



Australian Capital Territory

# **Children and Young People Act 1999 No 63**

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## **About this republication**

### **The republished law**

This is a republication of the *Children and Young People Act 1999* effective from 10 May 2000 to 21 September 2000.

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In preparing this republication, amendments have been made under section 13.



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SCHEDULE 1

APPLICATIONS UNDER CHAPTER 7 (CHILDREN AND YOUNG  
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PART 3 (CARE AND PROTECTION ORDERS  
AND EMERGENCY ACTION)

SCHEDULE 2

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Australian Capital Territory

# Children and Young People Act 1999

An Act about the welfare of children and young people

## CHAPTER 1—PRELIMINARY

### PART 1—INTRODUCTORY

#### 1 Short title

This Act may be cited as the *Children and Young People Act 1999*.

#### 2 Commencement

(1) Section 1 and this section commence on the day this Act is notified in the Gazette.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the Gazette.

(3) If the provisions mentioned in subsection (2) have not commenced within 6 months beginning on the day this Act is notified in the Gazette, they commence, by force of this subsection, on the first day after that period.

## **PART 2—INTERPRETATION**

### **3 Definitions—the dictionary etc**

- (1) The dictionary at the end of this Act defines certain words and expressions, and includes references to certain words and expressions defined elsewhere in the Act.
- (2) The dictionary is part of this Act.
- (3) A definition in this Act applies to each use of the word or expression in the Act unless the contrary intention appears.

### **4 Orders *in favour of* a person**

- (1) An order made in relation to a child or young person is an order *in favour of* a person if—
  - (a) for an order in relation to an aspect of parental responsibility—the person is given that aspect of parental responsibility under the order; or
  - (b) for an order for reparation or compensation—the order requires the child or young person to make reparation or pay compensation to the person; or
  - (c) for a contact order—the order allows the person to have contact with the child or young person; or
  - (d) for a residence order—the order requires the child or young person to live with the person.
- (2) In this section:  
*order* means an order made by the Childrens Court or another court, whether under this Act or another law.

### **5 Meaning of *carer***

- (1) In this Act, other than Chapter 9 (Childrens services):  
*carer*, for a child or young person, includes a person who provides regular and substantial care for the child or young person.
- (2) A person is not a *carer*—
  - (a) only because the person provides care for a child or young person at a child-care centre or under a family day care scheme; or

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- (b) if the person provides care on a casual basis and is not a relative of the child or young person being cared for.
- (3) In this section:  
*care* includes foster care, respite care and crisis care.

### **PART 3—APPLICATION OF THE ACT**

#### **6 Application of Act generally**

This Act applies to children and young people.

#### **7 Who is a child?**

For this Act, a *child* is a person who is under 12 years old.

#### **8 Who is a young person?**

(1) For this Act, a *young person* is a person who is 12 years old or older, but not yet an adult.

(2) However, in Chapter 6 (Young offenders), a reference to a young person includes a reference to a child.

#### **9 Children and young people to whom Act applies**

The functions and powers under this Act may be performed or exercised in relation to children and young people—

- (a) who ordinarily live in the Territory; or
- (b) who do not ordinarily live in the Territory, but who are present in the Territory; or
- (c) who are subject to an event or circumstances happening in the Territory giving rise to a report under section 158 (Voluntary reporting) or 159 (Mandatory reporting).

**CHAPTER 2—GENERAL OBJECTS, PRINCIPLES AND  
PARENTAL RESPONSIBILITY**

**PART 1—GENERAL OBJECTS**

**10 Objects**

The objects of this Act include—

- (a) to provide for and promote the care, protection and wellbeing of children and young people in a way that recognises their right to grow in a safe and stable environment and that takes into account the responsibilities of parents and others for them; and
- (b) to recognise that children and young people have the right to be protected from abuse and neglect and that their protection is the responsibility of parents and families with community and government support; and
- (c) to ensure that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide care and protection for them; and
- (d) to ensure that services provided by or for government for the care and protection of children and young people foster their health, education, developmental needs, spirituality, self-respect, self-reliance and dignity; and
- (e) to recognise that the support of young offenders, and the provision of positive opportunities to allow them to become valuable community members, is the responsibility of parents and families with community and government support; and
- (f) to prevent abuse and neglect of children and young people through the provision of appropriate assistance to parents and others who have responsibility for children and young people.

## **PART 2—PRINCIPLES APPLYING TO THE ACT**

### **11 Application of principles**

In making a decision or taking action under this Act in relation to a child or young person—

- (a) the general principles in section 12 (including the best interests principle as explained in section 13) are to be applied; and
- (b) if the child or young person is indigenous—the indigenous children and young people principle in section 14 and, if relevant, the indigenous placement principle in section 15 are also to be applied.

### **12 General principles**

**(1)** In making a decision or taking action under this Act in relation to a child or young person, the general principles to be applied by a person are as follows:

- (a) the best interests of the child or young person should be the paramount consideration (the *best interests principle*);
- (b) the primary responsibility for providing care and protection for the child or young person should lie with his or her parents and other family members;
- (c) high priority should be given to supporting family members, in cooperation with them, to care for and protect the child or young person, including when the child or young person is subject to an order under this Act or a voluntary care agreement;
- (d) if the child or young person is in need of care and protection and family members are unwilling or unable to provide the child or young person with adequate care and protection (whether temporarily or permanently)—it is the responsibility of government to share or take over their responsibility;
- (e) if intervention by government in the life of the child or young person (and his or her family) is appropriate—the intervention should be the least intrusive consistent with the best interests of the child or young person;
- (f) if removal of the child or young person from his or her existing situation is necessary or desirable in his or her best interests—consideration should be given, before any other placement option

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is considered, to the child or young person living or being placed with a family member or a person regarded by the child or young person as a family member;

- (g) if the child or young person does not live with his or her family because of the operation of this Act—contact with people who are significant in his or her life should be encouraged;
- (h) the education, training or lawful employment of the child or young person should be encouraged and continued without unnecessary interruption;
- (i) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced and the decision or action should be consistent with his or her racial or ethnic traditions and religious, cultural and individual values.

**(2)** In making a decision under this Act about a child or young person, the following general principles are also to be applied:

- (a) the child or young person, and anyone else involved in making decisions about the child or young person, should be given sufficient information about the decision-making process, in language and a way that they can understand, to allow them to take part fully in the process;
- (b) if the child or young person can form and express views about his or her wellbeing—those views should be sought and considered, taking into account his or her age and maturity;
- (c) anyone else involved in making decisions about the child or young person should be given the opportunity to give his or her views about the wellbeing of the child or young person and those views should be considered;
- (d) the decision-maker should make a decision promptly—
  - (i) having regard to the degree of urgency of the particular case and the child's or young person's developmental needs; and
  - (ii) having regard to the principle that a delay in the decision-making process is likely to prejudice the wellbeing of the child or young person;
- (e) the decision-maker should also have regard to the principle that it is important for a child or young person to have settled and permanent living arrangements.



**(3)** In addition, if the decision-maker is a court considering whether to make an order under this Act in relation to the child or young person, the court should apply the general principle that an order under this Act should be made by a court in relation to a child or young person only if the court considers that making the order would be better for the child or young person than making no order at all.

### **13 How to apply the best interests principle**

**(1)** In making a decision or taking action under this Act in relation to a child or young person, a person applies the best interests principle if—

- (a) the person finds out whether the child or young person is indigenous and, if the child or young person is, ensures that any relevant indigenous organisation is consulted in relation to issues affecting the child or young person; and
- (b) the person takes into account the following matters so far as they are relevant:
  - (i) the need to protect the child or young person from harm;
  - (ii) if the child or young person has been abused or neglected—the importance of responding to his or her needs;
  - (iii) the capacity of each parent, or anyone else, to provide for his or her needs;
  - (iv) the wishes stated by the child or young person and the factors (for example, his or her maturity or level of understanding) that the person considers are relevant to the weight that should be given to the child's or young person's wishes;
  - (v) the nature of his or her relationship with each parent and with anyone else who is significant in his or her life;
  - (vi) the attitude to the child or young person, and to parental responsibilities, demonstrated by each parent;
  - (vii) the importance of continuity in the child's or young person's care and the likely effect on the child or young person of disruption of that continuity, including separation from—
    - (A) a parent or anyone else with parental responsibility for the child or young person; or
    - (B) a sibling or other family member; or

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- (C) a carer or anyone else (including a child or young person) with whom the child or young person is, or has recently been, living; or
  - (D) anyone else who is significant in his or her life;
  - (viii) the practicalities of the child or young person maintaining contact with his or her parents, siblings and other family members and anyone else who is significant in his or her life;
  - (ix) the age, maturity, sex and background of the child or young person.
- (2) Subsection (1) does not limit the matters that the person may take into account.

**14 Indigenous children and young people principle**

In making a decision or taking action under this Act in relation to an indigenous child or young person, a person applies the indigenous children and young people principle if the person takes into account the following:

- (a) submissions made by or on behalf of any relevant indigenous organisation about the child or young person;
- (b) indigenous traditions and cultural values (including kinship rules) as generally stated by the indigenous community.

**15 Indigenous placement principle**

(1) In making a decision about the placement of an indigenous child or young person, a person applies the indigenous placement principle if the person makes the decision in accordance with this section.

(2) The child or young person should be placed in accordance with the first of the following options that is available and to which the child or young person does not object:

- (a) with a member of his or her family (as defined by local custom and practice) in the correct relationship to the child or young person in accordance with Aboriginal or Torres Strait Islander law;
- (b) with a member of his or her community in a relationship of responsibility for the child or young person according to local custom and practice;
- (c) with a member of his or her community;
- (d) with an indigenous carer.

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- (3)** If the child or young person cannot be placed in accordance with subsection (2), the child or young person may be placed with a non-indigenous carer who lives near the child's or young person's indigenous family or community if the decision about placement takes into account—
- (a) that family reunion should be a primary objective; and
  - (b) that continuing contact with the child's or young person's indigenous family, community or culture should be ensured.
- (4)** Nothing in this section applies to the disposition of a young offender under Chapter 6 (Young offenders).

### PART 3—PARENTAL RESPONSIBILITY

#### 16 Meaning of *court order* for pt 3

In this Part:

*court order* means an order made by the Childrens Court or another court, whether under this Act or another law.

#### 17 What is parental responsibility?

(1) In this Act:

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

(2) *Parental responsibility* includes responsibility for the day-to-day or long-term care, welfare and development of the child or young person.

#### 18 Who has parental responsibility?

(1) A person has parental responsibility for a child or young person if—

- (a) the person is his or her parent; or
- (b) a court order is in force in relation to the child or young person in favour of the person; or
- (c) the person has parental responsibility for the child or young person because of section 224 (Parental responsibility following emergency action).

(2) A person, including a carer, may exercise parental responsibility on behalf of the chief executive in accordance with this Act.

#### 19 Who can exercise parental responsibility for a child or young person?

(1) A person's parental responsibility for a child or young person may be shared or suspended by a court order or by the taking of emergency action.

(2) If 2 or more people have parental responsibility for the child or young person, each of them may act alone in discharging the responsibility.

(3) However, if the chief executive is one of the people with parental responsibility, no-one else may discharge parental responsibility for the

child or young person in a way that would be incompatible with the chief executive's discharge of his or her responsibility.

**20 Parental responsibility for day-to-day care, welfare and development**

(1) A person with parental responsibility for the day-to-day care, welfare and development of a child or young person has responsibility to make decisions about the following matters for the child or young person:

- (a) arrangements for, or directions about, his or her care, including, for example, personal appearance or grooming;
- (b) arrangements for temporary care by someone else (whether the person is in the Territory or elsewhere);
- (c) arrangements (including admission to hospital) for assessing his or her physical or mental wellbeing;
- (d) the people with whom the child or young person may, or may not, have contact;
- (e) day-to-day issues about his or her education, training or employment.

(2) If the person makes arrangements for assessing the physical or mental wellbeing of the child or young person, subject to an order of any court to the contrary, the person is entitled to any report of the assessment.

(3) Also, if the person makes a decision about something covered by paragraph (1) (d) or (e), the person is responsible for the arrangements to give effect to the decision.

(4) This section does not limit the matters for which the person has responsibility to make decisions for the child or young person, but is subject to any court order.

**21 Parental responsibility for long-term care, welfare and development**

(1) A person with parental responsibility for the long-term care, welfare and development of a child or young person is responsible for making decisions about the following matters for the child or young person:

- (a) the administration, management or control of his or her property;
- (b) his or her religion and his or her observance of racial, ethnic, religious or cultural traditions;

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- (c) consent to medical treatment (except as expressly dealt with in this Act);
  - (d) the issue of a passport (or opposing the issue of a passport) for the child or young person;
  - (e) long-term issues about his or her education, training or employment;
  - (f) an aspect of day-to-day parental responsibility that does not belong to someone else.
- (2)** Subsection (1) is subject to any court order.
- (3)** Without limiting the scope of subsection (2), the court may order that a person (including the chief executive) with parental responsibility for a child or young person must, if practicable, consult others with parental responsibility for the child or young person before exercising his or her responsibility.
- (4)** However, the court may not make such an order if the person has parental responsibility under an enduring parental responsibility order.

### **CHAPTER 3—PROCEEDINGS UNDER THIS ACT GENERALLY**

#### **22 Entitlement to take part**

A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person.

#### **23 Chapters 6 and 7—general representation of child or young person**

(1) In a proceeding under Chapter 6 (Young offenders) or 7 (Children and young people in need of care and protection) in relation to a child or young person—

- (a) the child or young person may be represented by a lawyer or litigation representative, or both; and
- (b) a representative of the child or young person must ensure that views or wishes stated by the child or young person are put to the court; and
- (c) a representative of the child or young person must tell the court whether he or she is acting on the instructions of the child or young person or in the best interests of the child or young person, or both.

(2) A person may only be litigation representative for a child or young person with leave of the court.

(3) The court may appoint a person to be a representative of a child or young person only if the person and the child or young person have been given an opportunity to be heard about the appointment.

(4) In this section:

*litigation representative* means a litigation guardian or next friend.

#### **24 Chapters 6, 7 and 8—legal representation of child or young person**

(1) The court may hear an application under Chapter 6 (Young offenders), 7 (Children and young people in need of care and protection) or 8 (Transfer of protection orders and proceedings) in relation to a child or young person only if—

- (a) the child or young person has a lawyer; or
- (b) the court is satisfied that—

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- (i) the child or young person has had a reasonable opportunity to get legal representation; and
  - (ii) the child's or young person's best interests will be adequately represented in the proceeding.
- (2) If, in a proceeding under Chapter 6, 7 or 8 in relation to a child or young person—
- (a) the child or young person does not have a lawyer; and
  - (b) either—
    - (i) the court is not satisfied that the child or young person has made, or can make, an informed and independent decision not to be represented by a lawyer, and it considers that the child or young person should be represented by a lawyer; or
    - (ii) the court is not satisfied the child's or young person's interests will be adequately represented in the proceeding;

the court may make the orders, or give the directions, it considers necessary or desirable to allow the child or young person a reasonable opportunity to get a lawyer.

- (3) The court may act under subsection (2)—
- (a) on application by or on behalf of the child or young person or a party to the proceeding; or
  - (b) on its own initiative.
- (4) In a proceeding under Chapter 7 or 8 in relation to a child or young person, a lawyer of the child or young person must—
- (a) if the lawyer is satisfied that, because of the child's or young person's age, maturity and level of understanding of the proceeding, the child or young person can give the lawyer instructions—act and make representations to the court in accordance with the instructions; or
  - (b) in any other case—act and make representations to the court in the best interests of the child or young person and having regard to the objects and principles of this Act.

## **25 Applications may be heard together**

- (1) If 2 or more applications under this Act have been filed in relation to a child or young person, the court may hear and decide the applications



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together if it considers that it would be in the best interests of the child or young person.

**(2)** If 2 or more applications under this Act are before the court in relation to children or young people who are related or that raise related issues, the court may hear and decide the applications together if it considers that it would be in the best interest of each child or young person.

## **CHAPTER 4—ADMINISTRATION**

### **PART 1—CHIEF EXECUTIVE**

#### **26 Functions and general powers of chief executive**

- (1) The chief executive has the following functions under this Act:
- (a) to provide, or assist in the provision of, services directed to strengthening and supporting families in relation to the care and protection of their children and young people;
  - (b) to help the community to set up programs for the protection of children and young people and for the prevention or reduction of the incidence of abuse and neglect of children and young people in the community;
  - (c) to provide, or assist in the provision of, information to members of the community, including carers and prospective carers, about the operation of this Act and developmental, social and safety issues affecting children and young people;
  - (d) to provide, or assist in the provision of, information to people who are required under this Act to report cases, or suspected cases, of abuse to help them perform their legal obligation;
  - (e) to provide, or assist in the provision of, information, services or assistance to people who have left the chief executive's care;
  - (f) to provide, or assist in the provision of, services in relation to children or young people who offend against the criminal law, including by ensuring the provision of the care, correction and guidance necessary to allow those children and young people the opportunity to develop in socially responsible ways.
- (2) The chief executive has power to do everything necessary or convenient to be done in relation to the performance of his or her functions.

#### **27 Duties and particular powers of chief executive**

- (1) The chief executive must—
- (a) have regard to the purposes and principles of this Act in performing a function or exercising a power under the Act; and

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- (b) encourage the maintenance and development of family, cultural and other significant relationships of every child or young person for whom the chief executive has parental responsibility; and
  - (c) set up mechanisms for coordinating services for the care and protection of children and young people.
- (2) The chief executive may provide for any of the following for a child or young person for whom the chief executive has parental responsibility:
- (a) accommodation with a carer (whether within or outside the Territory);
  - (b) financial support;
  - (c) counselling;
  - (d) suitable education, training and employment opportunities;
  - (e) medical, dental and similar treatment;
  - (f) recreational opportunities;
  - (g) regular care planning and review that fully involves the child or young person so that he or she can take part and considers the views of parents and anyone else who is involved with the care, welfare and development of the child or young person;
  - (h) an explanation, in language and a way the child or young person can understand, of the aim of care plans.

**28 Who can the chief executive get help from?**

(1) For this Act, the chief executive may request a Territory authority or statutory office holder to provide information, advice, guidance, assistance, documents, facilities or services relevant to the physical or emotional welfare of children and young people.

(2) If a request is made of an authority or office holder under this section, the authority or office holder must promptly comply with the request.

**29 Power to give and receive information**

- (1) The Minister or chief executive may—
- (a) give a defined entity information relevant to the safety, welfare and wellbeing of children and young people; and
  - (b) give a person information held by the Minister or chief executive in relation to the person; and

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- (c) in relation to the chief executive only—ask a defined entity to give the chief executive information relevant to the safety, welfare and wellbeing of children and young people.
- (2) However, if the regulations regulate the way information is to be given or requested under this section, the Minister or chief executive may only act under subsection (1) in accordance with the regulations.
- (3) If information is given in good faith and with reasonable care to or by a defined entity under subsection (1), the giving of the information is not—
  - (a) a breach of confidence, professional etiquette or ethics or a rule of professional conduct; or
  - (b) the publication of an actionable libel; or
  - (c) a ground for civil proceedings for malicious prosecution or conspiracy.
- (4) This section does not limit any other power to give information.
- (5) In this section:

***defined entity*** means—

- (a) for a child or young person—
  - (i) a person with parental responsibility for the child or young person; or
  - (ii) a carer of the child or young person; or
- (b) a Minister; or
- (c) a Territory authority or statutory office holder; or
- (d) a body established under a law of a State or the Commonwealth; or
- (e) the holder of an office established under a law of a State or the Commonwealth.

**30 Power to enter agreements for general exercise of parental responsibility**

- (1) The chief executive may enter into an agreement with an individual or a body (the *carer*) for the carer to exercise parental responsibility on behalf of the chief executive.

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(2) The chief executive may enter into an agreement with the carer only if the chief executive is satisfied that the carer is a suitable carer to exercise parental responsibility on behalf of the chief executive.

(3) If the chief executive enters into an agreement with the carer, the carer may exercise parental responsibility on behalf of the chief executive in relation to a particular child or young person only if the carer is authorised to do so under section 31.

(4) Section 47 (Suitable entities) applies in deciding whether a carer is suitable to exercise parental responsibility on behalf of the chief executive.

**31 Authorisation to exercise parental responsibility for particular child or young person**

(1) The chief executive may, orally or in writing, authorise—

- (a) a carer with whom it has an agreement under section 30 to exercise parental responsibility for a child or young person on behalf of the chief executive; or
- (b) a member of kin of a child or young person to exercise parental responsibility for the child or young person on behalf of the chief executive.

*Examples of way authorised carer or member of kin may exercise parental responsibility*

By the provision of foster care, respite care or crisis care.

(2) When giving the authorisation or as soon as possible afterwards, the chief executive must give the authorised carer or member of kin written confirmation that the chief executive has parental responsibility for the child or young person, including a copy of any relevant court order.

(3) The chief executive may authorise a carer or member of kin under subsection (1) only if the carer or person agrees to be authorised.

**32 Monitoring children and young people for whom chief executive has parental responsibility**

(1) If the chief executive has parental responsibility for a child or young person, the chief executive may, with reasonable and necessary assistance and at a reasonable time, enter and inspect the place where the child or young person is living to ensure that the child or young person is being properly cared for on behalf of the chief executive.

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(2) The chief executive must, when exercising power under subsection (1), identify himself or herself and, if asked, provide identification.

(3) If the chief executive cannot provide identification when asked, the chief executive may not exercise a power under subsection (1).

**33 After care assistance**

If the chief executive ceases to have parental responsibility for a person for any reason, the chief executive may arrange for financial or other assistance to be provided to, or in relation to, the person on the terms and conditions the chief executive considers appropriate.

**34 Delegation**

The chief executive may, in writing, delegate to a public servant a power under this Act or under an interstate law.

## **PART 2—CHILDRENS SERVICES COUNCIL**

### **35 Childrens Services Council**

- (1) The Childrens Services Council is established.
- (2) The functions of the council are—
  - (a) to report to the Minister, at the Minister's request, on anything relating to the operation or administration of the Act; and
  - (b) to make recommendations to the Minister about services for children and young people in the Territory.

### **36 Members of the council**

- (1) The council consists of not less than 3, nor more than 10, members appointed by the Minister from the community.
- (2) The Minister must ensure that there is always at least 1 member of the council who represents the interests of carers.
- (3) The Minister may appoint a person to the council only if satisfied that the person—
  - (a) has expertise in relation to services for children or young people; or
  - (b) represents the interests of carers.
- (4) A person is a member of the council for the term, and on the terms and conditions, stated in the instrument of appointment.

### **37 Chairperson**

The Minister must appoint a chairperson from among the members.

### **38 Meetings of the council**

- (1) A quorum at a meeting of the council is a majority of the members of the council holding office at the time of the meeting.
- (2) The chairperson must preside at all meetings of the council at which the chairperson is present.
- (3) If the chairperson is not present at a meeting, the members present may choose a member present to preside.

(4) The member presiding at a meeting has a deliberative vote and, if the votes are equal, a casting vote.

**39 Termination of appointment of members**

The Minister may end the appointment of a member of the council—

- (a) for misbehaviour; or
- (b) for physical or mental incapacity; or
- (c) if the member is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 12 months or longer.

**40 Advice and assistance by chief executive and community advocate**

The chief executive and the community advocate must give the council the advice and assistance that the council reasonably asks for.



### **PART 3—OTHER OFFICIALS**

#### **41 Official visitor**

- (1) The office of the Official Visitor is established.
- (2) The Minister may appoint a person as official visitor only if satisfied that the person has suitable qualifications or experience.
- (3) A person may be appointed as official visitor for a term of not longer than 3 years.
- (4) The official visitor may resign by signed notice of resignation given to the Minister.
- (5) The Minister may end the appointment of a person as official visitor—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity; or
  - (c) if the person 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 creditors; or
  - (d) if the person is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 12 months or longer.

#### **42 Functions of official visitor**

- (1) The official visitor must—
  - (a) visit and inspect shelters and institutions; and
  - (b) visit children and young people receiving therapeutic protection, if practicable, at least once each week; and
  - (c) hear a complaint, or referral of a complaint, made by a child or young person in a shelter or institution or who is receiving therapeutic protection at a place, or by anyone else, about—
    - (i) the child's or young person's care, detention or treatment; or
    - (ii) the way in which the shelter, institution or place providing therapeutic protection is conducted; and

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- (d) except as provided by section 44 (No requirement to investigate complaint) investigate each complaint and prepare a report about it (which may contain recommendations); and
  - (e) provide a copy of the report to the chief executive and the community advocate.
- (2) The official visitor may also provide a copy of the report, or part of it, to—
- (a) the Minister; and
  - (b) the complainant.
- (3) Before providing a copy of the report or part to the complainant, the official visitor may make minor alterations that the official visitor considers appropriate to protect the privacy and confidentiality of a person mentioned in the report.
- (4) In addition to a report under subsection (1), the official visitor may, on his or her own initiative, provide a report (that may include a recommendation) to the Minister or chief executive, or both.

**43 Making and hearing complaints**

- (1) A child or young person may make a complaint to the official visitor personally or through someone else.
- (2) A child or young person may have his or her complaint heard by the official visitor with no-one else present if the child or young person asks.
- (3) The official visitor may only include in a report about a complaint material, by way of opinion or otherwise, that may be adverse to a person or critical of a person (whether expressly or implicitly) if the official visitor has given the person an opportunity to be heard.

**44 No requirement to investigate complaint**

- (1) The official visitor need not investigate a complaint if satisfied that the substance of it has been, is being or will be investigated by the community advocate or another appropriate entity.
- (2) If subsection (1) applies, the official visitor may provide information about the complaint to the community advocate or other entity in relation to the investigation.

**45 Assistance for community advocate**

(1) For the purpose of performing a statutory function, the community advocate may request a Territory entity to provide information, advice, guidance, assistance, documents, facilities or services relevant to the physical or emotional welfare of children and young people.

(2) If a request is made of an entity under subsection (1), the entity must promptly comply with the request.

(3) In this section:

*Territory entity* means a Territory authority, or a statutory office holder, involved in providing welfare services for children and young people.

**46 Giving information protected**

If information is given in good faith and with reasonable care to, or by, the official visitor or community advocate under this Part, the giving of the information is not—

- (a) a breach of confidence, professional etiquette or ethics or a rule of professional conduct; or
- (b) the publication of an actionable libel; or
- (c) a ground for a civil proceeding for malicious prosecution or conspiracy.

**47 Suitable entities**

(1) The chief executive may—

- (a) appoint, engage, employ or authorise an entity (whether for payment or as a volunteer) to provide services for a child or young person under this Act only if the chief executive is satisfied that the entity is a suitable entity to provide the services; or
- (b) allow an entity access to information about a child or young person acquired under the Act only if the chief executive is satisfied that the entity is a suitable entity to have access to the information.

(2) In deciding whether the entity is a suitable entity, the chief executive may take into account such of the following as are relevant:

- (a) whether the entity has been found guilty of an offence—

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- (i) relating to the provision of services for children or young people; or
  - (ii) involving dishonesty, fraud or possession of, or trafficking in, a drug of dependence; or
  - (iii) against or involving a child or young person;
- (b) whether the entity has been involved in proven noncompliance with a legal obligation relating to the provision of services for children or young people;
  - (c) whether the entity has a sound financial reputation and stable financial background;
  - (d) whether the entity has a good reputation;
  - (e) whether the entity has proven experience or demonstrated capacity in providing services to children or young people;
  - (f) any other consideration relevant to the entity's ability to provide high quality services for children or young people.

**48 Officers**

- (1) There are 1 or more officers for this Act.
- (2) The chief executive may create and maintain 1 or more offices in the public service the duties of which include performing the functions of an officer.
- (3) A public servant for the time being performing the duties of a public service office mentioned in subsection (2) is an officer.

**49 Identity cards**

- (1) The chief executive must issue to each officer an identity card that specifies the officer's name and includes a photograph of the officer from which the officer is readily identifiable.
- (2) A person who ceases to be an officer must not, without reasonable excuse, fail to return his or her identity card to the chief executive within 7 days of ceasing to be an officer.

