



Australian Capital Territory

# **Children's Services Act 1986**

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Uncommenced provision: see endnote 1

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## **About this republication**

### **The republished law**

This is a republication of the *Children's Services Act 1986* effective from 20 November 1994 to 28 November 1994.

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Australian Capital Territory

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**CHILDREN'S SERVICES ACT 1986**

*As at 20 November 1994*

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Australian Capital Territory

## CHILDREN'S SERVICES ACT 1986

An Act relating to the welfare of children

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Children's Services Act 1986*.<sup>1</sup>

#### Commencement

2.<sup>1</sup> (1) This section and section 1 shall come into operation on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions of this Act shall come into operation on such date as is, or such dates as respectively are, fixed by the Minister of State for Territories by notice in the *Gazette*.

#### Repeal and savings

3. (1) The Ordinances specified in Part I of the Schedule are repealed.

(1A) The Ordinances specified in Part II of the Schedule are repealed.

(2) Where, after the date of commencement of Part IV, a child is convicted of an offence in proceedings instituted before that date, the court in which the proceedings were heard may make such orders in relation to the child as the court could have made if the proceedings had been instituted after that date.

(3) Where, immediately before the date of commencement of Part VI, a child was a ward within the meaning of the *Child Welfare Ordinance 1957*, there shall be deemed to have been made, on that date, an order under section 80 that the child be made a ward of the Director.

(4) Notwithstanding the repeal of the Ordinances specified in Part I of the Schedule, a licence granted under the repealed Ordinances and in force immediately before the date of commencement of Part VII—

- (a) subject to sections 122 and 123, remains in force for such period as it would have remained in force under the repealed Ordinances; and
- (b) for the purposes of the definition of “licence” in section 117, shall be deemed to be a licence under Part VII.

(5) Notwithstanding the repeal of the Ordinances specified in Part II of the Schedule, the Agreement and the Supplemental Agreement within the meaning of the repealed Ordinances—

- (a) shall continue in force until an agreement is entered into under Part XI with a Minister of State for the State of New South Wales; and
- (b) while they so continue in force, shall be deemed to have been entered into under Part XI.

### **Interpretation**

4.<sup>2</sup> (1) In this Act, unless the contrary intention appears—

“action” includes a suit or an original proceeding between parties but does not include a criminal proceeding;

“adopting parent” means—

- (a) a person who has adopted another person by an order of adoption under the *Adoption Act 1993* or by a deed of adoption and, where—
  - (i) an order under that Act has been made in favour of a husband and wife on their joint application; or
  - (ii) a husband and wife have, by deed, jointly adopted a child,

includes both the husband and wife; or

- (b) a person whose adoption of another person has effect under Part V of that Act;

“agreement” means an agreement entered into under section 69B or 176;

“approved home” means a home approved by the Director for the purposes of this Act;

- “attendance centre” means an attendance centre established or declared by the Minister under section 157;
- “attendance centre order” means an order made by a court, in relation to a child, that requires the child, during such period, not exceeding one year, as the court specifies, to report at an attendance centre and to place himself or herself in the custody of the Director;
- “barrister and solicitor” means a barrister and solicitor within the meaning of the *Legal Practitioners Act 1970*;
- “Chief Magistrate” has the same meaning as in the Magistrates Court Act;
- “child” means a person who has not attained the age of 18 years;
- “childrens welfare” means the welfare of children in the Territory;
- “Community Advocate” means the person appointed under subsection 4 (1) of the *Community Advocate Act 1991*;
- “conditional discharge order” means an order made by a court in respect of a child discharging the child subject to such conditions as the court specifies;
- “Council” means the Childrens Services Council constituted by section 13;
- “custody” in relation to a child, means—
- (a) the right to have the daily care and control of the child; and
  - (b) the right and responsibility to make decisions concerning the daily care and control of the child;
- “dentist” means a person registered as a dentist under the *Dentists Registration Act 1931*;
- “Director” means the Director of Family Services;
- “institution” means an institution established or declared by the Minister under section 157;
- “Magistrates Court Act” means the *Magistrates Court Act 1930*;
- “medical practitioner” means a person registered as a medical practitioner under the *Medical Practitioners Registration Act 1930*;
- “offence” includes an offence against a law of the Commonwealth;
- “officer” means a person appointed by the Director to be an officer for the purposes of this Act;
- “Official Visitor” means the Official Visitor appointed under section 19A;

“parent”, in relation to a child—

- (a) includes a step-parent, adopting parent or guardian of the child and a person who is by law liable to maintain the child; and
- (b) does not include a parent in respect of whom a court has made an order that the parent be no longer a guardian of the child;

“place of safety” means a police station, a hospital or a place the occupier of which is prepared to receive and care for a child temporarily;

“probation order” means an order made by a court—

- (a) placing a child under the supervision of the Director or of some other person specified in the order for the period specified in the order; and
- (b) requiring the child to report to the supervisor at a place and at intervals specified by the supervisor;

“registered nurse” has the same meaning as in the *Nurses Act 1988*;

“remand centre” has the same meaning as in the *Remand Centres Act 1976*;

“repealed Ordinances” means the Ordinances repealed by this Act;

“residential order” means an order—

- (a) that a child be placed—
  - (i) in an approved home; or
  - (ii) in the custody of a person specified in the order, whether the person resides in the Territory or elsewhere;  
or
- (b) directing the child to live at such place, whether within or outside the Territory, as the Director from time to time determines;

“school” includes any place of education or training;

“shelter” means a shelter established or declared by the Minister under section 157;

“Standing Committee” means the Standing Committee of the Council;

“State institution” means an institution situated in a State or Territory with a Minister of State of which an agreement has been entered into, being

an institution established or constituted under a law of the State or Territory as a place in which children may be detained;

“supervision order” means an order made by a court in respect of a child who has been declared to be in need of care—

- (a) placing the child under the supervision of—
  - (i) the Director or such other person as may be designated for the purpose by the Director from time to time; or
  - (ii) a person specified in the order;for the period specified in the order; and
- (b) requiring the child, a parent of the child or both the child and a parent of the child to report to the supervisor at a place and at intervals specified by the supervisor;

“supervisor”, in relation to a child in respect of whom a probation order or a supervision order is in force, means the person under whose supervision the child is placed by virtue of the order;

“the Court” means the Magistrates Court when known by virtue of section 20 as the Childrens Court;

“the school-leaving age” has the same meaning as in the *Education Act 1937*;

“ward” means a child who is a ward of the Director by reason of an order or declaration made under this Act and includes a child who becomes a ward of the Director by reason of the operation of subsection 3 (3).

**(2)** A reference in this Act to the parents of a child or to one of the parents of a child shall, where the child has only one parent, be read as a reference to that parent.

**(3)** A reference in this Act to the person in charge of a hospital shall be read as including a reference to a medical practitioner having authority to act on behalf of the person so in charge.

**(4)** A reference in this Act to the person in charge of an approved home shall be read as including a reference to a person having authority to act on behalf of the person so in charge.

**(5)** A provision of this Act referring to a shelter shall, in relation to the Jervis Bay Territory, be read as including a reference to a place of safety.

**Matters to be considered concerning children**

**5. (1)** In any proceedings in a court having jurisdiction in the Territory, whether the proceedings are under this Act or under some other law, being proceedings against or concerning or affecting a child, the court shall, in the exercise of its jurisdiction or powers, seek to procure for the child such care, protection, control or guidance as will best lead to the proper development of the personality of the child and to the child's becoming a responsible and useful member of the community.

**(2)** In the exercise of a power, whether under this Act or under some other law of the Territory, by a body, authority or person, being a power the exercise of which affects or concerns a child, the body, authority or person shall seek to procure for the child the matters referred to in subsection (1).

**(3)** For the purpose of subsections (1) and (2), the court, body, authority or person shall have regard to such matters as seem to it or the person to be appropriate and, in particular, to such of the following as are appropriate:

- (a) the need to strengthen and preserve the relationship between the child and his or her parents and other members of his or her family;
- (b) the desirability of leaving the child in his or her own home;
- (c) the desirability of allowing the education, training or lawful employment of the child to be continued without interruption or disturbance;
- (d) the desirability of ensuring that the child is aware that he or she must bear responsibility for anything that he or she does that is contrary to law; and
- (e) the need to protect the community or a particular person from the violent or other unlawful acts of the child.

**Courts to see that child understands proceedings**

**6.** In any proceedings in a court having jurisdiction in the Territory, being proceedings to which a child is a party, and whether the proceedings are under this Act or under some other law, the court shall endeavour to ensure that the child and any other parties present at the hearing understand the nature and purpose of the proceedings and of any order that the court proposes to make or has made.

**PART II—ADMINISTRATION****Director of Family Services**



7. (1) For the purposes of this Act there shall be a Director of Family Services, who shall be appointed in writing by the Minister.

(2) A person shall not be so appointed unless he or she is a public servant.

**Director to provide assistance**

8. (1) For the purpose of assisting the parents of children, and others, to discharge their duties and responsibilities to children adequately, it is the duty of the Director to do such things as he or she may properly do, or is required by law to do, for the purpose of promoting the physical, mental, moral, spiritual and social development of children in a normal and healthy manner, and promoting the protection and care of children.

(2) Without limiting the generality of subsection (1), the Director may—

- (a) make advice and guidance available to the parents of children and to others concerned with childrens welfare; and
- (b) arrange for the provision of financial or other assistance to—
  - (i) the parents of children, and others, for or in connection with childrens welfare and, as required, the welfare of particular children;
  - (ii) organisations whose objects include the promotion of childrens welfare; and
  - (iii) any person for the purposes of lessening the need to bring children before a court.

**Acting appointments**

10. (1) The Minister may appoint a person to act as Director—

- (a) during a vacancy in the office of Director whether or not an appointment has been previously made to the office; or
- (b) during any period, or during all periods, when the Director is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his or her office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in circumstances specified in the instrument of appointment.

(3) Where a person is acting as Director in accordance with paragraph (1) (b) and the office of Director becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as Director ceases to have effect if the person resigns the appointment by writing signed by him or her and delivered to the Minister.

(5) While a person is acting as Director, the person has and may exercise all the powers, and shall perform all the functions, of the Director under this Act or under any other law.

(6) The validity of anything done by a person purporting to act under the preceding provisions of this section shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the person's appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

### **Appointment of officers**

11. (1) The Director may, from time to time, appoint persons to be officers for the purposes of this Act.

(2) The Director shall cause to be issued to each person appointed under subsection (1) an identity card that specifies the name and appointment of the person and to which is attached a recent photograph of the person.

(3) A person who was appointed under subsection (1) shall not, upon ceasing to be an officer, fail or refuse, without reasonable excuse, to return to the Director the identity card issued to the person.

(4) A person who contravenes subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

### **Advice and assistance by Director and Community Advocate**

12. The Director and the Community Advocate shall give to the Council and the Standing Committee such advice or assistance as the Council or Standing Committee reasonably requests.

### **Childrens Services Council**

**13. (1)** For the purposes of this Act there is constituted a body to be known as the Childrens Services Council.

**(2)** The Council consists of—

- (aa) the Chairperson;
- (a) the Director;
- (b) the Chief Magistrate or another magistrate nominated by the Chief Magistrate;
- (c) the Community Advocate;
- (d) a person nominated by the Minister;
- (e) a police officer appointed by the Commissioner of Police of the Australian Federal Police;
- (g) a court counsellor within the meaning of the *Family Law Act 1975* of the Commonwealth nominated by the Principal Director of Court Counselling referred to in section 37 of that Act;
- (h) a person nominated by the Australian Capital Territory Schools Authority; and
- (i) such other persons as the Minister from time to time appoints.

**(3)** The members of the Council, other than the members referred to in paragraphs (2) (a), (b), (c) and (e), shall be appointed by the Minister.

**(3A)** The Minister shall not appoint a person as Chairperson unless satisfied that the person—

- (a) has appropriate status in the community;
- (b) has relevant experience; and
- (c) is not a person concerned with, or a person associated with a body, authority or agency concerned with, children's welfare.

**(4)** The persons referred to in paragraph (2) (i) shall be persons concerned with, or persons associated with bodies, authorities or agencies concerned with, childrens welfare.

**(5)** The Chairperson shall preside at all meetings at which he or she is present.

**(6)** Meetings of the Council shall be convened by the Chairperson or, in the Chairperson's absence, by the Director or the Community Advocate.

(7) Meetings of the Council shall be so convened that a period of not more than 3 months elapses between a meeting of the Council and the next meeting.

(8) If the Chairperson is unable to attend a meeting of the Council, the members present shall elect one of their number to preside at that meeting.

(9) Five members of the Council form a quorum.

(10) Questions arising at a meeting of the Council shall be decided by the votes of a majority of the members present and voting.

(11) If the voting is equal, the Chairperson or other person presiding has a casting vote.

(12) If a member of the Council other than the Chairperson is unable to attend a meeting of the Council, a person nominated for the purpose by the member may attend in the member's place and shall, in respect of that meeting, be regarded as a member of the Council, may vote and shall be taken into account in determining a quorum.

(13) The proceedings and decisions of the Council are not affected by reason of any failure to comply with a provision of this section.

### **Functions of the Council**

14. The functions of the Council are—

- (a) to consider matters related to childrens welfare referred to it by the Minister;
- (b) to consider any other matter related to childrens welfare;
- (c) to make recommendations concerning childrens welfare to a Minister, body, authority or agency concerned with the welfare of children;
- (d) to make recommendations to the Minister with respect to the granting of assistance (other than financial assistance) to a body, authority or agency concerned with childrens welfare;
- (e) to inform itself concerning matters related to childrens welfare;
- (f) to arrange meetings for the discussion of matters related to childrens welfare;
- (g) to prepare and issue papers related to childrens welfare; and

- (h) to arrange for the preparation of statistics with respect to any matter dealt with under this Act or otherwise with respect to childrens welfare.

### **Annual reports**

**15. (1)** The Director shall, as soon as practicable after each 30 June, furnish to the Council a report as to the exercise of his or her powers and the performance of his or her duties and functions during the previous 12 months.

**(2)** The Council shall, as soon as practicable after each 30 June but not later than each 30 September, furnish to the Minister a report as to the operation of this Act, and as to childrens welfare in the Territory, during the previous 12 months.

**(3)** The Minister shall cause a copy of each report furnished under subsection (2) to be laid before the Legislative Assembly within 15 sitting days after its receipt by the Minister.

### **Standing Committee of Council**

**16. (1)** For the purposes of this Act, there shall be a Standing Committee of the Council consisting of the members of the Council referred to in paragraphs 13 (2) (a), (c), (d) and (e).

**(2)** A member of the Standing Committee may invite other persons to attend a meeting of the Standing Committee but a person so invited is not entitled to vote at the meeting.

**(3)** The Director shall be the Chairperson of the Standing Committee.

**(4)** If the Director is not present at a meeting of the Standing Committee, the person nominated under subsection (9) to attend in his or her place shall chair the meeting.

**(5)** Three members of the Standing Committee form a quorum.

**(6)** The Director may, and shall, if a member of the Standing Committee so requests, convene a meeting of the Standing Committee.

**(7)** Questions arising at a meeting of the Standing Committee shall be decided by the votes of a majority of the members present and voting.

**(8)** If the voting is equal, the person presiding has a casting vote.

**(9)** A member of the Council may nominate a person to attend a meeting of the Standing Committee in the member's place and the person nominated shall,

in respect of that meeting, be regarded as a member of the Standing Committee, may vote and shall be taken into account in determining a quorum.

### **Functions of Standing Committee**

**17.** The functions of the Standing Committee are to make proposals and recommendations as to the welfare of a particular child, including a recommendation to the Director whether the Director should, or should not, make an application to the Court for a declaration that the child is in need of care.

### **Assistance by authorities and agencies**

**18.** An authority or agency established by a law of the Territory, being an authority or agency involved in the provision of welfare services to children, shall—

- (a) upon request by the Director or the Community Advocate, make available to the Director or the Community Advocate, as the case requires, such information, advice, guidance, assistance, documents, facilities or services as are necessary or desirable in connection with childrens welfare or with the welfare of a particular child; and
- (b) furnish to the Council or to the Standing Committee such information, advice, assistance or documents with respect to childrens welfare, or to the welfare of a particular child, as the Council or the Standing Committee reasonably requests.

### **Delegation**

**19. (1)** The Director may, either generally or as otherwise provided by the instrument of delegation, in writing delegate to a public servant any of his or her powers under this Act.

**(2)** A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Director.

**(3)** A delegation under this section does not prevent the exercise of a power by the Director.

### **Official Visitor**

**19A. (1)** For the purposes of this Act there shall be an Official Visitor who shall be appointed by the Minister.

**(2)** A person shall not be so appointed unless the Minister is satisfied that he or she has appropriate qualifications or experience.

(3) A person so appointed holds office for a period not exceeding 3 years and is eligible for re-appointment.

(4) A person so appointed may resign his or her office by writing signed by him or her and delivered to the Minister.

(5) The Minister may terminate the appointment of an Official Visitor—

- (a) for misbehaviour;
- (b) for physical or mental incapacity;
- (c) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of those creditors; or
- (d) if he or she is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 12 months or longer.

(6) The Official Visitor shall be paid such remuneration and allowances as are prescribed.

(7) Subsection (6) does not apply in relation to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Official Visitor; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the Official Visitor.

(8) In subsection (7)—

“determination” means a determination of the Remuneration Tribunal.

## **Duties**

**19B. (1)** The Official Visitor shall—

- (a) visit and inspect shelters and institutions, as far as practicable at least once a week;
- (b) hear any complaints made by any children in the shelter or institution concerning—
  - (i) the manner of their care, detention or treatment; or
  - (ii) the manner in which the shelter or institution is conducted; and
- (c) investigate any such complaints.

- (2) A child may make complaints to an Official Visitor either—
- (a) personally; or
  - (b) through a personal representative chosen by the child.
- (3) A child may have their complaint heard by the Official Visitor alone if the child so requests.
- (4) An Official Visitor may, of his or her own motion, or after investigating a complaint, make—
- (a) a report to the Minister; and
  - (b) a recommendation to the Director.
- (5) The Official Visitor shall, as soon as practicable after each 30 June, lodge a report in writing to the Minister detailing how he or she has performed duties and exercised powers under this Act during the period of 12 months that ended on that date.
- (6) On receiving a report the Minister shall, as soon as practicable, table the report before the Assembly.

### **PART III—THE CHILDRENS COURT**

#### **Jurisdiction**

20. The Magistrates Court has jurisdiction—
- (a) to hear and determine informations against children; and
  - (b) to hear and determine applications and other proceedings under this Act with respect to children,

and, when exercising that jurisdiction, shall be known as the Childrens Court.

#### **Determination of jurisdiction by reference to age**

21. For the purpose of determining the application of section 20 with respect to proceedings concerning a person (not being proceedings in relation to which section 24 applies), regard shall be had to the age of the person at the time of the commencement of the proceedings.

#### **Procedure of Childrens Court**

22. (1) Subject to this Act and the regulations—



- (a) the *Magistrates Court Act 1930* and the rules and regulations under that Act apply to and in relation to the Court in the exercise of its jurisdiction under section 20 in respect of proceedings under Part IV, other than section 68; and
  - (b) the *Magistrates Court (Civil Jurisdiction) Act 1982* and the regulations under that Act apply to and in relation to the Court in the exercise of its jurisdiction under section 20 in respect of any other proceedings under this Act.
- (2) The Executive may make regulations, not inconsistent with this Act—
- (a) prescribing the procedure to be followed in proceedings in the Court in the exercise of its jurisdiction under section 20; and
  - (b) prescribing all other matters that are necessary or convenient to be prescribed for the purposes of this Part.

## **PART IV—CHILD OFFENDERS**

### ***Division 1—General***

#### **Saving of other laws**

**23.** Except as otherwise expressly provided by this Act, this Part does not affect the operation of the common law or of any other law in force in the Territory.

#### **Determination of criminal jurisdiction by reference to age**

**24. (1)** Subject to this section, for the purpose of determining whether an information alleging an offence by a person should be heard and determined by the Court, regard shall be had to the age of the person at the time of the alleged offence.

