notice of it must be served on the Secretary, 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 Secretary, 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 Secretary 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 Secretary 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.

### **231O 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 Secretary) written notice of it must be served on the Secretary, 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 Secretary 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 Secretary 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 Secretary 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.

**231QA Effect of registration**

- (1) A child protection order registered in the Children's Court under this Part is taken for all purposes (except for the purposes of appeal) to be a care order of the relevant type made by the Children's Court on the day on which it is registered and it may be varied or rescinded, or a breach of it dealt with, under this Act accordingly.
- (2) An interim order registered in the Children's Court under this Part is taken for all purposes to be an interim care order made by the Children's Court under this Act having effect, from the day on which it is registered, for the period specified in the order.
- (3) An interim order registered in the Children's Court under this Part cannot be varied under this Act, but nothing in this subsection prevents an application for a new interim care order being made under this Act and, if the application is granted, the interim order being rescinded.
- (4) Despite subsection (3), a breach of an interim order registered in the Children's Court under this Part may be dealt with under this Act in the same way as a breach of any other interim care order.
- (5) If an order under an interstate law to transfer a child protection proceeding to New South Wales is registered under this Part, the proceeding is taken to have been commenced in the Children's Court on the day on which the order is registered.

**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 Secretary, 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 Secretary 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 Secretary 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 Secretary 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 Secretary in New South Wales instead of to an interstate officer.

**231W Discretion of Secretary 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 Secretary 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 Secretary 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 Secretary or a police officer may apply to an authorised officer for a search warrant if the Secretary 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 Secretary 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 Children's Guardian 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.

### **236A Entry without warrant into premises—suspected employment of children**

- (1) This section applies to any premises that the Children's Guardian reasonably suspects is a place at which a person is employing a child in contravention of Chapter 13.
- (2) The Children's Guardian 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 the purpose of ensuring that the provisions of Chapter 13 with respect to the premises are being complied with.

- (3) Nothing in this section authorises the entry of a dwelling.

### **237 Entry and inspection under search warrant**

- (1) The Secretary or a police officer may apply to an authorised officer for a search warrant if the Secretary 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.

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**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 15A Alternative dispute resolution**

**244A Interpretation**

In this Act:

**alternative dispute resolution** means any process (other than a process involving a judicial determination) conducted under this Act in which an impartial person assists persons in dispute to resolve issues between them, and includes (without limitation) the following:

- (a) alternative dispute resolution conducted under section 37,
- (b) a dispute resolution conference conducted under section 65,
- (c) alternative dispute resolution conducted under section 65A,
- (d) a dispute resolution conference conducted under section 91D,
- (e) alternative dispute resolution conducted under section 114.

**244B Protection of information disclosed in alternative dispute resolution**

- (1) Evidence of anything said or of any admission made in the course of alternative dispute resolution is not admissible in any proceedings before any court, tribunal or body.
- (2) Evidence of the conduct of any party in the course of alternative dispute resolution is not admissible in any proceedings before any court, tribunal or body.
- (3) A document prepared for the purposes of, or in the course of, or as a result of, alternative dispute resolution is not admissible in evidence in any proceedings before any court, tribunal or body.
- (4) Subsections (1)–(3) do not apply with respect to any evidence or document:
  - (a) if the persons participating in, or identified during, the alternative dispute resolution and in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 244C (2) (b) or (c), (3) or (4).

**244C Confidentiality of information disclosed in alternative dispute resolution**

- (1) A person who conducts or participates in any alternative dispute resolution process must not disclose anything said or done or any admission made during the process to any other person, except as permitted by subsections (2)–(4).
- (2) A person conducting alternative dispute resolution may disclose information obtained in connection with the alternative dispute resolution only in any one or more of the following circumstances:
  - (a) with the consent of the person from whom the information was obtained,
  - (b) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
  - (c) if, as a result of obtaining the information, the person conducting alternative dispute resolution has reasonable grounds to suspect that a child or young person is at risk of significant harm within the meaning of Part 2 of Chapter 3,

**Note—**

See section 23.

- (d) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.
- (3) A person participating in alternative dispute resolution may disclose information

obtained in connection with the administration or execution of this Chapter only if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property.