Maximum penalty (subsection (2)): 1 penalty unit.

## **CHAPTER 5—THE CHILDRENS COURT**

### **50 Childrens Court Magistrates**

- (1)** The Chief Magistrate must, in writing, declare 1 magistrate to be the Childrens Court Magistrate for a stated term of up to 2 years.
- (2)** The Chief Magistrate must revoke the declaration on request in writing by the Childrens Court Magistrate.
- (3)** The Chief Magistrate may declare himself or herself to be the Childrens Court Magistrate.

### **51 Restriction on assignment to act as Childrens Court Magistrate**

- (1)** The Chief Magistrate may assign a magistrate to act as Childrens Court Magistrate only if—
  - (a)** there is no Childrens Court Magistrate; or
  - (b)** the Childrens Court Magistrate—
    - (i)** is absent from duty or from the Territory; or
    - (ii)** for another reason, cannot carry out the duties of Childrens Court Magistrate.

- (2)** A magistrate assigned to act as Childrens Court Magistrate is the Childrens Court Magistrate for this Act and any other Act.

### **52 Arrangement of business of court**

The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Childrens Court and accordingly may, subject to appropriate and practicable consultation with the magistrates, make arrangements as to the magistrate who is to constitute the Childrens Court.

### **53 Childrens Court**

When the Magistrates Court is constituted by the Childrens Court Magistrate exercising the jurisdiction conferred by section 54, the Magistrates Court is known as the Childrens Court.

### **54 General jurisdiction of Childrens Court**

- (1)** The court has jurisdiction—

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- (a) to hear and decide informations against children and young people; and
  - (b) to hear and decide applications and other proceedings under this Act in relation to children and young people.
- (2) A proceeding transferred to the Childrens Court under Chapter 8 (Transfer of protection orders and proceedings) is a proceeding under this Act in relation to children and young people.
- (3) Subsection (1) does not by implication preclude a magistrate other than the Childrens Court Magistrate from—
- (a) exercising a power or performing a function conferred on a magistrate under a provision of this Act; or
  - (b) exercising a power conferred on a magistrate under a law of the Territory to admit a child or young person to bail in accordance with the *Bail Act 1992* or to remand a child or young person in custody.

**55 Decisions about jurisdiction by reference to age**

- (1) In deciding whether section 54 applies to a proceeding in relation to a person, regard must be had to the person's age when the proceeding is begun.
- (2) This section does not apply to a proceeding to which section 69 (Decisions about criminal jurisdiction by reference to age) applies.

**56 Procedure of Childrens Court**

- (1) Except as expressly provided in this Act—
- (a) the *Magistrates Court Act 1930*, and the rules and regulations under that Act, apply to the Childrens Court in the exercise of its jurisdiction under section 54 (General jurisdiction of Childrens Court) in relation to a proceeding under Chapter 6 (Young offenders), other than section 128 (Special purpose leave); and
  - (b) the *Magistrates Court (Civil Jurisdiction) Act 1982*, and the regulations under that Act, apply to the Childrens Court in the exercise of its jurisdiction under section 54 in relation to any other proceeding under this Act.
- (2) The regulations may make provision with respect to the procedure to be followed in proceedings in the court in the exercise of its jurisdiction under section 54.

**57 Matters before Childrens Court**

The sittings of the court must be arranged to keep each of the following to a minimum:

- (a) the extent to which children and young people can associate with each other within the court precincts while awaiting the hearing of proceedings;
- (b) the extent to which parents and other people need to be in common waiting rooms while awaiting the hearing of proceedings.

**58 Forms**

The court may approve and publish forms for this Act.

**59 Orders about service**

The court may make any of the following orders:

- (a) an order dispensing with service of a notice, order or other instrument under this Act;
- (b) an order for substituted service of a notice, order or other instrument under this Act;
- (c) an order shortening the time for serving a notice, order or other instrument under this Act.

**60 Attendance of parents at court**

**(1)** A parent of a child or young person who is the subject of a proceeding in the court must attend the court throughout the proceeding if—

- (a) notice of the proceeding has been served on the parent; or
- (b) the parent is otherwise aware of the proceeding.

**(2)** Notice of a proceeding served on a parent must—

- (a) state the time and date when, and the place where, the hearing of the proceeding will start; and
- (b) state that a warrant may be issued to bring the parent before the court if the parent does not attend throughout the proceeding.

**(3)** The court may issue a warrant to bring a parent of a child or young person before the court if—

- (a) notice of the proceeding has been served on a parent of the child or young person; but

- (b) neither parent of the child or young person attends the court at the start of, or at any time during, the proceeding.
- (4) If the parent is brought before the court on the warrant and the court is not satisfied that the parent has a reasonable excuse for not attending, the court may admit the parent to bail on an undertaking by the parent, with or without sureties, to attend the court throughout the remainder of the proceeding.
- (5) This section applies to a parent who lives within or outside the Territory.
- (6) This section does not apply to a proceeding under Chapter 7 (Children and young people in need of care and protection).

#### **61 Proceedings not open to public**

The following people are the only people who may be present at the hearing of a proceeding in the court:

- (a) an officer of the court;
- (b) a party to the proceeding, a lawyer representing the party, or an employee of the lawyer;
- (c) a parent or other person with parental responsibility for the child or young person who is the subject of the proceeding or anyone else whom the court admits as a representative of the child or young person;
- (d) the chief executive or a person authorised by the chief executive for this section;
- (e) the community advocate or a person authorised by the community advocate for this section;
- (f) a person who has, or a representative of an entity that has, provided a report under Chapter 7 (Children and young people in need of care and protection);
- (g) if the proceeding is a proceeding under Chapter 6 (Young offenders)—a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by his or her employer;
- (h) anyone else required or permitted to be present by the court or under this Act.



**62 Court may excuse parties from attendance**

- (1)** The court may excuse a party to a proceeding under this Act from attending all or part of the proceeding on the application of the party.
- (2)** The court may, at any time and by notice served on the party, require the party to attend the proceeding.

## CHAPTER 6—YOUNG OFFENDERS

### PART 1—INTERPRETATION

#### 63 Definitions for ch 6

In this Chapter:

**conditional discharge order**, in relation to a young person charged with an offence, means an order made by a court discharging the young person subject to conditions.

**fine** has the meaning given by Part 9 (Enforcement of decisions), Division 2 (Enforcement of fines) of the *Magistrates Court Act 1930*.

**Minister**, for a State, means—

- (a) for the Northern Territory—a person holding ministerial office under the *Northern Territory (Self-Government) Act 1978* (Cwlth); or
- (b) in any other case—a Minister of the Crown of the State.

**outstanding fine** has the meaning given by Part 9 (Enforcement of decisions), Division 2 (Enforcement of fines) of the *Magistrates Court Act 1930*.

#### 64 Meaning of *young offender*

(1) In this Chapter:

**young offender** means—

- (a) a person in relation to whom the Childrens Court has made an order under section 96 (Disposition of young offenders), except an order reprimanding the person or requiring the person to submit to the jurisdiction of the mental health tribunal; or
- (b) a person who—
  - (i) has committed an offence against a law of a State; and
  - (ii) is under 18 years old, or is under 21 years old and was under 18 years old when the offence was committed; and

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- (c) has been dealt with for the offence under a young offenders law of the State, but is not on remand.

(2) In this section:

*young offenders law*, of a State, means a law of the State about the punishment of offenders who are under 18 years old when they commit offences.

**65 Meaning of *State institution***

(1) In this Chapter, a *State institution* is a place in a State in which, under the law of the State, a young person may be detained under a court order.

(2) In this section:

*State* means a State for which an agreement under section 133 (General agreements with other jurisdictions) is in force.

**66 Special meaning of *young person* in ch 6**

In this Chapter:

*young person* includes a child.

## **PART 2—WITHIN THE TERRITORY**

### ***Division 1—General***

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

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

#### **68 Principles**

If a decision is to be made under this Part in relation to a young person or young offender, the decision-maker must make the decision in accordance with the following principles:

- (a) if a young person does anything that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
- (b) the young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;
- (c) a young person may only be detained in custody for an offence (whether on arrest, in remand or under sentence) as a last resort;
- (d) young offenders should be dealt with in the criminal law system in a manner consistent with their age and maturity and have the same rights and protection before the law as would adults in similar circumstances;
- (e) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
- (f) a balanced approach must be taken between the needs of the young offender, the rights of any victim of the action that constituted the young offender's offence and the interests of the community.

#### **69 Decisions about criminal jurisdiction by reference to age**

**(1)** In deciding whether an information alleging an offence by a person should be heard and decided by the court, regard should be had to the age of the person at the time of the alleged offence.

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(2) If 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 must be dealt with in accordance with this Part until the time (if any) that the court finds the offence proved; and
- (b) in dealing with the person, this Part applies to and in relation to the person as if the person were a young person; and
- (c) if the court finds the offence proved, the person must be dealt with as an adult.

(3) If 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 must be dealt with as an adult unless, in the circumstances, the court considers it appropriate for the person to be dealt with as a young person.

**70 Proceedings where young person jointly charged with adult**

(1) If a young person and an adult are jointly charged with an offence, section 54 (General jurisdiction of the Childrens Court) applies to a proceeding against the young person arising out of that charge as if the young person had been charged separately.

(2) Section 54 does not apply to the preliminary examination in respect of an indictable offence alleged to have been committed jointly by a young person and an adult 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.

**71 Age of criminal responsibility**

(1) A child who is under the age of 10 years is, for all purposes, 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 or young person who is of or over the age of 10 years, but under the age of 14 years, is incapable of committing in the Territory an offence against a law in force in the Territory because the child or young person did not have the capacity to know that the act or omission concerned was wrong.

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

(1) If a police officer reasonably believes that a person is a child under the age of 10 years and has done or is doing an act that, but for section 71, 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) When exercising the power conferred by subsection (1), the police officer may—

- (a) enter premises, by force if necessary and reasonable, at any time of the day or night for the purpose of arresting the child; and
- (b) if the police officer reasonably believes that—
  - (i) the child has committed a serious offence within the meaning of Division 2 (Criminal proceedings against young people); and
  - (ii) the child is on the premises;  
search the premises for the child.

(3) On apprehending a child under subsection (1), the police officer must—

- (a) take the child to a person with parental responsibility for the child;  
or
- (b) if it is not practicable to do so—
  - (i) place the child with a suitable person who is prepared to care for the child; and
  - (ii) notify the chief executive that the police officer has done so.

**73 Powers of court with respect to reports**

(1) A court hearing any proceeding in relation to or against a child or young person may order a public servant whose duties relate to the welfare of children and young people in the Territory to give the court a report about the child or young person.

(2) A public servant given an order must, despite any other law of the Territory, give a report.

(3) In giving effect to an order under subsection (1), the public servant may do 1 or more of the following:

- (a) visit and interview the child or young person;
- (b) interview a parent of the child or young person;

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- (c) interview a schoolteacher or other person concerned with the education or welfare of the child or young person;
- (d) require the child or young person to submit to being interviewed by a doctor or other named person.

(4) If a report is provided in good faith to the person mentioned in subsection (1) by a doctor or other person following an interview mentioned in paragraph (3) (d), the report is not a breach of confidence, professional etiquette or ethics or a rule of professional conduct.

**74 Reports to be made available**

- (1) Unless a court otherwise orders, a copy of a report provided under section 73 must be made available to the parties to the proceeding.
- (2) The person providing a report under section 73 may be called as a witness by a party to the proceeding.

**75 Care and protection considerations**

(1) If, when hearing an information against a young person, the court is satisfied that the young person should be dealt with under Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action), the court may—

- (a) dismiss the information; or
- (b) adjourn the proceeding for a period not exceeding 15 days.

(2) If the court acts under subsection (1) in relation to a proceeding it must, as soon as practicable, but in any event not later than 2 working days after the day it acts, give a statement of the reasons for the action to the chief executive and the community advocate which contains the following information about the proceeding:

- (a) if the proceeding has been adjourned—the reason the proceeding was adjourned;
- (b) the circumstances of which the court is aware which led to the young person coming before the court;
- (c) the factors that satisfied the court that the young person should be dealt with under Chapter 7, Part 3.

(3) The court may, if it proposes to adjourn a proceeding, make an order placing the young person who is the subject of the proceeding in the physical care of the chief executive or an officer, or into the physical care

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of a police officer for delivery to the chief executive or an officer, if the court is of the opinion that—

- (a) if the young person were convicted as a result of the proceeding— it would be appropriate to make an order under section 96 (other than under paragraph 96 (1) (a), (b) or (g), an order imposing a fine or an order for reparation) in relation to him or her; or
- (b) the immediate release of the young person would not be in his or her best interests.

**(4)** If the court makes an order under subsection (3) in relation to a proceeding, the chief executive has parental responsibility for the young person who is the subject of the proceeding as if he or she had taken emergency action in relation to him or her and must—

- (a) approve the existing arrangements for the care and protection of the young person; or
- (b) cause suitable arrangements for the care and protection of the young person to be made.

**(5)** The chief executive must treat a statement of reasons provided to him or her under subsection (2) as if it were a report made under section 159 (Mandatory reporting).

**(6)** If—

- (a) a proceeding has been adjourned under subsection (1); and
- (b) the court has provided the chief executive with a statement of reasons under subsection (2) about the action of the court;

the chief executive must, within 15 days after the day the court acts under subsection (1), give notice in writing to the community advocate and the court—

- (c) of the action he or she has taken, is taking or proposes to take under Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action) in relation to the young person who is the subject of the proceeding; or
- (d) if the chief executive proposes to take no action—that he or she proposes to take no action under Chapter 7, Part 3 in relation to the young person.



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- (7) The chief executive will be taken to have complied with subsection (6) in relation to a proceeding that has been adjourned under subsection (1) if—
- (a) the chief executive files an application under Chapter 7, Part 3 in relation to the young person who is the subject of the proceeding; and
  - (b) serves a copy of that application on the community advocate.
- (8) When a proceeding adjourned under subsection (1) comes before the court again, the court must—
- (a) if the chief executive has given the court notice under paragraph (6) (c) and the court is satisfied that taking the action mentioned in the notice is in the best interests of the young person—dismiss the proceeding; or
  - (b) if the chief executive has given the court notice under paragraph (6) (d) and the court is satisfied that it is in the best interests of the young person that the chief executive take no action—dismiss the proceeding; or
  - (c) if the chief executive has made an application under Chapter 7, Part 3 in relation to the young person—dismiss the proceeding; or
  - (d) in any other case—make such further order or take such further action in relation to the information that is the subject of the proceeding as the court considers appropriate.

***Division 2—Criminal proceedings against young people***

**76 Definitions for div 2**

In this Division:

***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.

***interview*** includes ask questions.

***police officer*** includes a person holding office under an Act or under regulations under an Act and having power because of that Act or those regulations to arrest or detain a person or to take a person into his or her custody but does not include a custodial escort.

**serious offence** means an offence punishable by imprisonment for more than 1 year.

**77 Meaning of *under restraint***

- (1) For this Division, a young person is ***under restraint*** if—
- (a) the young person is under restraint as a result of having been lawfully arrested or detained; or
  - (b) the young person is under restraint in relation to an offence and a police officer reasonably believes that—
    - (i) the young person committed the offence; or
    - (ii) he or she would be authorised under a law in force in the Territory to arrest the young person for the offence; or
  - (c) the young person is in the company of a police officer for a purpose connected with the investigation of an offence or a possible offence.
- (2) For paragraph (1) (c), a young person is in the company of a police officer for a purpose connected with the investigation of an offence or a possible offence—
- (a) if the police officer would not allow the young person to leave if the young person wished to do so or the young person is waiting at a place at the request of a police officer for such a purpose; and
  - (b) whether or not the police officer reasonably believes that the young person has committed the offence and whether or not the young person is in lawful custody in respect of the offence.
- (3) However, for this Division, a young person is not ***under restraint*** if the young person is in the company of—
- (a) a police officer by the roadside, whether or not the young person is in a motor vehicle, for a purpose connected with the investigation of an offence, other than a serious offence, arising out of the use of a motor vehicle; or
  - (b) a police officer for the purpose of breath analysis, a screening test or the taking of a blood sample in accordance with the *Road Transport (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 reasonably believes was not committed by the young person.

**78 Committing an offence**

In this Division, a reference to a young person who has committed an offence includes a reference to a young person who has committed an offence with another person or other people.

**79 Interviewing young people**

**(1)** This section applies if a police officer—

- (a) suspects that a young person may have committed a serious offence or an offence against the person or property; or
- (b) reasonably believes that a young person may be implicated in the commission of such an offence; or
- (c) is holding a young person under restraint.

**(2)** If this section applies, a police officer may not interview a young person in respect of an offence or cause the young person to do anything in relation to the investigation of an offence—

(a) unless an adult other than a police officer who is—

- (i) a person with parental responsibility for the young person; or
- (ii) a relative of the young person acceptable to the young person; or
- (iii) a lawyer acting for the young person or some other suitable person acceptable to the young person;

is present; or

(b) unless—

- (i) the police officer has taken reasonable steps to secure the presence of a person mentioned in paragraph (a); and
- (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) someone else (who may be a police officer) who has not been involved with the investigation of the offence is present.

**(3)** However, a police officer —

(a) is not required—

- (i) to permit a person whom the police officer reasonably believes to be an accomplice of the young person in relation to the offence to be present while the young person

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is being interviewed, or is doing anything, in relation to the investigation of the offence; or

(ii) to take steps to procure the presence of a person mentioned in paragraph (2) (a) whom the police officer reasonably believes to be an accomplice of the young person in relation to the offence; and

(b) may interview a young person, or ask or cause a young person to do a particular thing, if the police officer reasonably believes that it is necessary to do so without delay in order to avoid danger of the death of, or serious injury to, a person or serious damage to property.

(4) In this section:

*accomplice* includes a person whom the police officer reasonably believes to be likely to secrete, lose, destroy or fabricate evidence relating to the offence.

**80 Notification of arrest**

If a police officer places a young person under restraint, the police officer must promptly—

(a) take all reasonable steps to cause a person with parental responsibility for the young person to be notified, whether the person lives in the Territory or not; and

(b) if the police officer is not an authorised officer, notify an authorised officer.

**81 Limitations in respect of criminal proceedings against young people**

(1) A police officer may not institute a prosecution against a young person 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 a requirement under another law to get consent to a prosecution.

(3) In deciding whether he or she should consent to the prosecution of a young person, an authorised officer must have regard to such matters as

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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 young person has previously been found guilty or convicted of an offence, whether against a law in force in the Territory or elsewhere, and the seriousness of that offence;
- (e) whether a warning has been given to the young person in the Territory by a police officer;
- (f) the age of the young person;
- (g) the apparent maturity of the young person;
- (h) the apparent mental capacity of the young person;
- (i) any apparent mental dysfunction or mental illness of the young person and whether, as a consequence, it would be appropriate to refer the young person to the mental health tribunal;
- (j) whether the people with parental responsibility for the young person appear able and prepared to exercise effective discipline and control over the young person;
- (k) whether it would be sufficient to warn the young person, at a police station, at home or otherwise, against the commission of the same or similar offences;
- (l) the prevalence of the same or similar offences;
- (m) whether the prosecution would be likely to be harmful to the young person, or to be inappropriate, having regard to the personality of the young person, the circumstances of living of the young person or any other circumstances that the authorised officer considers should be taken into account.

**(4)** The authorised officer may only consent to a prosecution if satisfied, after having considered the matters mentioned in subsection (3), that a prosecution is justified.

**(5)** If the prosecution of the offence requires the consent of a person under another law, the authorised officer must—

- (a) make a recommendation with respect to the prosecution, having regard to the matters mentioned in subsection (3); and

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- (b) forward his or her recommendation, together with the papers and other relevant material, to the person whose consent is required under the other law.
- (6) If an authorised officer consents to the prosecution of a young person 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 must record in writing his or her reasons for giving consent.
- (7) If a young person is under restraint, an authorised officer must, as soon as practicable, decide whether he or she will consent to a prosecution of the young person and, if the authorised officer does not consent, the young person must be released promptly.
- (8) A police officer may institute a prosecution against a young person without the consent of an authorised officer if—
- (a) the young person is licensed to drive a motor vehicle; and
  - (b) the police officer reasonably believes that the young person has committed an offence arising out of the use of a motor vehicle.

**82 Procedure by summons**

- (1) A police officer may not charge a young person at a police station with an offence unless satisfied that proceeding by way of a summons would not be effective.
- (2) For that purpose, the police officer must have regard to the need to achieve the purposes stated in paragraph 349W (1) (b) of the *Crimes Act 1900* (Power of arrest without warrant by police officers).

**83 Charge against young person—informing person with parental responsibility**

- (1) If a young person is charged at a police station with an offence, the person who charged the young person must promptly take all reasonable steps to give notice to a person with parental responsibility for the young person about—
- (a) the charge; and
  - (b) the young person's location; and
  - (c) the time and place when the young person will be brought before the court.

(2) Subsection (1) applies whether the person with parental responsibility lives in the Territory or not.

#### **84 Identifying material**

(1) In this section:

*identifying material*, for a young person, means prints of his or her hands, fingers, feet or toes, recordings of his or her voice, photographs of him or her, samples of his or her handwriting or material from his or her body.

*police officer* means the police officer for the time being in charge of a police station.

(2) An authorised officer or a police officer may only take, or cause to be taken, identifying material of a young person if a magistrate has approved the taking of the identifying material.

(3) Identifying material that consists of material from the body of a young person may only be taken in accordance with this section by a doctor.

(4) An authorised officer or a police officer 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 young person who is in lawful custody in relation to an offence or of a young person against whom a proceeding has been instituted by summons in relation to an offence.

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

(6) If the magistrate tells the applicant by telephone of the magistrate's approval, the applicant may proceed under the approval even though written approval has not been given.

(7) If identifying material of a young person is taken in accordance with this section, the authorised officer or police officer must, as soon as practicable, take all reasonable steps to give notice to a person with parental responsibility for the young person about the action taken.

**85 Detention of young people**

(1) A young person who has been charged with an offence and is not admitted to bail must, as soon as practicable, be taken to a shelter, and detained there.

(2) However, a young person may be taken to a remand centre and detained there if it is appropriate to do so because of—

- (a) the actual or apprehended violent behaviour of the young person (whether in the shelter or elsewhere); or
- (b) the seriousness of the offence with which the young person is charged; or
- (c) an escape, or attempted escape, by the young person from lawful detention; or
- (d) another good reason.

(3) A young person 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 young person detained in a hospital is discharged from hospital, the young person must—

- (a) for a young person to whom subsection (2) applies—be taken to a remand centre and detained there; or
- (b) in any other case—be taken to a shelter and detained there.

(5) If—

- (a) a young person is detained at a place; and
- (b) it is necessary to take the young person—
  - (i) to a court from the place; or
  - (ii) to the place from a court;

unless it is impracticable to avoid doing so, the young person may not be taken—

- (c) with an adult under detention; or
- (d) to a court and placed in a room in which an adult is placed.

**86 Private property**

(1) The person in charge of an institution or shelter may require a young person placed in the institution or shelter—

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



all property in the possession of the young person.

- (2) Property surrendered must be—
  - (a) returned to the person to whom it belongs; or
  - (b) retained by the person in charge of the institution or shelter until the young person is discharged or transferred.
- (3) When a young person is discharged or transferred, property surrendered by the young person that has not been returned under paragraph (2) (a) must be—
  - (a) returned to the young person; or
  - (b) sent to the person in charge of the institution to which the young person is transferred.
- (4) The person in charge of an institution or shelter must keep a record of all property surrendered, returned and sent on under this section.

#### **87 Bringing arrested young people before court**

- (1) If a young person has been charged with an offence and has not been released from detention, a police officer or a custodial escort must, as soon as practicable, bring the young person before the court.
- (2) If the young person is not brought before the court, the young person must be released from detention immediately.

#### **88 Exclusion of evidence unlawfully obtained**

- (1) If, in a proceeding against a young person 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 young person, the court must refuse to admit the evidence in the proceeding unless satisfied that—
  - (a) admission of the evidence is substantially in the public interest as regards the administration of criminal justice; and
  - (b) public interest would outweigh any prejudice to the rights of a person, including the young person, 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 young person 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; and
- (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.

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

(1) Subject to this section and section 91 (Young person may elect to be committed for trial), if—

- (a) a young person 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 decide the charge summarily.

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

(3) Before forming an opinion about whether a case can properly be disposed of summarily, the court must have regard to such matters as it considers relevant and, in particular, to each of the following:

- (a) relevant representations made by the defendant;
- (b) 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 young person;
- (g) the apparent maturity of the young person;
- (h) the apparent mental capacity of the young person;

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- (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.

**90 Committal for trial in certain cases**

If a young person is charged before the court with an indictable offence and—

- (a) the court is not empowered to hear and decide the charge summarily; or
- (b) the court is so empowered but decides not to hear and decide the charge summarily;

the court must deal with the charge in accordance with the provisions of the *Magistrates Court Act 1930* relating to indictable offences.

**91 Young person may elect to be committed for trial**

- (1) The court may not exercise its powers under subsection 89 (1) (Summary disposal of certain cases) without the consent of the young person.
- (2) Before proceeding to hear the charge, the court must tell the young person, and anyone with parental responsibility for the young person who is present, of the provisions of subsection (1).
- (3) If a person with parental responsibility for the young person is not present, the court may adjourn the hearing to allow a person with parental responsibility to be present.
- (4) If a person with parental responsibility for the young person is not present at the adjourned hearing, the court may continue the hearing.
- (5) The court may, at any time, adjourn the hearing to allow the young person, or a person with parental responsibility for the young person, to get legal advice.

**92 Committal of guilty young person to Supreme Court**

- (1) If the Childrens Court convicts a young person of an indictable offence, the court may, if it appears to it that, because of the character and antecedents of the young person, it is desirable that sentence be passed on the young person by the Supreme Court, by order commit the young person to the Supreme Court for sentence.

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

(3) Before the Childrens Court makes an order under subsection (1), the court must have regard to any report provided to it in accordance with section 73 (Powers of court with respect to reports).

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

If the Childrens Court decides not to hear and decide a charge summarily and commits a young person to the Supreme Court, the Childrens Court must state the reasons for its decision and cause those reasons to be entered in the records of the court.

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

(1) If a young person 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 young person remitted under subsection (1) in a way in which it might have dealt with the young person if the young person had been convicted of the offence in the Childrens Court.

- (3) If the Supreme Court remits a case under subsection (1)—
- (a) the Supreme Court may give directions as to the detention of the young person, or the young person's release on bail, until the young person is brought before the Childrens Court; and
  - (b) the registrar of the Supreme Court must transmit to the registrar of the Magistrates Court a certificate stating—
    - (i) the nature of the offence; and
    - (ii) that the young person has been convicted of the offence; and
    - (iii) that the case has been remitted to be dealt with under this section.

### **95 Transfer to the mental health tribunal**

(1) This section applies if, in a proceeding against a young person in respect of an offence, the court is satisfied that—

- (a) the young person is mentally dysfunctional or mentally ill; and

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- (b) on an outline of the facts to be alleged in the proceeding, or such other evidence as the court considers relevant, it would be appropriate to deal with the young person under this section.
- (2) If this section applies, the court may, by order—
- (a) dismiss the charge and require the young person to submit to the jurisdiction of the mental health tribunal to allow the tribunal to make a mental health order; or
  - (b) dismiss the charge unconditionally.
- (3) If the court makes an order under paragraph (2) (a), the order operates as a stay of the proceeding, or of further proceedings, against the young person in relation to the offence.
- (4) If the court makes an order under subsection (2), the court must not make an order under section 437 (Reparation orders), 556A (Conditional release of offenders without proceeding to conviction) or 556B (Conditional release of offenders) or Part 15A (Community service orders) 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 a proceeding to which this section applies, in order to decide whether a young person is mentally dysfunctional or mentally ill, the court may make such orders as it considers appropriate, including the following:
- (a) that the young person submit to the jurisdiction of the mental health tribunal;
  - (b) that the proceeding be adjourned;
  - (c) that the young person be released on bail.