**(2)** Where a person was under the age of 18 years at the time of an alleged offence and between the ages of 18 years and 18 years 6 months at the time of the person's first appearance in the Court after having been charged with the alleged offence—

- (a) the person shall be dealt with in accordance with this Part until such time (if any) as the Court finds the offence proved;
- (b) for the purposes of so dealing with the person, this Part applies to and in relation to the person as if the person were a child; and

- (c) if the Court finds the offence proved, the person shall be dealt with as an adult.

(3) Where a person was under the age of 18 years at the time of an alleged offence and over the age of 18 years 6 months at the time of the person's first appearance in the Court after having been charged with the alleged offence, the person shall be dealt with as an adult unless, in the circumstances of the case, the Court considers it appropriate for the person to be dealt with as a child.

### **Proceedings where child jointly charged with adult**

25. (1) Where a child and a person who is not a child are jointly charged with an offence, section 20 applies to and in relation to proceedings against the child arising out of that charge as though the child had been charged separately.

(2) Section 20 does not apply in relation to the preliminary examination in respect of an indictable offence alleged to have been committed jointly by a child and a person who is not a child if the Chief Magistrate, having regard to the nature of the alleged offence and the time and expense involved in carrying out the preliminary examinations separately, so orders.

### **Transfer of proceedings**

26. (1) If it appears to the Court when hearing an information against a child that the circumstances are such that the child should be dealt with under Part V, the Court may order that a copy of the papers, together with any report that the Court thinks fit to make, be furnished to the Director and the Community Advocate.

(2) Where the Court makes an order under subsection (1), the Court shall release the child into the custody of an authorised person within the meaning of Part V and either—

- (a) dismiss the information; or
- (b) adjourn the matter indefinitely.

(3) Where the Court adjourns the matter in pursuance of subsection (2), the matter may be set down again for hearing at the request of the prosecutor, the child to whom the matter relates, the Director or the Community Advocate.

### **Age of criminal responsibility**

27. (1) A child who has not attained the age of 8 years shall, for all purposes, be presumed to be incapable of committing in the Territory an offence against a law in force in the Territory.

(2) There is a rebuttable presumption that a child who has attained the age of 8 years but has not attained the age of 14 years is incapable of committing in the Territory an offence against a law in force in the Territory by reason that the child did not have the capacity to know that the act or omission concerned was wrong.

### **Power to apprehend under-age children**

28. (1) Where a police officer has reasonable grounds to believe that a person is a child who has not attained the age of 8 years and has done or is doing an act which, but for subsection 27 (1), would constitute an offence, the police officer may apprehend the child, and for that purpose may use such force as is necessary and reasonable.

(2) For the purpose of exercising the power conferred by subsection (1), the police officer may enter any premises, by force if necessary and reasonable, at any time of the day or night for the purpose of arresting the child, and may search the premises for the child, if the police officer believes on reasonable grounds that the child has committed a serious offence within the meaning of Division 2 and is on the premises.

(3) Upon apprehending a child under subsection (1), the police officer shall—

- (a) take the child to one of the child's parents; or
- (b) if it is not practicable to do so, place the child with a suitable person who is prepared to care for the child and notify the Director that the police officer has done so.

### ***Division 2—Criminal Proceedings against Children***

#### **Interpretation**

29. (1) In this Division, unless the contrary intention appears—

“authorised officer” means the Commissioner of Police or a Deputy Commissioner of Police of the Australian Federal Police or a police officer authorised by one of those officers to act under this Division;

“police officer” includes a person holding office under an Act or under regulations under an Act and having power by virtue of that Act or those regulations to arrest or detain a person or to take a person into his or her custody;

“serious offence” means an offence punishable by imprisonment for a period exceeding one year;

“to interview” includes to ask questions.

(2) For the purposes of this Division, a child is under restraint if the child is under restraint—

- (a) as a result of the child's having been lawfully arrested or detained; or
- (b) in respect of an offence and a police officer believes on reasonable grounds that—
  - (i) the child has committed the offence; or
  - (ii) he or she would be authorised under a law in force in the Territory to arrest the child for the offence.

(3) If a child is in the company of a police officer for a purpose connected with the investigation of an offence or a possible offence and the police officer would not allow the child to leave if the child wished to do so, whether or not the police officer has reasonable grounds for believing that the child has committed the offence and whether or not the child is in lawful custody in respect of the offence, the child is, for the purposes of this Division, under restraint.

(4) For the purposes of this Division, a child is not under restraint if the child is in the company of—

- (a) a police officer by the roadside, whether or not the child is in a motor vehicle, for a purpose connected with the investigation of an offence, not being a serious offence, arising out of the use of a motor vehicle;
- (b) a police officer for the purpose of a screening, breath or blood test in accordance with the *Motor Traffic (Alcohol and Drugs) Act 1977*; or
- (c) an inspector, within the meaning of the *Liquor Act 1975* for a purpose connected with the investigation of an offence under that Act, which the inspector believes on reasonable grounds was not committed by the child.

(5) For the purposes of this Division, a child is in the company of a police officer for a purpose connected with the investigation of an offence if the child is waiting at a place at the request of a police officer for such a purpose.

(6) For the purposes of this Division, a reference to a child who has committed an offence includes a reference to a child who has committed an offence with another person or other persons.

### **Interviewing of children**

**30. (1)** Where a police officer—

- (a) suspects that a child may have committed a serious offence or an offence against the person or property;
- (b) believes, on reasonable grounds, that a child may be implicated in the commission of such an offence; or
- (c) is holding a child under restraint,

the police officer shall not interview the child in respect of an offence or cause the child to do anything in connection with the investigation of an offence—

- (d) unless a person who is not a child or a police officer but is—
  - (i) a parent of the child;
  - (ii) a relative of the child acceptable to the child; or
  - (iii) a barrister and solicitor acting for the child or some other appropriate person acceptable to the child,

is present; or

- (e) unless—
  - (i) the police officer has taken reasonable steps to secure the presence of a person referred to in paragraph (d);
  - (ii) it was not practicable for such a person to be present within 2 hours after the person was requested to be present; and
  - (iii) another person (who may be a police officer) who has not been concerned in the investigation of the offence is present.

**(2)** Subsection (1) does not require a police officer—

- (a) to permit a person whom the police officer believes, on reasonable grounds, to be an accomplice of the child in respect of the offence to be present while the child is being interviewed, or is doing anything, in connection with the investigation of the offence; or
- (b) to take steps to procure the presence of a person referred to in paragraph (1) (d) whom the police officer believes, on reasonable grounds, to be an accomplice of the child in respect of the offence.

**(3)** A reference in subsection (2) to an accomplice shall be read as including a reference to a person whom the police officer believes, on

reasonable grounds, to be likely to secrete, lose, destroy or fabricate evidence relating to the offence.

(4) Subsection (1) does not prevent a police officer from interviewing a child, or asking or causing a child to do a particular thing, where the police officer has reasonable grounds for believing that it is necessary to do so without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property.

#### **Notification of arrest etc.**

32. Where a police officer places a child under restraint, the police officer shall forthwith—

- (a) take all reasonable steps to cause a parent of the child to be notified, whether the parent resides in the Territory or not; and
- (b) if the police officer is not an authorised officer, notify an authorised officer.

#### **Limitations in respect of criminal proceedings against children**

33.<sup>2</sup> (1) Subject to subsections (4) and (8), a police officer shall not institute a prosecution against a child for an offence unless an authorised officer, being an officer not otherwise involved in the investigation of the alleged offence, has consented in writing to the institution of the prosecution and the consent has not been revoked.

(2) Subsection (1) does not affect any requirement under any other law to obtain consent to a prosecution.

(3) For the purpose of determining whether he or she should consent to the prosecution of a child, an authorised officer shall have regard to such matters as seem to the officer to be relevant and, in particular, to each of the following:

- (a) the seriousness of the offence;
- (b) the evidence available as to the commission of the offence;
- (c) the circumstances in which the offence is alleged to have been committed;
- (d) whether the child has previously been found guilty or convicted of an offence, whether against a law in force in the Territory or elsewhere, and the seriousness or otherwise of that offence;
- (e) whether a warning has at any time been given to the child in the Territory by a police officer;

- (f) the age of the child;
- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child;
- (i) whether the parents of the child appear able and prepared to exercise effective discipline and control over the child;
- (j) whether it would be sufficient to warn the child, at a police station, at home or otherwise, against the commission of the same or similar offences;
- (k) the prevalence of the same or similar offences;
- (l) whether the prosecution would be likely to be harmful to the child, or to be inappropriate, having regard to the personality of the child, the circumstances of living of the child or any other circumstances that the authorised officer considers should be taken into account.

**(4)** Where the offence is one the prosecution for which requires the consent of a person under any other law, the authorised officer shall—

- (a) make a recommendation with respect to the prosecution, having regard to the matters specified in subsection (3); and
- (b) forward his or her recommendation, together with the papers and all other relevant material, to the person whose consent is required under that other law.

**(5)** The authorised officer shall not consent to the prosecution unless the authorised officer is satisfied, after having considered the matters referred to in subsection (3), that a prosecution is justified.

**(6)** If an authorised officer consents to the prosecution of a child whom the authorised officer knows or believes has not previously been convicted of an offence, whether against a law in force in the Territory or elsewhere, the authorised officer shall record in writing his or her reasons for giving consent.

**(7)** Where a child is under restraint, an authorised officer shall, as soon as practicable, decide whether he or she will consent to a prosecution of the child and, if the authorised officer does not so consent, the child shall forthwith be released.

**(8)** A police officer may institute a prosecution against a child without the consent of an authorised officer where—

- (a) the child is licensed to drive a motor vehicle; and

- (b) the police officer believes on reasonable grounds that the child has committed an offence arising out of the use of a motor vehicle.

### **Procedure by summons**

**34. (1)** A police officer shall not charge a child at a police station with an offence unless the police officer is satisfied that proceeding by way of a summons would not be effective.

**(2)** For that purpose, the police officer shall have regard to the need to achieve the purposes specified in paragraph 352 (2) (b) of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory.

### **Charge against child—informing of parent**

**35.** Where a child is charged at a police station with an offence, the person who so charged the child shall forthwith take all reasonable steps to cause a parent of the child to be notified of the charge, of the child's location and of the time and place when the child will be brought before the Court, whether the parent resides in the Territory or not.

### **Identifying material**

**36. (1)** In this section, "identifying material", in relation to a child, means prints of the hands, fingers, feet or toes of the child, recordings of the voice of the child, photographs of the child, samples of the handwriting of the child or material from the body of the child.

**(2)** An authorised officer or a police officer for the time being in charge of a police station shall not take, or cause to be taken, identifying material of a child unless a magistrate has, under subsection (4), approved the taking of the identifying material.

**(2A)** Identifying material that consists of material from the body of a child shall not be taken pursuant to this section otherwise than by a person who is a medical practitioner.

**(3)** An authorised officer or a police officer referred to in subsection (2) may—

- (a) make application to a magistrate in person; or
- (b) if it is not practicable for the officer to do so, make application to a magistrate by telephone,



for approval to take identifying material of a child who is in lawful custody in respect of an offence or of a child against whom proceedings have been instituted by summons in respect of an offence.

(4) The magistrate may, if he or she thinks it proper in the circumstances, give his or her approval, in writing, for the taking of specified identifying material and shall send the writing to the applicant.

(5) The magistrate may inform the applicant by telephone of his or her approval and in that case the applicant may proceed under the approval notwithstanding that the written approval has not been given.

(6) Where identifying material of a child is taken pursuant to this section, the authorised officer or police officer referred to in subsection (2) shall as soon as practicable take all reasonable steps to cause a parent of the child to be notified of the action taken in relation to the child.

### **Detention of children**

**38. (1)** Subject to this section, a child who has been charged with an offence and is not admitted to bail shall, as soon as practicable, be taken to a shelter, and shall be detained there.

(2) In the case of the actual or apprehended violent behaviour of the child (whether in the shelter or elsewhere) or by reason of the seriousness of the offence with which the child is charged, an escape, or attempted escape, by the child from lawful detention, or for other good cause, the child may be taken to a remand centre and shall be detained there.

(3) A child who requires medical attention may be taken to a hospital and, if the person in charge of the hospital consents, be detained in the hospital.

(4) When a child who was detained in a hospital is discharged from hospital, the child shall—

- (a) in the case of a child to whom subsection (2) applies—be taken to, and detained in, a remand centre; and
- (b) in any other case—be taken to, and detained in, a shelter.

(5) Where it is necessary to take the child from the place at which the child is detained to a court, or from a court to that place, the child shall not, unless it is impracticable to avoid doing so, be so taken in company with a person under detention who is not a child and shall not be placed at the court in a room in which another person under detention who is not a child is placed.

**Private property**

**38A. (1)** The person in charge of an institution or shelter may require a child placed in the institution or shelter—

- (a) to surrender to the person in charge; or
- (b) to send away from the institution or shelter;

any or all property that is in the possession of the child.

**(2)** Any property surrendered under subsection (1) shall be retained by the person in charge of the institution or shelter until the child is discharged or transferred.

**(3)** When a child is discharged or transferred any property surrendered by that child shall be—

- (a) returned to the child; or
- (b) sent to the person in charge of the institution to which the child is transferred;

as the case requires.

**(4)** The person in charge of an institution or shelter shall keep a record of all property surrendered and sent on under this section.

**Arrested children: bringing before Court**

**39. (1)** Where a child has been charged with an offence and has not been released from detention, a police officer shall bring the child before the Court as soon as practicable.

**(2)** If the child is not so brought before the Court, the child shall forthwith be released from detention.

**Exclusion of evidence unlawfully obtained**

**40. (1)** Where, in proceedings against a child in respect of an offence, the court is satisfied that evidence tendered to the court was obtained in contravention of, or in consequence of a contravention of, a provision of this Act in relation to the child, the court shall refuse to admit that evidence in the proceedings unless it is satisfied that—

- (a) admission of the evidence is substantially in the public interest as regards the administration of criminal justice; and

- (b) that interest would outweigh any prejudice to the rights of any person, including the child, that has occurred or is likely to occur as a result of the contravention or the admission of the evidence.

(2) The matters to which a court may have regard in deciding whether it should admit the evidence that was obtained in contravention of, or in consequence of a contravention of, a provision of this Act in relation to the child include—

- (a) the seriousness of the offence to which the evidence relates, the difficulty of detecting the offender, the need to apprehend the offender and the need to preserve evidence of the facts;
- (b) the nature and seriousness of the contravention; and
- (c) the extent to which the evidence might have been lawfully obtained.

(3) This section is in addition to, and not in substitution for, any other law or rule under which a court may refuse to admit evidence.

#### **Summary disposal of certain cases**

41. (1) Subject to this section and to section 43, where—

- (a) a child is charged before the Court with an indictable offence; and
- (b) the Court is of the opinion that the case can properly be disposed of summarily,

the Court may hear and determine the charge summarily.

(2) Subsection (1) does not apply to an offence that is punishable by imprisonment for life.

(3) Before forming an opinion whether or not a case can properly be disposed of summarily, the Court shall have regard to such matters as it considers relevant and, in particular, to each of the following:

- (a) any relevant representations made by the defendant;
- (b) any relevant representations made by the prosecutor in the presence of the defendant;
- (c) the facts of the case;
- (d) the seriousness of the alleged offence;
- (e) the circumstances in which the offence is alleged to have been committed;

- (f) the age of the child;
- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child;
- (i) the suitability of the penalties that the Court is empowered to impose;
- (j) the difficulty of any question of law that is likely to arise.

**Committal for trial in certain cases**

**42.** Where a child is charged before the Court with an indictable offence and—

- (a) the Court is not empowered to hear and determine the charge summarily; or
- (b) the Court is so empowered but decides not to hear and determine the charge summarily,

the Court shall deal with the charge in accordance with the provisions of the Magistrates Court Act relating to indictable offences.

**Child may elect to be committed for trial**

**43. (1)** The Court shall not exercise its powers under subsection 41 (1) without the consent of the child.

**(2)** Before proceeding to hear the charge, the Court shall inform the child, and any parent of the child who is present, of the provisions of subsection (1).

**(3)** If a parent is not present, the Court may adjourn the hearing so as to enable a parent to be present.

**(4)** If a parent is not present at the adjourned hearing, the Court may continue the hearing.

**(5)** The Court may, at any time, adjourn the hearing to enable the child or a parent of the child to obtain legal advice.

**Committal of guilty child to Supreme Court**

**44. (1)** Where the Court convicts a child of an indictable offence, the Court may, where it appears to it that, by reason of the character and antecedents of the child, it is desirable that sentence be passed on the child by the Supreme Court, by order commit the child to the Supreme Court for sentence.

(2) The Supreme Court may deal with a child committed for sentence under subsection (1) in any way in which it might have dealt with the child if the child had been convicted of the offence before the Supreme Court.

(3) Before the Court makes an order under subsection (1), the Court shall have regard to any report furnished to the Court in pursuance of section 162.

### **Childrens Court to give reasons**

45. Where the Court decides not to hear and determine a charge summarily and commits a child to the Supreme Court, the Court shall state the reasons for its decision and cause those reasons to be entered in the records of the Court.

### **Remission of matter by Supreme Court**

46. (1) Where a child is convicted by the Supreme Court of an offence, the Supreme Court may remit the case to the Childrens Court.

(2) The Childrens Court may deal with a child remitted under subsection (1) in any way in which it might have dealt with the child if the child had been convicted of the offence in that Court.

(3) Where the Supreme Court remits a case under subsection (1)—

- (a) the Supreme Court may give directions as to the detention of the child, or the child's release on bail, until the child is brought before the Childrens Court; and
- (b) the Registrar of the Supreme Court shall cause to be transmitted to the Registrar of the Magistrates Court a certificate stating—
  - (i) the nature of the offence;
  - (ii) that the child has been convicted of the offence; and
  - (iii) that the case has been remitted to be dealt with under this section.

46A.<sup>2</sup> \* \* \* \* \*

### ***Division 3—Disposition of Young Offenders***

#### **Disposition of young offenders**

47.<sup>2</sup> (1) Where a child has been convicted of an offence by the Court, the Court shall, as soon as practicable and, in any case, within 6 months after the date of the conviction, make one or more of the following orders:

- (a) an order reprimanding the child;

- (b) a conditional discharge order;
- (c) an order imposing a penalty provided by law with respect to the offence;
- (d) any other order that the Court is empowered by any other law to make with respect to the offence;
- (e) where a fine is not provided by law with respect to the offence, an order imposing a fine not exceeding \$1,000;
- (f) where reparation or compensation is not provided for by law with respect to the offence, an order that the child make reparation by way of money payment, or pay compensation, in respect of any loss suffered or expense incurred by reason of the offence, but so that the total amount of reparation or compensation does not exceed \$1,000;
- (g) a probation order;
- (h) an attendance centre order;
- (i) a residential order having effect for such period, not exceeding 2 years, as the Court specifies;
- (j) an order committing the child to a State institution in a specified State or Territory for such period, not exceeding 2 years, as the Court specifies;
- (k) an order committing the child to an institution for such period, not exceeding 2 years, as the Court specifies.

(2) A probation order may be expressed to commence to have effect when an order under paragraph (1) (i), (j) or (k) ceases to have effect.

(3) A conditional discharge order shall specify the period, being a period not exceeding 6 months, within which the conditions of the order are to be complied with.

### **Early release**

**47A.** Notwithstanding an order of the court pursuant to which a child is detained in an institution or state institution, if the period for which the child may be so detained would expire on a Saturday, Sunday or public holiday, the child may be released on the last preceding day that is not a Saturday, Sunday or public holiday.

### **Disposition without proceeding to conviction**

**48.** Where the Court is satisfied that a charge against a child is proved but, in the circumstances, and having regard to—

- (a) the provisions of section 5;
- (b) the welfare of the child;
- (c) the facts of the case;
- (d) the seriousness of the offence;
- (e) the circumstances in which the offence was committed;
- (f) the age of the child;
- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child; or
- (i) the health of the child,

the Court is of the opinion that it should not proceed to a conviction, the Court shall, as soon as practicable but, in any case, within 6 months—

- (j) dismiss the charge; or
- (k) make one or more of the orders referred to in paragraph 47 (1) (a), (b), (f) or (g) notwithstanding that a conviction has not been entered.