- (4) Any person conducting or participating in alternative dispute resolution may disclose information obtained in connection with the alternative dispute resolution if the disclosure is reasonably required for the purpose of referring any person conducting the alternative dispute resolution or a legal practitioner participating in the alternative dispute resolution to an appropriate body for any professional misconduct alleged to have been committed in connection with the alternative dispute resolution.

## **Chapter 16 Administrative review**

### **245 Decisions that are administratively reviewable by Civil and Administrative Tribunal**

- (1) Each of the following decisions made under or for the purposes of this Act or the regulations is an administratively reviewable decision for the purposes of section 28 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*:
- (a) a decision of the relevant decision-maker to suspend a person's authorisation as an authorised carer or to impose conditions on a person's authorisation,
  - (a1) a decision of the relevant decision-maker to cancel a person's authorisation as an authorised carer, other than a decision to cancel an authorisation granted on a provisional basis or a decision to cancel an authorisation on the occurrence of an event prescribed under section 137 (2) (e),
  - (b) a decision of the relevant decision-maker to accredit or not to accredit a Public Service agency or an organisation (or part of a Public Service agency 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 Children's Guardian 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 Children's Guardian to declare under section 221 (2) that a person is taken to be the employer of a child,
  - (f) a decision of the Children's Guardian 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 Secretary 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, the Children's Guardian or the Secretary belonging to such class of decisions as may be prescribed by the regulations,
- (h) a decision of the Minister or the Secretary 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 Secretary or a designated agency as to the suitability of a person to be a guardian.
- (m), (n) (Repealed)

(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:

- (a) any body or organisation specified in section 248 (6) or that is prescribed by the regulations for the purposes of that section, or
- (b) any other body or class of bodies (including an unincorporated body or bodies), organisation or person prescribed by the regulations for the purposes of this 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 or a referral to an assessment officer under section 27A,
  - (b) the family of an unborn child the subject of such a report or referral,
  - (c) the expected date and place of birth of an unborn child the subject of such a report or referral.

#### **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.

#### **245CA Provision of information by any person**

- (1) This section applies to the following persons:
  - (a) an authorised carer or a carer applicant,
  - (b) a guardian or a prospective guardian,
  - (c) a person who resides on the same property as a person referred to in paragraph (a) or (b).
- (2) Any person (the **provider of information**) may provide information to a designated agency about another person if the provider of information:
  - (a) has been notified by the designated agency, the Children's Guardian or the Secretary that the other person is a person to whom this section applies, or
  - (b) otherwise reasonably believes the other person to be a person to whom this

section applies.

- (3) A designated agency may use any such information to determine whether a person is suitable to be, or to continue to be, an authorised carer or guardian.
- (4) Information may be provided under this section regardless of whether the provider has been requested to provide the information.
- (5) For the purposes of this section:

**reside on a property** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

#### **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 and interstate 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 Circuit Court of Australia,
- (c) the Commonwealth Department of Human Services,
- (d) the Commonwealth Department of Immigration and Border Protection, or any successor of that Department,
- (e) the Indigenous Affairs Group within the Commonwealth Department of the Prime Minister and Cabinet, or any successor of that group or Department that is responsible for indigenous affairs,
- (f) any other prescribed body that is a department of the public service, or an agency, of another State or Territory.

### **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 Secretary 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 Secretary 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 Secretary 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 Secretary.

(1) The Secretary may do either or both of the following:

- (a) the Secretary 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 Secretary may, in accordance with the requirements (if any) prescribed by the regulations, direct a prescribed body to furnish the Secretary 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 Public Service agency 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 Secretary and Children's Court**

- (1) The regulations may make provision for or with respect to the collection by the Secretary 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 Secretary 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 Secretary 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 Secretary or the Children's Court from doing anything in accordance with the regulations made under this section.

**248B Disclosure of information to bodies in other jurisdictions**

- (1) In this section:

**assessment information** means information relevant to assessing the suitability of a person to be an adoptive parent (within the meaning of the [Adoption Act 2000](#)), an authorised carer or a guardian or the equivalent of any of these in another jurisdiction and may include information about the person and any other person who resides on the same property as the person.