***Division 3—Disposition of young offenders***

**96 Disposition of young offenders**

- (1) If a young person has been convicted of an offence by the court, the court must, as soon as practicable and in any event within 6 months after the date of the conviction, make 1 or more of the following orders:
- (a) an order reprimanding the young person;
  - (b) a conditional discharge order;
  - (c) an order imposing a penalty provided by law with respect to the offence;

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- (d) another order that the court is empowered by another law to make with respect to the offence;
  - (e) if a fine is not provided by law with respect to the offence—an order imposing a fine not greater than 50 penalty units;
  - (f) if reparation or compensation is not provided for by law in relation to the offence—an order that the young person make reparation by way of money payment, or pay compensation, in respect of a loss suffered or expense incurred by reason of the offence, but so that the total amount of reparation or compensation is not more than \$1,000;
  - (g) a probation order;
  - (h) a community service order;
  - (i) an attendance centre order;
  - (j) a residential order having effect for the period of not longer than 2 years stated in the order;
  - (k) an order committing the young person to a State institution in a named State for the period of not longer than 2 years stated in the order;
  - (l) an order committing the young person to an institution for the period of not longer than 2 years stated in the order;
  - (m) an order in accordance with section 118 (Referral to mental health tribunal following conviction).
- (2) A probation order may commence to have effect when an order under paragraph (1) (j), (k) or (l) ceases to have effect.
- (3) A conditional discharge order must state the period, being not longer than 6 months, within which the conditions of the order are to be complied with.

**97 Early release**

Despite an order of the court under which a young person is detained in an institution or State institution, if the period for which the young person may be so detained would end on a non-working day, the young person may be released on the last working day before the day the period ends.

**98 Disposition without proceeding to conviction**

If the court is satisfied that a charge against a young person is proved but, in the circumstances, and having regard to—

- (a) the welfare of the young person; and
- (b) the facts of the case; and
- (c) the seriousness of the offence; and
- (d) the circumstances in which the offence was committed; and
- (e) the age of the young person; and
- (f) the apparent maturity of the young person; and
- (g) the apparent mental capacity of the young person; and
- (h) the health of the young person;

the court is of the opinion that it should not proceed to a conviction, the court must, as soon as practicable but in any event within 6 months—

- (i) dismiss the charge; or
- (j) make 1 or more of the orders mentioned in paragraph 96 (1) (a), (b), (f), (g) or (h), despite no conviction being entered.

**99 Prohibition on certain orders**

**(1)** The court may not make an order—

- (a) for the imprisonment of a young person; or
- (b) releasing a young person on the young person giving security to be of good behaviour; or
- (c) of a kind mentioned in paragraph 96 (1) (h), (i), (j), (k) or (l)—
  - (i) if the court would not, if the offence had been committed by an adult, have been empowered to sentence the adult to imprisonment; or
  - (ii) unless 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 (Conditional release of offenders without proceeding to conviction) or 556B (Conditional release of offenders) of the *Crimes Act 1900*.

**100 Variation or revocation of conditional discharge order**

Where the court has made a conditional discharge order in respect of a young person, application may be made to the court by the young person or a person with parental responsibility for the young person for the revocation or variation of the order.

**101 Fines and similar orders**

- (1) Before the court makes an order imposing a fine on a young person, it must have regard to the ability of the young person to comply with the order.
- (2) The court may, when making an order imposing a fine on a young person, on its own initiative or on application by or on behalf of the young person, by order, allow time for the payment of the fine.
- (3) The powers conferred on the court by this section are in addition to any other power possessed by the court.

**102 Enforcement of payment of fines etc**

- (1) Subject to this section, an order of the court imposing a fine on a young person may be enforced by any means provided by law for the enforcement of a similar order of the Magistrates Court.
- (2) The court may not make an order for the imprisonment of a young person in default of payment of a fine.
- (3) A warrant may not be issued committing a young person to prison because of a failure of the young person to pay a fine.
- (4) The registrar must, by warrant, commit a young person to an institution or State institution in a stated State or Territory if—
  - (a) the registrar is satisfied that all reasonable action has been taken under Part 9 (Enforcement of decisions), Division 2 (Enforcement of fines) of the *Magistrates Court Act 1930* to secure payment of an outstanding fine payable by a young person and there is no reasonable likelihood of the fine being paid; and
  - (b) the outstanding fine has not been remitted under section 159 (Remission) of the *Magistrates Court Act 1930*.
- (5) The period for which the young person is to be committed to an institution or State institution is the lesser of—



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- (a) a period calculated at the rate of 1 day for each \$100, or part of \$100, of the outstanding fine; or
- (b) 30 days.

**103 Breach of certain orders for reparation or compensation**

**(1)** If—

- (a) an order for reparation or compensation is made under paragraph 96 (1) (f) in favour of a person other than the Territory; and
- (b) the young person in respect of whom the order is made fails to obey the order;

the court may, at any time, by order served on the young person or on a person with parental responsibility for the young person, direct that the young person appear before the court at the time and place stated in the order.

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

**104 Probation orders**

**(1)** A probation order, in relation to a young person, is an order made by a court—

- (a) placing the young person under the supervision of the chief executive or someone else named in the order for the period stated in the order; and
- (b) requiring the young person to report to the supervisor at a place and at times required by the supervisor.

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

- (a) a condition requiring the young person to take part in discussions with the supervisor about the welfare of the young person, in particular whether the young person should receive some form of treatment, or take part in some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the young person;
- (b) such other conditions and provisions as the court considers to be desirable in the interests of the welfare of the young person, in particular conditions and provisions having as their object the

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avoidance of a repetition of the offence or of the commission of further offences.

(3) The court may only make a probation order that is in force for a period of more than 1 year if it considers it necessary to do so.

(4) The court may not make a probation order that is in force for more than 2 years.

**105 Probation orders—entry and inspection by supervisor**

(1) If a young person who is the subject of a probation order lives with a person with parental responsibility for him or her, the supervisor of the young person may, on reasonable grounds and at a reasonable time—

- (a) enter the premises where the young person lives; and
- (b) inspect the premises and meet and talk with the young person.

(2) If a young person who is the subject of a probation order lives with someone other than a person who has parental responsibility for the young person, the supervisor may enter the premises where the young person lives and inspect the premises and meet and talk with the young person only if the entry and inspection is made—

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

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

- (a) a young person who is the subject of a probation order is living on premises other than with a person who has parental responsibility for the young person; and
- (b) it is necessary in the interests of the young person for the premises to be inspected and to meet and talk with the young person;

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

- (c) to enter on or into the premises; and
- (d) to inspect the premises and meet and talk with the young person.

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

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- (a) the informant or someone else has given to the magistrate, either orally or by affidavit, any further information 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.

**106 Community service orders**

**(1)** A community service order in relation to a young person must state—

- (a) the number of occasions on which the young person is to report for community service or that the young person is to report on the number of occasions in each week that the chief executive from time to time specifies; and
- (b) the total number of hours of community service, being 8 or a multiple of 8, the young person will be required to perform to comply with the order; and
- (c) the period of time during which the community service is required to be performed, being a period not longer than 1 year; and
- (d) the day and time when the young person is to report on the first occasion.

**(2)** A young person may not be required to perform more than 208 hours of community service.

**(3)** A community service order in relation to a young person may contain such recommendations with respect to the young person's attendance as the court decides.

**(4)** The length of each period during which the young person is to perform community service is as decided by the chief executive.

**(5)** All the periods of community service need not be the same length but the total periods in a week may not be longer than 60 hours.

**(6)** Having regard to the general directions given by the court, the chief executive must decide the days on which and the times at which the young person is required to report for community service after the first occasion.

**(7)** The days on which and the times at which the young person is required to report for community service, and the period during which he or she is to perform community service, should not interfere with the

education or training of the young person or with a genuine religious observance by the young person.

(8) The chief executive may, for good cause, excuse a young person from reporting for and performing community service on a particular occasion or on all occasions in a particular week.

### **107 Duties of young offender under community service order**

(1) A person who is the subject of a community service order under this Chapter is, except as expressly provided in this Act, subject to the reasonable control, direction and supervision of the chief executive or of an authorised person while the person is performing community service.

(2) A person must, while he or she is subject to control, direction and supervision in accordance with subsection (1), engage in such work by way of community service as the chief executive considers to be in the interests of the person.

(3) Before giving directions to a person under this section, the chief executive must take into account the religious beliefs, and conscientious beliefs, of the person.

(4) A person may not be required to work under the control, direction or supervision of a person who would benefit from the work performed other than as a member of the community or of a group within the community.

(5) A person is not entitled to remuneration in respect of work performed under this section.

(6) In exercising his or her powers under this section, the chief executive must take into account any recommendation made by the court when the community service order was made.

(7) In this section:

*authorised person* means a person declared by the chief executive in writing to be an authorised person for this section.

### **108 Contravention of community service orders**

A person in relation to whom a community service order is in force who—

- (a) fails to report for community service as required by the chief executive; or
- (b) contravenes a rule applicable to community service; or

- (c) contravenes subsection 107 (2); or
- (d) leaves a place where he or she is or has been performing community service at a time when he or she should be there; or
- (e) refuses to work or neglects or mismanages his or her work;

contravenes the community service order.

**109 Contravention of community service and conditional discharge orders**

**(1)** If a person contravenes a community service order or a condition of a conditional discharge order under this Chapter, the court may, at any time, by order served on the person or on a person with parental responsibility for the person, direct that the person appear before the court at the time and place stated in the notice.

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

**(3)** If the court directs a person to appear before it under subsection (1), it may—

- (a) by order, revoke the community service order or conditional discharge order, and make 1 or more of the orders set out in subsection 96 (1), other than a further community service order or conditional discharge order; or
- (b) make an order that the community service order or conditional discharge order continue, for such period as the order states, whether with or without a variation in the terms or conditions.

**(4)** When making an order under subsection (3), the court must take into account—

- (a) the fact that the community service order or conditional discharge order was made; and
- (b) anything done under the community service order or conditional discharge order; and
- (c) an order, other than the community service order or conditional discharge order, made in relation to the same offence and anything done in pursuance of that other order.

**(5)** The court may not make an order under subsection (3)—

- (a) of the kind set out in paragraph 96 (1) (c), (d), (e), (i), (j), (k) or (l), unless the court has first convicted the person of the offence in

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relation to which the community service order or conditional discharge order was made; or

- (b) imposing a penalty that, when taken together with a penalty previously imposed for the offence in relation to which the community service order or conditional discharge order was made, is greater than the maximum penalty the court could have imposed for that offence.

(6) The court may not specify, under paragraph (3) (b), a period that would result in the total period for which the community service order or conditional discharge order is in force of more than 6 months.

**110 Attendance centre orders**

(1) An attendance centre order in relation to a young person must state—

- (a) the number of occasions on which the young person is to report at the attendance centre or that the young person is to report on the number of occasions in each week that the chief executive from time to time specifies; and
- (b) the total number of hours, being 8 or a multiple of 8, the young person will be required to attend to comply with the order; and
- (c) the period of time during which the attendance is required, being a period not longer than 1 year; and
- (d) the day and time when the young person is to report on the first occasion.

(2) The total number of hours a young person may be required to attend may not exceed 208.

(3) An attendance centre order in relation to a young person may contain such recommendations about the young person's attendance as the court decides.

(4) The length of each period during which the young person is to place himself or herself under the temporary control of the chief executive is to be as decided by the chief executive.

(5) All the periods of temporary control need not be of the same length but the total of the periods in a week may not be longer than 60 hours.

(6) Having regard to the general directions given by the court, the chief executive must decide the days on which and the times at which the young person is required to report at the attendance centre after the first occasion.

(7) The days on which and the times at which the young person is required to report, and the period during which he or she is to remain under temporary control, should not interfere with the education or training of the young person or with a genuine religious observance by the young person.

(8) The chief executive may, for good cause, excuse a young person from attendance on a particular occasion or on all occasions in a particular week.

### **111 Duties of young person under attendance centre order**

(1) A young person who is the subject of an attendance centre order is subject to the control, direction and supervision of the chief executive or of an authorised person while the young person is—

- (a) attending an attendance centre; or
- (b) outside the attendance centre because of a direction of the chief executive; or
- (c) travelling between the attendance centre and a place outside the attendance centre at which the young person is directed to be.

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

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

that the chief executive considers to be in the interests of the young person.

(3) Before giving directions to a young person under this section, the chief executive must take into account the religious beliefs, and conscientious beliefs, of the young person.

(4) A young person may not be required to work under the control, direction or supervision of a person who would benefit from the work other than as a member of the community or of a group within the community.

(5) A young person is not entitled to remuneration in respect of work performed under this section.

(6) In exercising his or her powers under this section, the chief executive must 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 chief executive in writing to be an authorised person for this section.

## **112 Contravention of attendance centre orders**

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 chief executive; or
- (b) contravenes a rule applicable at the attendance centre at which the young person is required to report; or
- (c) contravenes subsection 111 (2); or
- (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;

contravenes the attendance centre order.

## **113 Compensation**

(1) In this section:

***Compensation Act*** means the *Workers' Compensation Act 1951*.

***overtime*** has the meaning given by the Compensation Act, subsection 6 (1).

(2) While a young person is working under an attendance centre order or a community service order, the Compensation Act applies in relation to the young person as if—

- (a) the young person were employed by the Territory under a contract of service; and
- (b) paragraphs (b) and (c) of the definition of ***worker*** in subsection 6 (1) of the Compensation Act were omitted; and
- (c) for subparagraph 1 (c) (i) of Schedule 1 to the Compensation Act there were substituted the following subparagraph:
  - ‘(i) of the amount mentioned in subparagraph (b) (i); or’; and



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- (d) subparagraphs 2 (b) (i) and (ii) of Schedule 1 to the Compensation Act were omitted.
- (3) Despite section 1A of Schedule 1 to the Compensation Act, in the application of that Act in accordance with subsection (2), the prescribed amount applicable to a young person in respect of a week, for paragraph 1 (b) of that Schedule—
- (a) for a young person who, immediately before the day the liability of the Territory under the Compensation Act to pay compensation to or in respect of the young person 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 that liability arose, was employed or was carrying on a business on his or her own account;

is the amount calculated by dividing by 52 the amount that is equal to the income of the young person during the period of 12 months ending immediately before the day that liability arose; and
  - (b) for a young person who was unemployed immediately before the day the liability of the Territory under the Compensation Act to pay compensation to or in respect of the young person arose, not being a young person mentioned in paragraph (a)—is nil; and
  - (c) in any other case—is an amount equal to the income of the young person in respect of the period of 7 days ending immediately before the day the liability of the Territory under the Compensation Act to pay compensation to or in respect of the young person arose.
- (4) In paragraph (3) (c), *income*, for a young person, does not include—
- (a) a payment in respect of overtime; or
  - (b) an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the young person; or
  - (c) if the young person had more than 1 occupation during the period of 7 days mentioned in that paragraph—income derived by the young person from an occupation other than his or her principal occupation.
- (5) If—

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- (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 young person for a period (the ***compensatable period***), being the whole or a part of a period during which the young person is totally incapacitated for work; and
- (b) a person who is an employer of the young person is liable, by reason of the young person's total incapacity for work, to make a payment to the young person by way of salary or wages for the compensatable period;

the Territory is not liable to pay that amount under the Compensation Act, but must pay to the employer so much of that amount as does not exceed the amount payable to the young person by the employer, and the balance (if any) of that amount must be taken to be compensation payable by the Territory under the Compensation Act to or in respect of the young person in relation to the compensatable period.

- (6) However, no amount is payable in respect of a young person—
  - (a) if the young person was employed only in work of a casual nature; or
  - (b) for a young person who was unemployed—unless the young person was qualified to receive an unemployment benefit under the *Social Security Act 1991* (Cwlth).

**114 Residential orders**

A residential order, in relation to a young person, is an order made by the court requiring the young person to live at the place or with the person, whether within or outside the Territory—

- (a) as is stated in the order; or
- (b) as the chief executive from time to time directs.

**115 Contravention of residential order**

A person in respect of whom a residential order under this Part is in force contravenes the order—

- (a) if the order is an order that the person live at such place as the chief executive decides—if the person contravenes the reasonable lawful directions of the person in charge of the place; or
- (b) if the order is an order that the person be placed in the care of a suitable person—if the person contravenes the reasonable lawful directions of the person.

**116 Contravention of probation, community service, attendance centre or residential orders**

(1) If a person in relation to whom a probation order, an attendance centre order, a community service order or a residential order is made contravenes the order or a condition of the order, without reasonable excuse, the person is guilty of an offence against this section.

(2) If 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 1 or more of the following orders:

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

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

- (a) the fact that the original order was made; and
- (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 may only make an order under paragraph (2) (a) imposing a penalty that, when taken together with a penalty previously imposed for the offence in relation to which the original order was made, is no greater than the maximum penalty the court could have imposed for that offence.

(5) If—

- (a) the court makes or varies a probation order under subsection (2) in respect of a young person; and
- (b) there is in force another order of the kind mentioned in subsection 96 (1) in respect of the young person;

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

(6) In this section:

*original order*, in relation to a young person, means the order mentioned in subsection (1) that the person contravened, or the condition of which the person contravened.

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

(1) If the court has made under this Act—

- (a) a conditional discharge order; or
- (b) a probation order; or
- (c) a community service order; or
- (d) an attendance centre order; or
- (e) a residential order in relation to a young person; or
- (f) an order committing a person to an institution or a State institution;

(the *previous order*), the court may, on an application by the chief executive or anyone else, by order revoke or vary the previous order or make another order in substitution for the previous order.

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

- (a) if the applicant is—
  - (i) the chief executive—on the community advocate; or
  - (ii) the community advocate—on the chief executive; or
  - (iii) someone other than the chief executive or the community advocate—on the chief executive and the community advocate; and
- (b) if practicable—on at least 1 person with parental responsibility for the young offender who is the subject of the previous order, whether the person is resident in the Territory or not; and
- (c) on the young offender; and
- (d) on any other person that the court directs.

(3) The court may make an order that appears to the court to be appropriate.

(4) However, the previous order as varied or the order made in substitution for the previous order must be an order of the kind mentioned in subsection 96 (1), but the court must have regard to the circumstances at the time of hearing the application.

(5) If a probation order has been made in respect of a young person without convicting the young person of an offence, the court may not, unless the court first convicts the young person of the offence, make—

- (a) an order of the kind mentioned in paragraph 96 (1) (c), (d) or (e), in relation to the young person; or
- (b) an attendance centre order or a residential order in relation to the young person or an order committing the young person to an institution or a State institution.

(6) This section has effect even if the young person is for the time being living outside the Territory, whether under an order of a court or otherwise.

### **118 Referral to mental health tribunal following conviction**

(1) This section applies if—

- (a) a young person has been convicted by the court of an offence; and
- (b) the court is satisfied that the young person is mentally dysfunctional or mentally ill.

(2) If this section applies, the court may, before sentencing the young person, order him or her to submit to the jurisdiction of the mental health tribunal to allow the tribunal—

- (a) to decide whether or not the young person is mentally dysfunctional or mentally ill; and
- (b) if the tribunal decides that the young person is mentally dysfunctional or mentally ill—to make recommendations as to how the young person should be dealt with.

(3) If the tribunal notifies the court that the young person is mentally dysfunctional or mentally ill, the court must make such orders as it considers appropriate.

(4) The orders that the court may make include an order that the young person submit to the jurisdiction of the tribunal to allow the tribunal to make a mental health order.

### ***Division 4—Transfer between institutions***

#### **119 Meaning of *transfer direction***

In this Division:

***transfer direction*** means a direction for the transfer of a person under section 120.

**120 Transfer directions**

- (1) The chief executive may, in writing, direct under this section that a person be transferred from an institution to another institution if—
- (a) the person was committed to the first institution by order under paragraph 96 (1) (l) (whether or not the order mentioned that particular institution); or
  - (b) the person had previously been transferred to the first institution under this Chapter.
- (2) On the application of a transferee or a person responsible for a transferee, or if the chief executive has parental responsibility for the transferee, the chief executive may make a transfer direction if—
- (a) the chief executive reasonably believes that the transfer is appropriate, having regard to all the circumstances, including—
    - (i) the place or intended place of residence of anyone with parental responsibility for the transferee or kin of the transferee; and
    - (ii) the present and future education, training or employment of the transferee; and
    - (iii) the medical needs of the transferee; and
    - (iv) the safety, health and welfare of the transferee; and
  - (b) except where the transferee applies for the transfer—
    - (i) the transferee consents to the transfer; or
    - (ii) the chief executive decides that the particular circumstances of the case indicate that the transfer should be directed without the transferee's consent.
- (3) For the purpose of deciding whether or not to make a transfer direction, the chief executive may request necessary information from—
- (a) the transferee; or
  - (b) a person responsible for the transferee.
- (4) The chief executive may refuse to make a transfer direction if information sought under this section is not supplied within the time stated by the chief executive.
- (5) The chief executive may make a transfer direction other than under subsection (2) if he or she reasonably believes that the behaviour of the transferee in the institution from which he or she is to be transferred places

at risk the safety, health or welfare of other people detained in the institution, or of the staff of the institution.

(6) A transfer direction is sufficient authority for an officer, a custodial escort or police officer to take the person to the institution to which he or she is to be transferred.

(7) In this section:

*person responsible*, in relation to a transferee, means—

- (a) a person with parental responsibility for the transferee; or
- (b) a person who has the temporary control of the transferee (whether or not the person has the custody of the transferee); or
- (c) a person who had the temporary control of the transferee immediately before the transferee became subject to detention under this Act.

*transferee* means a person who is, or is proposed to be, the subject of a transfer direction.

## **121 Reporting transfers**

If the chief executive makes a transfer direction under section 120, the chief executive must, within 14 days after making the direction—

- (a) notify the Legislative Assembly Standing Committee of the particulars of the direction; and
- (b) give a copy of the notice to the Chief Magistrate and the community advocate.

## **122 Temporary custody prior to transfer between institutions**

(1) If the chief executive makes a transfer direction under section 120, the person who is the subject of the direction may be placed in a shelter or remand centre until he or she is transferred.

(2) A person may not be placed in a remand centre under subsection (1) without the written approval of—

- (a) the chief executive; and
- (b) the director of corrective services.

(3) A person may not be kept in a remand centre or a shelter under subsection (1) for more than 14 days without the written approval of—

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- (a) the chief executive; or
  - (b) if the person is kept in a remand centre—
    - (i) the chief executive; and
    - (ii) the director of corrective services.
- (4) A transfer direction is sufficient authority for an officer, a custodial escort or a police officer—
- (a) subject to a contrary provision in the direction—
    - (i) to take the person to a shelter or remand centre; or
    - (ii) to take the person from one shelter or remand centre to another; or
    - (iii) to take the person from a shelter to a remand centre or from a remand centre to a shelter; and
  - (b) subsequently to take the person to the institution to which he or she is to be transferred.
- (5) In this section:

*director of corrective services* means the Director of Corrective Services under the *Periodic Detention Act 1995*.

***Division 5—Miscellaneous***

**123 Powers of Supreme Court**

- (1) If a young person is convicted of an offence by the Supreme Court, the Supreme Court may—
- (a) make any order with respect to the young person, issue any warrants, and do any other acts and things, that the Childrens Court could have made, issued or done if the young person had been convicted by the Childrens Court; or
  - (b) make an order committing the young person to an institution or a State institution for a stated 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 young person in a way in which it might have dealt with the young person if he or she had been an adult at the time of the commission of the offence.
- (2) If, in accordance with paragraph (1) (c), a young person is sentenced to imprisonment, the sentence has effect subject to a law of a State in which



the young person is detained relating to the detention of young people (however described).

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

(1) If the hearing of a charge against a young person is adjourned by the court, the adjournment may not, except in special circumstances, be for a period that exceeds 15 days.

(2) If the court adjourns the proceeding, the court may—

(a) by order—

(i) release the young person if the young person and 1 of his or her parents give an undertaking satisfactory to the court that the young person will be present at the next hearing; or

(ii) release the young person on bail in accordance with the *Bail Act 1992*; or

(iii) place the young person in the custody of a suitable person; or

(b) order that the young person be placed in a shelter or remand centre; or

(c) if the person in charge of a hospital consents, order that the young person be placed in the hospital.

(3) The court may not order that a young person be placed in a remand centre unless satisfied that it is necessary or desirable to do so because of—

(a) the actual or apprehended violent behaviour of the young person; or

(b) the seriousness of the offence; or

(c) an escape or attempted escape by the young person from lawful detention; or

(d) another good reason.

#### **125 Placing in shelter or remand centre**

(1) If the court commits a young person to an institution or a State institution, the young person must be placed in a shelter or remand centre until he or she is removed to the institution.

(2) The young person may not be kept in the shelter or remand centre for more than 14 days unless the court so orders or the chief executive approves in writing.

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**(3)** An order committing a young person to an institution or a State institution is sufficient authority for an officer, an escort under the *Custodial Escorts Act 1998* or police officer to do 1 or more of the following:

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

**126 Young people in remand centres**

If a young person is in a remand centre under this Act, the *Remand Centres Act 1976* applies in relation to the young person as if the young person were a detainee within the meaning given by section 3 of that Act.

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

If a young person has been committed to an institution, the chief executive may, unless the court otherwise ordered when committing the young person, having regard to the young person's conduct and industry or to special circumstances, reduce the period stated by the court under that paragraph by not more than 1/3 of the period so stated.

**128 Special purpose leave**

**(1)** The chief executive may, in writing, on the terms and conditions he or she thinks fit, grant leave of absence to a young person who has been committed to an institution or placed in a shelter for any reason he or she thinks fit, including 1 or more of the following:

- (a) the education and training of the young person;
- (b) the employment of the young person;
- (c) a compassionate reason;
- (d) the health of the young person;
- (e) the recreation of the young person;

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- (f) the participation by the young person in a community project or an attendance centre program.
- (2) A period for which a young person is outside an institution on a leave of absence granted under this section is, for this Act, taken to be a period for which the young person was in the institution.
- (3) A young person, or a person with parental responsibility for the young person, may appeal to the court if the chief executive—
  - (a) refuses to grant leave of absence to a young person; or
  - (b) grants leave of absence to a young person for a period that is less than the period requested in respect of the young person.
- (4) On the hearing of an appeal under this section, the court may by order confirm, vary or revoke the decision of the chief executive and may make such other orders as the court considers necessary.

**129 Medical examinations and surgical operations**

- (1) This section applies to a young person who is in an institution under an order under paragraph 96 (1) (l).
- (2) The chief executive may arrange a special assessment of a young person to whom this section applies.
- (3) Chapter 7 (Children and young people in need of care and protection) applies to a special assessment of a young person to whom this section applies as if the young person were in need of care and protection and the chief executive had parental responsibility for him or her.

**130 Other rights and freedoms not affected**

This Part, as far as it protects a young person—

- (a) is in addition to the rights and freedoms of the young person under any other law in force in the Territory; and
- (b) is not intended to exclude or limit the operation of such a law as far as it is capable of having effect concurrently with this Part.

**131 Royal prerogative of mercy not affected**

Nothing in this Act affects the royal prerogative of mercy.

**PART 3—INTERSTATE TRANSFER**

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

**132 Definitions for pt 3**

In this Part:

***arrangement*** means an arrangement under section 134 (Arrangements for transfer—general) 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 under an agreement or arrangement or a transfer order to take and keep temporary control of a young offender.

***person responsible***, in relation to a young offender, means—

- (a) a person with parental responsibility for the young offender; or
- (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.

***transfer order*** means an order under section 139.

**133 General agreements with other jurisdictions**

(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 for the transfer of young offenders—

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

(2) An agreement relating to a State may 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.

#### **134 Arrangements for transfer—general**

(1) If an agreement with or on behalf of a Minister of a State is in force, the chief executive may make an arrangement with that Minister, with a person authorised by that Minister or with someone else in accordance with 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.

(2) The chief executive may make a further arrangement with that Minister or such a person for the purpose of rectifying an error in an arrangement mentioned in subsection (1).

(3) The chief executive may only make an arrangement for the transfer of a particular young offender from the Territory to a State in the circumstances mentioned in section 135.