**Prohibition on certain orders**

**49. (1)** The Court shall not make an order—

- (a) for the imprisonment of a child;
- (b) releasing a child upon the child giving security to be of good behaviour; or
- (c) of a kind referred to in paragraph 47 (1) (h), (i), (j) or (k)—
  - (i) in a case where the Court is not empowered to sentence an adult to imprisonment;
  - (ii) unless the Court is satisfied that, in the circumstances, no other order that might be made is appropriate; or
  - (iii) for a period longer than the period of imprisonment that could have been imposed in respect of the offence if the offence had been committed by an adult.

**(2)** Nothing in paragraph (1) (b) affects the power of the Court under section 556A or 556B of the Crimes Act 1900 of the State of New South Wales in its application in the Territory.

**49A.**<sup>2</sup>

\* \* \* \* \*

**Variation or revocation of conditional discharge order**

**50.** Where the Court has made a conditional discharge order in respect of a child, application may be made to the Court by the child or a parent of the child for the revocation or variation of the order.

**Breach of conditional discharge orders**

**51. (1)** If a child fails to comply with a condition of a conditional discharge order made in respect of the child, the Court may, at any time, by order served on the child or on a parent of the child, direct that the child appear before the Court at the time and place specified in the notice.

**(2)** If the child does not appear before the Court as directed, the Court may issue a warrant for the apprehension of the child.

**(3)** The Court may make, with respect to the child with respect to which the conditional discharge order was made—

- (a) an order revoking the conditional discharge order, together with one or more of the orders set out in subsection 47 (1), other than a further conditional discharge order; or
- (b) an order that the conditional discharge order continue, for such period as the Court specifies, whether with or without a variation in the conditions.

**(4)** When making an order under subsection (3), the court shall, in addition to any other matters that the Court considers should be taken into account, take into account—

- (a) the fact that the conditional discharge order was made;
- (b) anything done under the conditional discharge order; and
- (c) any other order made in respect of the offence in respect of which the conditional discharge order was made and anything done in pursuance of that other order.

**(5)** The Court shall not make, under subsection (3)—

- (a) an order of the kind set out in paragraph 47 (1) (c), (d), (e), (h), (i), (j) or (k) unless the Court has first convicted the child of the offence with respect to which the conditional discharge order was made; or
- (b) an order imposing a penalty which, when taken together with the penalty previously imposed in respect of the offence in respect of



which the conditional discharge order was made, exceeds the maximum penalty the Court could have imposed in respect of that offence.

(6) The Court shall not specify, under paragraph (3) (b), a period that would result in the total period for which the conditional discharge order is in force exceeding 6 months.

### **Fines and like orders**

52. (1) In this section, “fine” includes pecuniary penalty, costs or other amount of money ordered to be paid.

(2) Before a court makes an order imposing a fine on a child, the Court shall have regard to the ability of the child to comply with the order.

(3) The Court may, when making an order imposing a fine on a child, of its own motion or on application by or on behalf of the child, by order—

- (a) allow time for the payment of the fine; or
- (b) direct payment of the fine to be made by instalments.

(4) A child against whom an order referred to in subsection (2) has been made may, at any time, apply to the Court for an order as mentioned in subsection (3) or for the variation of such an order.

(5) The powers conferred on the Court by this section are in addition to, and not in derogation of, any other powers possessed by the Court.

### **Breach of orders imposing fines etc.**

53. (1) Where a child in respect of whom an order under paragraph 47 (1) (e) or (f) is made fails to obey the order, the Court may, at any time, by order served on the child or on a parent of the child, direct that the child appear before the Court at the time and place specified in the order.

(2) If the child does not appear before the Court as directed, the Court may issue a warrant for the apprehension of the child.

### **Enforcement of payment of fines etc.**

54. (1) In this section, “fine” includes pecuniary penalty, costs or other amount of money ordered to be paid.

(2) Subject to this section, an order of the Court imposing a fine on a child may be enforced by any means provided by law for the enforcement of a like order of the Magistrates Court.

(3) The Court shall not make an order for the imprisonment of a child in default of payment of a fine.

(4) A warrant shall not be issued committing a child to prison by reason of any failure of the child to pay a fine.

(5) Subject to subsection (6), where a child fails to comply with an order imposing a fine, the Court may make one or more of the following orders:

- (a) an order remitting the fine or reducing the amount of the fine;
- (b) an order allowing time, or further time, for the payment of the fine;
- (c) an order of the kind referred to in paragraph 47 (1) (a), (b), (c), (d), (g) or (h);
- (d) an order that the child be placed in a shelter for such period, not exceeding 30 days, as the Court specifies;
- (e) an order committing the child to an institution or State institution in a specified State or Territory for such period, not exceeding 30 days, as the Court specifies.

(6) The Court shall not make an attendance centre order or an order as referred to in paragraph (5) (d) or (e) unless it is satisfied that the failure of the child to comply with the order imposing the fine was, in the circumstances, unreasonable.

### **Probation orders**

**55. (1)** A probation order may contain one or more of the following conditions and provisions:

- (a) a condition requiring the child to take part in discussions with the supervisor with respect to the welfare of the child, in particular whether the child should receive some form of treatment, or participate in some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the child; and
- (b) such other conditions and provisions as the Court considers to be desirable in the interests of the welfare of the child, in particular conditions and provisions having as their object the avoidance of a repetition of the offence or of the commission of further offences.

(2) Subject to subsection (3), the Court shall not specify a period that exceeds one year as the period for which a probation order is to remain in force.

**(3)** Where the Court considers that it is necessary to do so, the Court may specify a period not exceeding 2 years as the period for which a probation order is to remain in force.

**Probation orders: entry and inspection by supervisor**

**56. (1)** Where a child who is the subject of a probation order resides with a person who has the custody of the child, the supervisor of the child may, on reasonable grounds and at a reasonable time—

- (a) enter the premises where the child resides; and
- (b) inspect the premises and the child.

**(2)** Where a child who is the subject of a probation order resides with a person other than a person who has the custody of the child, the supervisor may enter the premises where the child resides and inspect the premises and the child if, and only if, the entry and inspection is made—

- (a) with the consent of the occupier of the premises; or
- (b) in pursuance of a warrant issued under this section.

**(3)** Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that—

- (a) a child the subject of a probation order is residing on premises otherwise than with a person who has the custody of the child; and
- (b) it is necessary in the interests of the child for the premises and the child to be inspected,

and the information sets out those grounds, the magistrate may issue a search warrant authorising the supervisor of the child, with such assistance as is necessary and reasonable and by such force as is necessary and reasonable—

- (c) to enter upon or into the premises; and
- (d) to inspect the premises and the child.

**(4)** A magistrate shall not issue a warrant under this section unless—

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

**Attendance centre orders**

**57. (1)** Where the Court makes an attendance centre order in respect of a child, the order—

- (a) shall specify the number of occasions on which the child is to report at the attendance centre or that the child is to report on such number of occasions in each week as the Director from time to time specifies;
- (aa) shall specify the total number of hours the child will be required to attend in compliance with the order, such number being 8 or a multiple of 8 (not exceeding 104);
- (ab) shall specify the period of time during which the attendance is required, being a period not exceeding 1 year;
- (b) shall specify the day on which and the time at which the child is to report on the first occasion; and
- (c) may contain such other recommendations with respect to the child's attendance as the Court determines.

**(2)** The duration of each period during which the child is to place himself or herself under the temporary control of the Director shall be as determined by the Director.

**(3)** All the periods of temporary control need not be of the same duration but the periods shall not be longer than 60 hours in the aggregate in a week.

**(4)** The days on which and the times at which the child is required to report at the attendance centre after the first occasion shall be as the Director determines but the Director shall have regard to any general directions given by the Court.

**(5)** The days on which and the times at which the child is required to report, and the period during which he or she is to remain under temporary control, shall be such as to avoid interference with the education or training of the child or with any genuine religious observance by the child.

**(6)** The Director may, for good cause, excuse a child from attendance on a particular occasion or on all occasions in a particular week.

**Duties of child under attendance centre order**

**58. (1)** A child the subject of an attendance centre order is, subject to this Act, subject to the reasonable control, direction and supervision of the Director or of an authorised person while the child is—

- (a) attending an attendance centre;
- (b) outside the attendance centre in pursuance of a direction of the Director; and
- (c) travelling between the attendance centre and a place outside the attendance centre at which the child is directed to be.

(2) A child shall, while he or she is subject to control, direction and supervision in accordance with subsection (1)—

- (a) engage in such work;
- (b) take part in such activities (whether physical or otherwise);
- (c) attend such classes or groups of persons; or
- (d) undergo such education or training,

as the Director considers to be in the interests of the child.

(3) Before giving directions to a child under this section, the Director shall take into account the religious beliefs, and any conscientious beliefs, of the child.

(4) A child shall not be required to work under the control, direction or supervision of a person who would benefit by the work performed by the child in any way otherwise than as a member of the community or of a group within the community.

(5) A child is not entitled to any remuneration in respect of work performed in pursuance of this section.

(6) In exercising his or her powers under this section, the Director shall take into account any recommendation made by the Court when the attendance centre order was made.

(7) In this section, “authorised person” means a person declared by the Director in writing to be an authorised person for the purposes of this section.

### **Compensation**

**59. (1)** In this section—

“Compensation Act” means the *Workers' Compensation Act 1951*;

“overtime” has the same meaning as in the Compensation Act.

**(2)** While a child is working pursuant to an attendance centre order the Compensation Act applies in relation to the child as if—

- (a) the child, in so working, were employed by the Territory under a contract of service;
- (b) paragraphs (b) and (c) of the definition of “worker” in subsection 6 (1) of the Compensation Act were omitted;
- (c) for subparagraph 1 (c) (i) of Schedule 1 to the Compensation Act there were substituted the following subparagraph:
  - “(i) of the amount referred to in subparagraph (b) (i); or”; and
- (d) subparagraphs 2 (b) (i) and (ii) of Schedule 1 to the Compensation Act were omitted.

**(3)** Notwithstanding clause 1A of Schedule 1 to the Compensation Act, for the purposes of the application of that Act in accordance with subsection (2), the prescribed amount applicable to a child in respect of a week, for the purposes of paragraph 1 (b) of that Schedule, is—

- (a) in the case of a child who, immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of the child arose—
  - (i) was carrying on a business on his or her own account; or
  - (ii) was unemployed and was not carrying on a business on his or her own account but who, at any time during the period of 12 months ending immediately before the day on which that liability arose, was employed or was carrying on a business on his or her own account,

the amount calculated by dividing by 52 the amount that is equal to the income of the child during the period of 12 months ending immediately before the day on which that liability arose;

- (b) in the case of a child who was unemployed immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of the child arose, not being a child referred to in paragraph (a)—nil; and
- (c) in any other case—an amount equal to the income of the child in respect of the period of 7 days ending immediately before the day on which the liability of the Territory under the Compensation Act to pay compensation to or in respect of the child arose.

(4) A reference in paragraph (3) (c) to income, in relation to a child, shall not be read as including a reference to—

- (a) a payment in respect of overtime;
- (b) an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the child; or
- (c) where the child had more than one occupation during the period of 7 days referred to in that paragraph—income derived by the child from an occupation other than his or her principal occupation.

(5) Where—

- (a) the Territory would, but for this subsection, be liable under the Compensation Act to pay an amount of compensation to, or in respect of, a child in relation to a period, being the whole or a part of a period during which the child is totally incapacitated for work; and
- (b) a person who is an employer of the child is liable, by reason of the child's total incapacity for work, to make a payment to the child by way of salary or wages in relation to that first-mentioned period,

the Territory shall not be liable to pay that amount under the Compensation Act but shall pay to the employer so much of that amount as does not exceed the amount payable to the child by the employer, and the balance (if any) of that amount shall be taken to be compensation payable by the Territory under the Compensation Act to or in respect of the child in relation to that first-mentioned period.

(6) Notwithstanding the preceding provisions of this section, no amount is payable in respect of a child—

- (a) if the child was employed only in work of a casual nature; or
- (b) in the case of a child who was unemployed—unless the child was qualified to receive an unemployment benefit under the *Social Security Act 1947* of the Commonwealth.

#### **Breach of attendance centre orders**

**60.** A person in respect of whom an attendance centre order is in force who—

- (a) fails to report at an attendance centre or other place as required by the Director;

- (b) contravenes any rule applicable at the attendance centre at which the child is required to report;
- (c) contravenes subsection 58 (2);
- (d) leaves an attendance centre at a time when he or she should be there;  
or
- (e) refuses to work or neglects or mismanages his or her work,

shall be deemed to have failed to comply with the attendance centre order.

### **Breach of probation, attendance centre or residential orders**

**61. (1)** If a person with respect to whom a probation order, an attendance centre order or a residential order is made fails, without reasonable excuse, to comply with the order or with a condition of the order, the person is guilty of an offence against this section.

**(2)** Where a person is convicted of an offence against this section or the Court finds such an offence to be proved but does not proceed to a conviction, the Court may make one or more of the following orders:

- (a) an order that the Court is empowered to make, by this Act or any other law, with respect to the offence in relation to which the order mentioned in subsection (1) was made;
- (b) an order—
  - (i) revoking or varying the order referred to in subsection (1); or
  - (ii) directing the person to comply with the order referred to in subsection (1) in so far as it has not been complied with.

**(3)** When making an order under paragraph (2) (a), the Court shall, in addition to any other matters that the Court considers should be taken into account, take into account—

- (a) the fact that the probation order, the attendance centre order or the residential order (in this subsection and subsection (4) referred to as the “original order”) was made;
- (b) anything done under the original order; and
- (c) any other order made in respect of the offence in respect of which the original order was made and anything done in pursuance of that other order.



(4) The Court shall not make, under paragraph (2) (a), an order imposing a penalty which, when taken together with the penalty previously imposed in respect of the offence in respect of which the original order was made, exceeds the maximum penalty the Court could have imposed in respect of the offence.

(5) Where—

- (a) the Court makes or varies a probation order under subsection (2) in respect of a child; and
- (b) there is in force another order of the kind referred to in subsection 47 (1) in respect of the child,

the Court may order that the probation order is to commence to have effect when the other order ceases to have effect.

#### **Revocation and variation of certain orders**

**62. (1)** Subject to subsection (5), where the Court has made a conditional discharge order, a probation order, an attendance centre order or a residential order in respect of a child, or an order committing a child to an institution or a State institution (in this section referred to as the “previous order”), the Court may, on an application by the Director or any other person, by order revoke or vary the previous order or make another order in substitution for the previous order.

(2) The applicant shall cause a copy of the application to be served—

- (a) if the applicant is—
  - (i) the Director—on the Community Advocate;
  - (ii) the Community Advocate—on the Director; or
  - (iii) a person other than the Director or the Community Advocate—on the Director and the Community Advocate;
- (b) if practicable, on at least one of the parents of the child concerned, whether the parent is resident in the Territory or not;
- (c) on the child concerned; and
- (d) on any other person that the Court directs.

(3) The previous order as varied or the order made in substitution for the previous order shall be an order of the kind mentioned in subsection 47 (1) but the Court shall have regard to the circumstances at the time of the hearing.

(4) Subject to subsection (3), the Court may make any order that appears to the Court to be appropriate.

**(5)** Where a probation order has been made in respect of a child without convicting the child of an offence, the Court shall not make—

- (a) an order of the kind referred to in paragraph 47 (1) (c), (d) or (e), in respect of the child; or
- (b) an attendance centre order or a residential order in respect of the child or an order committing the child to an institution or a State institution,

unless the Court first convicts the child of the offence.

**(6)** This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

#### ***Division 4—Miscellaneous***

##### **Powers of Supreme Court**

**63. (1)** Where a child is convicted of an offence by the Supreme Court, the Supreme Court may—

- (a) make such order with respect to the child, issue such warrants, and do such other acts and things, as the Childrens Court could have made, issued or done if the child had been convicted by the Childrens Court;
- (b) make an order committing the child to an institution or a State institution for a specified period not longer than the period of imprisonment that could have been imposed in respect of the offence if the offence had been committed by an adult; or
- (c) deal with the child in any way in which it might have dealt with the child if he or she had been an adult at the time of the commission of the offence.

**(2)** Where, pursuant to paragraph (1) (c), a child is sentenced to imprisonment, the sentence has effect subject to any law of a State in which the child is detained relating to the detention of young persons (however described).

##### **Adjournment of criminal proceedings**

**64. (1)** Where the hearing of a charge against a child is adjourned by the Court, the adjournment shall not, except in special circumstances, be for a period that exceeds 21 days.

**(2)** Where the Court adjourns the proceedings, the Court may—

- (a) by order—

- (i) release the child if the child and one of his or her parents give an undertaking satisfactory to the Court that the child will be present at the next hearing;
  - (ii) release the child on bail in accordance with the provisions of the *Bail Act 1992*;
  - (iii) place the child in the custody of a suitable person;
- (b) order that the child be placed in a shelter or remand centre; or
- (c) if the person in charge of a hospital or approved home consents, order that the child be placed in the hospital or approved home.

(4) The Court shall not order that a child be placed in a remand centre unless the Court is satisfied that, by reason of the actual or apprehended violent behaviour of the child, the seriousness of the offence, an escape or attempted escape by the child from lawful detention or for other good cause, it is necessary or desirable so to place the child.

#### **Placing in shelter etc.**

**65. (1)** Where the Court commits a child to an institution or a State institution, the child shall be placed in a shelter or remand centre until he or she is removed to the institution.

**(2)** The child shall not be kept in the shelter or remand centre for more than 14 days unless the Court so orders or the Director approves in writing.

**(3)** An order committing a child to an institution or a State institution is sufficient authority for an officer or police officer to do one or more of the following:

- (a) subject to any contrary provision in the order—
  - (i) take the child to a shelter or remand centre;
  - (ii) take the child from one shelter or remand centre to another;
  - (iii) take the child from a shelter to a remand centre or from a remand centre to a shelter;
- (b) take the child to the institution or the State institution;
- (c) in the case of a child committed to a State institution—take the child to the State or Territory specified in the order for the purposes of detention in the State institution.

#### **Children in remand centres**

66. Where a child is in a remand centre in pursuance of this Act, the *Remand Centres Act 1976* applies to and in relation to the child as though the child were a detainee within the meaning of that Act.

#### **Remission of time to be spent in institution**

67. Where a child has been committed to an institution, the Director may, unless the Court otherwise ordered when so committing the child, having regard to the child's excellence in conduct and industry or to special circumstances, reduce the period specified by the Court under that paragraph by not more than one-third of the period so specified.

#### **Director may grant leave for special purposes**

68. (1) The Director may, by instrument in writing, on such terms and conditions as he or she thinks fit, grant leave of absence to a child who has been committed to an institution or placed in a shelter for any reason he or she thinks fit, including one or more of the following:

- (a) the education and training of the child;
- (b) the employment of the child;
- (c) a compassionate reason;
- (d) the health of the child;
- (e) the recreation of the child;
- (f) the participation by the child in a community project or an attendance centre program.

(2) Any period for which a child is outside an institution in pursuance of leave of absence granted under this section shall, for the purposes of this Act, be taken to be a period for which the child was in the institution.

(3) Where the Director—

- (a) refuses to grant leave of absence to a child; or
- (b) grants leave of absence to a child for a period that is less than the period requested in respect of the child,

the child or a parent of the child may appeal to the Court.

(4) On the hearing of an appeal under this section, the Court may by order confirm, vary or set aside the decision of the Director and may make such other orders as the Court considers necessary.

#### **Other rights and freedoms not affected**

**69. (1)** This Part, in so far as it protects a child, is in addition to and not in derogation of any rights and freedoms of the child under any other law in force in the Territory and it is not intended to exclude or limit the operation of such a law in so far as it is capable of having effect concurrently with this Part.