**reside on a property** has the same meaning as in the [Child Protection \(Working with Children\) Act 2012](#).

**State child protection body** means the following:

- (a) the Department,
  - (b) the Children's Guardian,
  - (c) each designated agency,
  - (d) each accredited adoption service provider.
- (2) The object of this section is to provide for the exchange of assessment information between State child protection bodies and bodies that arrange or provide child protection, out-of-home care, guardianship or adoption services in other jurisdictions.
- (3) The Minister may, by order published in the Gazette, make protocols setting out the circumstances under which assessment information may be exchanged under this section.
- (4) The protocols may contain recommended privacy standards for bodies in other jurisdictions and may prohibit the disclosure of information under this section to bodies that do not adopt those standards.
- (5) The Minister is to consult with the Privacy Commissioner in the preparation of the protocols.
- (6) A State child protection body may exchange assessment information with bodies that

arrange or provide child protection, out-of-home care, guardianship or adoption services in other jurisdictions, but only if the exchange is in accordance with the protocols.

- (7) Section 245G applies to a person who, acting in good faith, exchanges information in accordance with this section in the same way as it applies to a person who, acting in good faith, provides information under Chapter 16A.
- (8) Nothing in this section limits an exchange of assessment information that is otherwise permitted under any Act or law.

**Note—**

See for example section 231V.

**249 Delegation by Minister**

- (1) The Minister may delegate to the Secretary 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 Secretary**

- (1) The Secretary may delegate to any person any of the Secretary'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 Secretary if the delegate is authorised in writing to do so by the Secretary.

**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 Secretary 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.

#### **Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

(2) It is not an offence under this section for the Secretary to disclose information to a person who has made a report concerning any action taken as a consequence of the report if the Secretary is of the opinion that disclosure of the information is not inconsistent with the objects and principles of this Act.

### **254A Disclosure of information for research purposes**

(1) The Secretary may enter into arrangements with a research organisation for the

purposes of permitting the disclosure to the research organisation of information (including health information and personal information) that is held by the Department, the Children's Guardian, a designated agency or an accredited adoption service provider about any of the following persons (an **affected person**):

- (a) a person involved in an adoption or prospective adoption as a birth parent, adoptive parent, young person or child,
  - (b) an authorised carer,
  - (c) a child or young person in out-of-home care,
  - (d) a child or young person the subject of a final care order if the Children's Court has determined or accepted the Secretary's assessment that there is no realistic possibility of the child or young person being restored to his or her birth parents or adoptive parents.
- (2) The Secretary is not to enter into arrangements under this section unless satisfied that those arrangements will ensure that:
- (a) reasonable steps will be taken to de-identify information disclosed under the arrangements, and
  - (b) information disclosed under the arrangements will be treated by the research organisation as confidential, and
  - (c) as far as is reasonably practicable, no publication that uses or is based on information disclosed under the arrangements will enable the identity of an affected person to be ascertained, and
  - (d) as far as is reasonably practicable, any personal information disclosed under the arrangements will be used or dealt with in accordance with the information protection principles set out in sections 12, 17, 18 and 19 of the *Privacy and Personal Information Protection Act 1998* as those principles would apply if the research organisation were a public sector agency.

**Note—**

The *Privacy and Personal Information Protection Act 1998* requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act.

- (3) Before entering into arrangements for the disclosure of information under this section, the Secretary must consult with the Privacy Commissioner in relation to those arrangements.
- (4) A disclosure of information made in good faith under the arrangements does not constitute a contravention of any provision as to confidentiality in this Act and does not constitute a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*.

- (5) The provisions of the *Health Records and Information Privacy Act 2002* apply to health information disclosed under the arrangements as if the research organisation were a private sector person (within the meaning of that Act).

**Note—**

The *Health Records and Information Privacy Act 2002* requires a private sector person that collects, holds or uses health information to comply with the health privacy principles provided for by that Act.