#### **135 Power to arrange for transfers**

(1) The chief executive may make an arrangement for the transfer of a young offender from the Territory to a State on application by the young offender or a person responsible for a young offender, or where the chief executive has parental responsibility for the young offender, if—

- (a) the chief executive reasonably believes that the transfer is appropriate, having regard to all the circumstances, including—
  - (i) the place or intended place of residence of people with parental responsibility for the young offender or his or her kin; and
  - (ii) the present and future education, training or employment of the young offender; and
  - (iii) the medical needs of the young offender; and
  - (iv) the safety, health and welfare of the young offender; and
- (b) except where the young offender applies for the transfer—
  - (i) the young offender consents to the transfer; or
  - (ii) the chief executive decides that the particular circumstances of the case indicate that the transfer should be arranged without the young offender's consent; and

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- (c) the young offender has been given independent legal advice about the effect of the arrangement; and
- (d) the chief executive is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.

(2) In deciding whether to arrange for the transfer of a young offender from the Territory to a State on an application under subsection (1), the chief executive may ask—

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

for relevant information.

(3) The chief executive may refuse to make an arrangement if information asked for is not supplied within the time stated by the chief executive.

(4) The chief executive may make an arrangement to transfer a young offender from the Territory to a State other than under subsection (1) if—

- (a) the young offender is detained in an institution; and
- (b) the chief executive reasonably believes that the behaviour of the young offender in the institution places at risk the safety, health or welfare of other people detained in the institution or of the staff of the institution; and
- (c) the young offender has been given independent legal advice about the effect of the arrangement; and
- (d) the chief executive is satisfied that there is no appeal pending against an order of the court to which the young offender is subject.

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

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

An arrangement for the transfer of a young offender from a State to the Territory may not be made unless the chief executive 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.

**137 Provisions to be contained in each arrangement**

**(1)** An arrangement for the transfer of a young offender from or to the Territory must—

- (a) be in writing; and
- (b) provide for the acceptance of, and means of dealing with, the young offender in the receiving State; and
- (c) state each order of a court of the sending State to which the young offender is subject (including an 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 mentioned, the arrangement must state—

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

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

**138 Reporting of transfers**

If the chief executive makes an arrangement for the transfer of a young offender from the Territory to a State, the chief executive must, within 14 days after making the arrangement—

- (a) notify the Legislative Assembly Standing Committee of the particulars of the arrangement; and

- (b) give a copy of the notice to the Chief Magistrate and the community advocate.

### **139 Transfer order**

(1) If the chief executive 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 chief executive must make a written order that—

- (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 mentioned 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; or
- (b) a custodial escort; or
- (c) a person appointed by the chief executive; or
- (d) an officer; or
- (e) a person acting as an escort with the approval of the chief executive.

### **140 Temporary custody pending interstate transfer**

(1) If the chief executive 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 (being an escort mentioned in subsection 139 (2)), the offender may be placed in a shelter or remand centre until he or she is delivered to the escort.

(2) A young offender may not be placed in a remand centre under subsection (1) without the written approval of—

- (a) the chief executive; and
- (b) the director of corrective services.

(3) A young offender may not be kept in a remand centre or a shelter under subsection (1) for more than 14 days without the written approval of—

- (a) the chief executive; or



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- (b) if the offender is kept in a remand centre—
  - (i) the chief executive; and
  - (ii) the director of corrective services.

(4) An arrangement mentioned in subsection (1) is sufficient authority for an officer, a custodial escort or police officer, subject to a provision to the contrary in the arrangement to take the young offender—

- (a) to a shelter or remand centre; or
- (b) from 1 shelter or remand centre to another; or
- (c) from a shelter to a remand centre or from a remand centre to a shelter.

(5) In this section:

*director of corrective services* means the Director of Corrective Services under the *Periodic Detention Act 1995*.

**141 Transfer to Territory in temporary control of escort**

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 stated in the arrangement.

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

A young offender in respect of whom an order under paragraph 96 (1) (l) 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 6 months.

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

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

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

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

**(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) a sentence imposed on, or order made in relation to, the young offender by a court of the sending State and stated in the arrangement is to be considered as having been imposed or made by such court of the Territory as is stated in the arrangement; and
- (b) a 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 stated 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 stated in the arrangement; and
- (c) a 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 stated in the arrangement.

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

- (a) had, at the relevant time, 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 Territory***

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

(1) The chief executive 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, then—

- (a) while in the Territory, the escort is authorised to take and keep temporary control of the young offender for the transfer; and
- (b) a superintendent authorised under this section may, at the request of the escort and on 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 reasonably necessary for 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.

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

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

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

- (a) escapes and is apprehended; or
- (b) attempts to escape;

the young offender may be taken before a magistrate.

**(3)** The magistrate may, by warrant, order the young offender to be detained in temporary control at an institution.

**(4)** A warrant may be executed according to its tenor.

**(5)** A young offender who is apprehended under a warrant must, as soon as practicable, be brought before—

- (a) for a young offender who is of or over the age of 18 years—the Magistrates Court; or
- (b) in any other case—the Childrens Court;

**(6)** The Magistrates Court or Childrens Court may order that the young offender—

- (a) be delivered to the temporary control of an escort; or
- (b) be detained for not longer than 7 days until an escort is available from the sending State to carry out the arrangement or an order made by a court of the State.

**(7)** 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 order from being made under subsection (6).

**(8)** A reference in subsection (6) or (7) to an escort for a young offender being transferred through the Territory from a State to another State under an agreement is a reference—

- (a) to the escort authorised by the agreement to have temporary control of the young offender; or
- (b) if the offender has escaped or attempted to escape—to 1 or more of the following people:
  - (i) the escort;
  - (ii) a member of the police force of the sending State;
  - (iii) a person appointed 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 an order of a court of the sending State.

#### **147 Search warrants**

(1) An escort, a police officer or an officer may apply to a magistrate for a search warrant if such a person reasonably believes 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 the person named in the warrant with such assistance, and with such force, as is necessary and reasonable—

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

(3) A warrant issued under this section must state—

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

(4) A police officer—

- (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***

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

(1) The court may revoke a transfer order on application by the chief executive if the young offender to whom it applies has, while being transferred, committed—

- (a) the offence of escaping; or
- (b) another 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 recorded in relation to the offence concerned or not.

**149 Revocation of transfer order by chief executive**

(1) The chief executive may revoke a transfer order at any time before the young offender is delivered in the receiving State into the temporary control stated in the arrangement concerned.

(2) If the chief executive revokes a transfer order, he or she may make a further arrangement with the receiving State for the return of the young offender to the Territory.

**150 Reports etc**

(1) In forming an opinion or exercising a discretion under this Part, the chief executive may—

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

(2) A report that relates 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 chief executive.

**CHAPTER 7—CHILDREN AND YOUNG PEOPLE IN NEED OF  
CARE AND PROTECTION**

**PART 1—GENERAL**

***Division 1—Preliminary***

**151 Meaning of *abuse and neglect***

(1) In this Chapter:

***abuse***, in relation to a child or young person, means—

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) emotional abuse (including psychological abuse) if the child or young person—
  - (i) has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause significant harm to his or her wellbeing or development; or
  - (ii) has been, is being or is likely to be exposed to conduct that is a domestic violence offence within the meaning of the *Domestic Violence Act 1986* and that has caused, is causing or is likely to cause significant harm to his or her wellbeing or development.

(2) In this Chapter:

***neglect***, of a child or a young person, means a failure to provide the child or young person with a necessity of life that has caused, is causing or is likely to cause the child or young person significant harm to his or her wellbeing or development.

*Examples of necessities of life*

Food, shelter, clothing and medical care.

**152 Meaning of *contact***

In this Chapter:

***contact*** with a person means direct or indirect contact with the person.

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*Examples of direct contact*

Physical or face to face contact with the person.

*Examples of indirect contact*

Contact by an agent, by telephone or letter or by giving the person something.

**153 Meaning of *former caregiver***

(1) In this Chapter:

*former caregiver* means—

- (a) for a child or young person for whom it is proposed to make a voluntary care agreement—the person who is providing care for the child or young person when the agreement is proposed; or
- (b) for any other child or young person—a person who was providing care for the child or young person immediately before parental responsibility for him or her vested in the chief executive or someone else by order of the court or operation of this Act, whether or not the person had parental responsibility for the child or young person at that time.

(2) However, *former caregiver* does not include a person providing care for the child or young person—

- (a) at a childcare centre, under a family day care scheme or otherwise for reward; or
- (b) if the person provides care on a casual basis and is not a relative.

**154 Person apparently a child or young person**

For this Chapter—

- (a) a person who appears, on reasonable grounds, to the court, the chief executive or a police officer to be a child or young person may be dealt with under this Chapter as if he or she were a child or young person and the provisions of this Chapter that refer to a child or young person have effect in relation to the person accordingly; and
- (b) if it becomes known that the person is not a child or young person—
  - (i) no further proceeding with respect to the person may be taken under this Chapter; and



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- (ii) if, by reason of the application of a provision of this Chapter, the person is in a hospital, a shelter or a State institution, the provision ceases to have effect with respect to the person and the person must be released; and
- (iii) an order or agreement under this Chapter ceases to have effect with respect to the person.

**155 Chapter ceases applying when young person becomes adult**

- (1) This Chapter, and any order or agreement under it, ceases to apply in relation to a young person when the young person becomes an adult.
- (2) A young person being detained under this Chapter must be released immediately on becoming an adult.
- (3) However, this section 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 or other decision of a court, including a court of a State; or
  - (b) has been charged with an offence and is so detained in relation to the charge.

***Division 2—Abuse and neglect***

**156 In need of care and protection**

- (1) For this Chapter, a child or young person is in need of care and protection if—
  - (a) he or she has been, is being or is likely to be, abused or neglected; and
  - (b) no-one with parental responsibility for the child or young person is willing and able to protect him or her from suffering the abuse or neglect.
- (2) Without limiting subsection (1), a child or young person is in need of care and protection in the following circumstances:
  - (a) if a person with whom the child or young person lives or is likely to live—
    - (i) has threatened to kill or injure the child or young person and there is a real possibility of the threat being carried out; or

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- (ii) has killed, abused or neglected a child or young person and there is a real possibility of the person killing, abusing or neglecting the relevant child or young person;  
and no-one with parental responsibility for the child or young person is willing and able to protect the child or young person;
- (b) no-one with parental responsibility for the child or young person (other than the chief executive) is willing and able to provide him or her with adequate care and protection;
- (c) if there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the chief executive) to such an extent that the care and protection of the child or young person is, or is likely to be, seriously disrupted;
- (d) the people with parental responsibility for the child or young person (other than the chief executive) are—
  - (i) dead, have abandoned him or her or cannot be found after reasonable inquiry; or
  - (ii) unwilling or unable to keep him or her from engaging in self-damaging behaviour; or
  - (iii) sexually or financially exploiting the child or young person or unwilling or unable to keep him or her from being sexually or financially exploited;
- (e) the child or young person is the subject of a child protection order in a State that is not being complied with.

**157 Effect of conduct outside Territory**

In section 156, it does not matter whether conduct giving rise to the belief that a child or young person has been, is being or is likely to be, abused or neglected occurred wholly or partly outside the Territory.

**158 Voluntary reporting**

A person who believes or suspects that a child or young person is in need of care and protection may report the circumstances on which the belief or suspicion is based to the chief executive.

**159 Mandatory reporting**

- (1) This section applies to a person who is—
  - (a) a doctor; or

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- (b) a registered dentist within the meaning given by the *Dentists Act 1931*, section 3; or
- (c) a person who is an enrolled nurse or a registered nurse within the meaning of the *Nurses Act 1988*, section 3; or
- (d) a teacher at a school; or
- (e) a police officer; or
- (f) a person employed to counsel children or young people at a school; or
- (g) a person caring for a child at a child-care centre; or
- (h) a person coordinating or monitoring the provision of home-based care on behalf of a family day care scheme licensee; or
- (i) a public servant who, in the course of his or her employment, provides services related to the health or wellbeing of children, young people or families; or
- (j) the community advocate; or
- (k) the official visitor; or
- (l) a prescribed person.

**(2)** If—

- (a) an adult to whom this section applies reasonably suspects that a child or young person has suffered, or is suffering, sexual abuse or non-accidental physical injury; and
- (b) those grounds arise during the course of or from the person's work (whether for remuneration or otherwise);

the person must, as soon as practicable, report to the chief executive the name, or a description, of the child or young person and the grounds for the person's suspicion.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**160 Report other than in good faith**

A person must not make a report under section 158 or 159 other than in good faith.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**161 Action on report**

**(1)** On receiving a report under section 158 or 159, the chief executive may, after consideration of the report, act in relation to it.

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(2) The action the chief executive may take in relation to a report about a child or young person includes the following:

- (a) a child protection appraisal of the child or young person and his or her situation;
- (b) providing, or arranging the provision of, support services for the child or young person and, if appropriate, his or her family;
- (c) assisting a member of kin of the child or young person to care for him or her;
- (d) developing, in consultation with a person with parental responsibility for the child or young person if appropriate, a plan to meet the needs of the child or young person and, if appropriate, his or her family, that does not involve bringing the matter before a court;
- (e) emergency action or an application to a court for an order in relation to the child or young person.

(3) Nothing in this Act requires the chief executive to act in relation to a report made to him or her under section 158 or 159.

**162 Records**

(1) The chief executive must keep a written record of—

- (a) each report made to him or her under section 158 or 159; and
- (b) a child protection appraisal made as a result of a report.

(2) If the chief executive has parental responsibility for a child or young person about whom a report under section 158 or 159 is made at the time of reporting, the chief executive must provide a copy of any record mentioned in paragraph (1) (a) about the report to the community advocate as soon as practicable.

**163 Protection of people making reports**

(1) If a person makes a report under section 158 or 159 in good faith—

- (a) the making of the report is, for all purposes, not a breach of confidence, professional etiquette or ethics or a rule of professional conduct; and
- (b) no civil or criminal liability is incurred by reason only of the making of the report; and

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- (c) subject to subsections (2) and (3), the report is not admissible in evidence in any proceeding in a court or tribunal and evidence of its contents is not so admissible; and
  - (d) subject to subsection (2), a person may not be compelled in any proceeding before a court or tribunal to provide the report or a copy of, or extract from, the report or to disclose, or give evidence of, the contents of the report.
- (2) Paragraph (1) (c) does not apply to a report tendered in evidence, or evidence given in respect of a report, by the person by whom the report was, or was caused to be, made.
- (3) Paragraphs (1) (c) and (d) do not apply—
- (a) in a proceeding before the court under this Part in relation to the child or young person concerned or before a court hearing an appeal from a decision of the court in such a proceeding; and
  - (b) to a charge or allegation made in a proceeding against a person in relation to the person's exercising a power, or performing a duty or function, under this Act.

**164 Protection of community advocate and person providing information to community advocate**

If the community advocate receives a report that a person believes or suspects that a child or young person is in need of care and protection and provides the report to the chief executive—

- (a) the report is taken to be a report under section 158 (Voluntary reporting); and
- (b) the person who made the report to the community advocate is taken to have made the report to the chief executive; and
- (c) section 163 (Protection of people making reports) applies to the providing of the report by the community advocate to the chief executive as if he or she had made the report in good faith.

## **PART 2—VOLUNTARY ACTION**

### ***Division 1—Family group conferences***

#### **165 Definitions for div 1**

In this Division:

***child***, in relation to a conference, means the child whose care and protection is the subject of the conference.

***conference*** means a family group conference.

***participant***, in relation to a conference, means a person who attends the conference at the invitation of the facilitator but does not include a person invited to provide information in accordance with paragraph 169 (3) (b).

***signed agreement*** means an agreement mentioned in section 172.

***young person***, in relation to a conference, means the young person whose care and protection is the subject of the conference.

#### **166 Facilitators**

The chief executive may, by notice in the Gazette, appoint people as facilitators for this Division.

#### **167 Register**

The chief executive must set up and maintain a register of facilitators.

#### **168 Purpose of conferences**

**(1)** The chief executive may arrange for a conference about a child or young person to be held if he or she reasonably believes—

(a) that—

- (i) the child or young person is in need of care and protection; and
- (ii) arrangements should be made to secure the child's or young person's care and protection; and
- (iii) a conference is a suitable way of deciding what those arrangements should be; or

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- (b) that a review of existing arrangements in relation to the child or young person agreed on at a conference is necessary or desirable.
- (2) The purpose of a conference is to provide an opportunity for participants—
- (a) to take part in making arrangements for securing the care and protection of the child or young person; or
  - (b) to review those arrangements and make further arrangements from time to time.
- (3) If the chief executive arranges a conference, he or she must assign a facilitator to the conference.

**169 Action by facilitator**

- (1) A facilitator must, as soon as practicable after being assigned to a conference—
- (a) decide who should be invited to the conference; and
  - (b) give written notice to each person to be invited stating the time, date and place for the conference; and
  - (c) conduct the conference.
- (2) The following people must be invited to a conference:
- (a) if the facilitator is satisfied that the child or young person can understand and take part in the conference—the child or young person;
  - (b) each person with parental responsibility for the child or young person, unless the facilitator considers that it would not be in the best interests of the child or young person for the person to attend;
  - (c) a representative of the chief executive;
  - (d) each person with an interest in, or knowledge of, the care, welfare or development of the child or young person who the facilitator considers should attend the conference.
- (3) A facilitator may do anything necessary or convenient to be done in relation to facilitating a conference, including the following:
- (a) consult with a person with knowledge of or experience in a particular culture;
  - (b) request a person to provide information or to report to a conference without inviting that person to be a participant at the conference;

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- (c) invite a person to attend the conference as a participant at any time;
- (d) allow a person to take part in the conference by telephone or other electronic means;
- (e) set times and choose places at which the conference will take place.

**(4)** If a facilitator reasonably believes before the day a conference is to take place that the intended participants at the conference will not agree on arrangements to secure the care and protection of the child or young person, the facilitator must tell the chief executive that he or she does not intend to conduct the conference.

**170 Financial assistance**

The chief executive may provide financial assistance to a person to allow him or her to take part in a conference if satisfied that it is necessary or desirable to do so.

**171 Conduct of conference**

**(1)** A facilitator must conduct a conference with as little formality and as much speed as allow a full examination of—

- (a) the situation of the child or young person; and
- (b) why he or she may be in need of care and protection; and
- (c) the options available for making arrangements for his or her care and protection.

**(2)** However, the facilitator must ensure that he or she takes reasonable steps to find out and provide to the conference the views of the following people about the steps that should be taken to ensure the care and protection of the child or young person:

- (a) the child or young person (so far as his or her views are discoverable) if he or she has not been invited, or refuses, to attend;
- (b) people invited to attend the conference but who are unable to attend;
- (c) each person with parental responsibility for the child or young person or other family member or kin who has not been invited to attend the conference but whose views the facilitator considers it appropriate to provide to the conference.



- (3) A participant may not be represented at a conference by a lawyer.

**172 Agreements arising from conferences**

(1) If the facilitator is satisfied that the representative of the chief executive and a participant with parental responsibility for the child or young person at a conference have reached agreement about arrangements for securing the care and protection of the child or young person, the facilitator must put the agreement in writing and get—

- (a) the signatures of those people on the agreement; and
- (b) the signature of any other participant who agrees with the arrangements on the agreement.

(2) However, the facilitator may only act under subsection (1)—

- (a) if the facilitator is satisfied that the child or young person is capable of understanding the proposed agreement—if the facilitator has sought and considered the views of the child or young person; and
- (d) in relation to a young person who is of or over the school-leaving age—
  - (i) if the young person consents to the agreement being made; or
  - (ii) the young person is incapable of consenting.

(3) Before getting the signature of a person on an agreement, the facilitator must give the person an opportunity to get legal advice about the meaning and effect of the agreement.

**173 Outcome of conference**

(1) As soon as practicable after the end of a conference the facilitator must give the chief executive a written record of the outcome of the conference.

(2) A record must contain the following information about the conference:

- (a) the time, date and place it took place;
- (b) the name of the facilitator and each participant;
- (c) the name of each person who was invited to attend but did not attend;
- (d) the name of a person who was not a participant but provided information or reported.

- (3)** A record must—
- (a) if the conference has resulted in a signed agreement, contain—
    - (i) a summary of arrangements agreed to at the conference; and
    - (ii) the signed agreement; or
  - (b) if the conference has not resulted in a signed agreement—contain a statement by the facilitator to that effect.

**174 Action by chief executive**

- (1)** On receiving a signed agreement, the chief executive must—
- (a) provide a copy of the agreement to—
    - (i) each participant of the conference; and
    - (ii) each person who was invited to attend the conference but did not attend; and
    - (iii) each person with parental responsibility for the child or young person who was not invited to attend the conference; and
  - (b) take such steps as are necessary to implement and maintain the arrangements recorded in the agreement.
- (2)** On receiving notice that a conference has not resulted in a signed agreement, the chief executive may reconvene the conference.
- (3)** Nothing in this Division prevents the chief executive from taking action under Part 2 (Voluntary action) or Part 3 (Care and protection orders and emergency action) in relation to a child or young person.

**175 Application for registration**

- (1)** If—
- (a) a conference has resulted in a signed agreement; and
  - (b) that agreement proposes that parental responsibility for the child or young person be transferred from a person to someone else (other than the chief executive) or be shared with a person (other than the chief executive) who would not otherwise have it;

the chief executive may apply to a court to register the agreement.

- (2)** However, the chief executive may not apply to register an agreement the effect of which would be equivalent to an enduring parental responsibility order.

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- (3) An application to register an agreement must be—
- (a) in the prescribed form; and
  - (b) accompanied by—
    - (i) a copy of the signed agreement; and
    - (ii) a statement signed by each signatory to the agreement to the effect that he or she has had an opportunity to get legal advice as to the meaning and effect of the agreement.
- (4) If the chief executive makes an application, he or she must send a copy of the application to the community advocate.

**176 Registration of agreements**

- (1) On application, the court must—
- (a) if satisfied that it could make an order under this Act to the effect of the proposals in the agreement—register the agreement; or
  - (b) if not so satisfied—refuse to register the agreement.
- (2) However, the court may not register an agreement the effect of which would be equivalent to an enduring parental responsibility order.
- (3) If the court registers an agreement, it must give notice that it has done so to—
- (a) the chief executive; and
  - (b) the community advocate.
- (4) On receiving a notice, the chief executive must provide a copy of that notice to each person mentioned in paragraph 174 (1) (a).
- (5) If the court refuses to register an agreement, it must give notice that it has done so to the chief executive.

**177 Effect of registration**

A registered agreement has effect as if it were an order of the court and may be enforced accordingly.

**178 Review of arrangements for care and protection of child or young person**

- (1) The chief executive must convene a conference to review the arrangements for the care and protection of a child or young person in a signed agreement (whether registered or not) if the chief executive—
- (a) is required to do so under the agreement; or

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- (b) has been requested to do so by the child or young person or a person with parental responsibility for the child or young person who is a signatory to the agreement.
- (2) However, the chief executive is not required to convene a conference on the request of the child or young person or a person with parental responsibility for the child or young person if the chief executive—
- (a) has already convened a conference in relation to the child or young person in accordance with a request; and
  - (b) considers it inappropriate to do so.
- (3) The chief executive may convene a conference to review the arrangements for the care and protection of a child or young person in a signed agreement if the court has refused to register the agreement.

**179 People with parental responsibility who cannot be found**

Nothing in this Division requires a person to act in relation to a person with parental responsibility who cannot, after reasonable inquiry, be found.

**180 Publication of information concerning conferences**

- (1) Unless allowed by this Act or another Act, a person must not publish in any manner—
- (a) a signed agreement; or
  - (b) a record under subsection 173 (1); or
  - (c) a record or report prepared for and presented to the conference; or
  - (d) anything said or done at a conference.

Maximum penalty: 50 penalty units.

- (2) Evidence of anything said at a conference is not admissible in any proceeding.
- (3) However, the record in subsection 173 (1) is admissible in a proceeding under Part 3 (Care and protection orders and emergency action) for the purpose of proving that an agreement was or was not reached.

***Division 2—Voluntary care agreements***

**181 Meaning of *party***

In this Division:

*party*, for a voluntary care agreement, means the chief executive and the person with parental responsibility who entered the agreement.

**182 Voluntary care agreements**

- (1) The chief executive may enter into a written agreement with a person with parental responsibility for a child or young person to share that parental responsibility for the period of the agreement.
- (2) Negotiations for making or ending a voluntary care agreement in relation to a child or young person may be initiated by—
  - (a) a person with parental responsibility for the child or young person; or
  - (b) the child or young person or a person acting on behalf of the child or young person; or
  - (c) the chief executive.
- (3) The chief executive may not enter into a voluntary care agreement in relation to a child or young person unless—
  - (a) he or she has considered whether another form of assistance (for example, organising care by someone else with parental responsibility or a member of kin) would be preferable; and
  - (b) he or she is satisfied that a voluntary sharing of parental responsibility is appropriate; and
  - (c) if the chief executive is satisfied that the child or young person is capable of understanding that it is proposed that the child or young person will be temporarily cared for by a person other than his or her former caregiver—the chief executive has sought and considered the views of the child or young person; and
  - (d) in relation to a young person who is of or over the school-leaving age—
    - (i) the young person consents to the agreement being made; or
    - (ii) the young person is incapable of consenting.
- (4) If the chief executive has signed a voluntary care agreement in relation to a child or young person, he or she assumes parental

responsibility for the child or young person when the agreement is entered into or at the later time stated in the agreement.

(5) A voluntary care agreement must state the period of 6 months or less for which parental responsibility is to be shared.

### **183 Extending voluntary care agreements**

(1) The parties to a voluntary care agreement may agree in writing to extend the period of the agreement if—

- (a) the chief executive—
  - (i) has considered whether another form of assistance would be preferable; and
  - (ii) is satisfied that a voluntary sharing of parental responsibility is appropriate; and
  - (iii) if satisfied that the child or young person is capable of understanding that it is proposed that he or she will continue to be temporarily cared for under a voluntary care agreement—has sought and considered the views of the child or young person; and
- (b) the period of the voluntary care agreement and the proposed extension together will not be longer than 6 months; and
- (c) at the end of the proposed extension if the agreement is extended, the child or young person will not have been cared for under a voluntary care agreement for more than 6 months in the preceding 12 months; and
- (d) in relation to a young person who is of or over school-leaving age, the young person—
  - (i) consents to the extension; or
  - (ii) is incapable of consenting.

(2) A voluntary care agreement may be extended in accordance with subsection (1) more than once.

### **184 Longer agreements allowed for certain young people**

Despite anything to the contrary in section 182 or 183, a voluntary care agreement in relation to a young person who has reached the school-leaving age may be entered into or extended for more than 6 months with the consent of the young person.

**185 Agreements not void**

A voluntary care agreement is not void or voidable because a person with parental responsibility who is a party to it is not an adult.

**186 Early termination**

A party to a voluntary care agreement may, before the agreement ends, end the agreement by giving written notice to the other parties.

**187 Action on expiration or termination**

(1) If a voluntary care agreement in relation to a child or young person expires or is ended, the chief executive—

- (a) must return the child or young person to a former caregiver or other person as agreed between the parties to the voluntary care agreement; and
- (b) has no parental responsibility for the child or young person once he or she is returned.

(2) However, the chief executive is not required to return a child or young person if—

- (a) emergency action is being taken in relation to the child or young person; or
- (b) the chief executive has made an application to the court seeking parental responsibility for the child or young person.

(3) Nothing in this section allows the chief executive to keep parental responsibility for the child or young person if the court refuses the application for parental responsibility.

**188 Parental contributions**

If the chief executive agrees with a person with parental responsibility for a child or young person that—

- (a) the chief executive exercise parental responsibility for the child or young person; and
- (b) the person with parental responsibility pay an amount by way of contribution to the cost of the care of the child or young person;

the amount by way of contribution—

- (c) may not be more than the amount paid by the Territory in relation to the care of the child or young person; and
- (d) is a debt due and payable to the Territory.