**(2)** Nothing in this Act affects the Royal prerogative of mercy.

## **PART IVA—INTERSTATE TRANSFER OF OFFENDERS**

### ***Division 1—Interstate transfer generally***

#### **Interpretation**

**69A.** In this Part—

“arrangement” means an arrangement under section 69C or, if such an arrangement has been varied by a further arrangement under that section, the arrangement as so varied;

“escort” means a person (whether or not an officer) who is authorised by or under an agreement or arrangement or a transfer order to take and keep temporary control of a young offender;

“Minister”, in relation to a State or another Territory, means—

- (a) except as provided by paragraph (b)—a Minister of the Crown of that State or Territory; or
- (b) in the case of the Northern Territory—a person holding Ministerial office under the *Northern Territory (Self-Government) Act 1978* of the Commonwealth;

“person responsible”, in relation to a young offender, means—

- (a) a parent of the young offender;
- (b) a person who has the temporary control of the young offender (whether or not the person has the custody of the young offender); or
- (c) a person who had the temporary control of the young offender immediately before the young offender became subject to detention under this Act;

“receiving State” means the State to which a young offender is transferred;

“sending State” means the State from which a young offender is transferred;

“State” includes a Territory;

“transfer order” means an order under section 69G;

“young offender” means—

- (a) a person who is—
  - (i) under the age of 18 years and has committed an offence against the law of a State; or
  - (ii) of or over the age of 18 years, but under the age of 21 years, and has committed an offence against the law of a State when the person was under the age of 18 years;  
and who has been dealt with for the offence under a law which applies in that State and which relates to the punishment of a person who is under the age of 18 years, but who is not on remand; or
- (b) a person in respect of whom an order under paragraph 47 (1) (b), (c), (d), (e), (f), (g), (h), (i) or (k) has been made.

### **Minister may enter into general agreements**

**69B. (1)** The Minister may enter into an agreement with a Minister of a State, or with a person authorised to enter into an agreement on behalf of such a Minister, providing generally—

- (a) for the transfer of young offenders from or to the Territory; or
- (b) for the transfer of young offenders through the Territory from a State to another State.

**(2)** An agreement relating to a State shall not be entered into unless a regulation is in force declaring that the State has enacted legislation dealing with the interstate transfer of young offenders.

### **Director may make arrangements**

**69C.** If an agreement with or on behalf of a Minister of a State is in force, the Director may make an arrangement with that Minister, with a person authorised by that Minister or with another person as provided in the agreement, for the transfer of a particular young offender—

- (a) from the Territory to the State; or
- (b) to the Territory from the State;

and may make a further arrangement with that Minister or such a person for the purpose of rectifying any error in such an arrangement.

**Arrangement for transfer from the Territory**

**69D. (1)** An arrangement for the transfer of a young offender from the Territory to a State shall not be made unless—

- (a) the young offender or a person responsible for the young offender applies for the transfer to be made;
- (b) the Director is of the opinion that the transfer is appropriate, having regard to all the circumstances, including—
  - (i) the place or intended place of residence of the parents or other relatives of the young offender;
  - (ii) the present and future education, training or employment of the young offender; and
  - (iii) the medical or other needs of the young offender;
- (c) the young offender has been given independent legal advice of the effect of the arrangement;
- (d) the young offender consents to the arrangement, or the Director determines that the particular circumstances of the case indicate the arrangement should be made without the young offender's consent; and
- (e) the Director is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.

**(2)** For the purpose of deciding whether or not to arrange for the transfer of a young offender from the Territory to a State, the Director may ask—

- (a) the young offender; or
- (b) a person responsible for the young offender;

for any necessary information.

**(3)** The Director may refuse to make an arrangement if information sought under this section is not supplied within the time specified by the Director.

**(4)** This section does not apply to a further arrangement made for the purpose of rectifying an error.

**Arrangement not to be made if facilities not adequate**

**69E.** An arrangement for the transfer of a young offender from a State to the Territory shall not be made unless the Director is satisfied that there are adequate facilities in the Territory for the young offender to be accepted and dealt with as provided in the arrangement.

**Provisions to be contained in each arrangement**

**69F. (1)** An arrangement for the transfer of a young offender from or to the Territory shall—

- (a) be in writing;
- (b) provide for the acceptance of, and means of dealing with, the young offender in the receiving State; and
- (c) specify each order of a court of the sending State to which the young offender is subject (including any order required by a previous arrangement with the Territory or with a State to be treated as having been made by a court of the sending State).

**(2)** For each order so specified, the arrangement shall—

- (a) state the way in which it is to operate in the receiving State, which shall be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made;
- (b) state the maximum time for which it may operate, which shall not be longer than the maximum time for which it could operate in the sending State if the arrangement were not made;
- (c) state any entitlement of the young offender to a reduction in detention in the sending State and how that entitlement is to operate in the receiving State, which shall be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made; and
- (d) state that a young offender who is subject to a non-probation period may be treated as being subject to an equivalent non-parole period, if the laws of the receiving State do not provide for non-probation periods.

**(3)** A reference in this section to an order of a court shall be read as a reference to any sentence, detention, probation, parole or other order, which could be made or imposed by such a court.

**Transfer order**



**69G. (1)** If the Director makes an arrangement under this Act for the transfer of a young offender from the Territory to a State in the temporary control of an escort, the Director shall make a written order which—

- (a) directs the person who has temporary control of the young offender to deliver the young offender to the temporary control of the escort; and
- (b) authorises the escort to take and keep temporary control of the young offender for the purpose of transferring the young offender to the place in the receiving State and to the temporary control specified in the arrangement.

**(2)** The authority conferred on an escort by this section is conferred only on an escort who is—

- (a) a member of the Police Force;
- (b) a person appointed by the Director;
- (c) an officer; or
- (d) a person acting as an escort with the approval of the Director.

**Transfer to the Territory in the temporary control of an escort**

**69H.** If, under an arrangement for the transfer of a young offender to the Territory, an escort authorised under the arrangement brings the young offender into the Territory, the escort, while in the Territory is authorised to take and keep temporary control of the young offender for the purpose of transferring the young offender to the place in the Territory and to the temporary control specified in the arrangement.

**Escape from temporary control of young offender being transferred from the Territory**

**69J.** A young offender in respect of whom an order under paragraph 47 (1) (k) has been made—

- (a) who is in temporary control under an arrangement made for his or her transfer from the Territory to a State; and
- (b) who escapes or attempts to escape from that temporary control while he or she is not within the Territory or the receiving State;

is guilty of an offence against this Act and is liable for committal to an institution for not more than 3 months.

***Division 2—Transfer of sentence or order***

**Transfer from the Territory of sentence or order**

**69K.** If a young offender is transferred from the Territory to a State under an arrangement, then, from the time the young offender arrives in that State, any sentence imposed on, or order made in relation to, the young offender in the Territory before that time ceases to have effect in the Territory except for the purpose of—

- (a) any appeal against or review of any conviction, judgment, sentence or order made, imposed or fixed by a court of the Territory;
- (b) taking into account any period of detention served before that time by the young offender or any reduction of the period of detention granted before that time;
- (c) taking into account anything done before that time by the young offender in carrying out the order; and
- (d) allowing for any remittance of money to the Territory which is or has been paid at any time in discharge or partial discharge of the sentence or order.

**Transfer to the Territory of sentence or order**

**69L. (1)** If a young offender is transferred to the Territory from a State under an arrangement, then, from the time the young offender arrives in the Territory—

- (a) any sentence imposed on, or order made in relation to, the young offender by a court of the sending State and specified in the arrangement is to be considered as having been imposed or made by such court of the Territory as is specified in the arrangement;
- (b) any sentence or order considered by a previous arrangement with the Territory or with a State to have been imposed or made by a court of the sending State (being a sentence or order specified in the arrangement under which the young offender is transferred to the Territory) is to be considered as having been imposed or made by such court of the Territory as is specified in the arrangement; and
- (c) any direction given or order made by a court of the sending State concerning the time when anything is to be done under an order made by a court of that State is, so far as practicable, to be considered as having been given or made by such court of the Territory as is specified in the arrangement.

(2) Any such sentence, order or direction has effect in the Territory as specified in the arrangement and the laws of the Territory apply as if the court of the Territory specified in the arrangement—

- (a) had had power to impose the sentence and to give or make the order or direction; and
- (b) did in fact impose the sentence and make or give the order or direction when it was imposed, made or given.

### ***Division 3—Transit through the Territory***

#### **Lawful custody for transit through the Territory**

**69M. (1)** The Director may authorise the superintendent of an institution to receive, at the institution, young offenders being transferred through the Territory from a State to another State in accordance with an agreement.

(2) If a young offender is brought into the Territory by an escort authorised by such an agreement to have temporary control of the young offender—

- (a) while in the Territory, the escort for the time being is authorised to take and keep temporary control of the young offender for the purposes of the transfer; and
- (b) a superintendent authorised under this section may (at the request of the escort for the time being and upon receiving from the escort written authority for the transfer of the young offender as provided in the agreement)—
  - (i) receive and detain the young offender at the institution in such temporary control and for such time as the escort requests, if it is reasonably necessary for the purposes of the transfer; and
  - (ii) at the end of that time, deliver the young offender into the temporary control of the escort.

(3) In this section—

“superintendent” means the person for the time being in charge of an institution.

#### **Escape from temporary control**

**69N. (1)** A young offender being transferred through the Territory from a State to another State in accordance with an agreement who escapes from the temporary control of an escort authorised by the agreement to have temporary control of the offender may be apprehended by any person without a warrant.

(2) Where a young offender being so transferred through the Territory from a State to another State in the temporary control of such an escort—

- (a) has escaped and been apprehended; or
- (b) has attempted to escape;

the young offender may be taken before a magistrate who may, by warrant under his or her hand, order the young offender to be detained in temporary control at an institution.

(3) Such a warrant may be executed according to its tenor.

(4) A young offender who is apprehended pursuant to such a warrant shall, as soon as practicable, be brought before the Magistrates Court, in the case of a young offender who is of or over the age of 18 years, or the Childrens Court, in the case of a young offender who is under the age of 18 years, which may order—

- (a) that the young offender be delivered to the temporary control of an escort; or
- (b) that the young offender be detained for no longer than 7 days until an escort is available from the sending State to carry out the arrangement or any orders made by a court of that State.

(5) If a young offender who is the subject of an order made by a magistrate is not, in accordance with the order, delivered into the temporary control of an escort within 7 days after the making of the order, the order has no further effect, but nothing in this section prevents a further such order from being made.

(6) The references in subsections (4) and (5) to an escort for a young offender being transferred through the Territory from a State to another State under an agreement shall be read as a reference—

- (a) to the escort authorised by the agreement to have temporary control of the young offender; or
- (b) where the offender has escaped or attempted to escape—to 1 or more of the following persons:
  - (i) that escort;
  - (ii) a member of the Police Force of the sending State;
  - (iii) a person appointed by instrument in writing (by the Minister of the sending State or a person authorised to enter into an

agreement on behalf of that Minister) to be an escort for the purpose of carrying out any orders of a court of the sending State.

### **Search warrants**

**69P. (1)** An escort, any member of the Police Force or any officer may apply to a magistrate for a search warrant if such a person has reasonable grounds for believing that a young offender, who has escaped from the temporary control of an escort while being transferred through the Territory from a State to another State in accordance with an agreement, is on or in premises.

**(2)** A magistrate to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an escort, a member of the Police Force or an officer named in the warrant with such assistance, and with such force, as is necessary and reasonable—

- (a) to enter specified premises;
- (b) to inspect the premises for evidence of the young offender who has escaped from temporary control;
- (c) to observe and converse with any person apparently residing there; and
- (d) to apprehend the young offender at the premises.

**(3)** There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the identity of and a description of the young offender in relation to whom entry and search are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) a date, not being later than 1 month after the date of issue of the warrant, upon which the warrant ceases to have effect.

**(4)** A member of the Police Force—

- (a) may accompany an escort or an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist in the apprehension of the young offender at the premises.

(5) In this section—

“escort” means the escort authorised by the agreement to have temporary control of the young offender.

#### ***Division 4—Revocation of transfer orders***

##### **Revocation of transfer order on escape from temporary control**

**69Q. (1)** The Childrens Court may revoke a transfer order on application made to it by the Director that the young offender to whom it applies has, while being transferred, committed—

- (a) the offence of escaping or attempting to escape; or
- (b) any other offence.

(2) This section applies whether—

- (a) the offence concerned was an offence against the law of the Territory or of the receiving State or of a State through which the young offender was being transferred; or
- (b) an information has been laid or a conviction secured in respect of the offence concerned or not.

##### **Revocation of transfer order by Director**

**69R. (1)** The Director may revoke a transfer order at any time before the young offender is delivered in the receiving State into the temporary control specified in the arrangement concerned.

(2) Where, under this section, the Director revokes a transfer order, the Director may make a further arrangement with the receiving State for the return of the young offender to the Territory.

##### **Reports**

**69S. (1)** For the purpose of forming an opinion or exercising a discretion under this Act, the Director may—

- (a) be informed as the Director thinks fit; and
- (b) have regard to reports from—
  - (i) any person responsible for a young offender; or
  - (ii) any person who has had the custody, temporary control, care or supervision of a young offender;

in the Territory or in a State.

(2) Any such reports that relate to a Territory young offender may be sent to a Minister of a State who has entered into an agreement or on whose behalf an agreement has been entered into or to a person authorised under an agreement to make arrangements with the Director.

## PART V—CHILD CARE PROCEEDINGS

### *Division 1—Preliminary*

#### **Authorised persons**

70. For the purposes of this Part, “authorised person” means—

- (a) a person for the time being appointed in writing by the Minister to be an authorised person for the purposes of this Part; or
- (b) a police officer.

#### **Children in need of care**

71. (1) For the purposes of this Part, a child is in need of care if—

- (a) the child—
  - (i) has been physically injured (otherwise than by accident); or
  - (ii) has been sexually abused,by one of the child’s parents or by a member of the household in which the child lives or there is a likelihood that he or she will so suffer such physical injury or sexual abuse;
- (b) the child—
  - (i) has been physically injured (otherwise than by accident); or
  - (ii) has been sexually abused,by a person other than a person mentioned in paragraph (a), or there is a likelihood that the child will so suffer such physical injury or sexual abuse, and the child’s parents are unable or unwilling to protect him or her from the injury or abuse;
- (c) by reason of the circumstances in which the child is living, has lived or is reasonably likely to live or in which the child is found—
  - (i) the health of the child has been impaired or there is a likelihood that it will be impaired; or

- (ii) the child has suffered, or is likely to suffer, psychological damage of such a kind that his or her emotional or intellectual development is or will be endangered;
- (d) the child is engaging in behaviour that is, or is likely to be, harmful to him or her and his or her parents or guardian are unable or unwilling to prevent the child from engaging in that behaviour;
- (e) there is no appropriate person to care for the child because—
  - (i) the child has been abandoned by his or her parents or guardian;
  - (ii) the child's parents or guardian cannot, after reasonable enquiries have been made, be found; or
  - (iii) the child's parents are dead and he or she has no guardian;
- (f) there is serious incompatibility between the child and one of his or her parents or between the child and his or her guardian; or
- (g) the child is required by law to attend school and is persistently failing to do so and the failure is, or is likely to be, harmful to the child.

(2) In the application of this Part, an authorised person, the Director or the Court shall have regard to the degree of injury, abuse, impairment, likelihood, incompatibility or failure and shall disregard any of those things that, in the circumstances, appears to be not sufficiently serious or substantial to justify action under this Part.

### **Where person apparently a child**

72. For the purposes of this Part—

- (a) a person who appears, on reasonable grounds, to an authorised person, to the Director or to the Court, as the case may be, to be a child may be dealt with under this Part as if he or she were a child and the provisions of this Part that refer to a child have effect in relation to the person accordingly; and
- (b) if it becomes known that the person is not a child—
  - (i) no further proceedings with respect to the person shall be taken under this Part; and
  - (ii) if, by reason of the application of any provision of this Part, the person is in an approved home, a hospital, a shelter or a State institution or is in the custody of a person, that provision



ceases to have effect with respect to the person and the person is entitled to be released.

***Division 2—Child Care Proceedings Generally***

**Proceedings with respect to children in need of care**

**73. (1)** If it appears, on reasonable grounds, to an authorised person that a child is in need of care and the circumstances are such that action under this subsection should be taken immediately to safeguard the welfare of the child, the authorised person may take the child into his or her custody and place the child in a shelter or, if the person in charge of an approved home or a hospital consents, the approved home or hospital.

**(2)** Subsection (1) has effect with respect to a child who is in the Territory notwithstanding that the usual place of living of the child is not in the Territory.

**(3)** The authorised person shall, as soon as practicable, notify the Director and the Community Advocate of the name and age of the child, the name of the shelter, approved home or hospital in which the person has placed the child, of the time when the child was taken into custody and of any other relevant circumstances.

**(4)** The Director shall record in writing particulars of all notifications under subsection (3) and of any action that he or she has taken in relation to them.

**(5)** The authorised person shall, as soon as practicable, take all reasonable steps to cause a parent of the child to be notified, whether the parent is resident in the Territory or not, of the time when the child was taken into custody, the name of the shelter, approved home or hospital in which the person has placed the child and of the other relevant circumstances notified to the Director under subsection (3).

**Children in hospital**

**74. (1)** If it appears, on reasonable grounds, to an authorised person that a child who is in a hospital is in need of care, or would, upon leaving the hospital, be in need of care, and that it is necessary to take urgent action to safeguard the welfare of the child, the authorised person may, in writing, direct that the child be detained in the hospital and, subject to this Act, the child shall be detained accordingly.

**(2)** Subsection (1) has effect with respect to a child who is in a hospital in the Territory notwithstanding that the usual place of living of the child is not in the Territory.

(3) The authorised person shall, as soon as practicable, notify the Director and the Community Advocate of the name and age of the child, of the name of the hospital, of the time at which the direction under subsection (1) was given and of any other relevant circumstances.

(4) The Director shall record in writing particulars of all notifications under subsection (3) and of any action that he or she has taken in relation to them.

(5) The authorised person shall, as soon as practicable, take all reasonable steps to cause a parent of the child to be notified, whether the parent is resident in the Territory or not, of the name of the hospital, of the time at which the direction under subsection (1) was given and of the other relevant circumstances notified to the Director under subsection (3).

#### **Direction for release of child**

75. (1) Upon a notification being made as provided by section 73 or 74, the Director may direct that the child be released immediately and, if the Director does not so direct, the Director shall, as soon as practicable, notify a magistrate and the Community Advocate of the name and age of the child, of the shelter, approved home or hospital in which the child is and of any other relevant circumstances.

(1A) If before the expiration of 48 hours after a child was taken into care under section 73 or a direction was given for the detention of a child in a hospital under section 74, the Director makes a decision that the child be released from that care or hospital, the Director shall not direct that the child be released until the Director has notified the Community Advocate of that decision.

(2) If, at the expiration of 48 hours after the child was taken into custody under subsection 73 (1) or a direction was given under subsection 74 (1), action under this section has not been taken by a magistrate, the child shall forthwith be released.

(2A) At any time after a child has been taken into custody under section 73 or detained under section 74, a parent of the child, or other person having custody of the child, may apply to a magistrate for a direction that the child be released.

(3) A magistrate may by order authorise the detention of the child in the shelter, approved home or hospital for such period, not exceeding 72 hours reckoned from the time when the magistrate gives the authority, as the magistrate specifies or may direct that the child be released.

(4) Subject to subsection (5), a magistrate may act under subsection (3) without any formal hearing and upon the information given to him or her by the Director and the magistrate is not required, before so acting, to hear any person on behalf of the child or his or her parents.

(4A) Before the Director gives information to a magistrate for the purposes of subsection (3), the Director shall notify the Community Advocate of his or her intention to do so.

(5) Where the child, a parent of the child or another person having custody of the child applies to a magistrate to be heard (whether pursuant to subsection (2A) or otherwise), the magistrate shall not act under subsection (3) without hearing the child, parent or person, the Director and the Community Advocate, whether by way of a formal hearing or otherwise.

(6) If—

- (a) a magistrate or the Director directs that the child be released; or
- (b) the period of 72 hours referred to in subsection (3) expires,

the child shall, subject to section 76, be released, as soon as practicable, and reasonable steps taken to return the child to his or her usual place of living.

#### **Application to Court for detention order**

**76. (1)** Subject to subsection (6), if a magistrate authorises the detention of the child, the Director shall forthwith make appropriate enquiries as to the welfare of the child and may make an application to the Court for an order under subsection (3).