- (6) In this section:

**health information** has the same meaning as in the *Health Records and Information Privacy Act 2002*.

**personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

**research organisation** has the same meaning as in the *Adoption Act 2000*.

## **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 Secretary 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 Secretary, 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 Secretary 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 Secretary that the person is not literate in the English language but is literate in another language,the Secretary 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 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 105 (2),

- (b) section 136 (2),
- (c) section 138 (2),
- (d) section 154 (3),
- (e) section 156B,
- (f) section 173 (2),
- (g) section 175 (1),
- (h) section 185 (2A),
- (i) section 222,
- (j) section 223 (1)-(4),
- (k) section 228,
- (l) section 230 (2),
- (m) section 230A (2),
- (n) section 241 (2),
- (o) section 254 (1).

(2) A person commits an offence against this section if:

- (a) a corporation commits an executive liability offence, and
- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
- (c) the person:
  - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
  - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty:** The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.



**258AA Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 258.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **258AB Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the **state of mind** of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **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 Secretary became aware of the alleged offence, or
  - (b) in any other case—within but not later than 6 months after the Secretary 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 Secretary 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 Secretary 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 issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

#### **Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) 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.
- (6) In this section, **authorised officer** means:
  - (a) a police officer, or
  - (b) a person employed in the Department who is authorised in writing by the Secretary as an authorised officer for the purposes of this section, or
  - (c) a person employed in the Office of the Children’s Guardian who is authorised in writing by the Children’s Guardian as an authorised officer for the purposes of this section.

## 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 284 of the *Criminal Procedure Act 1986* 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 284 of the *Criminal Procedure Act 1986*, 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 Secretary to exercise any function conferred or imposed on the Minister or the Secretary 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 Secretary 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 65A or 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 an administrative review by the Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997* of a decision of, or the failure or refusal to make a decision by, the Children's Guardian,
  - (j) the appointment of principal officers and other officers by designated agencies and registered agencies and the licensing of those principal officers,
  - (k) the register under section 181 (1) (d), including the information that is to be included on the register, the circumstances in which persons are required to enter information on the register, access to, and disclosure of, information on the register and any requirements for consultation with the Ombudsman in relation to the register or information held on the register,
  - (l) the disclosure of information under the arrangements referred to in section 254A, including any procedures or requirements in relation to that disclosure and any requirements on any organisation to which the information is disclosed.
- (1B) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (1A) (i) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.
- (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 Children's Guardian 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 Grant or refusal of authority**

- (1) 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 Children's Guardian that the applicant will comply with that Chapter and those conditions while the authority is in force.
- (2) When a person applies to the Children's Guardian for an employer's authority, the Children's Guardian must within 14 days:
  - (a) grant the 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.
- (3) The period of 14 days referred to in this clause may be varied or waived by agreement between the Children's Guardian and the applicant.

### **3 (Repealed)**

### **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 Children's Guardian:
  - (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 Children's Guardian 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 Children's Guardian 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 Children's Guardian may suspend or revoke an employer's authority at the request of the holder of the authority.

(3) If the Children's Guardian intends to suspend or revoke an employer's authority, the Children's Guardian 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 Children's Guardian 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 Children's Guardian's satisfaction that the Children's Guardian should not suspend or revoke the authority.

(4) When 28 days have expired after a notice has been served under subclause (3), the Children's Guardian 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 Children's Guardian 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 Children's Guardian 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 this Act or any Act that amends this Act.
- (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.

## Part 9 Provision consequent on enactment of [Royal Commissions and Ombudsman Legislation Amendment Act 2013](#)

### 30 Application of amendments to Child Sexual Abuse Royal Commission

- (1) The amendments made by the [Royal Commissions and Ombudsman Legislation Amendment Act 2013](#) to this Act extend to the Child Sexual Abuse Royal Commission.
- (2) In this clause, **Child Sexual Abuse Royal Commission** means the Royal Commission into institutional responses to allegations and incidents of child sexual abuse and related matters, issued by the Governor by Letters Patent on 25 January 2013 (and including any later alterations and variations of those Letters Patent).