***Division 3—Appraisal and assessment***

**189 Child protection appraisals**

- (1) If the chief executive reasonably suspects that a child or young person is in need of care and protection, the chief executive may make an appraisal of the circumstances of the child or young person.
- (2) For the appraisal, the chief executive may—
- (a) visually examine the child or young person or anyone else; and
  - (b) give information to anyone; and
  - (c) ask anyone to give information to the chief executive; and
  - (d) make inquiries about the child or young person or anyone else; and
  - (e) arrange for a special assessment to be made of the child or young person or anyone else.
- (3) In conducting the child protection appraisal, the chief executive must seek the cooperation of anyone with parental responsibility for the child or young person, if it is practicable to do so.
- (4) The chief executive may ask the child or young person or other person who is being appraised or assessed to—
- (a) attend at the place and time stated for the appraisal or assessment; and
  - (b) comply with any arrangement made by the chief executive for the purpose of the appraisal or assessment.

**190 Special assessment**

A special assessment of a person may include the following:

- (a) an examination, a test or a treatment of a physical, medical or dental nature on the person, other than by way of surgery;
- (b) the conducting of a detailed social assessment of the person by a social worker, psychologist or other suitably qualified person;
- (c) the conducting of a paediatric or developmental assessment of the person by a suitably qualified person;
- (d) an examination, a test or a treatment of a psychological nature on the person performed by a suitably qualified person;
- (e) an examination or test of a psychiatric nature on the person performed by a suitably qualified person;



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- (f) surgery if it is performed primarily—
  - (i) for the purpose of saving the person's life or preventing serious damage to his or her health; or
  - (ii) to relieve significant pain; or
  - (iii) as part of the management or setting of broken or dislocated bones;
- (g) if authorised by a court order—other surgery;

but does not include a prescribed assessment.

**191 Restrictions on special assessment of children and young people**

**(1)** An assessor may not undertake a special assessment of a child or young person if—

- (a) the assessor reasonably believes that the child or young person has the maturity to make a reasoned decision about whether to consent to the assessment; and
- (b) the child or young person refuses to consent to the assessment.

**(2)** If a proposed special assessment of a child or young person involves—

- (a) penetration of a body cavity other than an ear, the nose or the mouth; or
- (b) penetration of the skin, including by way of injection;

the assessment may not be undertaken unless a person with parental responsibility consents to the assessment.

**(3)** A special assessment of a child or young person for whom the chief executive has parental responsibility may not be undertaken unless the chief executive consents to the assessment.

**(4)** Nothing in this section prevents a special assessment of a child or young person from taking place without the relevant consent if the assessment—

- (a) is authorised by an assessment order or other order of a court; or
- (b) takes place primarily—
  - (i) for the purpose of saving the person's life or preventing serious damage to his or her health; or
  - (ii) to relieve significant pain; or

- (iii) as part of the management or setting of broken or dislocated bones.

**192 Assistance with assessment**

- (1) If the chief executive considers it necessary or desirable, he or she may get the assistance of the commissioner of police in carrying out a child protection appraisal or a special assessment.
- (2) The commissioner of police must give assistance to the chief executive by assigning police officers to assist the chief executive as allowed by this section.
- (3) For an assessment, a police officer assisting the chief executive may, after getting a warrant, do 1 or more of the following:
  - (a) enter or break into, remain in and search any premises or place;
  - (b) seize and remove an item that the officer reasonably believes may afford evidence relevant to the assessment;
  - (c) take photographs or audio or video recordings, or make sketches, of anything relevant to the assessment;
  - (d) require a person who may be in a position to provide information relevant to the assessment to answer a question to the best of that person's knowledge, information or belief.
- (4) A police officer assisting the chief executive may exercise the powers stated in subsection (3) even if the police officer has not got a warrant, if the police officer reasonably believes that the delay that would follow as a result of getting a warrant would prejudice the assessment or the safety of a child or young person.
- (5) A police officer assisting the chief executive may be accompanied by such other police officers or authorised people while exercising powers under this section as are reasonable or necessary.
- (6) A person must not, without reasonable excuse, contravene a requirement made under paragraph (3) (d).

Maximum penalty: 50 penalty units.

- (7) A person who refuses to answer a question required to be answered under paragraph (3) (d) has a reasonable excuse for refusing if the answer would—
  - (a) provide information that is privileged on the ground of legal professional privilege; or

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(b) incriminate, or tend to incriminate, the person.

(8) A person who is required to answer a question under this section does not incur liability in doing so if the person acts in good faith.

(9) If an item is seized while exercising a power under subsection (4), the commissioner of police or the chief executive may retain the item until the assessment is complete and any proceeding arising out of the assessment is finalised.

**193 Report**

If a person assesses a child or young person or other person in accordance with this Division, the assessor must, unless the court orders otherwise, provide a written report on the assessment to the chief executive as soon as practicable after its completion.

Maximum penalty: 5 penalty units.

**PART 3—CARE AND PROTECTION ORDERS AND EMERGENCY ACTION**

***Division 1—General***

**194 Definitions for ch 7**

In this Chapter:

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

***care and protection order*** means an order under this Chapter for or in relation to the care and protection of a child or young person.

***final care and protection order*** means an order under Division 7 (Final care and protection orders) (other than a domestic violence order, restraining order or interim order), or a contact order, residence order or therapeutic protection order made as a final care and protection order.

***residence order*** means an order under section 207.

***short care and protection order*** means an assessment order or a contact order, residence order, therapeutic protection order or specific issues order made in accordance with Division 2 (Short care and protection orders).

***specific issues order*** means an order under section 246.

***therapeutic protection order*** means an order under section 235.

**195 Basis for orders**

(1) Subject to section 196, a person may apply for an order under this Chapter in relation to a child or young person if he or she reasonably believes that the child or young person is in need of care and protection.

(2) Also, the chief executive may apply for an order under Division 3 (Assessment) if he or she reasonably suspects that a child or young person may be in need of care and protection.

**196 Applications by other people**

(1) If the chief executive has not made a care and protection application in relation to a child or young person, a person may, after consultation with

the chief executive, seek the leave of the court to make an application in relation to the child or young person.

(2) The court must hear the person and the chief executive and may make an order granting leave to the person to make the application.

(3) If an application is made with the court's leave, a copy of it must be served on the chief executive and the community advocate and each may appear and be heard in the proceeding.

### **197 Burden of proof**

In a proceeding under this Part, a fact is proved if it is proved on the balance of probabilities.

### **198 Information not required to be disclosed**

A person is not required, in relation to a care and protection order—

- (a) to provide information that is privileged on the ground of legal professional privilege; or
- (b) to provide information, or answer a question, if to do so would incriminate, or tend to incriminate, the person.

### **199 Orders in relation to third parties**

(1) The court may not make a care and protection order that imposes an obligation on a person unless the person—

- (a) consents to the making of the order; or
- (b) has had an opportunity to be heard in relation to the proposed order.

(2) The court gives a person an opportunity to be heard in relation to a proposed order if the court has caused to be served on the person a notice in writing directing his or her attendance at the proceeding to be heard in relation to the proposed making of an order, regardless of whether the person attends the proceeding.

(3) Despite subsection (1), the court may make a care and protection order if the person on whom the obligation is proposed to be imposed cannot, after reasonable inquiry, be found.

### **200 Contents of care and protection applications**

A care and protection application must specify the particular care and protection order sought and the ground on which it is sought.

**201 Cross-applications for care and protection orders**

(1) A party to a proceeding on a care and protection application who seeks—

- (a) an order in terms different from that applied for; or
- (b) a different order from that applied for;

should make a cross-application.

(2) A cross-application on a care and protection application may only be made by a party to the proceeding with leave of the court.

(3) No-one may cross apply for a therapeutic protection order or an assessment order for a child protection appraisal.

(4) A cross-application must specify the particular care and protection order sought and the grounds on which it is sought.

**202 Restriction on leave to cross apply**

The court may not grant leave to cross apply unless satisfied that there are reasonable grounds for believing that the child or young person to whom the order sought would relate would be in need of care and protection if an order was not made.

**203 Interim care and protection orders**

(1) The court may make an interim care and protection order in relation to a child or young person after a care and protection application is made and before the application is finally decided if satisfied that the chief executive reasonably believes that the child or young person is in need of care and protection or would be in need of care and protection if the order was not made.

(2) However, the court may not make an interim assessment order.

(3) If making an interim care and protection order, the court may make any other care and protection order that it considers appropriate for the care and protection of the child or young person.

**204 Court order not limited by terms of care and protection application**

The making of an application for a particular care and protection order of the court does not prevent the court from making a different care and protection order in addition to, or in substitution for, the order applied for.

**205 When can the court make a domestic violence order or a restraining order?**

The court may make a domestic violence order or a restraining order—

- (a) on application for a care and protection order; and
- (b) at any time it could make an interim order; and
- (c) in addition to an interim order, or in addition to, or in substitution for, the care and protection order applied for.

**206 Contact orders**

**(1)** This section applies to a child or young person in relation to whom—

- (a) another order under this Chapter is being sought or is in force; or
- (b) a proceeding is under way under this Chapter which may lead to the making of an order which has the effect of separating the child or young person from a significant person in his or her life.

**(2)** The court may, on its own initiative, or on application by a person, make an order allowing contact between a child or young person to whom this section applies and someone else.

**(3)** If a person applies for a contact order in relation to a child or young person—

- (a) if the person has parental responsibility for the child or young person or is his or her sibling—there is a rebuttable presumption that it is in the best interests of the child or young person to have contact with the person; or
- (b) in any other case—the person has the burden of proving that contact between him or her and the child or young person is in the best interests of the child or young person.

**(4)** A sibling of a child or young person in relation to whom a contact order is sought does not need the leave of the court to be joined as a party to the proceeding on the application.

**(5)** An order stating that there be no contact between a child or young person and someone else is a specific issues order, not a contact order.

**207 Residence orders**

- (1) This section applies to a child or young person in relation to whom another order under this Chapter is being sought or is in force.
- (2) The court may, on application or on its own initiative, make an order about the person with whom a child or young person to whom this section applies is to live if satisfied that there are reasonable grounds for believing that the child or young person would be in need of care and protection if the proposed order were not made.
- (3) If the court intends a person to have responsibility for deciding where a child or young person lives, the court must make a residence order in favour of the person.

**208 Temporary absence**

A person in whose favour a residence order in relation to a child or young person is in force may permit the child or young person to be temporarily absent from the place where he or she is directed to live under the order.

**209 Supervision order**

- (1) While a child or young person is subject to a supervision order under section 246 or 255, the supervisor may meet and talk with the child or young person alone or otherwise.
- (2) Without limiting what may be included in a supervision order under this Chapter, a supervision order in relation to a child or young person may—
- (a) require—
    - (i) the child or young person; or
    - (ii) a person with parental responsibility for the child or young person; or
    - (iii) both the child or young person and a person with parental responsibility for the child or young person;to report to the supervisor at a place and at intervals stated by the supervisor; and
  - (b) require—
    - (i) the child or young person; or
    - (ii) a person with parental responsibility for the child or young person; or



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- (iii) both a child or young person and a person with parental responsibility for the child or young person;

to take part in discussions with the supervisor in relation to the welfare of the child or young person, in particular whether the child or young person should receive some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the child or young person.

**210 Failure to comply with care and protection orders**

- (1) A person must not contravene a short care and protection order.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person must not contravene an order under this Chapter directing that the person—

- (a) not live at the same premises as a child or young person; or  
(b) stop or refrain from living at the same premises as a child or young person.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (3) A person must not contravene a final care and protection order.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) It is a defence to a prosecution under this section if the person proves that he or she had not been served with, did not know about and could not reasonably be expected to know about the care and protection order.

- (5) This section applies to a person's conduct whether within or outside the Territory.

***Division 2—Short care and protection orders***

**211 Initial consideration of applications**

- (1) The court must initially consider an application for—

- (a) a short care and protection order; or  
(b) the extension, variation or revocation of a short care and protection order;

within 2 working days after the day it is filed.

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(2) The court must initially consider a cross-application on an application for a short care and protection order within 2 working days after the day the cross-application is filed.

(3) Subject to section 212, after initially considering an application or cross-application, the court may adjourn further consideration for not longer than 7 days at a time beginning on the day after adjournment if satisfied that it is appropriate to do so given the urgency of the application.

(4) However, an application for a therapeutic protection order must be heard in accordance with section 240 (Time for hearing and deciding applications).

**212 Consideration of applications**

(1) The court must begin hearing an application for a short care and protection order (the *main application*) or cross-application within 14 days after the day the main application is filed.

(2) If the court fails, for whatever reason, to begin hearing an application or cross-application in accordance with subsection (1), an interim order made before the hearing of the proceeding was last adjourned continues in force until the application or cross-application is decided.

(3) This section does not apply to an application for a therapeutic protection order.

**213 Period of effect of short care and protection orders**

(1) A short care and protection order, other than an assessment order or a therapeutic protection order, has effect for the period of not longer than 18 weeks that is stated in the order.

(2) An assessment order has effect for the period of not longer than 4 weeks that is stated in the order.

(3) However, an assessment order or specific issues order may be extended under subparagraph 251 (1) (c) (i) for a period equal to the period of the adjournment.

(4) A therapeutic protection order made as a short care and protection order has effect for the period of not longer than 8 weeks that is stated in the order.

(5) The time limits in this section do not apply to a therapeutic protection order made as a final care and protection order.

**214 Extension, variation or revocation of orders**

(1) A person who was a party to the proceeding in which a short care and protection order was made (the *original order*) or a person named in the original order may apply for an extension, variation or the revocation of the original order.

(2) On application, the court may extend, vary or revoke the original order.

(3) If—

- (a) an application has been filed; and
- (b) the court cannot hear and decide the application before the date on which, but for this subsection, the order would cease to have effect;

then—

- (c) the court may adjourn the application for a period of not longer than 7 days beginning on the day after the application is adjourned; and
- (d) despite any other provision in this Act, the order sought to be extended continues to have effect until the application is decided.

(4) However, the court may not extend or vary an order if the effect of the extension or variation is to make the total period of the order extended or varied (including any extension, whether under paragraph (3) (d) or otherwise) more than—

- (a) in relation to an assessment order or therapeutic protection order—8 weeks; or
- (b) in any other case—18 weeks;

unless the court is satisfied that there are exceptional circumstances that justify such an extension or variation.

***Division 3—Assessment orders***

**215 Applications for assessment orders**

(1) The chief executive may apply to the court for an assessment order in relation to a child or young person if the chief executive considers it appropriate to do so.

(2) A person, other than the chief executive, may apply to the court for an assessment order in relation to a child or young person in accordance

with section 196 only if the chief executive has not made a care and protection application in relation to the child or young person.

(3) A person, including the chief executive, may make an application for an assessment order by telephone, fax or other electronic means in an urgent case.

### **216 Cross applications on assessment orders**

On application for an assessment order, the only order for which a cross application may be made is an assessment order for a special assessment.

### **217 Assessment orders**

(1) In this section:

*assessment* means a child protection appraisal or special assessment.

(2) On application under this Part, the court may make an order authorising the making of an assessment of a person and any of the following orders:

- (a) an order requiring a person to attend, either alone or with someone else, at a stated place and time for an assessment;
- (b) an order requiring a person or entity to comply with arrangements made by the chief executive for an assessment;
- (c) an order requiring, or authorising the chief executive to require, a person or entity to give the chief executive information about the care, welfare or development of a child or young person;
- (d) an order requiring that something be produced to the court or given to the chief executive or someone else for an assessment.

(3) The order may relate to someone other than a child or young person.

### **218 Restrictions on making assessment orders**

(1) The court may only make an assessment order if satisfied that the chief executive reasonably believes or reasonably suspects that the child or young person in relation to whom the order is proposed to be made is in need of care and protection or would be in need if the order were not made.

(2) If the chief executive applies for an assessment order because a child or young person has refused to consent to an appraisal or assessment, the court must—

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- (a) take such steps as it considers appropriate to—
  - (i) judge the capacity of the child or young person to give consent; and
  - (ii) identify the reasons for his or her refusal to consent; and
- (b) have regard to such capacity and reasons in making an assessment order.

**219 Assistance with assessment**

The chief executive may get assistance under section 192 in carrying out a child protection appraisal or a special assessment in accordance with an assessment order.

**220 Report**

If someone assesses a child or young person or other person in accordance with this Division, the assessor must provide a written report on the assessment as soon as practicable after its completion to—

- (a) each person named in the order for the purpose of receiving the report; and
- (b) if the court so orders—the court.

Maximum penalty: 5 penalty units.

**221 Childrens Court may act on recommendations**

The court may, on its own initiative, make an order under this Part to implement a recommendation arising out of a special assessment that it could make on application by the chief executive.

***Division 4—Emergency action***

**222 Taking emergency action**

- (1) In this section:

*place* includes a hospital or place where therapeutic protection is provided.

- (2) This section applies if the chief executive or a police officer reasonably believes that a child or young person—

- (a) is in immediate need of care and protection; or
- (b) would be so in need if immediate care and protection were not provided.

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- (3) If this section applies, the chief executive or police officer may—
- (a) arrange for the child's or young person's care and protection either in a premises or place or by moving him or her from a place to another place; and
  - (b) for the purpose of making those arrangements, use such force (including for breaking into premises) as is reasonably necessary to safeguard the wellbeing of the child or young person.
- (4) The chief executive or police officer may take emergency action in relation to a child or young person even if, at the time he or she proposes to take the action, the child or young person is in the care of someone with parental responsibility for the child or young person.
- (5) The chief executive or police officer may use such assistance as is necessary and reasonable for the purpose of taking the emergency action.

**223 Emergency action by police officer**

- (1) If a police officer takes emergency action in relation to a child or young person, he or she must—
- (a) immediately notify the chief executive in writing about the action taken, the reasons for taking the action and the child or young person in relation to whom the action was taken; and
  - (b) if practicable, notify each person with parental responsibility for the child or young person about the action taken; and
  - (c) deliver the child or young person to the place or person advised by the chief executive.
- (2) If it is not practicable to notify the chief executive in writing immediately, the police officer may notify the chief executive orally immediately and provide written notice as soon as practicable.

**224 Parental responsibility following emergency action**

- (1) A police officer has parental responsibility for a child or young person in relation to whom he or she has taken emergency action until the officer notifies the chief executive under section 223.
- (2) The chief executive has parental responsibility for a child or young person if—
- (a) a police officer notifies the chief executive that the officer has taken emergency action in relation to the child or young person; or

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- (b) the chief executive takes emergency action in relation to the child or young person.
- (3) The chief executive may authorise a police officer to exercise parental responsibility for a child or young person on his or her behalf.

**225 Keeping and losing parental responsibility**

(1) The chief executive or police officer ceases to have parental responsibility for a child or young person after emergency action has been taken in relation to the child or young person if—

- (a) the child or young person is returned to a former caregiver or person with parental responsibility; or
- (b) the court so orders.

(2) Except as expressly provided in this Act, the chief executive or police officer may keep parental responsibility for the child or young person without the need for an order of the court—

- (a) for the period of 2 working days beginning after the day the emergency action was taken; or
- (b) if the period mentioned in paragraph (a) is interrupted by a Saturday, a Sunday and a public holiday—for the period from the day the emergency action is taken until such time as the matter can be brought before the court on the next sitting day of the court.

(3) However, if the chief executive has parental responsibility for a child or young person after having been notified under section 223 (Emergency action by police officer), the period for which the chief executive may keep parental responsibility is the relevant period stated under subsection (2) less any period during which the police officer had parental responsibility for the child or young person.

(4) If, at the end of the period for which the chief executive or police officer may keep parental responsibility—

- (a) no order has been made in relation to the child or young person in relation to whom the emergency action was taken; and
- (b) the chief executive or police officer still has parental responsibility for the child or young person;

the chief executive or police officer must deliver the child or young person into the care of a former caregiver or someone with parental responsibility for the child or young person.

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(5) The chief executive or a police officer may only exercise parental responsibility for a child or young person under this section for the immediate care and protection of the child or young person.

**226 Notice of emergency action**

(1) If the chief executive takes emergency action in relation to a child or young person or is notified that a police officer has taken emergency action, he or she must, as soon as practicable, give notice that the action has been taken to—

- (a) each person with parental responsibility for the child or young person who has not been told about the action by the person who took the action; and
- (b) the community advocate; and
- (c) the court.

(2) This section applies even if the chief executive considers that it would not be in the best interests of the child or young person to give notice.

**227 Action by chief executive**

(1) If the chief executive has parental responsibility for a child or young person under this Division, he or she may make arrangements for the care and protection of the child or young person.

(2) The arrangements the chief executive may make for a child or young person include—

- (a) arranging a child protection appraisal that includes an examination of the circumstance that led to the taking of the emergency action; and
- (b) delivering the child or young person to a person (including someone with parental responsibility or a former caregiver).

**228 Early initial consideration of care and protection application**

(1) If, before the end of the relevant period mentioned in subsection 225 (2), the chief executive applies to the court for a care and protection order, the court must give initial consideration to an application on the day it is filed.

(2) This section applies despite any other provision of this Part.



**229 Contact with siblings and people with parental responsibility**

(1) If emergency action has been taken in relation to a child or young person for whom a police officer or the chief executive has parental responsibility, the officer or chief executive must allow reasonable contact between the child or young person and his or her siblings or a person with parental responsibility for the child or young person.

(2) However the chief executive is not required to allow contact under this section if it would not be in the best interests of the child or young person to do so.

**230 Record of action**

The chief executive must keep a written record of any emergency action taken, including particulars of any notice given under section 223 (Emergency action by police officer).

**231 Application for release of child or young person**

(1) At any time while the chief executive or a police officer has parental responsibility for a child or young person because of the taking of emergency action, anyone mentioned in subsection (2) may apply to the court for an order for the release of the child or young person into the care of the applicant or another named person.

(2) For subsection (1), the following people may apply:

- (a) the child or young person;
- (b) someone with parental responsibility;
- (c) a former caregiver;
- (d) the community advocate.

(3) The court may not order the release of a child or young person on an application under this section unless satisfied that proper arrangements exist for the care and protection of the child or young person.

***Division 5—Therapeutic protection orders***

**232 Effect of div 5 on other powers of chief executive**

(1) Nothing in this Division prevents the chief executive from taking action he or she can take under the common law, this Act or another enactment.

(2) However, as far as another law would be contrary to this Division, this Division must, so far as possible, prevail.

**233 What is therapeutic protection?**

Therapeutic protection is care provided by the chief executive for a child or young person, where the child or young person is confined to a place in a way that the chief executive considers appropriate to protect the child or young person from serious harm.

**234 Restriction on provision of therapeutic protection**

The chief executive may not provide therapeutic protection for a child or young person except in accordance with a therapeutic protection order.

**235 Therapeutic protection orders**

(1) The court may make a therapeutic protection order in relation to a child or young person if satisfied that there are reasonable grounds for believing that—

- (a) the child or young person is in need of care and protection and therapeutic protection should be arranged for the child or young person; or
- (b) the child or young person would be in need of care and protection if therapeutic protection were not provided.

(2) If the court makes a therapeutic protection order—

- (a) the court must include in the order any term or condition to which it is subject; and
- (b) unless the court otherwise orders—the order has the effect of a residence order in favour of the chief executive and a specific issues order conferring day-to-day responsibility for the care, welfare and development of the child or young person on the chief executive.

**236 Restriction on making, varying and extending**

(1) The court may not make, vary or extend a therapeutic protection order in relation to a child or young person unless it has received from the chief executive—

- (a) a schedule setting out the proposed time, date and duration of the provision of therapeutic protection for the child or young person

and the type of therapeutic protection proposed to be provided;  
and

- (b) in relation to an application for variation or extension—the same details about the therapeutic protection already provided.

(2) The court may not make, vary or extend a therapeutic protection order in relation to a child or young person unless satisfied that—

- (a) the order is necessary to prevent the child or young person from behaving in a manner likely to cause physical harm to himself or herself or another child or young person; and
- (b) a planned program is in place for the child or young person to be provided with treatment, therapy or other services that will help him or her to deal with the matter mentioned in paragraph (a); and
- (c) the program is likely to lead to a significant improvement in the circumstances of the child or young person; and
- (d) the person or administrative unit proposed to provide the therapeutic protection has indicated to the court a willingness and ability to allocate the resources necessary to implement the program; and
- (e) less intrusive methods have been attempted or would be insufficient for the support of the child or young person.

(3) However, on application for a variation of the term of a therapeutic protection order or for an extension, the court is not required to rehear the matter completely but may take into consideration a finding of fact made previously in relation to the child or young person.

### **237 Action by chief executive under therapeutic protection order**

Without limiting the therapeutic protection the chief executive may provide under an order, he or she may do, or cause to be done, such of the following as he or she reasonably believes is in the best interests of the child or young person who is the subject of the order:

- (a) take necessary steps to ensure that the child or young person may not leave the place where therapeutic protection is provided;
- (b) use such force as is reasonably necessary to safeguard the wellbeing of the child or young person;
- (c) search the child or young person in accordance with sections 399 and 400 (about personal searches);

- (d) provide close or constant supervision for the child or young person;
- (e) restrict the child or young person from having contact with other people.

**238 Restriction on cross-application**

A person may only cross apply on an application for a therapeutic protection order for—

- (a) an assessment order for a special assessment; or
- (b) a specific issues order; or
- (c) a residence order.

**239 Application for variation or revocation of therapeutic protection order**

(1) The following people may apply to the court for an order varying or revoking a therapeutic protection order in relation to a child or young person:

- (a) the child or young person;
- (b) anyone with parental responsibility for the child or young person;
- (c) a former caregiver;
- (d) the community advocate.

(2) If an application in relation to a child or young person is served on the chief executive, the chief executive must file with the court a schedule setting out—

- (a) the time, date and duration of the provision of therapeutic protection in relation to the child or young person; and
- (b) the type of therapeutic protection provided or to be provided.

**240 Time for hearing and deciding applications**

(1) The court must hear and decide an application for a therapeutic protection order within 2 working days after the day the application is filed with the court.

(2) However, a cross-application may be dealt with in accordance with section 211 (Initial consideration of applications).

**241 Limitations on restricting contact**

If, acting under a therapeutic protection order, the chief executive restricts a child or young person from having contact with others—

- (a) the restriction may not—
  - (i) unreasonably limit contact between the child or young person and a sibling or the child or young person and a person with parental responsibility for him or her; or
  - (ii) limit contact between the child or young person and the community advocate or official visitor for this Act; or
  - (iii) unreasonably restrict the child's or young person's access to open air; and
- (b) so far as it prevents the child or young person from having contact with people other than the community advocate, the official visitor or a supervisor of the child or young person—the restriction—
  - (i) may only occur under constant supervision; and
  - (ii) may not exceed a continuous period of longer than 12 hours or a period of 12 hours (whether continuous or otherwise) in any 24 hour period.

**242 Separation of children and young people from offenders**

A child or young person who is under therapeutic protection must not be accommodated in premises used mainly to confine people convicted of offences or remanded into custody in relation to offences.

**243 Provision of schedule of therapeutic protection**

On request by the community advocate or official visitor, the chief executive must promptly make available to the person requesting it a written schedule setting out—

- (a) the time, date and duration of the provision of therapeutic protection in relation to a named child or young person; and
- (b) the type of therapeutic protection provided or to be provided.

**244 Therapeutic protection order made as final care and protection order**

A therapeutic protection order made as a final care and protection order may be made for a period of up to 8 weeks and may be varied under

Division 7 (Final care and protection orders) to extend the term of the order for an additional period of up to 8 weeks each time a variation is sought.

#### **245 Review**

(1) The Minister must review the first 12 months of operation (the *review period*) of this Act in relation to therapeutic protection, to determine whether therapeutic protection is being provided in appropriate cases and appropriate ways and to evaluate the effectiveness of therapeutic protection orders.

(2) The Minister inform the Assembly of the terms of reference for the review.

(3) The Minister must present a report of the review to the Legislative Assembly not later than the first sitting day after a 3 month consideration period commencing on the first day after the end of the review period.

#### ***Division 6—Specific issues orders***

#### **246 Specific issues orders**

(1) On application under this Part, the court may make any specific issues order it considers appropriate in relation to a child or young person if satisfied that there are reasonable grounds for believing that the child or young person is in need of care and protection or would be in need if an order were not made.

(2) A specific issues order is an order relating to the care and protection of a child or young person (other than an assessment order).