(2) Where the Director makes an application under subsection (1), the child shall, unless the Court otherwise orders, continue to be detained in a shelter, approved home or hospital.

(3) The Court may make an order—

- (a) that the child be no longer detained;
- (b) authorising the continued detention of the child in the shelter, approved home or hospital or his or her detention in some other shelter, approved home or hospital; or
- (c) placing the child in the custody of a suitable person.

(4) An order under paragraph (3) (b) or (c) remains in force for such period, not exceeding 7 days, as the Court specifies in the order.

(5) The Court may, upon application by the Director, make one further order extending the period specified in the previous order by not more than 7 days.

(6) Before the Director makes application under subsection (1) or (5), the Director shall notify the Community Advocate of his or her intention to do so.

### **Procedure on application**

77. (1) Notification of an application under section 76 shall, if practicable, be given to the person having the custody of the child and to at least one of the child's parents, whether the person or parent is resident in the Territory or elsewhere.

(2) The child and each person notified under subsection (1) shall be the respondents to the application.

### **Application for declaration that child is in need of care**

78. (1) The Director may make an application to the Court for a declaration that a child, being a child who is in the Territory or ordinarily resides in the Territory, is in need of care.

(2) Before making such an application, the Director shall consult the Standing Committee.

(3) The Director may consult the Standing Committee by telephone.

### **Application to be served on parents**

79. (1) A copy of an application under section 78 shall, if reasonably practicable, be served on—

- (a) at least one of the child's parents, whether the parent is resident in the Territory or elsewhere;
- (b) if the child has, or appears to have, attained the age of 8 years—on the child; and
- (c) on any other person that the Court directs.

(2) The child, whether served with a copy of the application or not, and a parent or the parents on whom a copy of the application has been served shall be the respondents to the application.

### **Hearing and determination of application**

**80. (1)** The Court hearing an application under section 78 with respect to a child—

- (a) subject to subsection (2), may make a declaration that the child is in need of care; and
- (b) where the Court makes that declaration, shall make one or more of the orders specified in section 83 with respect to the child,

or may dismiss the application.

**(2)** The Court shall not make a declaration that the child is in need of care unless the Court is satisfied that the child is unlikely to receive suitable care unless the Court makes an order of the kind referred to in subsection 83 (1).

**(3)** The question whether a child is in need of care or is unlikely to receive suitable care shall be decided on the balance of probabilities.

**(4)** If an order is not made under this section within 6 months after the making of the application, the application lapses and the child, if he or she is detained under this Part, shall forthwith be released.

### **Adjournment of hearing**

**81. (1)** The Court may adjourn a hearing under section 80 from time to time but so that a period of adjournment does not, unless the Court considers it necessary, exceed 21 days.

**(2)** The Court may, by order, direct that, during the period of an adjournment, the child—

- (a) live, or continue to live, at home;
- (b) be placed, or remain, in the custody of a specified suitable person;
- (c) live, or continue to live, if the person in charge of the home consents, in an approved home;
- (d) live, or continue to live, in a shelter; or
- (e) be detained, if the person in charge of the hospital consents, in a specified hospital.

### **Child care conference**

**82. (1)** Where the Court adjourns an application under section 78, the Court may direct that the Director convene a conference to consider the welfare of the child, to be attended by one or more of the following persons:

- (a) if the Court so orders, the child;
- (b) a parent of the child;
- (c) a person who is or may be concerned with the welfare of the child;
- (d) with the leave of the Court, a barrister and solicitor acting for a person referred to in paragraph (a), (b) or (c).

**(1A)** Where the Court gives a direction under subsection (1), it shall give notice of the making of the direction to the Community Advocate.

**(2)** The Director shall attend and preside at the conference and shall report the result of the conference to the Court.

**(2A)** Where the Community Advocate is notified in accordance with subsection (1A), he or she may attend the conference to which the direction relates.

**(2B)** Notwithstanding subsection (1), where the Court adjourns an application under section 78, the Community Advocate shall, if requested in writing by the Director, convene a conference to consider the welfare of the child.

**(2C)** A conference convened under subsection (2B) may be attended by 1 or more of the following persons:

- (a) if the Court so orders, the child;
- (b) a parent of the child;
- (c) a person who is or may be concerned with the welfare of the child;
- (d) with the leave of the Court, a barrister and solicitor acting for a person referred to in paragraph (a), (b) or (c).

**(3)** The Director shall keep a record in writing of the proceedings at the conference.

**(4)** Evidence of anything said, or of any admission made, at a conference is not admissible in proceedings before a court except with—

- (a) the consent of all the persons who attended the conference; or
- (b) the leave of the Court.

**(5)** A person who attends a conference or to whom a disclosure is made in accordance with this section shall not—

- (a) except in the course of his or her official duties; or
- (b) otherwise than is provided by this section;

disclose any information furnished to the conference or anything said at the conference.

**(6)** A person who contravenes subsection (5) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000, or imprisonment for a period not exceeding 12 months, or both.

### **Care orders**

**83.<sup>2</sup> (1)** For the purposes of section 80, the following orders are specified:

- (a) a supervision order;
- (b) a residential order;
- (d) an order committing a child to an institution for such period as the Court determines;
- (e) an order that a child become a ward of the Director.

**(2)** An order of the kind specified in subsection (1) shall specify a period during which the order is to have effect.

**(3)** An order of the kind specified in paragraph (1) (d) or (e) shall not be made unless the Court is satisfied that no other order specified in subsection (1) would be in the interests of the welfare of the child.

**(4)** A supervision order may contain one or more of the following provisions:

- (a) a provision requiring the child, a parent of the child or both a child and a parent of the child to take part in discussions with the supervisor with respect to the welfare of the child, in particular whether the child should receive some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the child; and
- (b) such other provisions as the Court considers to be in the interests of the welfare of the child.

**(5)** A supervision order may be expressed to have effect when a residential order or an order of the kind specified in paragraph (1) (d) ceases to have effect.

**(6)** The Court may include in a supervision order provisions to be complied with by a parent of the child, being a parent on whom a copy of the application under section 78 was served, whether or not the parent resides in the Territory.

(7) An order that the child become a ward of the Director may provide that the Director or another person who has the custody of the child shall not, if it is practicable to consult a parent of the child, exercise a power in respect of the ward except after consulting a parent of the child.

**83A.**<sup>2</sup> \* \* \* \* \*

### **Access**

**84. (1)** Where the Court makes an order of the kind specified in paragraph 83 (1) (b), (d) or (e) in respect of a child, the Court may, at the time of making the order or at any time while the order is in force, on application made to it, by order grant to the applicant access to the child.

(2) Before making an order under subsection (1), the Court shall have regard to such matters as it thinks appropriate and, in particular, shall have regard to the wishes of the child if the child is capable of expressing them and to the conduct and wishes of the parent or of any other person concerned.

### **Residential orders and supervision orders: entry and inspection by Director etc.**

**85. (1)** Where a child who is the subject of a residential order or a supervision order resides with a person who has the custody of the child—

- (a) in the case of a child the subject of a residential order—the Director or an officer; and
- (b) in the case of a child the subject of a supervision order—the supervisor of the child,

may, on reasonable grounds and at a reasonable time—

- (c) enter the premises where the child resides; and
- (d) inspect the premises and the child.

(2) Where a child who is the subject of a residential order or a supervision order resides with a person other than a person who has the custody of the child—

- (a) in the case of a child the subject of a residential order—the Director or an officer; and
- (b) in the case of a child the subject of a supervision order—the supervisor of the child,

may enter the premises where the child resides if, and only if, the entry and inspection is made—



- (c) with the consent of the occupier of the premises; or
- (d) in pursuance of a warrant issued under this section.

(3) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that—

- (a) a child the subject of a residential order or a supervision order is residing on premises otherwise than with a person who has the custody of the child; and
- (b) it is necessary in the interests of the child for the premises and the child to be inspected,

and the information sets out those grounds, the magistrate may issue a search warrant authorising—

- (c) in the case of a child the subject of a residential order—the Director or an officer; and
- (d) in the case of a child the subject of a supervision order—the supervisor of the child,

with such assistance as is necessary and reasonable and by such force as is necessary and reasonable—

- (e) to enter upon or into the premises; and
- (f) to inspect the premises and the child.

(4) A magistrate shall not issue a warrant under this section unless—

- (a) the informant or some other person has given to the magistrate either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

#### **Placing in shelter etc.**

**86. (1)** Subject to subsection (2), a child who has been committed to a State institution by an order under paragraph 80 (1) (b) may be placed in an approved home or shelter until he or she is removed to the institution.

**(2)** The child shall not be kept in the approved home or shelter for more than 14 days unless the Court so orders or the Director approves in writing.

(3) An order committing a child to a State institution is sufficient authority for an officer to do one or more of the following:

- (a) subject to any contrary provision in the order—
  - (i) take the child to an approved home or a shelter;
  - (ii) take the child from one approved home or shelter to another;
- (b) take the child to the State institution;
- (c) take the child to the State or Territory specified in the order for the purposes of detention in the institution.

#### **Applications by other persons**

87. (1) If the Director has not made an application under section 78 with respect to a child, a person may, after consultation with the Director, seek the leave of the Court to make such an application.

(2) The Court shall hear the person and the Director and may make an order granting leave to the person to make the application.

(3) Where a person makes an application under section 78 in pursuance of leave granted under this section—

- (a) a copy of the application shall be served on the Director and the Community Advocate and each may appear and be heard in the proceedings; and
- (b) sections 79, 80, 81 and 82 apply to and in relation to an application made in pursuance of this section in like manner as they apply to an application made by the Director.

#### **Review of orders on application**

88. (1) Where the Court has made an order under section 80 with respect to a child (in this section referred to as the “previous order”), the Court may, on an application by the Director or any other person, by order revoke or vary the previous order or make another order in substitution for the previous order.

(2) Before making an application under this section the Director may consult the Standing Committee.

(3) The previous order as varied or the order made in substitution for the previous order shall be an order that the Court is empowered to make under section 80 but the Court shall have regard to the circumstances at the time of the hearing.

(4) Subject to subsections (3) and (5), the Court may make any order that appears to the Court to be appropriate.

(5) If the Court considers that the child is no longer in need of care, the Court shall revoke the order.

(6) This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

(7) This section applies to and in relation to an order made on appeal from an order under section 80.

### **Periodical review of orders**

**89. (1)** Where the Court—

- (a) makes an order under section 80; or
- (b) makes an order in substitution for such an order,

and that order is still in force, the Community Advocate shall, within 2 months before the expiration of each period of 12 months after the making of that order, apply to the Court for a review of the order.

(2) The Community Advocate shall serve with each copy of the application a statement as to any matter that the Community Advocate considers to be relevant concerning the child.

(3) If the Court considers that the child is no longer in need of care, the Court shall revoke the order.

(4) The Court may, in determining an application under subsection (1)—

- (a) by order—
  - (i) direct that the order continue in force for such period as the Court specifies;
  - (ii) vary the order; or
  - (iii) revoke the order; or
- (b) make an order of the kind specified in section 83 in substitution for the order.

(5) The Court shall not give a direction or vary or make an order under subsection (4) unless it is satisfied that the child is unlikely to receive suitable care unless the Court so acts.

(6) This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

(7) This section applies to and in relation to an order made on appeal from an order under section 80.

(8) If the Community Advocate does not make an application under subsection (1) in respect of an order, the order ceases to have effect at the expiration of the period of 12 months after the making of that order.

### **Service of applications for review**

90. A copy of an application under section 88 or 89 shall be served—

- (a) on the Director and the Community Advocate;
- (b) if practicable, on at least one of the parents of the child concerned, whether the parent is resident in the Territory or not;
- (c) if the child has attained the age of 8 years, on the child concerned; and
- (d) on any other person that the Court directs.

### **Application of Part**

91. The provisions of this Part relating to applications under section 78 apply, so far as applicable, to and in relation to the hearing of an application under section 88 or 89.

### **Order to resolve disagreements**

92. (1) Where a disagreement arises between a parent of a child and a person having, under this Act, the custody of the child, an application may be made to the Court for an order resolving the disagreement.

(2) The application may be made by the child, by the parent or by the person having the custody of the child.

(3) Where an order of the kind specified in paragraph 83 (1) (e) has been made with respect to the child, the application may be made by the Director.

(4) Each other person by whom the application might have been made shall be the respondents to the application and each of them shall be served with a copy of the application.

(5) On the hearing of the application, the provisions of this Part relating to applications under section 78 apply, so far as applicable and subject to any directions of the Court, to and in relation to the hearing.

**Procedure at hearing**

**93. (1)** The following provisions of this section have effect with respect to the hearing and determination of an application or other proceeding under this Part.

**(2)** Subject to this Act, the procedure to be followed in proceedings shall be as directed by the Court.

**(3)** The Court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

**(4)** It is not competent for a child or a parent of a child to admit that the child is in need of care.

**(5)** The Court may hear submissions that any of the following persons wishes to make:

- (aa) the Director;
- (a) the Community Advocate or other applicant;
- (b) a parent or other relative of the child concerned;
- (c) the barrister and solicitor representing the child;
- (d) a person appointed under section 166 to be the next friend of the child;
- (e) any person whom the Court considers is able to inform it on any matter relevant to determining the application or proceeding.

**(6)** Submissions on behalf of the Director or a person referred to in paragraph (a), (b), (d) or (e) may be made by a barrister and solicitor representing the Director or other person.

**(7)** A child the subject of proceedings may make representations in person to the Court, whether or not the child is legally represented, and the Court shall receive and consider the representations.

**(8)** The Court may, for good cause, order that a person (including the child concerned or a parent of the child concerned) shall not be present in the room where the Court is sitting during the whole or such part of the hearing as the Court determines.

**(9)** The validity of an order under this Part is not affected by reason of any failure to comply with any of the preceding provisions of this section.

***Division 3—Child Care Agreements***

**Child care agreements**

**94. (1)** The Director may, at the request of a parent of a child, approve the parent's placing the child in the custody of a suitable person, whether in the Territory or elsewhere.

**(2)** In considering whether to give his or her approval, the Director shall:

- (a) consider what assistance to the child is possible while the child is in the custody of his or her parent; and
- (b) where the child is capable of understanding the proposed arrangement—
  - (i) endeavour to ensure that the child does so understand; and
  - (ii) receive and consider such representations as the child wishes to make to the Director.

**(3)** Where the suitable person agrees to receive a child under subsection (1), a parent of the child and the Director shall enter into an agreement in writing with respect to the custody of the child.

**(4)** An agreement under subsection (3) shall be expressed to be in force for a period, not exceeding 3 months, specified in the agreement.

**(5)** The parties to an agreement under subsection (3) may agree to extend the period specified in the agreement for one or 2 further periods, neither of which shall exceed 6 months.

**(6)** Where—

- (a) a child is placed in the custody of a person in pursuance of this section; or
- (b) a child is placed in the custody of a person or organization, or committed to an institution, in pursuance of an order under section 80,

the Director may enter into an agreement with the person or organization, or the person in charge of the institution, with respect to the custody of the child.

**(7)** Where the Director—

- (a) refuses to give his or her approval under subsection (1); or
- (b) refuses to agree to extend an agreement under subsection (5),

the parent of the child may appeal to the Court.

(8) On the hearing of an appeal under this section, the Court may by order confirm, vary or set aside the decision of the Director and may make such other order as the Court considers necessary.

#### **Agreements not void**

95. An agreement under section 94 is not void or voidable because a parent who is a party to it has not attained the age of 18 years.

#### **Consent of child over the school-leaving age**

96. An agreement under section 94 with respect to a child who has attained the school-leaving age shall not be made without the consent of the child, unless the child is incapable of giving consent.

#### **Determination and expiration of agreements**

97. (1) A party to an agreement under section 94 may determine the agreement by giving to the other party not less than 21 days' notice in writing.

(2) Where an agreement under section 94 expires or is determined, the person having the custody of the child shall, as soon as practicable and in any case within 21 days after the expiration or determination of the agreement, cause the child to be returned—

- (a) to the parent or other person in whose custody the child was before the agreement was entered into; or
- (b) if there is an order in force placing the child in the custody of some other person—to that other person.

#### **Payment of expenses**

98. The Director may pay to a person who is caring for a child in pursuance of an agreement under section 94 such amount as the Director determines in respect of the expenses of the person in caring for the child.

#### **Contributions by parents**

99. (1) Where the Court makes an order of the kind specified in paragraph 83 (1) (b), (d) or (e) in respect of a child, the Court may also order that the parents of the child pay such amount by way of contribution to the cost of the care of the child as the Court, having regard to the financial circumstances of the parents, determines.

(2) An agreement under subsection 94 (3) may require the parent of the child to pay such amount by way of contribution to the cost of the care of the

child as the Director, having regard to the financial circumstances of the parent, determines.

- (3) An amount payable by virtue of this section—
  - (a) shall not exceed the amount paid under section 98 in respect of the child; and
  - (b) is a debt due to the Territory.

#### ***Division 4—Miscellaneous***

##### **Orders to be furnished to Director**

**100.** The Court shall cause a copy of an order under this Part to be furnished to the Director and to the Community Advocate.

##### **Dispensing with service**

**101.** The Court may, by order, dispense with service of a notice, order or other instrument under this Part upon a particular person or may make an order for substituted service of such a notice, order or instrument.

##### **Procedure where child voluntarily enters a place of safety**

**102. (1)** Where a child voluntarily enters a place of safety (not being a police station) otherwise than with the consent of a parent of the child, the occupier or person in charge of the place shall, as soon as practicable but in any case within 12 hours—

- (a) where the child has, or appears to the occupier or person in charge to have, attained the age of 8 years—seek the permission of the child to notify a parent of the child that the child is in the place of safety and, where the child grants permission, notify the parent accordingly; and
- (b) where the child has not, or does not appear to the occupier or person in charge to have, attained that age—notify a parent of the child that the child is in the place of safety.

Penalty: \$500.

**(2)** Where a child who voluntarily enters a place of safety referred to in subsection (1)—

- (a) has, or appears to the occupier or person in charge to have, attained the age of 8 years; and
- (b) does not grant permission under paragraph (1) (a);



the occupier or person in charge shall, as soon as practicable, but in any case within 12 hours after the child enters the place notify a police officer or the Director that the child is in the place of safety and of any relevant circumstances.

Penalty: \$500.

(3) Where the place of safety referred to in subsection (1) is a place the occupier of which regularly receives and cares for children temporarily, the occupier shall, as soon as practicable, but in any case within 12 hours, after the child enters the place, notify the Director that the child is in the place of safety and of any relevant circumstances.

Penalty: \$1,000.

(4) The Director shall make enquiries as to the welfare of the child and shall consider whether he or she should make an application to the Court under Division 2.

(5) The Director shall, as soon as practicable after being notified under subsection (2) or (3), notify a parent of the child that the child is in a place of safety.

### **Notification of children in need of care and of child abuse**

**103. (1)** Where a person, on reasonable grounds, suspects that there exist, have existed or may come into existence with respect to a child such circumstances as may make it appropriate that action should be taken with respect to the child under this Act, the person may notify the Director of those circumstances or may cause the Director to be so notified.

(2) Where—

- (a) a medical practitioner, dentist, registered nurse, police officer, teacher or person employed to counsel children in a school, in the course of practising his or her profession or carrying on his or her calling in the Territory;
- (b) a public servant whose duties relate to children's welfare; or
- (c) a person providing child care at premises in respect of which a licence under Part VII is in force, in the course of providing that care,

on reasonable grounds, suspects that a child has suffered physical injury (otherwise than by accident) or has been sexually abused, the person shall notify the Community Advocate accordingly or cause the Director to be so notified.

Penalty: \$1,000 or imprisonment for 6 months, or both.

### **Record of notifications**

**104.** The Director shall keep a record of each notification made to him or her under section 103 and shall include in the record particulars of any action that he or she takes in consequence of the notification.