## Part 10 Provisions consequent on enactment of [Child Protection Legislation Amendment Act 2014](#)

### 31 Definition

In this Part:

**amending Act** means the [Child Protection Legislation Amendment Act 2014](#).

### **32 Parent responsibility contracts**

- (1) An amendment made to sections 38A–38E by the amending Act extends (except as provided by subclause (2)) to a parent responsibility contract that is in force immediately before the commencement of the amendment.
- (2) Section 38E (4) as in force immediately before its repeal by the amending Act continues to apply to and in respect of a parent responsibility contract that is in force immediately before that repeal unless its terms are varied under sections 38A–38E as amended by the amending Act.

### **33 Contact orders**

- (1) An application may be made under section 86 (1A), as inserted by the amending Act, by a party to proceedings commenced (irrespective of whether or not finally determined) before the commencement of the insertion.
- (2) Section 86A, as inserted by the amending Act, extends to the variation of a contact order made before that insertion.

### **34 Orders for sole parental responsibility**

An order that is in force under section 149 of the Act (as in force immediately before its repeal by the amending Act) allocating sole parental responsibility to an authorised carer (or to the authorised carer and his or her partner) continues to have effect, on the repeal, as if that section were still in force.

### **35 Other orders allocating parental responsibility**

- (1) An order that is in force under section 79 (1) (a) (iii) of the Act (immediately before the substitution of that subparagraph by the amending Act) allocating all aspects of parental responsibility for a child or young person at a place other than the usual home of the child or young person to a relative or kin of the child or young person until the child or young person reaches 18 years of age (the **original order**) is taken, on the commencement of section 79A, to be a guardianship order allocating all aspects of parental responsibility for the child or young person to that relative or kin.
- (1A) A guardianship order that is taken to have been made under subclause (1) is taken to have allocated aspects of parental responsibility to the relevant relative or kin referred to in that subclause only and not to any other person.
- (2) Despite section 135 (3) (b1) (as inserted by the amending Act), a relative or kin of a child or young person who, immediately before being taken to have parental responsibility for a child or young person under a guardianship order by the operation of subclause (1), was being provided with financial assistance under section 161 may (subject to subclause (3) and the regulations) continue to be provided financial assistance under that section as if the child or young person were still in out-of-home



care for the purposes of this Act.

- (3) A person who is provided with financial assistance in accordance with subclause (2) must make an annual report to the Director-General (in the form required by the Director-General) concerning such matters as may be required by the Director-General relating to the provision of that financial assistance.

### **36 Existing supported out-of-home care arrangements**

Except as provided by clause 35, a provision of Chapter 8 that applied to or in respect of the placement of a child or young person in supported out-of-home care before the provision was amended by the amending Act continues to apply to and in respect of that placement as if the provision had not been amended.

### **37 Parent capacity orders**

Section 91B (b), as inserted by the amending Act, extends to a prohibition order breached before the insertion.

### **38 Alternative dispute resolution**

Chapter 15A, as inserted by the amending Act, does not apply to or in respect of alternative dispute resolution conducted before the commencement of that Chapter under section 37, 65 or 114.

### **39 Preparation of permanency plan**

Section 83 (4), as amended by the amending Act, extends to a plan prepared, but that has not been submitted to the Children's Court in accordance with section 83 (3), before the commencement of the amendment.

## **Part 11 Provisions consequent on enactment of [Child Protection Legislation Amendment Act 2015](#)**

### **40 Definition**

In this Part:

**amending Act** means the [Child Protection Legislation Amendment Act 2015](#).

### **41 Principal officer**

Section 5A (4) extends to things done by, or with the approval of, a principal officer before the commencement of that subsection in the same way as it applies to things done by, or with the approval of, a principal officer after that commencement.

### **42 Notification of other residents**

- (1) Section 79D extends to any person residing on the same property as the prospective

guardian who has not been notified to the designated agency even if that person commenced residing on the property, or attained the age of 18 years, before the commencement of that section.

- (2) Section 137 (3), as substituted by the amending Act, extends to any person residing on the same property as the authorised carer who has not been notified to the designated agency even if that person commenced residing on the property, or attained the age of 18 years, before that substitution.

### **43 Reviews by NCAT**

Section 245 (1), as in force immediately before it was amended by the amending Act, continues to apply in respect of any decision made before that amendment.