(3) Without limiting subsection (2), the specific issues orders that may be made in relation to a child or young person include the following:

- (a) an order relating to the day-to-day or long-term care, welfare or development of the child or young person;
- (b) an order requiring or authorising the chief executive to require a named person or Territory authority to give the chief executive oral or written information relating to the care, protection, welfare or development of a child or young person;
- (c) an order directing that a named person not live at the same premises as the child or young person (including that someone who lives in the same premises as the child or young person stop or refrain from living at those premises);

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- (d) an order directing that a party to the application, or anyone else, have no contact with the child or young person;
- (e) an order that the child or young person submit to the jurisdiction of the mental health tribunal to allow the tribunal—
  - (i) to decide whether the child or young person is mentally dysfunctional or mentally ill; and
  - (ii) if the tribunal decides that the child or young person is mentally dysfunctional or mentally ill—to make recommendations to the court as to how the child or young person should be dealt with;
- (f) a supervision order;
- (g) an order requiring a named person to do a stated thing, refrain from doing a stated thing or observe a stated condition;
- (h) such ancillary or other orders as the court thinks fit.

**247 Restriction on cross-application**

A person may only cross apply on an application for a specific issues order for—

- (a) a specific issues order; or
- (b) an assessment order for a special assessment; or
- (c) a residence order.

**248 Notice of making, varying or extending certain specific issues orders**

**(1)** This section applies to a specific issues order in relation to a child or young person—

- (a) directing someone to stop or refrain from living in the same premises as the child or young person; or
- (b) directing a named person to have no contact with the child or young person; or
- (c) requiring a named person to do a stated thing, refrain from doing a stated thing or observe a stated condition.

**(2)** If the court makes, varies or extends an order to which this section applies, the court must cause a copy of the order, or a copy of the order as varied or extended, to be—

- (a) served personally on the person directed to do a thing, cease or refrain from doing a thing or observe a condition; and

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- (b) served on the chief executive and the community advocate; and
  - (c) given to—
    - (i) the commissioner of police; and
    - (ii) each other person who was a party to the proceeding; and
    - (iii) any other person the court considers appropriate.
- (3) Despite paragraph (2) (a), if it appears to the court that it is not practicable to serve a document required to be served under subsection (2) personally, the court may—
- (a) order that the copy of the order be served by such other means as the court thinks just; or
  - (b) make an order for substituted service.
- (4) If the court is satisfied, having regard to the material before it, that it is appropriate to do so, the court may direct that a document required to be served on someone under subsection (2) be served by a police officer.
- (5) If the court gives a direction for service by a police officer, the commissioner of police must, when requested to do so by the registrar, arrange for the document to be served by a police officer.

***Division 7—Final care and protection orders***

**249 Initial consideration of applications**

- (1) The court must initially consider—
- (a) an application for a final care and protection order; or
  - (b) an application for the variation or revocation of a final care and protection order; or
  - (c) a cross-application on an application for a final care and protection order;

within 5 working days after the day the application, or cross-application, is filed.

- (2) After initially considering an application (the ***main application***) or cross-application, the court must—
- (a) if satisfied that no purpose would be served by an adjournment—decide the main application or cross-application; or
  - (b) in any other case—set a date to begin hearing the main application or cross-application that is not more than 10 weeks after the day



the main application is filed, and adjourn the main application or cross-application.

**(3)** If the court fails, for whatever reason, to begin hearing the main application or cross-application within 10 weeks after the day the main application is filed, an order or direction made in relation to the proceeding before that day continues in force until the main application or cross-application is decided.

**250 Restriction on cross-application**

A person may only cross apply on an application for a final care and protection order for—

- (a) an assessment order for a special assessment; or
- (b) a specific issues order; or
- (c) a residence order.

**251 Before application adjourned**

**(1)** Before adjourning an application or cross-application under this Division, the court—

- (a) must define the matters which are in dispute and consider the length of hearing required; and
- (b) must make such directions as are necessary to facilitate the hearing; and
- (c) if a specific issues order or assessment order is in force, may—
  - (i) extend the length of the order in accordance with subsection 213 (3); or
  - (ii) revoke the order; and
- (d) may order that a meeting be held to find out or resolve the issues in dispute; and
- (e) may make 1 or more of the following orders (*interim orders*) to have effect for a stated period ending on or before the day the application or cross application is decided:
  - (i) an order conferring interim parental responsibility for the child or young person on the chief executive or someone else;
  - (ii) a contact order;
  - (iii) an assessment order;
  - (iv) a specific issues order.

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- (2) The types of directions that the court may give under paragraph (1) (b) include a direction—
- (a) setting a schedule for the filing of evidence; and
  - (b) providing a time for the making of any further direction required.
- (3) Before making an interim order, the court may require the chief executive to provide a care plan for the child or young person who is the subject of the hearing for the period of the adjournment.

**252 Court ordered meeting**

- (1) A meeting ordered by the court under paragraph 251 (1) (d)—
- (a) must be attended by the chief executive and someone with parental responsibility for the child or young person who is the subject of the proceeding; and
  - (b) may be attended by—
    - (i) a party to the proceeding; and
    - (ii) the representative of a party to the proceeding; and
    - (iii) a person who was served with the application for the care and protection order; and
    - (iv) with the leave of the court, anyone who has an interest in the proceeding.
- (2) The court must appoint someone mentioned in subsection (1) to preside over the meeting.
- (3) Evidence of anything said or done at a meeting is not admissible in the proceeding to which it relates except with—
- (a) the consent of the parties to the proceeding; or
  - (b) the leave of the court.
- (4) The person presiding at a meeting must report the outcome of the meeting to the court.

**253 Variation of interim orders**

- (1) A party to the proceeding may apply to the court for the variation of an interim order.
- (2) The court must hear and decide an application for variation within 5 working days after the day the application is filed.
- (3) After hearing an application, the court must—

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- (a) vary the terms of the interim order; or
- (b) make another order available under paragraph 251 (1) (e) in substitution for the order sought to be varied; or
- (c) dismiss the application.

(4) If, but for this subsection, an interim order in force on the day an application for a variation is filed would expire on a day before the hearing of the application, that order continues in force until the application is heard and decided.

**254 Appeal from assessment and specific issues interim orders**

If the court makes an interim order that is an assessment order or a specific issues order, the order may be appealed from as if it had been made as a short care and protection order.

**255 Final care and protection orders**

(1) The court may declare a child or young person to be in need of care and protection if satisfied that a final care and protection order should be made in relation to the child or young person.

(2) The court may not accept the admission of the parties to a proceeding that a child or young person is in need of care and protection but must satisfy itself that the child or young person is in need of care and protection.

(3) After making a declaration, the court may make a final care and protection order if satisfied that such an order is necessary to secure—

- (a) the care and protection of the child or young person; or
- (b) proper arrangements in existence for the care and protection of the child or young person.

(4) A final care and protection order in relation to a child or young person may include 1 or more of the following:

- (a) an order that the chief executive supervise the care and protection of the child or young person in relation to matters mentioned in the order;
- (b) an order conferring parental responsibility for the child or young person on the chief executive or someone else;
- (c) an enduring parental responsibility order that has effect until the child or young person turns 18;

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- (d) an order that the child or young person submit to the jurisdiction of the mental health tribunal to allow the tribunal—
    - (i) to decide whether the child or young person is mentally dysfunctional or mentally ill; and
    - (ii) if the tribunal decides that the child or young person is mentally dysfunctional or mentally ill—to make recommendations to the court as to how the child or young person should be dealt with;
  - (e) any other order the court considers appropriate.
- (5) A final care and protection order has effect for a stated period or, if no period is stated, until the child or young person becomes an adult.
- (6) Subsection (5) does not apply to the following final care and protection orders:
- (a) an enduring parental responsibility order;
  - (b) a therapeutic protection order;
  - (c) an order that a child or young person submit to the jurisdiction of the mental health tribunal.
- (7) The court does not need to make a declaration that a child or young person is in need of care and protection before it may make a contact order, a domestic violence order or a restraining order on an application for a final care and protection order.

**256 Therapeutic protection order made as final care and protection order**

A therapeutic protection order made as a final care and protection order must comply with section 244.

**257 Parental responsibility**

A final care and protection order dealing with parental responsibility for a child or young person may—

- (a) vest parental responsibility in more than 1 person; and
- (b) state or limit the manner in which a person may exercise his or her responsibilities for the child or young person under that order; and
- (c) state the responsibilities that someone has or does not have; and
- (d) state how someone must consult with someone else with parental responsibility before exercising an aspect of parental responsibility.

**258 Restriction on making final care and protection orders**

The court may not make a final care and protection order in relation to a child or young person unless it has considered a care plan prepared by the chief executive in relation to the child or young person.

**259 What is a care plan?**

(1) A *care plan* for a child or young person is a written plan of the chief executive's proposals in relation to the care and protection of the child or young person.

(2) The care plan may include proposals for the following:

- (a) allocation of parental responsibility in relation to the child or young person;
- (b) the type of placement which will be sought or provided for the child or young person if he or she is to live away from home, including any interim placement arrangements;
- (c) whether the chief executive believes restoration of the child or young person to his or her parents is a realistic possibility and, if the chief executive believes it is, a description of the changes at the home or by the parents that the chief executive believes would need to occur before the chief executive would consider it safe for the child or young person to return to his or her parents;
- (d) contact between the child or young person and his or her parents (and anyone else as appropriate);
- (e) the agency with whom arrangements are to be made concerning the provision of care and protection, supervision or other support for the child or young person;
- (f) services to be provided in relation to the child or young person.

(3) Unless the court orders otherwise, the chief executive must serve a copy of a care plan provided for a proceeding on each other party to the proceeding.

**260 Enduring parental responsibility orders**

(1) The court may make an enduring parental responsibility order in relation to a child or young person if—

- (a) no-one with parental responsibility for the child or young person (other than under a care and protection order) has had care of him or her for a continuous period of at least 2 years, or for periods

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that total at least 2 years within the period of 3 years, immediately before the order is made; and

- (b) the child or young person has been living with the person in whose favour the order is sought (the *proposed carer*) under a care and protection order for a continuous period of 2 years, or for periods that total at least 2 years within the period of 3 years, immediately before the order is made; and
  - (c) satisfied that—
    - (i) no-one with parental responsibility for the child or young person (other than under a care and protection order) (a *previous carer*) is able or willing to exercise that responsibility; or
    - (ii) it is not in the best interests of the child or young person for a previous carer to exercise parental responsibility for the child or young person; and
  - (d) satisfied that the proposed carer—
    - (i) is a suitable person to have parental responsibility for the child or young person; and
    - (ii) is willing and able to assume day-to-day and long-term responsibility for the care, welfare and development of the child or young person; and
  - (e) in relation to an indigenous child or young person—it has given any relevant indigenous organisation a reasonable opportunity to provide a written report about the making of the proposed order.
- (2) An enduring parental responsibility order is—
- (a) a residence order in favour of the proposed carer; and
  - (b) an order conferring parental responsibility for the day-to-day and long-term care, welfare and development of the child or young person on the proposed carer for the duration of the order.

**261 Restriction on making enduring parental responsibility orders**

The court may not make an enduring parental responsibility order in favour of the chief executive.

**262 Effect of enduring parental responsibility order on others with parental responsibility**

No-one may discharge parental responsibility for a child or young person in a way that would be incompatible with the discharge of parental

responsibility of someone who has an enduring parental responsibility order in relation to the child or young person.

### **263 Financial contributions and burdens**

(1) If the court makes a final care and protection order conferring parental responsibility (whether sole or shared) for a child or young person on the chief executive, the court may order someone with parental responsibility for the child or young person to pay to the chief executive the amount by way of contribution to the cost of the care of the child or young person that the court, having regard to the financial circumstances of the person, decides.

(2) If the court makes an order under subsection (1), the amount ordered to be paid is a debt due and payable by the former caregiver to the Territory.

(3) Unless the court orders otherwise, if the court makes a care and protection order involving a financial cost to a person, the person is responsible for the cost.

(4) If—

- (a) the court makes an enduring parental responsibility order; and
- (b) immediately before the order was made the child or young person was in the care of the chief executive (however described);

the chief executive may arrange for the provision of financial or other assistance to the person in whose favour the order is made, on the terms and conditions, that the chief executive considers appropriate.

### **264 Application for variation and revocation of orders**

(1) A person may, with the leave of the court, apply to the court for the variation or revocation of a final care and protection order on the ground that—

- (a) the child or young person is no longer in need of care and protection; or
- (b) the order made by the court does not secure—
  - (i) the care and protection of the child or young person; or
  - (ii) proper arrangements in existence for the care and protection of the child or young person.

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- (2) The court may not grant leave to someone to apply under subsection (1) on more than 1 occasion in a 12 month period unless satisfied that there are exceptionable circumstances that justify doing so.
- (3) The court must grant leave to apply to someone who was a party to the proceeding in which the final care and protection order sought to be varied was made unless subsection (2) prevents it from doing so.
- (3) An application for a variation must specify—
- (a) the provision sought to be varied; and
  - (b) the nature of the proposed variation.
- (4) On application under subsection (1), the court must list the application so that there is a directions hearing in relation to it within 5 working days after the day the application is filed.
- (5) At a directions hearing in relation to an application under subsection (1), the court—
- (a) must deal with the application in the same way as it would deal with an application for a final care and protection order at a directions hearing; and
  - (b) may take any action in relation to the application that it could take if the application were an application for a final care and protection order.

**265 Variation and revocation of orders**

- (1) On application under subsection 264 (1), the court must—
- (a) if satisfied that it is in the best interests of the child or young person to do so—
    - (i) vary the order; or
    - (ii) revoke the order; or
  - (b) in any other case—dismiss the application.
- (2) The court may not vary or revoke an order under this section unless the applicant has proved to the satisfaction of the court that it is in the best interests of the child or young person to vary or revoke the order.
- (3) The orders the court may make when varying an order under subparagraph (1) (a) (i) include the following:
- (a) substituting the order with another order the court may make on application for a final care and protection order;



- (b) changing the period for which the order has effect;
- (c) varying a term or condition in the order;
- (d) making an additional order that the court may make on application for a final care and protection order.

**266 Continuation of existing orders**

If, but for this section, a final care and protection order in force on the day an application for a variation of the order under subsection 264 (1) is filed would expire on a day before the hearing of the application, that order continues in force until the application is heard and decided.

**267 Chief executive to report**

- (1) If, under a final care and protection order in force for a period longer than 6 months in relation to a child or young person—
- (a) the chief executive has parental responsibility for the child or young person; or
  - (b) the child or young person is subject to the supervision of the chief executive;

the chief executive must give a report under this section to—

- (c) the child or young person; and
  - (d) each person with parental responsibility for the child or young person; and
  - (e) a carer caring for the child or young person; and
  - (f) the community advocate; and
  - (g) the court.
- (2) A report under this section must include information in relation to the following:
- (a) the circumstances of the child or young person and the family with which he or she lives;
  - (b) the chief executive's performance of his or her obligations under the care and protection order;
  - (c) whether the chief executive considers the existing arrangements for the care and protection of the child or young person are in the best interests of the child or young person.
- (3) A report under this section in relation to a care and protection order must be given—

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- (a) if the order is in force for a period of less than 12 months—at least 1 month before the order expires but not earlier than 2 months before; or
- (b) if the order is in force for a period of 12 months or more—
  - (i) at least 1 month before each anniversary of the making of the order while the order is in force, but not earlier than 2 months before; and
  - (ii) if the order is due to expire more than 6 months but less than 12 months after the last report was provided—at least 1 month before the order expires but not earlier than 2 months before.

(4) The chief executive may also give a report to an interpreter, doctor or similar person if the chief executive considers it appropriate to do so to allow the person to bring the report to the attention of someone to whom the report must be provided.

(5) If the chief executive causes a report under this section to be prepared in relation to a child or young person, the chief executive may, before providing the report to someone mentioned in paragraph (1) (c), (d) or (e) or subsection (4), make such minor alterations to the report to protect the privacy and confidentiality of a person named in the report as the chief executive considers appropriate.

**268 Waiving of obligation to give report**

(1) If the chief executive is required to give a report about a child or young person under section 267 to someone mentioned in paragraph 267 (1) (c), (d) or (e) and—

- (a) the chief executive considers that to give the report to the person would not be in the best interests of the child or young person; or
- (b) the person cannot be found after reasonable inquiries;

the chief executive may apply to the court for an order waiving the need to comply with that section in relation to the person named in the order.

(2) If the ground for applying is that the chief executive considers that to give the report to the person would not be in the best interests of the child or young person, the chief executive must cause a copy of the application to be served on each person to whom the report is required to be given.

(3) On application under subsection (1), the court must order—

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- (a) if satisfied that—
- (i) to give a copy of the report to the named person would not be in the best interests of the child or young person; or
  - (ii) reasonable inquiries have been made and the person cannot be found;
- that the chief executive is not required to give a copy of the report to the person under section 267; or
- (b) in any other case—that the chief executive is required to provide the person with a copy of the report.

**(4)** An order under paragraph (3) (b) must specify whether the copy of the report is to be provided in full or in part.

**(5)** If the court makes an order under paragraph (3) (b) it may make such other orders in relation to the provision of the copy of the report as it considers appropriate.

**(6)** An application under subsection (1) may be heard *ex parte*.

**269 Failure to give report**

- (1)** If the chief executive has not—
- (a) given a report in accordance with section 267 to a person to whom the report is required to be given; and
  - (b) got an order waiving the requirement to give the report to the person to whom the report has not been given;

the community advocate may apply to the court for an order requiring the chief executive to give a report under section 267.

**(2)** The community advocate must cause a copy of an application to be served on the chief executive.

**(3)** If, on application, the court orders the chief executive to give a report, the chief executive must give the report in accordance with section 267 within 14 days after the day the court makes the order.

- (4)** If—
- (a) the court orders the chief executive to give a report; and
  - (b) the final care and protection order to which it relates ends within a month after the date of making of the order;

the court may extend the period of the final care and protection order so that it ends not more than 1 month after the date of making the order.

***Division 8—Safe custody***

**270 Circumstances in which child or young person may be taken into safe custody**

- (1) A magistrate may issue a warrant for the purpose of having a child or young person taken into safe custody if satisfied by evidence on oath or by the affidavit of the chief executive, an officer or a police officer that—
- (a) someone has contravened an order in force under this Part and as a result the child or young person to whom the order relates is in danger; or
  - (b) the child or young person who is the subject of an order in force under this Part is absent without lawful authority or excuse from the place in which the child or young person is required under the order to live and needs to be found and returned to such a place.
- (2) An application for a warrant may be made by the chief executive, an officer or a police officer and must be in the form prescribed under the regulations.
- (3) When acting under a warrant, the chief executive, officer or police officer may—
- (a) be accompanied by such authorised people and police officers as is reasonable or necessary; and
  - (b) use such force as is reasonable.
- (4) If a child or young person is taken into safe custody under a warrant issued under this section, the chief executive must ensure that as soon as practicable and in any event within 1 working day after the day the child or young person is taken into safe custody, the matter is brought before the court.
- (5) However, the child or young person is not required to be brought before the court (unless the court directs otherwise).
- (6) A child or young person taken into safe custody under this section must be placed by the person who executed the warrant—
- (a) in the place stated in the warrant; or
  - (b) if no such place is stated—in a place decided by the chief executive.

**271 Court's powers in relation to child or young person taken into safe custody**

If a child or young person has been taken into safe custody, when the matter is brought before the court under section 270, the court may do 1 or more of the following in relation to the child or young person:

- (a) make or vary an assessment order;
- (b) make or vary a care and protection order or interim care and protection order;
- (c) make such other orders as it considers necessary or desirable.

***Division 9—Representation of wishes of child or young person***

**272 Opportunity for child or young person to be heard**

The court must allow a child or young person who is the subject of a proceeding under this Chapter a reasonable opportunity to give his or her views or wishes personally to the court as to his or her ongoing care and protection unless satisfied that the child or young person is not capable of doing so.

**273 Court informing self of child's or young person's wishes**

The court should inform itself of the views or wishes of a child or young person—

- (a) by having regard to—
  - (i) anything said by the child or young person personally to the court; or
  - (ii) anything said by a representative of the child or young person in relation to the child's or young person's views or wishes; or
  - (iii) anything contained in a report (whether ordered by the court or otherwise) given to the court in relation to the child's or young person's views or wishes; or
- (b) by any other means the court considers appropriate, including by the child or young person expressing his or her wishes through a statement or submission by a carer, an expert or someone else.

**274 No requirement to express views or wishes**

Nothing in this Part permits the court or a person to require a child or young person to express his or her views or wishes in relation to a matter.

***Division 10—Procedures***

**275 Applications—scheduled matters**

A person making an application in relation to a child or young person of the type mentioned in column 2 of an item in Schedule 1 must cause a copy of the application to be served on each person mentioned in column 3 of the item at least the number of days (if any) stated in column 4 of the item before the hearing of the application.

**276 Accompaniments to applications**

An application under this Part must—

- (a) be in accordance with any form approved for the purpose by the court; and
- (b) be accompanied by the following:
  - (i) a written statement of the substance of the oral evidence that the applicant intends to adduce at the hearing of the application;
  - (ii) a written notice of any document or expert report the applicant intends to rely on at the hearing of the application.

**277 Form of statements and reports**

Unless otherwise directed by the court, a statement or report prepared for use in a proceeding under this Part must be in the form of an affidavit or must—

- (a) be signed by the person making the statement; and
- (b) be dated; and
- (c) contain a declaration to the effect that the maker of the statement or the provider of the report believes it to be true and understands that it may be placed before the court.

**278 Oral applications**

- (1) Despite any requirement for service in this Act, someone may, with the leave of the court, make an oral application under this Act in relation to a proceeding before, during or after the hearing of the proceeding.
- (2) If an oral application is made, the court must direct the applicant as to—
  - (a) whether service of a written application is required; and
  - (b) whether a written application is required or not, which (if any) of the requirements for service or notice of the making of an application are to apply to the oral application and how they are to apply.
- (3) If the court does not give directions under subsection (2) in relation to an oral application, no service is required under this Act.

**279 Ex parte proceedings**

If someone makes an application under this Part, the person may, at the same time, seek the leave of the court to have the application heard ex parte.

**280 Parties**

- (1) The following people are parties to an application under this Part:
  - (a) the applicant;
  - (b) the child or young person;
  - (c) a person served with a copy of the application who takes part in the proceeding (other than as a witness or as a representative);
  - (d) someone, other than someone mentioned in paragraph (c), who is a participant in the proceeding (other than as a witness or as a representative) who has—
    - (i) attended at the request of the court and been joined as a party to the proceeding; or
    - (ii) been joined as a party to the proceeding on his or her own application.
- (2) However, the community advocate is not a party to a proceeding under this Part unless he or she applies to be joined as a party.

**281 Nonattendance of party**

If someone required to attend a proceeding under this Part, who has been served with a copy of the application, fails to attend the hearing of the application, the court must—

- (a) adjourn the proceeding and make such order as to further service of that person as the court thinks fit; or
- (b) make such orders or directions as it thinks fit, including orders or directions that are binding on the person.

**282 Joining parties—court initiated**

If, in a proceeding on an application under this Part, the court is satisfied that it should make an order binding on or affecting someone who is not a party to the proceeding, the court—

- (a) may join that person as a party to the proceeding; and
- (b) must—
  - (i) before making the order; or
  - (ii) if, because of the urgency of the case it is not possible to do so before making the order—within a reasonable time after making the order;

allow the person a reasonable opportunity to make representations to the court as to why the order should not be made.

**283 Joining parties—on application**

(1) The court may order that someone be joined as a party to a proceeding under this Part on application by the person if it considers it appropriate to do so.

(2) If the applicant is the community advocate, the court must join him or her as a party to the proceeding.

(3) If the applicant has been caring for the child or young person who is the subject of the proceeding for a continuous period of 2 years or more, there is a rebuttable presumption in favour of joining him or her as a party to the proceeding.

(4) An application may be made orally without notice to the parties to the proceeding, but the court must give each party an opportunity to be heard on the application before deciding whether to join the applicant as a party.



**284 Joined parties—filed material**

- (1) If the court makes an order under section 282 or 283 that someone be joined as a party to a proceeding—
- (a) the person is not entitled to material already filed in the proceeding unless the court so directs; and
  - (b) the court—
    - (i) must direct what material that has already been filed must be provided to the person, and by whom; and
    - (ii) may make such further orders or directions for the conduct of the proceeding as the court thinks fit.

**285 Removal of parties**

- (1) If, on application by a party or on its own initiative, the court is satisfied that a party to a proceeding—
- (a) has been improperly or unnecessarily joined; or
  - (b) has ceased to be a proper or necessary party;

the court may order that the party cease to be a party and may make such further orders or directions for the conduct of the proceeding as the court considers appropriate.

- (2) Before making an order under this section, the court must provide each party to the proceeding with an opportunity to be heard on the application or motion.

**286 Notice of address for service**

A party to a proceeding under this Part must file with the court and serve on each other party to the proceeding, a notice containing his or her name and address for service of documents.

**287 Representation**

- (1) A party to a proceeding under this Part may appear before the court—
- (a) in person; or
  - (b) represented by a lawyer; or
  - (c) with the leave of the court—represented by someone else.
- (2) Also, the chief executive may appear before the court by his or her delegate or someone authorised to appear on his or her behalf.

(3) If a party to a proceeding under this Part (the *represented party*) is represented by a lawyer in the proceeding, the lawyer must file with the court and serve on each other party to the proceeding written notice that he or she acts on behalf of the represented party and an address in the Territory for service of documents.

(4) A lawyer may not cease to be the lawyer for a party to a proceeding under this Part unless and until the lawyer files with the court and serves on each other party to the proceeding, written notice to that effect.

### **288 Procedure at hearing**

(1) Except as expressly provided in this Act, a proceeding under this Part must be conducted with as little formality and technicality and as quickly as the requirements of this or any other Act and a proper consideration of the matter permit.

(2) The court may, for good cause, order that someone (including the child or young person who is the subject of the proceeding or someone with parental responsibility for him or her) may not be present in the room where the court is sitting during the whole or such part of the hearing of the proceeding as the court decides.

### **289 Reasons for decisions**

(1) A party to a proceeding may, within 28 days after the day an order is made by the court under this Part, request the court in writing to give a statement of reasons in respect of the order.

(2) On receiving a request under this section, the court must, as soon as practicable but in any event within 28 days after the day of receipt, give a written statement of reasons for the order made.

### **290 Service of orders**

As soon as practicable after making an order under this Part, the court must cause a copy of the order to be served on—

- (a) the chief executive; and
- (b) the community advocate; and
- (c) each lawyer representing a party who has, prior to the date of the order, filed a notice of address for service; and
- (d) if no lawyer representing a party has filed a notice and the party has, prior to the date of the order, filed a notice of address for service—the party.

**291 Court may inform itself as appropriate**

(1) In a proceeding under this Part, the court is not bound by rules of evidence but may inform itself of a matter in any manner that it considers appropriate.

(2) In addition to any other manner of informing itself before making, extending, varying or revoking an order under this Part, the court may—

- (a) admit and act on hearsay evidence; and
- (b) take submissions from someone who is not a party.

**292 Court may call witnesses**

(1) In a proceeding under this Part, the court may, on its own initiative, call as a witness a person whose evidence may, in its opinion, be of assistance to the court.

(2) If—

- (a) someone required to be served with an application under this Part has been served but has failed to attend a hearing to which the application relates; and
- (b) the court considers that the presence of the person is necessary to allow the court to hear and decide the application;

the court may give such directions or issue and cause to be executed such summonses or warrants, as it considers appropriate to bring about the attendance of the person.

(3) A summons issued under this section must include a statement to the effect that, if the person does not attend the court, a warrant may be issued to bring the person before the court, and that there is a penalty for refusal to attend or failure to attend without reasonable excuse.

(4) A person must not, without reasonable excuse, refuse or fail to attend court in answer to a summons directed to him or her.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(5) If—

- (a) a summons has been served on someone under this section; and
- (b) the person to whom the summons is issued does not appear to answer to it;

the court may direct the issue of a warrant to bring that person before the court.