### **Protection of persons making notifications**

**105. (1)** Where a person in good faith notifies the Director as provided by section 103—

- (a) the notification shall, for all purposes, be taken not to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct;
- (b) no civil or criminal liability is incurred by reason only of the making of the notification;
- (c) subject to subsections (2) and (3), the notification is not admissible in evidence in any proceedings in a court and evidence of its contents is not so admissible; and
- (d) subject to subsection (2), a person shall not be compelled in any proceedings to produce the notification or a copy of, or extract from, the notification or to disclose, or give any evidence of, any of the contents of the notification.

**(2)** Paragraph (1) (c) or (d) does not apply—

- (a) in proceedings before the Court under this Part in relation to the child concerned or before a court hearing an appeal from a decision of the Court in any such proceedings; or
- (b) with respect to a charge or allegation made in proceedings against a person in relation to the person's exercising any of his or her powers, or performing any of his or her duties or functions, under this Act.

**(3)** Paragraph (1) (c) does not apply where a notification is tendered in evidence, or evidence in respect of a notification is given, by the person by whom the notification was, or was caused to be, given.

### **Cessation of Part**

**106. (1)** This Part and any order or agreement under this Part cease to have effect with respect to a child upon the child attaining the age of 18 years

and, if the child is being detained under this Part, the child shall forthwith be released.

- (2) Subsection (1) does not require the release of a person who—
- (a) has been convicted of an offence and, in relation to the conviction, is detained under an order, determination, direction, declaration or decision of a court, including a court of a State or of another Territory; or
  - (b) has been charged with an offence and is so detained in relation to the charge.

## PART VI—WARDS

### Marriage of wards

107. If a person who is a ward marries before attaining the age of 18 years, the person ceases to be a ward.

### Director to be guardian of wards

108. (1) Notwithstanding any other law in force in the Territory relating to the guardianship of children, the Director is the guardian of a child who is a ward to the exclusion of the parent or person who would otherwise be the guardian of the child.

- (2) Subsection (1) has effect both within and beyond the Territory.

### Incidents of wardship

109. (1) While a child is a ward of the Director, the Director has, subject to this Act, the custody of the child to the exclusion of the parents or other guardian of the child and has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would otherwise have.

- (2) In particular, the Director—
- (a) is entitled to the custody of the ward;
  - (b) is responsible for providing or arranging for the provision of the necessities and amenities of life of the ward, including the maintenance and accommodation of the ward and recreation and entertainment for the ward; and
  - (c) is responsible for the well-being generally of the ward.

### Placement in homes etc.

**110. (1)** The Director may place a ward in the custody of—

- (a) a parent or relative of the child or with some other suitable person (whether in the Territory or elsewhere);
- (b) the person in charge of an approved home;
- (c) the person in charge of a hospital (whether in the Territory or elsewhere);
- (d) the person in charge of a home (whether in the Territory or elsewhere) for the accommodation of children; or
- (e) the person in charge of some other appropriate place (whether in the Territory or elsewhere).

**(2)** A person who has the custody of a child so placed has the responsibilities specified in paragraphs 109 (2) (b) and (c).

### **Religion**

**111. (1)** The Director may make such decisions as he or she considers to be in the interests of a ward with respect to religious matters concerning the ward.

**(2)** In making such a decision, the Director shall take into account, so far as they can be ascertained after reasonable enquiry—

- (a) any wishes of the ward;
- (b) any religious upbringing of the child before the child became a ward; and
- (c) any wishes of a parent of the ward or of a former guardian of the ward.

**(3)** A parent or former guardian of a ward who is dissatisfied with a decision of the Director under subsection (1) with respect to the ward may appeal to the Court against the decision.

**(4)** The Director shall be the respondent to the appeal.

### **Visits to wards**

**112. (1)** The Director or an officer may, at reasonable times, visit a ward.

**(2)** A person who has the custody of a ward shall permit the Director or officer visiting the ward in pursuance of subsection (1) to interview the ward in private and to make such inspections and examinations as the Director or officer considers necessary.

(3) An officer shall, before interviewing a ward or making an inspection or examination as mentioned in subsection (2), produce to the person who has the custody of the ward the identity card issued to the officer under subsection 11 (2).

(4) Where a person who has the custody of a ward does not comply with the requirements of subsection (2), the Director may remove the ward from the person's custody.

### **Wards running away**

**113. (1)** In this section, "authorised officer" means an officer for the time being authorised by the Director to act under this section.

(2) An authorised officer may, with such force as is necessary and reasonable, apprehend a ward who has run away, or has been unlawfully removed, from his or her proper custody and shall return the ward to his or her former custody.

(3) A police officer may, if the authorised officer so requests, with such force as is necessary and reasonable, assist an authorised officer in the apprehension of a ward under subsection (2).

### **Property of wards**

**114. (1)** The Court may, upon application by the Director, make an order—

- (a) empowering the Director to manage, control or deal with the property of a ward; or
- (b) appointing the Public Trustee as manager of the property of a ward.

(2) An order under subsection (1) may include such incidental or supplementary provisions as are necessary to give effect to the order.

(3) The Court shall not make an order under subsection (1) with respect to property if there is some other person, not being the ward, empowered to manage, control or deal with the property.

(4) The Director shall cause a copy of an application under this section to be served on such persons as the Court directs and the procedure upon the hearing of the application shall be as the Court directs.

### **Payments to ex-wards**

**115.** Where the Director considers it proper to do so, he or she may arrange for the provision of financial or other assistance, on such terms and conditions as he or she thinks fit, to a person who was at any time a ward.

**Wards from outside the Territory**

**116. (1)** The Director may, on request by or on behalf of the authority having the custody in a State or in another Territory of a child who, under a law in force in the State or Territory, is a ward and has entered or is about to enter the Australian Capital Territory, in writing declare the child to be a ward of the Director.

**(2)** Where the Director makes a declaration under subsection (1), the child, while in the Australian Capital Territory, shall be deemed to be a ward of the Director by virtue of an order under section 80 and this Act applies to and in relation to the child accordingly.

**(3)** A declaration under subsection (1) ceases to have effect if the child ceases to be a ward under the law of a State or another Territory of the authority previously having custody and control of the child.

**(4)** Where, in the opinion of the Director, the law of a State or another Territory contains a provision corresponding to subsection (1), the Director may request the authority having the custody of wards in that State or Territory to declare to be a ward under that law a child who has been made or declared a ward under this Act.

**(5)** Where a declaration is in force in respect of a child in pursuance of a request under subsection (4), the functions and duties conferred or imposed on the Director by this Act in relation to the child shall be deemed to have been suspended.

**(6)** Subsection (5) does not apply to the exercise by the Director of a function or duty in respect of a child in pursuance of an arrangement made under subsection (7) with respect to the child.

**(7)** The Director may, on behalf of the Territory, make financial or other arrangements with an authority referred to in subsection (1) or (4) with respect to a child while the child is a ward of that authority or of the Director, as the case requires.

**(8)** The Director may make arrangements for the return of a child who has become a ward of the Director under this section to his or her former custody.

**PART VII—CHILDREN'S DAY CARE SERVICES****Interpretation**

**117. (1)** In this Part, unless the contrary intention appears—

“licence” means a licence under this Part;

“licensee” means the holder of a licence;

“service to the community” includes service to a section of the community.

**(2)** Subject to subsection (3), for the purposes of this Part a person is providing child care if the person provides care for a child or a number of children—

(a) where—

(i) the care is provided on a business basis or on a community service basis; and

(ii) the care is provided at a place which is not the place of living for the time being of any of the children being cared for on that basis; and

(b) of all the children for whom care is being provided at that place at any one time (including those not being cared for on a business basis or on a community service basis)—

(i) the number of children who have not enrolled in primary school exceeds 4; or

(ii) the number of children who have not attained the age of 12 years exceeds 8.

**(3)** This Part does not apply to or in relation to—

(a) foster care;

(b) care provided in a place under the control of the Chief Executive;

(c) care provided, whether during school hours or not, by the Australian Capital Territory Schools Authority;

(d) care provided by a person in the course of conducting a school that is registered under the *Education Act 1937*; or

(e) care provided for children as patients in a hospital.

**(4)** For the purposes of subsection (2)—

(a) care is provided for children on a business basis if it is provided in the course of carrying on a business of caring for children or it is provided incidentally to the carrying on of some other business;

- (b) care is provided for children on a community service basis if it is provided as a service to the community or it is provided incidentally to providing some other service to the community;
- (c) a child who is received at a place in an emergency or in unexpected circumstances shall not be taken into account unless and until the child has been cared for at the premises for 2 consecutive days; and
- (d) a child is being cared for at a place notwithstanding that the child is temporarily absent from that place.

### **Licensing of child care**

**118. (1)** Subject to section 119, a person shall not provide child care, whether for reward or otherwise, at any premises unless a licence is in force in respect of those premises.

Penalty:

- (a) in the case of a body corporate—\$10,000; and
- (b) in the case of a natural person—\$2,000.

**(2)** Subject to section 119, a person who provides child care at premises in respect of which a licence is in force shall not fail to comply with a condition to which the licence is subject.

Penalty:

- (a) in the case of a body corporate—\$5,000; and
- (b) in the case of a natural person—\$1,000.

### **Exemptions**

**119. (1)** The Minister may, by instrument in writing, exempt specified child care or child care of a specified class from the application of this Part where the Minister considers it desirable to do so, having regard to any one or more of the following:

- (a) the circumstances in which the child care is being or is to be provided;
- (b) the number of children cared for or likely to be cared for;
- (c) the nature of the premises at which the child care is being or is to be provided;
- (d) the days on which and the times at which the child care is being or is to be provided.



(2) An exemption under subsection (1) shall, unless sooner revoked, remain in force for the period specified in the instrument.

(3) The Minister may, by instrument in writing, revoke or vary an exemption.

(4) The Minister shall not revoke or vary an exemption which relates to specified child care unless the Minister has, at least 28 days before doing so, given to the person providing the child care an opportunity of stating reasons why the exemption should not be revoked.

(5) An instrument made under this section is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Licences**

**120. (1)** The Minister may, upon application by a person for a licence in respect of premises—

- (a) grant the licence; or
- (b) by notice in writing served on the applicant, refuse to grant the licence.

(2) An application under this section shall—

- (a) be in writing;
- (b) contain the prescribed particulars; and
- (c) be accompanied by the determined fee.

(3) The Minister shall determine the period, being a period not exceeding 2 years, for which a licence under this section is to be granted.

(4) A licence shall—

- (a) specify the period for which the licence is to remain in force; and
- (b) include conditions as to—
  - (i) the maximum number of children for whom care may be provided under the licence; and
  - (ii) the ages of the children for whom care may be provided under the licence.

(5) A licence is subject to such other conditions as the Minister thinks fit and specifies in the licence, including but not limited to conditions as to:

- (a) the number of the persons under whose control the children for whom care is provided will be placed;
- (b) the qualifications of the persons mentioned in paragraph (a);
- (c) the measures to be taken for the health and safety of the children;
- (d) the buildings and facilities to be used at the premises at which the care is provided;
- (e) the insurance of the licensee in respect of any liability of the licensee arising out of or relating to the provision of the care at those premises;
- (f) the activities to be provided for the benefit of the children; and
- (g) the management of those premises.

(6) Subject to this Act, a licence remains in force for the period specified in the licence as the period for which the licence is granted.

#### **Emergency suspension of licences**

**121.** Where the Minister is satisfied that there exists an emergency by reason of which it is desirable to suspend a licence immediately, the Minister may, by notice in writing served on the licensee, suspend the licence for such period, being a period that does not exceed 14 days, as is specified in the notice.

#### **Direction to comply with conditions**

**122. (1)** Where the Minister is satisfied that a condition to which a licence is subject has not been complied with, the Minister may, by notice in writing served on the licensee, inform the licensee that the Minister is so satisfied and that, if the licensee does not forthwith comply with the condition, steps may be taken for the revocation or suspension of the licence.

**(2)** The Minister may, having regard to an explanation so furnished, vary or revoke a condition to which the licence is subject.

#### **Cancellation etc. of licences**

**123. (1)** The Minister may, upon application by a licensee—

- (a) cancel the licence;
- (b) suspend the licence for the period specified in the application;
- (c) vary, in the manner specified in the application, a condition to which the licence is subject; or

(d) revoke a condition to which the licence is subject, being a condition specified in the application.

(2) Where a licensee is convicted of an offence under subsection 118 (2), the Minister may by notice in writing cancel the licence.

(3) The Minister may, by notice in writing served on a licensee, require the licensee to show cause why—

(a) the licence should not be—

(i) cancelled; or

(ii) suspended for the period specified in the notice;

(b) a condition to which the licence is subject should not be varied in the manner specified in the notice;

(c) the licence should not be made subject to a condition specified in the notice; or

(d) a condition specified in the notice and to which the licence is subject should not be revoked.

(4) The Minister may, not less than 28 days after the date of service of a notice under subsection (3), by notice in writing served on the licensee—

(a) cancel the licence;

(b) suspend the licence for the period specified in the first-mentioned notice or for some other period to which the licensee consents;

(c) vary a condition of the licence in the manner specified in the first-mentioned notice or in some other manner to which the licensee consents;

(d) include in the licence the condition specified in the first-mentioned notice or some other condition to the inclusion of which the licensee consents; or

(e) revoke the condition specified in the first-mentioned notice or some other condition to the revocation of which the licensee consents.

(5) A notice under subsection (4) has effect from and including the date on which it is served or such later date as is specified in the notice.

### **Removal of child from unlicensed care**

**124. (1)** If a person is providing child care for a child at premises in respect of which a licence is not, for the time being, in force, the Director or an officer may—

- (a) request a parent of the child to remove the child from the premises; or
- (b) remove the child from the premises and—
  - (i) place the child in the custody of a parent or of a relative of the child; or
  - (ii) if the Director or officer considers it more appropriate to do so, deliver the child to a suitable person who is prepared to care for the child.

**(2)** A request under paragraph (1) (a) may be made by any appropriate means of communication, including by telephone.

**(2A)** Before removing a child from premises, the Director or officer shall notify in writing the person providing care for the child and, where practicable, a parent of the child of the proposed removal of the child.

**(3)** Where, in pursuance of paragraph (1) (b), a child is placed in the custody of a person other than a parent of the child, the Director or an officer shall notify a parent of the child forthwith of the child's whereabouts.

### **Inspection of licensed premises**

**125. (1)** The Director or an officer may, at any reasonable time, enter and inspect premises specified in a licence.

**(2)** The Director or an officer is not entitled to remain in or on premises referred to in subsection (1) unless the Director or officer, on request by the occupier of the premises, produces evidence of his or her appointment as Director or officer, as the case requires.

## **PART VIII—EMPLOYMENT OF CHILDREN**

### **Interpretation**

**126. (1)** In this Part, “young child” means a person who has not attained the school-leaving age.

- (2)** For the purposes of this Part—
- (a) if a person causes or permits a child to participate or assist in a business, trade, calling or occupation carried on for private profit, the person shall be deemed to employ the child and shall be so deemed

whether or not the child receives payment or other reward for his or her participation or assistance; and

- (b) “employer” and “employment” have corresponding meanings.

**Employment of children in certain businesses etc.**

**127.** A person shall not employ a child in a prescribed business, trade, calling or occupation if the child has not attained the age prescribed in respect of that business, trade, calling or occupation.

Penalty:

- (a) in the case of a body corporate—\$10,000; and
- (b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

**Employment of young children**

**128. (1)** Except as provided by this Part, a person shall not employ a young child.

Penalty:

- (a) in the case of a body corporate—\$5,000; and
- (b) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both.

**(2)** Subsection (1) does not apply with respect to the employment of a young child in or in connection with a school, provided that any applicable law or any applicable industrial award, order, determination or agreement is complied with.

**Light work excepted**

**129. (1)** Subject to this Part, subsection 128 (1) does not apply with respect to the employment of a young child—

- (a) on baby-sitting;
- (b) on going on errands;
- (c) on casual work in or around a private home;
- (d) on golf-caddying;
- (e) on clerical work;
- (f) on gardening;

- (g) on selling, delivering or distributing newspapers or advertising matter;
- (h) for the purposes of or in relation to entertainment at a place used for providing entertainment or amusement;
- (i) for the purpose of entertainment at a place used for sporting activities;
- (j) for the purpose of singing, dancing, playing a musical instrument or for some similar purpose;
- (k) as a performer in a radio, television or film program or production, or a like program or production, not being in the nature of a news item;
- (l) as a model;
- (m) as the subject of photography, whether still or moving;
- (n) in or in connection with a circus; or
- (o) on any other prescribed work.

(2) Subsection (1) does not have effect with respect to the employment of a young child for more than 10 hours in any one week unless the proposed employer has, not less than 7 days before the employment commences, given to the Director a notice setting out—

- (a) the name and address, and the date of birth, of the young child;
- (b) the nature and place of the proposed employment;
- (c) the name and address of a parent of the young child;
- (d) the name and address of the proposed employer;
- (e) the proposed hours and days of work;
- (f) the proposed duration of the employment;
- (g) the name of the school, if any, attended by the young child; and
- (h) the reasons for proposing to employ the young child.

### **Family businesses excepted**

**130.** Subject to this Part, subsection 128 (1) does not apply with respect to the employment of a young child in or in connection with a business, trade, occupation or calling carried on by a parent of the young child or by a company of which a parent of the young child is a director.

### **Employment not to interfere with schooling etc.**

**131.** Sections 129 and 130 do not have effect with respect to the employment of a young child if the employment—

- (a) constitutes a breach of the *Education Act 1937* by or with respect to the young child; or
- (b) is likely to prejudice the health, safety or personal or social development of the young child or the ability of the young child to benefit from his or her education or training.

**Copies of notices to be given**

**132.** The Director shall, forthwith after receiving a notice under subsection 129 (2), furnish a copy of the notice to the Chief Executive.

**Dangerous employment**

**133. (1)** The Director may, on the application of a person who proposes to employ a young child where the employment involves the child engaging in activities dangerous to the health or safety of the child, consent to the employment of the child.

**(2)** The Director may refuse to grant consent under subsection (1) where the Director has reasonable grounds for believing that the proposed employment would be likely to prejudice the health or safety of the young child.

**(3)** The consent of the Director under subsection (1) may be expressed to be subject to such conditions as the Director thinks fit, being conditions relating to the preservation of the health and safety of the child.

**(4)** A person shall not, except with the consent of the Director, employ a young child where the employment involves the child engaging in activities dangerous to the health or safety of the child.

Penalty:

- (a) in the case of a body corporate—\$25,000; and
- (b) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both.

**(5)** A person to whom consent under subsection (1) has been given shall not fail to comply with any conditions subject to which the consent was given.

Penalty:

- (a) in the case of a body corporate—\$10,000; and

- (b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

(6) Where the Director gives consent under subsection (1), the Director shall furnish a copy of the consent to the Chief Executive.

### **Regulation of employment of children**

**134. (1)** The Director may, by notice in writing served on an employer—

- (a) prohibit the employer from employing or continuing to employ a child specified in the notice if the Director believes, on reasonable grounds, that the employment is, or is likely to be, prejudicial to the health, safety or personal or social development of the child or the ability of the child to benefit from his or her education or training; or
- (b) specify conditions to be complied with by the employer with respect to the employment of a child specified in the notice, being conditions designed to preserve the health, safety or personal or social development of the child or the ability of the child to benefit from his or her education or training.

(2) A person shall not employ a child in contravention of a notice under paragraph (1) (a).

Penalty:

- (a) in the case of a body corporate—\$5,000; and
- (b) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both.

(3) Where the Director has specified conditions to be complied with by the employer of a child with respect to the employment of the child, a person employing the child shall not fail to comply with a condition so specified.

Penalty:

- (a) in the case of a body corporate—\$5,000; and
- (b) in the case of a natural person—\$1,000.

### **Duty of employers of children**

**135.** An employer of a child shall do all things necessary and reasonable to ensure the health and safety of the child.

Penalty:



- (a) in the case of a body corporate—\$10,000; and
- (b) in the case of a natural person—\$2,000.

**Child not to render certain measures ineffective**

**136.** A child shall not do a thing, or fail to do a thing, that renders less effective anything done by the child's employer for the purpose of complying with section 135 or for the purpose of securing compliance with a condition to which the employment is subject.