**293 Child or young person as witness**

- (1) A child or young person may not be called as a witness in a proceeding under this Part without the leave of the court.
- (2) Even if the court gives leave for a child or young person to be called as a witness, the court may prohibit cross-examination of the child or young person if satisfied that it is in the best interests of the child or young person to do so.

**294 Restriction on taking evidence**

If it appears to the court to be necessary or convenient for the proper determination of the matters at issue in a proceeding, the court may restrict the manner or the extent to which someone, including a child or young person, is to be examined or cross-examined for the proceeding.

**295 Withdrawal or discontinuance of applications**

- (1) An applicant for an order under this Part may withdraw or discontinue his or her application before the determination of the proceeding by notifying, in writing, each person served with the application and filing a notice of withdrawal or discontinuance with the court.
- (2) A notice of withdrawal or discontinuance in relation to a proceeding must, if the proposed withdrawal or discontinuance has the consent of another party or parties, have the consent endorsed on it.

**296 Consent orders**

- (1) The parties to an application under this Part may file with the court a draft of an order (the *draft order*) which, if made, would have the consent of the parties.
- (2) The draft order must be—
  - (a) in accordance with any form approved by the court; and
  - (b) signed by—
    - (i) each party to the application; and
    - (ii) each person who will be required to comply with the order or who will be directly affected by the order.

**297 Costs**

- (1) In this section:

*court* means a court exercising jurisdiction under this Act.

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- (2) This section applies to a proceeding under this Part, including an interlocutory proceeding and an appeal from a decision made under this Part.
- (3) Parties to a proceeding to which this section applies must bear their own costs unless a court orders otherwise.
- (4) A court may order the payment of costs in relation to a proceeding to which this section applies if satisfied that—
- (a) an application in relation to the proceeding is frivolous, vexatious or has not been made in good faith; or
  - (b) there are exceptional circumstances that justify such an order.
- (5) Subject to subsection (6), a court may order costs be paid by, or apportioned between, the parties in such manner as the court orders.
- (6) If the Childrens Court makes an order for the payment of costs in relation to a proceeding to which this section applies, the costs allowed are up to 50% of the costs that would be allowed if the proceeding had been heard in the Supreme Court.
- (7) A court may award costs to someone if the hearing of a proceeding to which this section applies is adjourned because—
- (a) someone else required to attend the hearing did not attend; or
  - (b) someone else contravened a direction or order of the court.
- (8) A court may make an order for costs under this section on the application of a party to the proceeding or on its own initiative.
- (9) An applicant must cause the application to be served on the party from whom the costs are sought.

## **CHAPTER 8—TRANSFER OF CHILD CARE AND PROTECTION ORDERS AND PROCEEDINGS**

### **PART 1—PRELIMINARY**

#### **298 Object of ch 8**

The object of this Chapter is to provide for the transfer of care and protection orders and proceedings between the Territory and a State or between the Territory and New Zealand—

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

#### **299 Definitions for ch 8**

(1) In this Chapter:

*child care and protection order*, in relation to a child or young person, means an order (other than an interim order) under a child welfare law in relation to the child or young person that relates to an aspect of parental responsibility (however that responsibility is described) if the order is in favour of—

- (a) a government department or statutory authority; or
- (b) a person who is the chief executive of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority; or
- (c) an organisation or the chief executive (however described) of an organisation.

*child care and protection proceeding* means a proceeding brought in a court under a child welfare law for the making of a care and protection order or an interim order or for the variation or revocation or the extension of the period of such an order.

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**Childrens Court**, in relation to a State, means the court with jurisdiction to hear and decide a child care and protection proceeding at first instance.

**child welfare law** means—

- (a) Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action); or
- (b) a law that, under a notice under subsection (2) that has not been revoked, is declared to be a child welfare law for this Chapter; or
- (c) a law of a State that corresponds to Chapter 7, Part 3.

**interim order** means an order under section 313.

**interstate law** means—

- (a) a law that, under a notice under subsection (3) that has not been revoked, is declared to be an interstate law for Chapter 8 (Transfer of child care and protection orders and proceedings); and
- (b) a law of a State that corresponds to this Chapter.

**interstate officer**, in relation to a State, means—

- (a) the holder of an office or position that, under a notice under subsection (4) that has not been revoked, is declared to be an office or position the holder of which is the interstate officer in relation to the State for this Chapter; or
- (b) the person holding the office or position to which there is given under the child welfare law of the State, principal responsibility for the protection of children and young people in the State.

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

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

**State** includes New Zealand.

(2) The Minister may, by notice published in the Gazette, declare a law of a State to be a child welfare law for this Chapter if satisfied that the law substantially corresponds to Chapter 7 (Children and young people in need

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of care and protection), Part 3 (Care and protection orders and emergency action).

**(3)** The Minister may, by notice published in the Gazette, declare a law of a State to be an interstate law for this Chapter if satisfied that the law substantially corresponds to this Chapter.

**(4)** The Minister may, by notice published in the Gazette, declare an office or position in a State to be an office or position the holder of which is the interstate officer in relation to the State for this Chapter.



**PART 2—TRANSFER OF CERTAIN CHILD CARE AND PROTECTION ORDERS**

***Division 1—Administrative transfers***

**300 When chief executive may transfer order**

- (1) The chief executive may transfer a child care and protection order (the *home order*) to a participating State if—
- (a) in his or her opinion, a child care and protection order to the same or a similar effect as the home order could be made under the child welfare law of the State; and
  - (b) the home order is not subject to an appeal to the Supreme Court or affected by a proceeding for judicial review; and
  - (c) the relevant interstate officer has consented to the transfer and to the proposed terms of the child care and protection order to be transferred (the *interstate order*); and
  - (d) if the chief executive is satisfied that the child or young person who is the subject of the order is capable of understanding the proposal to transfer the order—the chief executive has sought and considered the views of the child or young person; and
  - (e) anyone whose consent to the transfer is required under section 301 has consented.
- (2) The chief executive may include in the interstate order a condition that could be included in a child care and protection order of that type made in the relevant participating State.
- (3) In deciding whether a child care and protection order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the chief executive may not take into account the period for which it is possible to make such an order in the State.
- (4) The period for which an interstate order is to remain in force must be decided by the chief executive and stated in the order.
- (5) The period must be—
- (a) if the remaining period of the home order at the date of registration of the interstate order in the participating State is a period for which an order may be made under the child welfare law of the State—the remaining period; or

- (b) in any other case—as similar a period as may be made under that law but in no case longer than the period of the home order.

### **301 People whose consent is required**

(1) For paragraph 300 (1) (d), consent to a transfer under this Division is required from—

- (a) in relation to the proposed transfer of a young person of or over the school-leaving age—the young person; and
- (b) each person with parental responsibility for the child or young person; and
- (c) each person who has a contact order in relation to the child or young person in his or her favour; and
- (d) each person not included in paragraph (a) or (b) who has a residence order in relation to the child or young person in his or her favour.

(2) If the child or young person lives in a State with someone who has a residence order in relation to the child or young person in his or her favour, it is sufficient if each person required to consent consents to the child or young person living in the State and their consent to the transfer is not required.

(3) If someone with parental responsibility for, or a residence order in relation to, the child or young person lives in, or is intending to live in, the relevant participating State, it is sufficient if each other person with parental responsibility or a residence order in relation to the child or young person consents to the child or young person living in the State and the consent of the person to the transfer is not required.

(4) However, a person's consent is not required if—

- (a) the person cannot, after reasonable inquiry, be found; or
- (b) the person is incapable of consenting.

### **302 Notification to child or young person and people with parental responsibility**

(1) If the chief executive has decided to transfer a child care and protection order to a participating State under this Division, the chief executive must serve—

- (a) each person with parental responsibility for the child or young person who is the subject of the order; and

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- (b) if the order relates to a young person—the young person; and
- (c) the community advocate;

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

(2) Service of a notice on someone is not required if it cannot be effected after making all reasonable efforts.

**303 Limited period for review of decision**

(1) A proceeding for judicial review of a decision of the chief executive to transfer a child care and protection order to a participating State must be commenced, and originating process must be served on the chief executive, within 10 working days after the date of the chief executive's decision.

(2) A proceeding for judicial review must be brought in accordance with the rules of the Supreme Court.

(3) However, the Supreme Court cannot extend the time fixed by subsection (1).

(4) The lodging (or filing) and service on the chief executive of an originating process mentioned in subsection (1) stays the operation of the decision until the proceeding is determined.

***Division 2—Judicial transfers***

**304 When court may make an order under div 2**

The court may make an order transferring a child care and protection order to a participating State if—

- (a) the chief executive applies for the making of the order; and
- (b) the child care and protection order is not subject to an appeal to the Supreme Court; and
- (c) the relevant interstate officer has consented to the transfer and the proposed terms of the child care and protection order to be transferred.

**305 Service of application**

The chief executive must as soon as possible cause a copy of an application for an order transferring a child care and protection order to a participating State to be sent by post or given to each person to whom he or she would have been required under Chapter 7 (Children and young people

in need of care and protection), Part 3 (Care and protection orders and emergency action) to send or give a copy of an application by him or her for the variation of the order sought to be transferred.

### **306 Type of order**

(1) If the court decides to transfer a child care and protection order (the *home order*), the form of the child care and protection order to be transferred (the *interstate order*) is to be a child care and protection order that could be made under the child welfare law of the participating State and that the court believes to be—

- (a) to the same or a similar effect as the home order; or
- (b) otherwise in the best interests of the child or young person.

(2) The court may include in the interstate order a condition that could be included in a child care and protection order of that type made in the relevant participating State.

(3) In deciding whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the court should not take into account the period for which it is possible to make such an order in that State.

(4) The period for which an interstate order is to remain in force must be decided by the court and stated in the order.

(5) The period must be a period—

- (a) for which a child care and protection order of the type of the interstate order may be made under the child welfare law of the participating State; and
- (b) that the court considers appropriate.

### **307 Court to have regard to certain matters**

In deciding what order to make on an application under this Division the court must have regard to—

- (a) whether the chief executive or an interstate officer is in the better position to exercise powers and responsibilities under a child care and protection order relating to the child or young person; and
- (b) the desirability of a child care and protection order being an order under the child welfare law of the State where the child or young person lives.

**308 Court must consider report from chief executive**

- (1) The court may not make an order under this Division unless it has received and considered a care plan prepared by the chief executive in relation to the proposed transfer.
- (2) Unless the court orders otherwise, the chief executive must provide a copy of the care plan to each person who was a party to the proceeding in which the original order was made.

**309 Appeals**

- (1) A party to an application for an order under this Division may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring a child care and protection order to a participating State.
- (2) An appeal under subsection (1)—
  - (a) must be instituted, and originating process must be served on the chief executive, within 10 working days after the day the order complained of was made; and
  - (b) operates as stay of the order.
- (3) An appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.
- (4) However, the Supreme Court cannot extend the time fixed by paragraph (2) (a).
- (5) The Supreme Court must hear and decide the appeal as expeditiously as possible.
- (6) After deciding the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.
- (7) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.
- (8) The Supreme Court may make any interim short care and protection order pending the hearing of the appeal that the Childrens Court has jurisdiction to make.

### **PART 3—TRANSFER OF CHILD CARE AND PROTECTION PROCEEDINGS**

#### **310 When court may make order under pt 3**

(1) The court may make an order (the *transfer order*) under this Part transferring a child care and protection proceeding pending in the court to the Childrens Court in a participating State if—

- (a) the chief executive applies for the making of the order; and
- (b) the relevant interstate officer has consented to the transfer.

(2) The proceeding is discontinued in the court when the transfer order is registered in the Childrens Court in the participating State in accordance with the interstate law.

#### **311 Service of application**

The chief executive must as soon as possible serve a copy of an application for a transfer order transferring a child care and protection proceeding to the Childrens Court in a participating State on—

- (a) each person with parental responsibility for the child or young person; and
- (b) if the order relates to a young person—the young person; and
- (c) the community advocate.

#### **312 Court to have regard to certain matters**

In deciding whether to make an order transferring a proceeding under this Part the court must have regard to—

- (a) whether another proceeding relating to the child or young person is pending, or has previously been heard and decided, under the child welfare law in the participating State; and
- (b) the place where any matter giving rise to the proceeding in the court happened; and
- (c) the place where the child or young person, each person with parental responsibility for the child or young person and anyone else who is significant to the child or young person lives or is likely to live.

**313 Interim order**

- (1) If the court makes an order transferring a proceeding under this Part, the court must also make an interim order that relates to the care, welfare or development of the child or young person.
- (2) An interim order may—
  - (a) give responsibility for an aspect of parental responsibility for the child or young person, or allow contact with, a person; and
  - (b) give responsibility for the supervision of the child or young person to the interstate officer in the participating State or another person in that State to whom responsibility for the supervision of a child or young person could be given under the child welfare law of that State.
- (3) An interim order remains in force for the period, not longer than 30 days, that is stated in the order.
- (4) The Childrens Court in the participating State may vary or revoke, or extend the period of, an interim order.

**314 Appeals**

- (1) A party to an application for an order under this Part may appeal to the Supreme Court, on a question of law, from a final order made in the proceeding transferring a child care and protection proceeding to the Childrens Court in a participating State.
- (2) An appeal—
  - (a) must be instituted, and originating process must be served on the chief executive, within 3 working days after the day the order complained of was made; and
  - (b) operates as stay of the order but not of any interim order made at the same time as the order.
- (3) An appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.
- (4) However, the Supreme Court cannot extend the time fixed by subsection (2) (a).
- (5) The Supreme Court must hear and decide the appeal as quickly as possible.

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- (6) After deciding the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.
- (7) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.
- (8) The Supreme Court may—
- (a) make an order staying the operation of an interim order made at the same time as the order that is the subject of the appeal or may, by order, vary or revoke or extend the period of that interim order; and
  - (b) make an interim short care and protection order that the Childrens Court has jurisdiction to make pending the hearing of the appeal.



## **PART 4—REGISTRATION**

### **315 Filing and registration of interstate documents**

- (1) The chief executive must as soon as possible file in the court for registration a copy of a child care and protection order transferred to the Territory under an interstate law.
- (2) The chief executive must as soon as possible file in the court for registration a copy of an order under an interstate law to transfer a child care and protection proceeding to the Territory, together with a copy of any interim order made at the same time.
- (3) The chief executive may not file in the court a child care and protection order or an order to transfer a child care and protection proceeding if, under the interstate law—
  - (a) the decision or order to transfer the child care and protection order or the order to transfer the child care and protection proceeding is subject to appeal or review or a stay; or
  - (b) the time for instituting an appeal or seeking a review has not expired.

### **316 Notification by appropriate registrar**

- (1) The registrar of the Childrens Court must immediately notify the appropriate officer of the Childrens Court in the sending State and the interstate officer in that State of—
  - (a) the registration of any document filed under section 315; or
  - (b) the revocation under section 318 of the registration of any document so filed.
- (2) If the registrar of the Childrens Court is notified under a provision of an interstate law equivalent to subsection (1) that the registration of a copy of a care and protection order or a care and protection proceeding transferred to the State under this Chapter has been revoked, the registrar must notify the chief executive.
- (3) On being notified, the chief executive must notify—
  - (a) the child or young person concerned; and
  - (b) each person with parental responsibility for the child or young person concerned; and

- (c) the parties to the proceeding in the Childrens Court in which the decision to transfer the order or proceeding was made.

### **317 Effect of registration**

**(1)** A child care and protection order registered in the court under this Part—

- (a) is for all purposes (except for appeal) a care and protection order of the relevant type made by the court on the day it is registered; and
- (b) may be varied or revoked, or the period of the order extended, or a contravention of it dealt with, under this Act.

**(2)** An interim order registered in the court under this Part—

- (a) is for all purposes (except for appeal) an interim short care and protection order made by the Court on the day it is registered; and
- (b) may be varied, or the period of the order extended, or a contravention of it dealt with, under this Act.

**(3)** If an order under an interstate law to transfer a child care and protection proceeding to the Territory is registered under this Part, the proceeding is taken to have been commenced in the court on the day the order is registered.

### **318 Revocation of registration**

**(1)** An application for revocation of the registration of a document filed under section 315 may be made to the court by—

- (a) the chief executive; or
- (b) the child or young person concerned; or
- (c) someone with parental responsibility for the child or young person concerned; or
- (d) a party to the proceeding in the Childrens Court in the sending State in which the decision to transfer the order or proceeding was made.

**(2)** The registrar of the Childrens Court must send by post or give a copy of the application as soon as possible to—

- (a) the relevant interstate officer; and
- (b) each person, other than the applicant, who could have made an application.

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- (3)** The court may only revoke the registration of a document filed under section 315 if satisfied that it was inappropriately registered because, under the interstate law—
- (a) the decision of the interstate officer or the order of the Childrens Court in the sending State to transfer the order or proceeding was at the time of registration subject to appeal or review or a stay; or
  - (b) the time for instituting an appeal or seeking a review had not expired.
- (4)** The registrar of the Childrens Court must send each document filed under section 315 to the Childrens Court in the sending State if the registration of the document is revoked.
- (5)** The revocation of the registration of a document does not prevent the later re-registration of the document.

## **PART 5—MISCELLANEOUS**

### **319 Effect of registration of transferred order**

(1) A child care and protection order made by the court under Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action) in relation to a child or young person ceases to have effect when an order in relation to the child or young person is registered in a participating State under an interstate law.

(2) However, if the registration is revoked in the participating State under the interstate law, the order that ceased to have effect is revived and has effect in accordance with its terms.

### **320 Transfer of court file**

The registrar of the Childrens Court must cause all documents filed in the court in relation to a child care and protection proceeding, and an extract from any part of the register that relates to a child care and protection proceeding, to be sent to the Childrens Court in a participating State if, under this Chapter—

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

### **321 Special provision with respect to Maori children and young people**

If an order or proceeding is transferred under an interstate law to the Territory from New Zealand and the child or young person is a Maori child, in deciding what finding or order to make in a proceeding relating to the child or young person under this Act, the court must have regard to the principle that, where practicable, the relationship between the child or young person and his or her family, whanau, hapu, iwi, family groups and community group must be maintained and strengthened.

### **322 Hearing and determination of transferred proceeding**

In hearing and deciding a child care and protection proceeding transferred to the court under an interstate law, the court—

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- (a) is not bound by a finding of fact made in the proceeding in the Childrens Court in the sending State before its transfer; and
- (b) may have regard to the transcript of, or evidence adduced in, the proceeding mentioned in paragraph (a).

**323 Disclosure of information**

Despite anything to the contrary in this Act, the chief executive may disclose to an interstate officer information that has come to his or her notice in the performance of duties or exercise of powers under this Act if the chief executive considers that it is necessary to do so to allow the interstate officer to perform duties or exercise powers under a child welfare law or an interstate law.

## CHAPTER 9—CHILDRENS SERVICES

### PART 1—GENERAL

#### 324 Definitions for ch 9

In this Chapter:

*approval in principle* means an approval in principle granted under section 338.

*controlling person*, in relation to a childrens service or proposed childrens service, means a person who exercises control or may exercise control over the childrens service (other than the proprietor).

*licence* means a licence granted under section 345.

*proprietor* means—

- (a) for a childrens service operated under an approval in principle—the person who holds the approval; and
- (b) for a licensed childrens service—the licensee; and
- (c) for an application for approval in principle or a licence to operate a childrens service—the person applying for the approval or licence.

#### 325 Objects

This Chapter should be construed and administered in accordance with the following objects:

- (a) to provide an effective system for licensing child-care centres and family day care schemes;
- (b) to provide a basis for the imposition of standards to facilitate the provision of quality child care.

#### 326 Principles

A decision made under this Chapter should be made in accordance with the following principles:

- (a) the best interests of children are the paramount consideration;
- (b) childrens services should provide care that is safe, positive and nurturing;

- (c) childrens services should promote the educational, social and developmental wellbeing of children.

**327 What is a childrens service?**

A *childrens service* is a service that provides, or by which it is proposed to provide, care at a child-care centre or as part of a family day care scheme.

**328 What is a child-care centre?**

(1) A *child-care centre* is premises at which a service is operated that provides care for monetary or other consideration for more than—

- (a) 4 children who are not yet attending primary school as students; or
- (b) 7 children (which may include 4 or less children who are not yet attending primary school as students).

(2) In this section:

- (a) *child* only includes a child for whom care is provided on an emergency basis or in unexpected or exceptional circumstances if the child has been cared for at the premises for at least 2 consecutive days; and
- (b) *child* includes a child of the carer who is being cared for at the premises if another child is being cared for at the premises for monetary or other consideration.

**329 What is a family day care scheme?**

(1) A *family day care scheme* is a scheme under which the provision of home-based care for children is organised, coordinated and monitored.

(2) However, a *family day care scheme* does not include a scheme under which home-based care is provided to children in their own homes.

*Example of scheme not included*

A scheme that organises, coordinates and monitors nannies.

(3) *Home-based care* is care provided by someone for monetary or other consideration at a home if the provision of the care does not amount to a transfer of parental responsibility.

**330 Situations where ch 9 does not apply**

Nothing in this Chapter applies to care provided for a child—

- (a) at a playgroup; or

- (b) in conjunction with a meeting, function or similar activity that involves a parent of, or other person with parental responsibility for, the child at the same or adjacent premises (unless provided in conjunction with the parent's or person's usual employment); or
- (c) by a relative (unless provided as part of a family day care scheme); or
- (d) for his or her protection as part of a foster care arrangement approved under the authority of the chief executive; or
- (e) by the Australian Capital Territory Schools Authority, whether provided during school hours or otherwise; or
- (f) by someone in the course of conducting a school that is registered or provisionally registered under the *Education Act 1937*; or
- (g) which is incidental to the child's participation in religious instruction, sporting, educational, recreational or cultural events or activities; or
- (h) which is incidental to activities by the child as a member, or while training to become a member, of a club or class sponsored by a non-profit community organisation; or
- (i) while the child is a patient in—
  - (i) a public hospital; or
  - (ii) a private hospital registered under the *Public Health (Private Hospitals) Regulations*; or
  - (iii) premises (other than a public or private hospital) where the child is admitted for surgical or medical treatment and discharged on the same day.

### **331 Exemptions**

- (1) The Minister may, by notice published in the Gazette, exempt a class of children's services from the application of all or any of the provisions of this Chapter.
- (2) An exemption may be made subject to any term or condition stated in the notice.
- (3) An exemption remains in force for the period stated in the notice unless sooner revoked.
- (4) A notice is a disallowable instrument.



**PART 2—APPROVALS IN PRINCIPLE AND LICENCES**

***Division 1—General***

**332 Deciding if suitable**

**(1)** In deciding if someone is suitable for this Chapter, the chief executive may take into account all or any of the following matters:

- (a) whether the person has been found guilty of an offence—
  - (i) relating to the provision of services for children or young people; or
  - (ii) involving dishonesty, fraud or possession of, or trafficking in, a drug of dependence; or
  - (iii) against or involving a child or young person;
- (b) whether the person has been involved in proven noncompliance with a legal obligation relating to the provision of services in relation to a child or young person;
- (c) whether the person is of sound financial reputation and stable financial background;
- (d) whether the person is of good repute having regard to character, honesty and integrity;
- (e) whether the person has proven experience or demonstrated capacity in the provision of services to children;
- (f) any other consideration relevant to the person's ability to provide services for children.
- (g) a result, reference or report obtained under subsection (2);
- (h) information supplied under section 333;
- (i) any prescribed matter.

**(2)** In considering an application under this Chapter, the chief executive may require a person about whose suitability he or she is required to decide to—

- (a) submit to a test or provide a reference or report to decide the suitability of the applicant or the nominated person; or
- (b) submit to a medical or psychiatric examination that the chief executive considers appropriate.

**333 Duty of disclosure**

- (1) This section applies to the following information about someone:
- (a) a guilty finding against the person for an offence relating to the provision of a childrens service;
  - (b) a failure by the person to comply with a legal requirement in relation to the provision of a childrens service;
  - (c) a guilty finding against the person for an offence involving dishonesty, fraud or possession of, or trafficking in, a drug of dependence;
  - (d) a refusal in any jurisdiction of an application for a licence, authority or permit in relation to a childrens service;
  - (e) a guilty finding against the person for an offence against, or involving, a child;
  - (f) any prescribed matter.
- (2) A proprietor making an application for approval in principle or a licence must include in the application information to which this section applies—
- (a) about the proprietor; and
  - (b) if the proprietor is aware of information about a controlling person—about the controlling person.
- (3) A controlling person must give information about himself or herself to which this section applies to a proprietor making an application for an approval in principle or a licence as soon as practicable after he or she becomes aware that the proprietor proposes to make an application.
- (4) If a controlling person becomes aware that—
- (a) an application has been made; and
  - (b) information about him or her to which this section applies has not been included in the application;

the controlling person must give the information in writing to the chief executive as soon as practicable after becoming aware of the making of the application.

- (5) A proprietor of a licensed childrens service or a controlling person of the service must provide information to which this section applies about himself or herself to the chief executive as soon as practicable after the occurrence of the event requiring disclosure.

**(6)** A person must not, without reasonable excuse, fail to comply with this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **334 Register**

The chief executive must set up and maintain a register of people in relation to whom an approval in principle or licence is in force.

## ***Division 2—Approval in principle***

### **335 Advertising intention to apply**

Someone who intends to apply for approval in principle to operate a childrens service must publish in a newspaper published and circulating in the Territory notice of that intention.

### **336 Application**

**(1)** An application to the chief executive for approval in principle to operate a childrens service must be—

- (a) in writing in a form approved by the chief executive; and
- (b) accompanied by—
  - (i) a copy of the advertisement of the applicant's intention to apply; and
  - (ii) any determined fee.

**(2)** On request, an applicant must give the chief executive further information—

- (a) relating to the application including information about the applicant of the proposed service and any controlling person; and
- (b) about the premises proposed to be used for operating the childrens service.

**(3)** If the chief executive requests it, the applicant must permit the chief executive to inspect the premises where the applicant proposes to operate a childrens service.

### **337 Eligibility for approval in principle**

An applicant is only eligible to be granted approval in principle if the chief executive satisfied that—

- (a) the applicant and each controlling person is—

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- (i) a suitable person; and
- (ii) likely to comply with any condition that may be imposed on a licence; and
- (b) the premises where the childrens service is to be operated are suitable for the purpose.

**338 Grant or refusal of approval in principle**

- (1) On application, the chief executive must—
  - (a) grant the approval in principle subject to the conditions stated in the approval; or
  - (b) refuse to grant the approval.
- (2) The approval must state—
  - (a) the type of childrens service approved; and
  - (b) if the approval is an approval to operate a child-care centre—the premises from which the child-care centre is permitted to operate; and
  - (c) that the approval is subject to the condition that the childrens service be operated in a way that ensures the safety of the children being cared for and educated and that their developmental needs are met; and
  - (d) the conditions to which the approval is subject, including but not limited to a condition about any of the following matters:
    - (i) the premises or parts of the premises from which the service may be provided;
    - (ii) the maximum number of children that may be cared for and educated by the service;
    - (iii) the circumstances in which care must or may be provided for children on an emergency basis or in unexpected or exceptional circumstances;
    - (iv) the ages of the children who may be cared for and educated by the service;
    - (v) the monitoring of the service's operation;
    - (vi) the manner of notifying a change of controlling person;
    - (vii) the minimum number of staff who must be in attendance during operation of the service;

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- (viii) the qualifications of coordinators, care providers, directors and ancillary staff engaged by the service;
- (ix) management of the service;
- (x) standards relating to the provision and quality of care to be provided by a service;
- (xi) the compilation and maintenance of records;
- (xii) the circumstances in which details of each child being cared for by the service (including the name and address of anyone with parental responsibility for the child) must be provided to the chief executive;
- (xiii) the insurance of the licensee in respect of a liability of the licensee arising out of or relating to the provision of the care;
- (xiv) any prescribed matter.

**(3)** The chief executive must give the applicant written notice of the decision under subsection (1)—

- (a) if the chief executive required testing, examination or further information—within 60 days after receiving the results or report of the test or examination or the information; or
- (b) in any other case—within 60 days after receiving the application.

**339 Certificate of approval in principle**

If the chief executive approves an application, he or she must issue a certificate of approval in principle stating—

- (a) the name of the person to whom it is granted; and
- (b) the conditions to which it is subject; and
- (c) how long it remains in force.