**Part subject to certain provisions of Education Act**

**137.** This Part has effect subject to sections 9 and 16 of the *Education Act 1937*.

**PART IX—OFFENCES**

**Presumption of age**

**138.** Where a person is charged with an offence against this Act or the regulations with respect to a person who is alleged in the charge not to have attained a specified age and the second-mentioned person appears to the Court not to have attained that age, there is a rebuttable presumption that the second-mentioned person has not attained that age.

**Neglect etc. of children**

**139. (1)** A person shall not—

- (a) ill-treat a child who is in the person's custody or under the person's temporary control; or
- (b) fail, otherwise than for financial reasons, to provide adequate and proper lodging, food or clothing, or nursing, medical or dental care and attention, for a child who is in the person's custody.

Penalty: \$5,000, or imprisonment for 2 years, or both.

**(2)** A person shall not, knowingly or recklessly, leave a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

Penalty: \$2,000, or imprisonment for 12 months, or both.

**(3)** A police officer, a medical practitioner or an officer may take such steps as appear to him or her to be necessary (including entering any building, place or vehicle, with such force as is necessary and reasonable) for the immediate safeguarding of a child who has been ill-treated or neglected as

mentioned in subsection (1) or has been left unattended as mentioned in subsection (2).

(4) An action does not lie against a person by reason of the person having acted pursuant to subsection (3) in good faith and with reasonable care in the circumstances.

(5) Subsection (3) does not affect the operation of Part V.

### **Unauthorised removal of children**

140. A person shall not, without lawful authority, remove or cause or procure to be removed a child from the care of a person into whose care or custody or under whose temporary control, the child has been placed, or by whom the child is detained, under this Act.

Penalty: \$1,000, or imprisonment for 6 months, or both.

### **False statements**

141. A person shall not, for the purposes of, or for a purpose connected with, this Act, knowingly make a statement that is false or misleading in a material particular.

Penalty: \$1,000, or imprisonment for 6 months, or both.

### **Tattooing of children**

142. A person shall not in any manner tattoo any part of the body of a child unless the person has first obtained the written permission of a parent of the child to tattoo the child in that manner on that part of the child's body.

Penalty: \$1,000.

## **PART X—APPEALS**

### **Interpretation**

143. In this Part, "order" includes declaration and decision.

### **Jurisdiction of Supreme Court**

144. (1) The appellate jurisdiction of the Supreme Court with respect to orders of the Magistrates Court under this Act extends to the hearing and determination of the following appeals and no others, namely:

- (a) an appeal, by the child against whom the order was made, from an order made under Part IV, other than an order made under section 44 or section 68;

- (b) an appeal, by the child charged, from a decision of the Court under section 48 that the charge against the child was proved;
- (c) an appeal, by a party to the proceedings in which the order was made, from an order of the Court made under Part V or under section 68, 111, 114, or 166;
- (d) an appeal, by way of order to review, by the informant from an order of the Court dismissing an information under Part IV;
- (e) an appeal, by way of order to review, by the child against whom the order was made, from an order made under Part IV;
- (f) an appeal, by way of order to review, by the informant from a decision of the Court to dispose of a case summarily under section 41;
- (g) an appeal, by way of order to review, by the informant from a decision of the Court not to commit a child to the Supreme Court for sentence under section 44;
- (h) an appeal, by way of order to review, by the informant from an order of the Court made under Division 3 of Part IV.

(2) Nothing in this Part limits the operation of Part XI of the Magistrates Court Act or any other Act that makes provision with respect to the appellate jurisdiction of the Supreme Court.

#### **Application of Magistrates Court Act**

**145. (1)** The provisions of Division 2 of Part XI of the Magistrates Court Act, other than section 219, apply to and in relation to an appeal of the kind referred to in paragraph 144 (1) (a) or (b) as if—

- (a) the appeal were an appeal to which that Division applied;
- (b) the appeal were an appeal to which section 214 of that Act applied; and
- (c) a reference in that Division to the Magistrates Court were a reference to the Childrens Court.

(2) Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies to and in relation to an appeal of the kind referred to in paragraph 144 (1) (c) as if it were an appeal from a judgment or order of a kind specified in subsection 282C (2) of that Act.

(3) The provisions of Division 3 of Part XI of the Magistrates Court Act apply to and in relation to an appeal of the kind referred to in paragraph 144 (1) (d), (e), (f), (g) or (h) as if it were an appeal from—

- (a) in the case of an appeal of the kind referred to in paragraph 144 (1) (d)—an order of the kind specified in paragraph 219B (1) (a) of that Act;
- (b) in the case of an appeal of the kind referred to in paragraph 144 (1) (e)—an order of the kind specified in paragraph 219B (1) (c) of that Act;
- (c) in the case of an appeal of the kind referred to in paragraph 144 (1) (f)—a decision of the kind specified in paragraph 219B (1) (f) of that Act;
- (d) in the case of an appeal of the kind referred to in paragraph 144 (1) (g)—a decision of the kind specified in paragraph 219B (1) (e) of that Act; and
- (e) in the case of an appeal of the kind referred to in paragraph 144 (1) (h)—a decision of the kind specified in paragraph 219B (1) (g).

#### **Barring of appeal if order to review granted**

**146.** Where an order *nisi* to review a decision of the kind referred to in paragraph 144 (1) (d) or (e) has been granted under Division 3 of Part XI of the Magistrates Court Act in its application under this Part—

- (a) the person obtaining the order *nisi* is not entitled to make any other appeal to the Supreme Court under this Part against that decision; and
- (b) if the person has served on the Registrar of the Magistrates Court notice of appeal to the Supreme Court against that decision, the notice of appeal shall be deemed to have been withdrawn.

#### **Orders that Supreme Court may make**

**147. (1)** On an appeal of the kind referred to in paragraph 144 (1) (a), (b) or (c), the Supreme Court shall not make an order other than an order that could have been made by the Childrens Court in the proceedings appealed from.

**(2)** On an appeal of the kind referred to in paragraph 144 (1) (d), (e) or (h), the Supreme Court may make any order that could have been made by the Childrens Court in the proceedings appealed from.

#### **Administrative review**

**148. (1)** Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister—

- (a) refusing to grant, or granting subject to conditions, a licence under section 120;
  - (b) determining the period for which a licence under section 120 is to be granted;
  - (c) varying or revoking a condition under subsection 122 (2), 123 (1) or 123 (4);
  - (d) including a condition in a licence under subsection 123 (4); or
  - (e) cancelling or suspending a licence under section 123.
- (2) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Director—
- (a) making a determination under section 98 or subsection 99 (2);
  - (b) refusing to grant, or granting subject to conditions, his or her consent under section 133; or
  - (c) under section 134, prohibiting, or specifying conditions with respect to, the employment of a child.

## PART XI—MISCELLANEOUS

### *Division 1—Powers of entry and search*

#### **Interpretation**

**149.** For the purposes of this Division, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been connected;
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or intended to be used, for the purpose of committing the offence.

(2) A reference in this Division to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

(3) In this Division, “authorised officer” means an officer authorised by the Director for the purposes of this Division, or a police officer.

**Search and seizure**

**150.** The Director or an authorised officer may enter upon land or upon or into any premises or a vessel or vehicle, and may search for and seize any thing that he or she believes on reasonable grounds to be connected with an offence against this Act that is found on the land, or on or in the premises, vessel or vehicle if, and only if, the search and seizure is made by the authorised officer—

- (a) in pursuance of a warrant issued under section 151;
- (b) in circumstances of seriousness and urgency, in accordance with section 152; or
- (c) after obtaining the consent of the occupier of the land or premises or of the person in charge of the vessel or vehicle to the entry.

**Search warrants**

**151. (1)** Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon any land or upon or in any premises, vessel or vehicle a thing of a particular kind connected with a particular offence against a provision of this Act, and the information sets out those grounds, a Magistrate may issue a search warrant authorising the Director, or authorised officer named in the warrant, with such assistance as is necessary and reasonable and such force as is necessary and reasonable—

- (a) to enter upon the land or upon or into the premises, vessel or vehicle;
- (b) to search the land, premises, vessel or vehicle for things of that kind; and
- (c) to seize any thing of that kind found upon the land or upon or in the premises, vessel or vehicle that he or she believes on reasonable grounds to be connected with that offence.

**(2)** A Magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

**(3)** There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which entry and search are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorised to be seized; and
- (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

### **Entry in emergencies**

**152.** The Director or an authorised officer may enter upon any land, or upon or into any premises, vessel or vehicle, on or in which the Director or officer believes on reasonable grounds that any thing connected with an offence against this Act is situated and may search for and seize any such thing that he or she finds in the course of that search, or upon the land or upon or in the premises, vessel or vehicle, as the case may be, if—

- (a) the Director or authorised officer believes, on reasonable grounds, that it is necessary to do so for the purposes of this Act; and
- (b) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of a warrant issued under section 151.

### **Consent to entry**

**153. (1)** Before obtaining the consent of a person—

- (a) for the purposes of subsection 56 (2)—the supervisor;
- (b) for the purposes of subsection 85 (2)—the Director, officer or supervisor, as the case requires; or
- (c) for the purposes of paragraph 150 (c)—the Director or authorised officer, as the case requires,

shall inform the person that the person may refuse to give his or her consent.

**(2)** Where—

- (a) the supervisor, for the purposes of subsection 56 (2);
- (b) the Director, officer or supervisor, for the purposes of subsection 85 (2); or

- (c) the Director or authorised officer, for the purposes of paragraph 150 (c),

obtains the consent of a person, the supervisor, Director, officer or authorised officer as the case requires, shall ask the person to sign a written acknowledgment—

- (d) of the fact that the person has been informed that he or she may refuse to give his or her consent;
- (e) of the fact that the person has given his or her consent; and
- (f) of the day on which, and the time at which, the person gave his or her consent.

(3) An entry by a supervisor, the director, an officer or an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of subsection 56 (2), or 85 (2) or paragraph 150 (c) and an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

### **Obstruction**

**154.** A person shall not hinder or obstruct another person in the exercise by that other person of his or her powers, or the performance of his or her duties or functions, under this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

### ***Division 2—General***

#### **Notification of decisions**

**155. (1)** Where the Minister or the Director makes a decision referred to in section 148 he or she shall cause notice of the decision to be given to a person whose interests are affected by the decision.

**(2)** A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

#### **Breach of residential order**



**156.** A person in respect of whom a residential order under Part IV or V is in force who—

- (a) where the order is an order that the person be placed in an approved home or that the person live at such place as the Director determines—fails to comply with the reasonable lawful directions of the person in charge of the approved home or place; or
- (b) where the order is an order that the person be placed in the care of a suitable person—fails to comply with the reasonable lawful directions of that person,

shall be deemed to have failed to comply with the order.

**Establishment etc. of shelters etc.**

**157.** The Minister may, for the purposes of this Act—

- (a) establish shelters, attendance centres and institutions; and
- (b) in writing, declare that a place which is, at the date of commencement of this Act, used as a shelter, an attendance centre or an institution, in relation to the care of children, is to be a shelter, an attendance centre or an institution, as the case requires, for the purposes of this Act.

**Medical examinations and surgical operations**

**158. (1)** This section applies in relation to a child who—

- (a) is in an institution in pursuance of an order under paragraph 47 (1) (k);
- (b) has been placed in an approved home, a hospital, a shelter or a remand centre; or
- (c) is a ward.

**(2)** The Director may, on reasonable grounds, arrange that a child in relation to whom this section applies be examined by a medical practitioner or by a dentist.

**(3)** The Director may consent to medical treatment that he or she is advised by a medical practitioner, or dental treatment that he or she is advised by a dentist, is in the interests of the health of a child in relation to whom this section applies.

**(4)** Subsections (2) and (3) have effect notwithstanding any objection by or lack of consent of a parent of the child concerned.

**Child's name may be given**

**159.** Where—

- (a) a child has been given a warning by a police officer in respect of an act that constitutes an offence against a law of the Commonwealth or of the Territory; or
- (b) a child has been charged with an offence against a law of the Commonwealth or of the Territory,

and the Commissioner of Police or a police officer authorised by him or her is satisfied on reasonable grounds that a person has suffered loss by reason of that act or offence, the Commissioner or officer may furnish to the person the name, age and address of the child and particulars of the act or offence.

**Director to notify births under substitute parent agreements**

**159A. (1)** Where the Director becomes aware that a child was born as a result of a pregnancy that was the subject of a substitute parent agreement, the Director—

- (a) shall make such inquiries as he or she thinks reasonable to inform himself or herself correctly of the particulars that are required to be entered in the Register of Births under the *Registration of Births, Deaths and Marriages Act 1963* in relation to the child; and
- (b) shall furnish the particulars that have come to his or her knowledge to the Registrar-General.

**(2)** In subsection (1)—

“substitute parent agreement” means a contract, agreement, arrangement or understanding under which—

- (a) a person agrees to become, or to attempt to become, pregnant and that a child born as a result of the pregnancy is to be taken to be (whether by adoption, agreement or otherwise) the child of another person; or
- (b) a person who is pregnant agrees that a child born as a result of the pregnancy is to be taken to be (whether by adoption, agreement or otherwise) the child of another person.

**Notifications**

**160.** A notification under this Act may be given by any appropriate means, including by telephone or any other form of communication by electronic means.

**Court may direct Minister to make certain determinations**

**161. (1)** The Director or any other person may apply to the Court for an order directing the Minister to make a determination with respect to a child under clause 3 of the Agreement (including that clause as applying by virtue of subclause 3 (6) of the Supplemental Agreement), being the Agreement and Supplemental Agreement within the meaning of the repealed Ordinances.

**(2)** On the hearing of an application under this section the Court shall, if it considers it in the interests of the child, by order direct the Minister to make the determination.

**(3)** The procedure in connection with an application under this section is as the Court directs.

**Powers of courts with respect to reports**

**162. (1)** A court hearing any proceedings in respect of or against a child may order a public servant whose duties relate to children's welfare to furnish to the court a report as to the child and that person shall, notwithstanding any other law of the Territory, furnish a report accordingly.

**(2)** For the purpose of giving effect to an order under subsection (1), the person referred to in that subsection may do one or more of the following:

- (a) visit and interview the child;
- (b) interview a parent of the child;
- (c) interview a schoolteacher or other person concerned with the education or welfare of the child;
- (d) require the child to submit to being interviewed by a medical practitioner or other specified person.

**(3)** Where a report is furnished in good faith to the person referred to in subsection (1) by a medical practitioner or other person following an interview as mentioned in paragraph (2) (d), the report shall, for all purposes, be taken not to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct.

**Reports to be made available**

**163. (1)** Unless the court otherwise orders, a copy of a report furnished under section 162 shall be made available to the child, a parent of the child and a barrister and solicitor acting for the child or for a parent of the child.

**(2)** The person furnishing a report under section 162 may be called as a witness by a party to the proceedings.

### **Right of appearance**

**164.** At the hearing in any court—

- (a) of an information or complaint against a child; or
- (b) of an application, proceeding or matter under this Act or in relation to which this Act applies,

the Director or the Community Advocate, or a person authorised by the Director or Community Advocate for the purposes of this section, is entitled to appear and be heard and may call witnesses.

### **Matters before Childrens Court**

**165.** So far as practicable, the sittings of the Court shall be so arranged that the extent to which children are able to associate with each other within the precincts of the Court while awaiting hearing, and the extent to which parents and other persons are obliged to be in common waiting rooms pending the hearing of proceedings, are kept to a minimum.

### **Next friend of child**

**166. (1)** A court may, if it thinks it to be in the interests of a child to do so and if the person consents, by order appoint a person to be the next friend of the child for the purpose of proceedings under this Act in respect of the child.

**(2)** The next friend may, on behalf of the child, bring any application or other proceedings in a court under this Act or in relation to which this Act applies that the child might have brought and defend, on behalf of the child, any proceedings brought against the child, whether under this Act or otherwise.

**(3)** In proceedings, an order for costs may be made in favour of or against a next friend in the same circumstances as the order might have been made with respect to the child.

**(4)** In this section, “proceedings” includes an appeal and an application for an order to review.

### **Representation of children**

**167. (1)** Where, in proceedings in a court under this Act or in relation to which this Act applies—

- (a) a child is not separately represented by a barrister and solicitor; and
- (b) it appears to the court that the child should be so represented,

the court may, of its own motion or on the application of any person (including the child)—

- (c) adjourn the proceedings in order that the child may obtain legal representation; and
- (d) give such advice and assistance to the child as may be necessary to enable the child to obtain legal representation.

**(2)** In this section, “proceedings” includes an appeal and an application for an order to review.

#### **Attendance of parents at court**

**168. (1)** Except as otherwise provided by this section, a parent of a child who is the subject of proceedings before the Court shall, if notice of the proceedings has been served on the parent or if he or she is otherwise aware of the proceedings, attend the Court during the hearing and determination of the proceedings.

**(2)** A notice of the proceedings under this section shall—

- (a) state the time, date and place of the hearing of the proceedings; and
- (b) state that, if the parent does not attend the Court at the hearing of the proceedings, a warrant may be issued to bring the parent before the Court.

**(3)** If notice of the proceedings has been served on a parent of the child but, without reasonable cause, neither parent attends the Court at the hearing of the proceedings, the Court may direct a warrant to issue to bring the parent before the Court.

**(4)** The Court may admit to bail a person in respect of whom a warrant has been so issued on the person's giving an undertaking, with or without a surety or sureties, to attend the Court during the hearing and determination of the proceedings.

**(5)** The application of this section extends to a parent whose place of living is outside the Territory.

**Proceedings not open to public**

**169. (1)** Subject to subsection (2), a person other than a person specified in this section is not entitled to be present at the hearing of proceedings in the Court:

- (a) an officer of the Court;
- (b) a party to the proceedings, the barrister and solicitor by whom the party is represented or an employee of the barrister and solicitor;
- (c) a parent or other person having the care of a child in respect of whom the proceedings are taken or any other person whom the Court admits as a representative of the child;
- (d) the Director or a person authorised by the Director for the purposes of this section;
- (e) the Community Advocate or a person authorised by the Community Advocate for the purposes of this section;
- (g) a person who has, or a representative of a body, authority or agency which has, furnished a report under section 162;
- (h) a person attending for the purpose of preparing a news report of the proceedings and authorised by his or her employer so to attend.

**(2)** Nothing in subsection (1) applies to or in relation to a person required or permitted to be present by this Act or by the Court.

**Restrictions on publication of reports of proceedings**

**170. (1)** A person shall not print or publish by any means a report or account of any proceedings under—

- (a) this Act or in relation to which this Act applies; or
- (b) a law of a State or another Territory in relation to the welfare of a child;

if the printing or publication discloses the identity of the child concerned or of a member of his or her family, or enables the identity of the child concerned or of a member of his or her family to be ascertained.

**(2)** A person who contravenes subsection (1) is guilty of an offence punishable—

- (a) in the case of a body corporate—by a fine not exceeding \$25,000; and

- (b) in the case of a natural person—by a fine not exceeding \$5,000, or imprisonment for a period not exceeding 2 years, or both.

(3) Proceedings for an offence against this section shall not be commenced except by, or with the consent in writing of, the Attorney-General or the Director of Public Prosecutions.

### **Protection of children in other courts**

171. (1) The Supreme Court may, in relation to proceedings before that court concerning a child, order that section 169 apply to and in relation to those proceedings, and that section thereupon so applies.

(2) The powers conferred upon the Supreme Court by virtue of subsection (1) are in addition to any other powers possessed by that court.

### **Confidentiality**

172. (1) A person shall not, otherwise than for the purposes of this Act or as required by law, make a record of or divulge or communicate to any person any information or document, being information or a document that the first-mentioned person acquired under or by virtue of this Act.

Penalty: \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(2) This section does not affect the operation of any other law relating to the confidentiality of information or documents.

### **Evidentiary certificates**

173. In proceedings under this Act—

- (a) a certificate purporting to be signed by an authorised officer stating—
  - (i) that he or she was, on a date or during a period specified in the certificate, an authorised officer; and
  - (ii) that, on the date specified in the certificate, he or she consented to the prosecution of the person specified in the certificate for the offence specified in the certificate and that consent has not been revoked,

is evidence of the matters stated in the certificate;

- (b) a certificate purporting to be signed by the Director stating that, on a date or during a period specified in the certificate, the person specified

in the certificate was a ward of the Director is evidence of the matters stated in the certificate; and

- (c) a certificate purporting to be signed by the Director stating that—
- (i) on the date specified in the certificate, the person specified in the certificate was committed to the shelter, approved home, institution or State institution specified in the certificate;
  - (ii) on the date specified in the certificate, the period for which the person was so committed had not expired or been reduced; and
  - (iii) on the date or during the period specified in the certificate, the Director had not granted leave of absence to the person or had granted the leave of absence at the times or during the periods specified in the certificate,

is evidence of the matters stated in the certificate.

#### **Power of Minister to determine fees**

**174.** The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

#### **Ministerial agreements**

**176. (1)** The Minister may, from time to time, enter into an agreement with a Minister of State of a State or of another Territory with respect to—

- (a) the transfer of children who have been dealt with under this Act to State institutions in that State or Territory; and
- (b) the reception into the Territory and the detention in shelters and institutions of children who have been dealt with under a law of that State or Territory with respect to the welfare or punishment of children.

**(2)** The Minister shall cause a copy of each agreement entered into under this section to be tabled in the Legislative Assembly within 15 sitting days of the date of the agreement.

#### **Regulations**

**177. (1)** The Executive may make regulations, not inconsistent with this Act, prescribing all matters that this Act requires or permits to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.



- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) make provision for or with respect to—
    - (i) the keeping of registers and records by or in relation to; and
    - (ii) the conditions to be included in licences granted to; persons providing child care to which Part VII applies; and
  - (b) make provision for or with respect to—
    - (i) the duties of persons in charge of shelters, attendance centres and institutions;
    - (ii) the health and safety of children attending attendance centres or detained in shelters and institutions;
    - (iii) travel and transport arrangements for children attending attendance centres; and
    - (iv) the periods to be taken into account when calculating the time to be spent in the custody of the Director as mentioned in subsection 57 (2); and
  - (c) prescribe penalties, not exceeding a fine of \$500, in respect of offences against the regulations.
-

**SCHEDULE**

Section 3

**ORDINANCES REPEALED****PART 1**

*Child Welfare Ordinance 1957*  
*Child Welfare Ordinance 1962*  
*Child Welfare Ordinance 1968*  
*Child Welfare Ordinance 1969*  
*Child Welfare Ordinance 1971*  
*Child Welfare Ordinance 1973*  
*Child Welfare (Amendment) Ordinance 1979*  
*Child Welfare (Amendment) Ordinance (No. 2) 1979*  
*Child Welfare (Amendment) Ordinance 1982*  
*Child Welfare (Amendment) Ordinance 1985*  
*Child Welfare (Amendment) Ordinance 1987*

**PART II**

*Child Welfare Agreement Ordinance 1941*  
*Child Welfare Agreement Ordinance 1962*

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## NOTES

1. The *Children's Services Act 1986* as shown in this reprint comprises Act No. 13, 1986 amended as indicated in the Tables below.

The Australian Capital Territory received Self-Government on 11 May 1989.

For details regarding the application of the *Children's Services Act 1986* from 11 May 1989 to 1 July 1992 see the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth (No. 106, 1988) and the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth (No. 109, 1988), in particular sections 3, 34 and Schedules 3 and 5 and section 12 respectively. The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) and the *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) effect the citation change of Ordinance to Act and affect references to Commonwealth legislation.

Table of Laws

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Children's Services Ordinance 1986</i>	13, 1986	4 June 1986	Ss. 1 and 2: 4 June 1986 Ss. 3 (1), (1A), 6, 9, 12-18, 20-102, 103 (1), 104-116, 126-140, 142-147, 148 (2), 149-154, 156-159 and 161-176: 26 April 1988 (see <i>Gazette</i> 1988, No. GN13, p. 673) Ss. 3 (2)-(5), 4, 5, 7, 8, 10, 11, 19, Part VII (ss. 117-125), ss. 141, 148 (1), 155, 160 and 177: 30 June 1987 (see <i>Gazette</i> 1987, No. S159) S. 3 (6): (a) S. 103 (2): (b)	
<i>Children's Services (Amendment) Ordinance 1987</i>	28, 1987	15 June 1987	15 June 1987	—
<i>Children's Services (Amendment) Ordinance (No. 2) 1987</i>	53, 1987	16 Sept 1987	16 Sept 1987	—
<i>Children's Services (Amendment) Ordinance 1988</i>	18, 1988	22 Apr 1988	26 Apr 1988	—
<i>Community and Health Service (Consequential Provisions) Ordinance 1988</i>	29, 1988	30 June 1988	2 July 1988	S. 4

## NOTES—continued

## Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Nurses (Consequential Amendments) Ordinance 1988</i>	62, 1988	7 Sept 1988	5 Dec 1988 (see <i>Gazette</i> 1988, No. S369)	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—
<i>Acts Revision (Arrest Without Warrant) Act 1989</i>	23, 1989	1 Dec 1989	1 Dec 1989	—
<i>Self-Government (Consequential Amendments) Ordinance 1990</i>	5, 1990	27 June 1990	Ss. 1 and 2: 27 June 1990 Remainder: 1 July 1990	S. 6 (2)
<i>Magistrates Court (Appeals Against Sentence) Ordinance 1990</i>	9, 1990	29 June 1990	29 June 1990	S. 11
<i>Health Services (Consequential Provisions) Act 1990</i>	63, 1990	28 Dec 1990	Ss. 1 and 2: 28 Dec 1990 Remainder: 31 Jan 1991 (see s. 2 (2) and <i>Gazette</i> 1991, No. S4)	Ss. 6-17
<i>Magistrates and Coroner's Courts (Registrar) Act 1991</i>	44, 1991	20 Sept 1991	Ss. 1 and 2: 20 Sept 1991 Remainder: 25 Sept 1991 (see <i>Gazette</i> 1991, No. S103, p. 2)	—
<i>Children's Services (Amendment) Act 1991</i>	65, 1991	31 Oct 1991	Ss. 1 and 2: 31 Oct 1991 Remainder: 7 Jan 1992	S. 7
<i>Children's Services (Amendment) Act (No. 2) 1991</i>	70, 1991	7 Nov 1991	7 Nov 1991	S. 40
<i>Workers' Compensation (Consequential Amendments) Act 1991</i>	106, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Remainder: 22 Jan 1992 (see s. 2 (2) and <i>Gazette</i> 1992, No. S9)	—
<i>Bail (Consequential Amendments) Act 1992</i>	9, 1992	28 May 1992	Ss. 1 and 2: 28 May 1992 Remainder: 28 Nov 1992	S. 3

## NOTES—continued

## Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision (Miscellaneous Provisions) Act 1992</i>	23, 1992	4 June 1992	4 June 1992	—
<i>Statute Law Revision (Miscellaneous Provisions) Act 1993</i>	1, 1993	1 Mar 1993	1 Mar 1993	—
<i>Health (Consequential Provisions) Act 1993</i>	14, 1993	1 Mar 1993	1 Mar 1993 (see s. 2)	S. 12 and Parts IV-VI (ss. 14-34)
<i>Adoption (Consequential Amendments) Act 1993</i>	23, 1993	8 Apr 1993	Ss. 1 and 2: 8 Apr 1993 Remainder: 31 July 1993 (see s. 2 (2) and <i>Gazette</i> 1993, No. 28, p. 800)	—
<i>Magistrates Court (Civil Jurisdiction) (Amendment) Act 1994</i>	5, 1994	14 Mar 1994	Ss. 1-4, 11 and 12: 14 Mar 1994 Remainder: (c)	—
<i>Children's Services (Amendment) Act 1994</i>	17, 1994	20 May 1994	Ss. 1 and 2: 20 May 1994 Remainder: 20 Nov 1994	Part III (ss. 30-33)
<i>Statute Law Revision Act 1994</i>	26, 1994	31 May 1994	31 May 1994	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Mental Health (Consequential Provisions) Act 1994</i>	45, 1994	7 Sept 1994	Ss. 1 and 2: 7 Sept 1994 Remainder (ss. 3-38): (see Note 2)	—
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—

## NOTES—continued

## Table of Laws—continued

Law	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Substitute Parent Agreements (Consequential Amendments) Act 1994</i>	70, 1994	1 Nov 1994	Ss. 1 and 2: 1 Nov 1994 Remainder: 7 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S243)	—

- (a) Subsection 3 (6) of the *Children's Services Ordinance 1986* was repealed before a date was fixed for its commencement.
- (b) In pursuance of subsection 2 (2) of the Principal Act no date had been fixed for the commencement of subsection 103 (2) as at 20 November 1994.
- (c) Subsection 3 (2) of the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1994* provides as follows:

“(2) The remaining provisions commence on the day on which the first determination under subsection 248A (1) of the *Magistrates Court Act* comes into effect.”

The date fixed in pursuance of subsection 3 (2) was 1 July 1994 (see Determination No. 34, 1994).

## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 3 .....	am. No. 28, 1987
S. 4 .....	am. No. 53, 1987; Nos. 29 and 62, 1988; Act No. 63, 1990; Nos. 65 and 70, 1991; Nos. 1, 14 and 23, 1993
S. 7 .....	am. No. 38, 1989; Act No. 70, 1991
S. 8 .....	am. Act No. 17, 1994
S. 9 .....	am. No. 53, 1987 rep. Act No. 65, 1991
S. 10 .....	am. Act No. 65, 1991
S. 12 .....	am. Act No. 65, 1991
S. 13 .....	am. No. 53, 1987; No. 29, 1988; No. 38, 1989; Act No. 63, 1990; Nos. 65 and 70, 1991; No. 14, 1993; No. 17, 1994
S. 14 .....	am. Act No. 70, 1991
S. 15 .....	am. No. 38, 1989; Act No. 65, 1991; No. 17, 1994
S. 16 .....	am. Acts Nos. 65 and 70, 1991; No. 17, 1994
S. 17 .....	am. Act No. 65, 1991 am. No. 17, 1994
S. 18 .....	am. Act No. 65, 1991
S. 19 .....	am. No. 38, 1989; Act No. 17, 1994

**NOTES**—continued**Table of Amendments**—continued

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
Ss. 19A, 19B	ad. Act No. 70, 1991
S. 22	am. No. 5, 1990
S. 24	am. No. 53, 1987
S. 26	am. Act No. 65, 1991; No. 17, 1994
S. 28	am. Act No. 65, 1991; No. 17, 1994
S. 29	am. Act No. 70, 1991
S. 30	am. No. 53, 1987
S. 31	rep. Act No. 23, 1989
S. 33	am. No. 53, 1987; Act No. 70, 1991
S. 34	am. Act No. 23, 1989
Ss. 35, 36	am. No. 53, 1987
S. 37	am. No. 53, 1987; No. 38, 1989; Act No. 70, 1991 rep. No. 9, 1992
S. 38A	ad. Act No. 70, 1991
S. 39	am. No. 53, 1987; Act No. 70, 1991
S. 46	am. Act Nos. 44 and 70, 1991
S. 47	am. Act No. 70, 1991
S. 47A	ad. Act No. 70, 1991
S. 49	am. Act No. 23, 1992
S. 56	am. No. 53, 1987; Act No. 70, 1991
S. 57	am. Act No. 70, 1991
S. 59	am. No. 38, 1989; Act No. 106, 1991
S. 62	am. Act No. 65, 1991; No. 17, 1994
S. 63	rs. No. 18, 1988
S. 64	am. Act No. 9, 1992
S. 65	am. No. 53, 1987
Part IVA (ss. 69A-69S)	ad. Act No. 70, 1991
Ss. 69A-69S	ad. Act No. 70, 1991
S. 71	am. Acts Nos. 65 and 70, 1991; No. 17, 1994
Ss. 72-74	am. No. 53, 1987; Act No. 65, 1991; No. 17, 1994
S. 75	am. No. 53, 1987; Acts Nos. 65 and 70, 1991; No. 17, 1994
S. 76	am. Act No. 65, 1991; No. 17, 1994
S. 78	am. Acts Nos. 65 and 70, 1991; No. 1, 1993; No. 17, 1994
S. 81	am. Act No. 70, 1991
S. 82	am. Acts Nos. 65 and 70, 1991; No. 17, 1994
S. 83	am. Act No. 70, 1991; No. 26, 1994
S. 84	am. Act No. 26, 1994
S. 85	am. No. 53, 1987; Act No. 70, 1991
Ss. 87, 88	am. Act No. 65, 1991; No. 17, 1994
S. 89	am. Act No. 65, 1991
S. 90	am. Act No. 65, 1991; No. 17, 1994
S. 92	am. Act No. 70, 1991
S. 93	am. Act No. 65, 1991; No. 17, 1994
S. 94	am. Act No. 70, 1991

**NOTES—continued****Table of Amendments—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 99 .....	am. No. 38, 1989; Act No. 26, 1994
S. 100 .....	am. Act No. 65, 1991
S. 102 .....	am. Acts Nos. 65 and 70, 1991; No. 17, 1994
S. 103 .....	am. Nos. 29 and 62, 1988; Act No. 63, 1990; Nos. 65 and 70, 1991; No. 14, 1993; No. 17, 1994
Ss. 104, 105.....	am. Act No. 65, 1991; No. 17, 1994
Ss. 109, 110.....	am. Act No. 70, 1991
S. 111 .....	am. No. 53, 1987
S. 112 .....	am. No. 53, 1987; Act No. 70, 1991
S. 113 .....	am. No. 53, 1987
S. 116 .....	am. No. 38, 1989; Act No. 70, 1991
S. 117 .....	am. No. 38, 1989; Act No. 70, 1991; No. 38, 1994
S. 119 .....	am. No. 38, 1989
S. 124 .....	am. No. 53, 1987
Ss. 132, 133.....	am. No. 38, 1989; Act No. 38, 1994
S. 139 .....	am. No. 53, 1987; Act No. 70, 1991
S. 140 .....	am. Act No. 70, 1991
S. 144 .....	am. No. 53, 1987; No. 9, 1990
S. 145 .....	am. No. 9, 1990
S. 146 .....	am. Act No. 44, 1991
S. 147 .....	am. No. 9, 1990
S. 148 .....	am. No. 53, 1987; No. 38, 1989; Act No. 60, 1994
S. 151 .....	am. No. 53, 1987
S. 155 .....	am. No. 53, 1987; No. 38, 1989; Act No. 60, 1994
S. 158 .....	am. Act No. 70, 1991
S. 159A .....	ad. Act No. 70, 1994
S. 161 .....	am. Act No. 65, 1991; No. 17, 1994
S. 162 .....	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 164 .....	am. Act No. 65, 1991
S. 168 .....	am. Act No. 9, 1992
S. 169 .....	am. Act No. 65, 1991
S. 170 .....	am. Act No. 70, 1991
S. 175 .....	rep. Act No. 5, 1994
S. 176 .....	am. No. 53, 1987; No. 38, 1989
S. 177 .....	am. No. 38, 1989
Schedule.....	am. No. 28, 1987



**NOTES—continued**

2. Sections 4, 33, 46A, 47, 49A, 83 and 83A of the *Children's Services Act 1986* are amended by section 35 and the Schedule to the *Mental Health (Consequential Provisions) Act 1994*, subsection 2 (2) of which provides as follows:

“(2) The remaining provisions commence on the day on which section 4 of the *Mental Health (Treatment and Care) Act 1994* commences.”

As at 20 November 1994 no date had been fixed for the commencement and the amendments are not incorporated in this reprint. They are set out below under the heading “EXTRACT FROM MENTAL HEALTH (CONSEQUENTIAL PROVISIONS) ACT 1994”.

**EXTRACT FROM MENTAL HEALTH (CONSEQUENTIAL PROVISIONS)  
ACT 1994**

**Interpretation**

17. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘mental dysfunction’ means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion;

‘mental health order’ means an order of a kind described in section 29 of the *Mental Health (Treatment and Care) Act 1994* made by the Mental Health Tribunal;

‘Mental Health Tribunal’ means the Mental Health Tribunal established by section 10 of the *Mental Health (Treatment and Care) Act 1994*.”

**Limitations in respect of criminal proceedings against children**

18. Section 33 of the Principal Act is amended by inserting after paragraph (3) (h) the following paragraph:

“(ha) any apparent mental dysfunction of the child and whether, as a consequence, it would be appropriate to refer the child to the Mental Health Tribunal;”

**Insertion**

19. After section 46 of the Principal Act the following section is inserted in Division 2 of Part IV:

**Transfer to the Mental Health Tribunal**

“46A. (1) This section applies where, in proceedings against a child in respect of an offence, the Court is satisfied that—

- (a) the child is mentally dysfunctional; and
- (b) on an outline of the facts to be alleged in the proceedings, or such other evidence as the Court considers relevant—it would be appropriate to deal with the child under this section.

“(2) Where this section applies, the Court may by order—

- (a) dismiss the charge and require the child to submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order; or
- (b) dismiss the charge unconditionally.

**NOTES—continued****EXTRACT FROM MENTAL HEALTH (CONSEQUENTIAL PROVISIONS)  
ACT 1994—continued**

“(3) Where the Court makes an order under paragraph (2) (a), the order operates as a stay of proceedings, or of further proceedings, against the child in relation to the offence.

“(4) Where the Court makes an order under subsection (2), the Court shall not make an order under section 437, 556A or 556B or Part XVA of the *Crimes Act 1900* in relation to the offence.

“(5) An order under subsection (2) does not constitute a finding that an offence has or has not been committed.

“(6) In proceedings to which this section applies, in order to determine whether a child is mentally dysfunctional, the Court may make such orders as it considers appropriate, including the following:

- (a) that the child submit to the jurisdiction of the Mental Health Tribunal;
- (b) that the proceedings be adjourned;
- (c) that the child be released on bail.”.

**Disposition of young offenders**

**20.** Section 47 of the Principal Act is amended by adding at the end of subsection (1) the following paragraph:

“(m) orders in accordance with section 49A.”.

**Insertion**

**21.** After section 49 of the Principal Act the following section is inserted:

**Referral to Mental Health Tribunal following conviction**

“49A. (1) This section applies where—

- (a) a child has been convicted by the Court of an offence; and
- (b) the Court is satisfied that the child is mentally dysfunctional.

“(2) Where this section applies, the Court may, before sentencing the child, order him or her to submit to the jurisdiction of the Mental Health Tribunal to enable the Tribunal—

- (a) to determine whether or not the child is mentally dysfunctional; and
- (b) if the Tribunal determines that the child is mentally dysfunctional—to make recommendations as to how the child should be dealt with.

“(3) If the Mental Health Tribunal notifies the Court that the child is mentally dysfunctional, the Court shall make such orders as it considers appropriate.

“(4) The orders that the Court may make under subsection (3) include an order that the child submit to the jurisdiction of the Mental Health Tribunal to enable the Tribunal to make a mental health order.”.

**Care orders**

**22.** Section 83 of the Principal Act is amended—

**NOTES—continued**

**EXTRACT FROM MENTAL HEALTH (CONSEQUENTIAL PROVISIONS)  
ACT 1994—continued**

- (a) by adding at the end of subsection (1) the following paragraph:
  - “(f) orders in accordance with section 83A.”; and
- (b) by omitting from subsection (2) “subsection (1)” and substituting “paragraph (1) (a), (b), (d) or (e)”.

**Insertion**

**23.** After section 83 of the Principal Act the following section is inserted:

**Referral to the Mental Health Tribunal**

“83A. (1) This section applies where the Court—

- (a) makes a declaration that a child is in need of care; and
- (b) is satisfied that the child is mentally dysfunctional.

“(2) Where this section applies, the Court may, before making an order specified in section 83 in respect of the child, order him or her to submit to the jurisdiction of the Mental Health Tribunal to enable the Tribunal—

- (a) to determine whether or not the child is mentally dysfunctional; and
- (b) if the Tribunal determines that the child is mentally dysfunctional—to make recommendations as to how the child should be dealt with.

“(3) If the Mental Health Tribunal notifies the Court that the child is mentally dysfunctional, the Court shall make such orders as it considers appropriate.

“(4) The orders that the Court may make under subsection (3) include an order that the child submit to the jurisdiction of the Mental Health Tribunal to enable the Tribunal to make a mental health order.”.

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