**340 Term**

**(1)** An approval in principle remains in force for a period of 2 years and 6 months unless it is cancelled sooner.

**(2)** An approval in principle may not be extended, transferred or renewed.

**341 Chief executive to report**

**(1)** The chief executive must provide a report under this section to the proprietor of a childrens service to which an approval in principle relates no

earlier than 2 months and no later than 1 month before each anniversary of the granting of the approval while the approval remains in force.

(2) A report must include information about the compliance of the service with the conditions of the approval in principle under which it operates.

### ***Division 3—Licences***

#### **342 Advertising intention to apply**

Someone who intends to apply for a licence to operate a childrens service must publish in a newspaper published and circulating in the Territory notice of that intention.

#### **343 Application**

(1) A person who has an approval in principle and has operated a childrens service for a continuous period of 2 years may only apply to the chief executive for a licence to operate a childrens service within 30 days after the second anniversary of the granting of the approval.

(2) An application must be—

- (a) in writing in a form approved by the chief executive; and
- (b) accompanied by—
  - (i) a copy of the advertisement of the applicant's intention to apply; and
  - (ii) any determined fee.

#### **344 Eligibility for licence**

An applicant is only eligible to be granted a licence if the chief executive is satisfied—

- (a) that the applicant and any controlling person in relation to the service is a suitable person; and
- (b) with the proprietor's compliance with the conditions on the approval in principle during the period of operating the childrens service; and
- (c) that the premises where the childrens service is to be operated are suitable for the purpose; and
- (d) that the proprietor is likely to comply with any condition which may be imposed on the licence.

**345 Grant or refusal of licence**

- (1) On application for a licence, the chief executive must—
- (a) grant a licence; or
  - (b) refuse to grant a licence.
- (2) The licence must state—
- (a) the period, being not longer than 3 years, for which it is in force; and
  - (b) the type of childrens service licensed; and
  - (c) if the licence is a licence to operate a child-care centre—the premises from which the child-care centre is permitted to operate; and
  - (d) that the licence is subject to the condition that the childrens service be operated in a way that ensures the safety of the children being cared for and educated and that their developmental needs are met; and
  - (e) the conditions to which the licence is subject, including but not limited to a condition about any of the following matters:
    - (i) the premises or parts of the premises from which the service may be provided;
    - (ii) the maximum number of children that may be cared for and educated by the service;
    - (iii) the circumstances in which care must or may be provided for children on an emergency basis or in unexpected or exceptional circumstances;
    - (iv) the ages of the children who may be cared for and educated by the service;
    - (v) the monitoring of the service's operation;
    - (vi) the manner of notifying a change of controlling person;
    - (vii) the minimum number of staff who must be in attendance during operation of the service;
    - (viii) the qualifications of coordinators, care providers, directors and ancillary staff engaged by the service;
    - (ix) management of the service;
    - (x) standards relating to the provision and quality of care to be provided by a service;
    - (xi) the compilation and maintenance of records;

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- (xii) the circumstances in which details of each child being cared for by the service (including the name and address of anyone with parental responsibility for the child) must be provided to the chief executive;
  - (xiii) the insurance of the licensee in respect of a liability of the licensee arising out of or relating to the provision of the care;
  - (xiv) any prescribed matter.
- (3) The chief executive must give an applicant notice of a decision about the application—
- (a) if the chief executive required testing, examination or further information—within 60 days after receiving the results or report of the test or examination or the information; or
  - (b) in any other case—within 60 days after receiving the application.

**346 Application for renewal**

- (1) A licensee may apply to the chief executive at least 30 days, but not more than 60 days, before his or her licence expires for renewal of that licence.
- (2) An application must be—
- (a) in writing in a form approved by the chief executive; and
  - (b) accompanied by any determined fee.
- (3) The chief executive may, on receiving any determined fee for late applications, consider an application for renewal of a licence that is received less than 30 days before the licence expires but before the licence expires.

**347 Renewal**

- (1) On receiving an application for renewal, the chief executive must—
- (a) renew the licence; or
  - (b) refuse to renew the licence.
- (2) If renewing a licence, the chief executive may—
- (a) renew the licence on the same terms and conditions; or
  - (b) vary a condition to which the licence is subject; or
  - (c) impose a new condition on the licence.



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- (3) The chief executive may only renew a licence if satisfied that the licensee would be eligible under section 344 to be granted a licence.
- (4) The conditions to which a licence renewed under this section is subject must be set out in the licence.
- (5) A renewed licence remains in force for the period not longer than 3 years that is stated in the licence.
- (6) Where the chief executive makes a decision about a renewal, he or she must, within 30 days after the application is made—
  - (a) notify the applicant; and
  - (b) if the decision is to renew the licence—notify the applicant of the conditions to which the licence, as renewed, is subject.

***Division 4—Matters common to approvals in principle and licences***

**348 Adjacent premises**

The chief executive may not grant an approval in principle or a licence for a service to be operated from premises adjacent to or near other premises at which the proposed proprietor operates a childrens service unless satisfied that he or she will not operate the services as a single service.

**349 Variation of an approval in principle or a licence**

- (1) The chief executive may at any time vary an approval in principle or a licence—
  - (a) by removing a proprietor; or
  - (b) by varying or cancelling a condition; or
  - (c) by imposing a new condition; or
  - (d) in relation to a licence only—by varying its period.
- (2) However, the chief executive may not vary the period of a licence so that it exceeds 3 years.
- (3) The chief executive may act under subsection (1)—
  - (a) except under paragraph (1) (a)—of his or her own initiative, after consultation with the proprietor of the service provided under the approval or license; or
  - (b) on application by the proprietor.

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- (4) An application for variation must be—
- (a) in writing in a form approved by the chief executive; and
  - (b) accompanied by any determined fee.
- (5) The chief executive may only vary an approval or a licence on application by a proprietor if satisfied that the applicant would be eligible—
- (a) under section 337 to be granted an approval; or
  - (b) under section 344 to be granted a licence.
- (6) The chief executive must send a notice of the variation of the approval or licence and a copy of the varied approval or licence to the licensee within 7 days after deciding that the approval or licence should be varied.
- (7) A variation of the period of an approval or a licence or a condition takes effect—
- (a) with the consent of the proprietor—at such time as is stated for the purpose in the variation; or
  - (b) in any other case—60 days after the day the chief executive gives the proprietor notice in writing of the variation.
- (8) In this section, the chief executive varies a condition of an approval or a licence if he or she suspends the operation of the condition for a stated period.

**350 Cancellation of an approval in principle or a licence**

- (1) The chief executive may cancel an approval in principle or a licence if satisfied that—
- (a) the approval or licence was obtained improperly; or
  - (b) the proprietor has—
    - (i) contravened a condition of the approval or licence; or
    - (ii) been found guilty of an offence against this Chapter; or
    - (iii) failed to operate the childrens service in a way that ensures the safety of the children being cared for by the service; or
  - (c) the proprietor or a controlling person has ceased to be a suitable person.
- (2) The chief executive may not cancel an approval in principle or licence unless the chief executive has—

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- (a) given the proprietor notice in writing of his or her intention to cancel the approval or licence and the grounds for cancellation; and
  - (b) given the proprietor at least 21 days to make submissions to the chief executive as to why the approval or licence should not be cancelled; and
  - (c) considered any submission received within that period.
- (3) If the chief executive sends a proprietor notice, he or she must, as far as is practicable, give notice of the proposed cancellation, and the reason for it, to a parent of, or person with parental responsibility for, each child cared for by the service provided by the proprietor.
- (4) The chief executive must give written notice of the cancellation of an approval in principle or a licence for a service—
- (a) to the proprietor at least 7 days before the cancellation takes effect; and
  - (b) as far as is practicable—to a parent or other person with parental responsibility for each child cared for by the service.

**351 Return of certificate or licence**

If the chief executive cancels an approval in principle or licence, the person to whom the approval or licence was granted must return the certificate of approval or licence within 7 days after the date of the notice under subsection 350 (4).

Maximum penalty: 5 penalty units.

**352 Change of controlling person**

If someone ceases to be a controlling person or becomes a controlling person in relation to a childrens service provided under an approval in principle or a licence, the proprietor of the service must, within 30 days after the change occurs, notify the chief executive of the change.

Maximum penalty: 5 penalty units.

## **PART 3—ENFORCEMENT**

### **353 Reporting breach**

(1) A person who reasonably believes that a provision of this Chapter, or a condition of an approval in principle or licence, is being contravened may report the circumstances on which the belief is based to the chief executive or an officer.

(2) If the report is made in good faith—

- (a) the making of the report is, for all purposes, not a breach of confidence, professional etiquette or ethics or a rule of professional conduct; and
- (b) no civil or criminal liability is incurred by reason only of the making of the report; and
- (c) except as provided by this section—
  - (i) the report is not admissible in evidence in any proceeding in a court or tribunal and evidence of its contents is not so admissible; and
  - (ii) no-one may be compelled in any proceeding before a court or tribunal to provide the report or a copy of, or extract from, the report or to disclose, or give evidence of, the contents of the report.

(3) In any proceeding, evidence as to the grounds contained in a report for the belief that this Chapter or a condition of a licence is being contravened may be given but evidence that—

- (a) a particular matter is contained in a report; or
- (b) identifies the person who made the report (the *reporter*) as the reporter or is likely to lead to the identification of the person as the reporter;

is only admissible in the proceeding if the court grants leave for the evidence to be given or if the reporter consents in writing to the admission of the evidence.

(4) A person (other than the reporter) may not disclose information that identifies or tends to identify that it was the reporter who made a report.

Maximum penalty: 50 penalty units.

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**(5)** It is a defence to a prosecution under subsection (4) if the defendant proves that the reporter consented to the disclosure.

**(6)** A court may not grant leave under this section unless satisfied that it is necessary for the evidence to be given—

- (a) to ensure the safety and wellbeing of a child; or
- (b) in relation to a charge or allegation made in a proceeding against someone the exercise of his or her powers or performance of his or her duties or functions under this Act; or
- (c) to decide whether the report was given in good faith.

**354 Records**

The chief executive must keep a written record of each report made to him or her under section 353.

**355 Powers of entry**

**(1)** An officer may at any reasonable time, with such assistance as may reasonably be required, to find out whether this Chapter is being complied with—

- (a) enter premises where a childrens service is operating under an approval or a licence or where the officer reasonably believes that a service is operating; and
- (b) inspect the premises and any plant, equipment, vehicle or other thing used or suspected of being used in the provision of a childrens service; and
- (c) take photographs or audio or video recordings, or make sketches, of the premises or anything at the premises; and
- (d) inspect and make copies of, or take extracts from, a document kept at the premises; and
- (e) seize a document, record or other thing at the premises used or suspected of being used in the provision of a childrens service; and
- (f) require someone—
  - (i) to answer a question in relation to the provision of a childrens service to the best of the person's knowledge, information and belief; or
  - (ii) to take reasonable steps to provide information in relation to the provision of a childrens service.

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- (2) If an officer seizes a document, record or thing, he or she must—
- (a) give notice of the seizure to the person apparently in charge of it or to an occupier of the premises; and
  - (b) return the document, record or thing to that person or the premises within 48 hours after seizing it.
- (3) However, if a document, record or thing seized is required for use in a proceeding under this Act, the officer may keep it until it has been used and must return it as soon as the proceeding has been finalised.
- (4) An officer may not, under this section, enter a house unless—
- (a) a childrens service provided under an approval in principle or a licence is operating at the house; or
  - (b) the occupier of the house consents in writing to the entry and inspection.
- (5) An occupier who consents in writing to the entry and search of his or her premises or house under this section must be given a copy of the signed consent immediately.
- (6) If, in a proceeding, a written consent is not provided to a court, it will be presumed, unless the contrary is proved, that the occupier did not consent to the entry and search.

**356 Offence related search and seizure at licensed premises**

- (1) An officer may exercise powers under this section if the officer—
- (a) reasonably suspects that there is, on premises where a childrens service provided under an approval in principle or licence is operating, a particular thing that may be evidence of the commission of an offence against this Chapter; and
  - (b) reasonably believes that the delay that would follow as a result of getting a warrant is likely to allow the thing to be lost, hidden or destroyed.
- (2) The officer may, with any necessary assistance and with or without the consent in writing of the occupier of the premises, enter the premises and search for the thing without applying for a search warrant.
- (3) If the thing is found during the search, the chief executive or officer may—
- (a) inspect and take photographs or audio or video recordings, or make sketches, of the premises or thing; and

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- (b) seize the thing if the officer reasonably believes that it is necessary to seize it in order to prevent its loss, concealment or destruction.
- (4) If an officer seizes anything, he or she must—
- (a) give notice of the seizure to the person apparently in charge of it or to an occupier of the premises; and
  - (b) return the thing to that person or the premises within 48 hours after seizing it.
- (5) However, if a thing seized is required for use in a proceeding under this Act, the officer may keep it until it has been used and must return it as soon as the proceeding has been finalised.

**357 Entry to premises of unlicensed service—search warrant**

- (1) An officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the officer reasonably believes that someone is carrying on or operating a childrens service at those premises in contravention of section 362 (Carrying on unapproved or unlicensed childrens service at child-care centre).
- (2) If the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that someone is carrying on or operating a childrens service at the premises in contravention of section 362, the magistrate must issue a search warrant.
- (3) A search warrant is to be addressed to the applicant for it and must authorise him or her, with any assistance he or she reasonably requires, to enter the premises, or the part of the premises, named or described in the warrant to search for an article, thing or material of a kind named or described in the warrant which there is reasonable ground to believe will provide evidence about an offence against section 362.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
- (a) any condition to which the warrant is subject; and
  - (b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
  - (c) the date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.

**358 Notice to enforce requirements**

**(1)** If the chief executive is satisfied that a childrens service is not operating in accordance with a provision of this Chapter the chief executive may—

- (a) by notice in writing, direct the proprietor to take the steps stated in the notice to comply with that provision within the period stated in the notice; and
- (b) if the chief executive gives a direction under paragraph (a)—if he or she considers it appropriate to do so, give notice to a parent of, or other person with parental responsibility for, each child cared for by the service that—
  - (i) a direction has been given; and
  - (ii) describes the nature of the direction; and
  - (iii) refers to the period for compliance with the direction.

**(2)** If a notice has been served on a proprietor and has not been complied with within the period stated in the notice after that service, or any further period that the chief executive allows, the chief executive may, by notice served on the proprietor—

- (a) for a childrens service provided under an approval in principle or a licence—suspend the approval or licence from the date stated for the purpose in the notice; and
- (b) for any childrens service—
  - (i) direct the proprietor to stop operating the childrens service and suspend the care of children by the service from the date stated for the purpose in the order; and
  - (ii) as far as is practicable, notify a parent of, or other person with parental responsibility for, each child cared for by the service at the time of suspension about the giving of the direction, the nature of the direction, the failure to comply with the direction and the suspension of the childrens service.

**(3)** The chief executive—

- (a) must consider any submission, whether oral or in writing, made to him or her by the proprietor of the childrens service within 7 days after the service of an order under subsection (2); and
- (b) may consider any other relevant submission or matter.



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- (4) After consideration, the chief executive must—
- (a) confirm the suspension and state the period for which the suspension is to operate; or
  - (b) end the suspension.
- (5) If the chief executive makes a decision under subsection (4), he or she—
- (a) must give notice of his or her decision to the proprietor of the childrens service; and
  - (b) may notify a parent of, or other person with parental responsibility for, each child cared for by the service at the time of suspension about the giving of the direction, the nature of the direction, the failure to comply with the direction, the suspension of the service and either the confirmation of the suspension or the ending of the suspension.
- (6) A person must not contravene an order in force under this section.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (7) In this section:
- proprietor*, in relation to a childrens service that is not licensed, means the person who owns or operates the service.

**359 Power to suspend operation if service unsafe**

- (1) Despite any other provision of this Chapter, the chief executive may, by written notice given to the proprietor of a service, order that the childrens service stop operating immediately if the chief executive reasonably believes that—
- (a) children being cared for by the childrens service are unsafe; and
  - (b) the exercise of his or her powers under this section is necessary to protect the children.
- (2) If the chief executive gives a proprietor notice, he or she must cause a parent of, or person with parental responsibility for, each child cared for by the service provided by the proprietor to be given notice that the chief executive has stopped operation of the service and the reason for doing so as soon as is practicable.
- (3) An order has effect until revoked in writing by the chief executive.

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(4) A person must not operate a childrens service in contravention of an order.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**360 Removal of children in emergency**

(1) If the chief executive is satisfied that there is an immediate danger to the health, welfare or safety of a child being cared for by a childrens service, the chief executive may—

- (a) remove or cause the removal of the child from the premises where the childrens service is operating and, if appropriate, any record or information reasonably required to assist with the care of the child; and
- (b) if the child is removed—arrange for the child to be returned to the care of a parent or other person with parental responsibility for him or her or to be placed temporarily in the care of another licensed childrens service.

(2) The chief executive must take all reasonable steps to tell someone with parental responsibility for a child removed from premises of that removal, the circumstances of the removal and the present location of the child.

## **PART 4—OFFENCES**

### **361 Provision of care as part of family day care scheme**

A person must not provide care for a child as part of a family day care scheme except in accordance with an approval in principle or a licence granted to the scheme.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **362 Carrying on unapproved or unlicensed childrens service at child-care centre**

A person must not own, operate, manage or control a child-care centre unless the care provided for a child at the centre is provided in accordance with an approval in principle or a licence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **363 Advertising certain childrens services**

(1) A person must not publish an advertisement for a childrens service unless there is an approval in principle or a licence in force in relation to the service.

Maximum penalty: 30 penalty units.

(2) Without limiting subsection (1), an advertisement includes an enrolment form and a circular, label, notice and sign.

(3) However, a document published for a feasibility study is not an advertisement.

### **364 Contravention of condition of approval in principle or licence**

A proprietor must not contravene a condition to which his or her approval in principle or licence is subject.

Maximum penalty: 50 penalty units.

### **365 Offences in relation to approval in principle or licence documents**

A person must not knowingly amend (other than in accordance with this Chapter) or deface an approval in principle, a licence or document issued in relation to an approval or licence.

Maximum penalty: 50 penalty units.

**366 Obligations on proprietors, controlling people and carers**

(1) In this section:

*responsible person*, for a childrens service, means—

- (a) the proprietor of the service; or
- (b) a controlling person in relation to the service; or
- (c) a person working in the service.

(2) A responsible person must ensure that every reasonable precaution is taken to protect a child being cared for by the service from a hazard likely to cause injury.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) A responsible person must ensure that a child being cared for by the service is adequately supervised.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(4) A person working at a childrens service must not subject a child being cared for or educated by the service to discipline which is unreasonable in the circumstances.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(5) A responsible person must take reasonable steps to ensure that the buildings, the grounds and all equipment and furnishings used in operating the service are maintained in a safe, clean and hygienic condition and in good repair.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**CHAPTER 10—EMPLOYMENT OF CHILDREN AND YOUNG PEOPLE**

**367 Meaning of *young child***

(1) In this Part:

*young child* means someone who is not school-leaving age or older.

**368 Employing a child or young person**

(1) For this Chapter, if someone causes or permits a child or young person to take part or assist in a business, trade, calling or occupation carried on for private profit, the person is deemed to employ the child or young person whether or not the child or young person receives payment or other reward for his or her participation or assistance.

(2) For this Chapter, an *employer* is someone deemed to employ a child or young person.

**369 Employment of children and young people in certain businesses etc**

A person must only employ a child or young person in a prescribed business, trade, calling or occupation if the child or young person is at least the age prescribed in relation to the business, trade, calling or occupation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**370 Employment of young children**

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

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) This section does not apply to the employment of a young child in or in relation to a school, if any applicable law or any applicable industrial award, order, determination or agreement is complied with.

**371 Light work excepted**

(1) Subject to this Part, subsection 370 (1) does not apply to the employment of a young child for the following purposes:

- (a) babysitting;
- (b) going on errands;

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- (c) casual work in or around a private home;
- (d) golf-caddying;
- (e) clerical work;
- (f) gardening;
- (g) selling, delivering or distributing newspapers or advertising matter;
- (h) entertainment at a place used for providing entertainment or amusement;
- (i) entertainment at a place used for sporting activities;
- (j) singing, dancing, playing a musical instrument or some similar purpose;
- (k) performing in a radio, television or film program or production, or a similar program or production, other than a news item;
- (l) modelling;
- (m) a photographic subject, whether still or moving;
- (n) in or in relation to a circus;
- (o) any other prescribed work.

**(2)** Subsection (1) does not have effect with respect to the employment of a young child for longer than 10 hours in 1 week unless the proposed employer has, at least 7 days before the employment commences, given the chief executive a notice stating—

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

**372 Family businesses excepted**

Subject to this Part, subsection 370 (1) does not apply to the employment of a young child in or in relation to 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.

**373 Employment not to interfere with schooling etc**

Sections 371 and 372 do not apply to the employment of a young child if the employment—

- (a) constitutes a breach of the *Education Act 1937* by or in relation 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.

**374 Dangerous employment**

(1) The chief executive may, on application by someone who proposes to employ a young child to engage in activities dangerous to the health or safety of the child, consent to the employment of the child.

(2) The chief executive may refuse to give consent if the chief executive reasonably believes that the proposed employment would be likely to prejudice the health or safety of the young child.

(3) The consent of the chief executive may be subject to stated conditions relating to the preservation of the health and safety of the child as the chief executive thinks fit.

(4) A person must not, except with the consent of the chief executive, employ a young child if the employment involves the child engaging in activities dangerous to the health or safety of the child.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

(5) A person to whom consent under subsection (1) has been given must not fail to comply with a condition to which the consent is subject.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**375 Regulation of employment of children and young people**

(1) The chief executive may, by notice in writing served on an employer—

- (a) prohibit the employer from employing or continuing to employ a child or young person named in the notice if the chief executive reasonably believes that the employment is, or is likely to be, prejudicial to the health, safety or personal or social development of the child or young person or the ability of the child or young person to benefit from his or her education or training; or

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- (b) state conditions to be complied with by the employer in relation to the employment of the child or young person named in the notice that are designed to preserve the health, safety or personal or social development of the child or young person or the ability of the child or young person to benefit from his or her education or training.

(2) A person must not employ a child or young person in contravention of a notice under paragraph (1) (a).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) If the chief executive has stated a condition to be complied with by the employer of a child or young person in relation to the employment of the child or young person, anyone employing the child or young person must not contravene the condition.

Maximum penalty: 50 penalty units.

**376 Duty of employers of children and young people**

An employer of a child or young person must do everything necessary and reasonable to ensure the health and safety of the child or young person.

Maximum penalty: 50 penalty units.

**377 Child or young person not to render certain measures ineffective**

A child or young person must not do anything, or fail to do anything, that renders less effective anything done by the child's or young person's employer for the purpose of complying with section 376 or for the purpose of securing compliance with a condition to which the employment is subject.

**378 Part subject to certain provisions of Education Act**

This Part has effect subject to sections 9 (Compulsory attendance) and 16 (Exemption certificates) of the *Education Act 1937*.



## CHAPTER 11—APPEALS AND REVIEW

### 379 **Meaning of *order***

In this Part:

*order* includes decision.

### 380 **Appeal to Supreme Court**

(1) The following appeals may be made to the Supreme Court under this Act:

- (a) an appeal by the young person against whom the order was made from an order under Chapter 6 (Young offenders), Part 2 (Within the Territory), other than an order made under section 92 (Committal of guilty young person to Supreme Court) or 128 (Special purpose leave);
- (b) an appeal, by the young person charged, from a decision of the court under section 98 that the charge against the young person was proved;
- (c) an appeal, by a party to the proceeding in which the order was made, from an order of the court under section 128;
- (d) an appeal, by way of an order to review, by the informant from an order of the court dismissing an information under Chapter 6 (Young offenders), Division 2 (Within the Territory);
- (e) an appeal, by way of an order to review, by the child against whom the order was made, from an order under Chapter 6 (Young offenders), Division 2 (Within the Territory);
- (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 89;
- (g) an appeal, by way of an order to review, by the informant from a decision of the court not to commit a child or young person to the Supreme Court for sentence under section 92;
- (h) an appeal, by way of an order to review, by the informant from an order of the court under Chapter 6 (Young offenders), Part 2 (Within the Territory), Division 3 (Disposition of young offenders).

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(2) An appeal from one of the following decisions under Chapter 7 (Children and young people in need of care and protection) may be made to the Supreme Court only on a question of law or on the ground that a substantial miscarriage of justice has occurred:

- (a) the making of an order;
- (b) a refusal to make an order applied for;
- (c) to extend an order;
- (d) a refusal to extend an order;
- (e) to vary an order;
- (f) a refusal to vary an order;
- (g) to revoke an order;
- (h) a refusal to revoke an order.

(3) The following people may appeal under subsection (2):

- (a) a party to the proceeding in which the decision was made;
- (b) a person named in the order.

(4) A person may not appeal to the Supreme Court in relation to a matter arising under this Act except—

- (a) in accordance with this section; or
- (b) in relation to a domestic violence order or a restraining order made by the Childrens Court in relation to a child or young person in need of care and protection—in accordance with the *Domestic Violence Act 1986* or the *Magistrates Court Act 1930*; or
- (c) in accordance with Chapter 8 (Interstate transfer of proceedings).

(5) Nothing in this Part limits the operation of Part 11 (Appeals to the Supreme Court) of the *Magistrates Court Act 1930* or another Act that makes provision with respect to the appellate jurisdiction of the Supreme Court.

### **381 Application of Magistrates Court Acts**

(1) The provisions of Part 11 (Appeals to the Supreme Court), Division 2 (Appeals) of the *Magistrates Court Act 1930*, other than section 219 (Barring of right of appeal under this Division if order to review is granted), apply to and in relation to an appeal of the kind mentioned in paragraph 380 (1) (a) or (b) as if—

- (a) the appeal were an appeal to which that Division applied; and

- (b) the appeal were an appeal to which section 214 (Appeals in cases other than civil cases) of that Act applied; and
- (c) a reference in that Division to the Magistrates Court were a reference to the Childrens Court.

(2) Part 21 (Appeals to Supreme Court) of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies to and in relation to an appeal of the kind mentioned in paragraph 380 (1) (c) and subsection 380 (2) of this Act as if it were an appeal from a judgment or order of a kind mentioned in subsection 387 (2) of that Act.

(3) The provisions of Part 11 (Appeals to the Supreme Court), Division 3 (Orders to review) of the *Magistrates Court Act 1930* apply to and in relation to an appeal of the kind mentioned in paragraph 380 (1) (d), (e), (f), (g) or (h) as if it were an appeal from—

- (a) for an appeal of the kind mentioned in paragraph 380 (1) (d)—an order of the kind mentioned in paragraph 219B (1) (a) of that Act; or
- (b) for an appeal of the kind mentioned in paragraph 380 (1) (e)—an order of the kind mentioned in paragraph 219B (1) (c) of that Act; or
- (c) for an appeal of the kind mentioned in paragraph 380 (1) (f)—a decision of the kind mentioned in paragraph 219B (1) (f) of that Act; or
- (d) for an appeal of the kind mentioned in paragraph 380 (1) (g)—a decision of the kind mentioned in paragraph 219B (1) (e) of that Act; or
- (e) for an appeal of the kind mentioned in paragraph 380 (1) (h)—a decision of the kind mentioned in paragraph 219B (1) (g) of that Act.

### **382 Barring of appeal if order to review granted**

If an order nisi to review a decision of the kind mentioned in paragraph 380 (1) (d) or (e) has been granted under Part 11 (Appeals to the Supreme Court), Division 3 (Orders to review) of the *Magistrates Court Act 1930* in its application under this Part—

- (a) the person getting the order nisi is not entitled to make any other appeal to the Supreme Court under this Part against the decision; and

- (b) if the person has served on the registrar of the Magistrates Court notice of appeal to the Supreme Court against the decision, the notice of appeal is deemed to have been withdrawn.

### **383 Orders that Supreme Court may make**

**(1)** On an appeal of the kind mentioned in paragraph 380 (1) (a), (b) or (c) or subsection 380 (2), the Supreme Court may not make an order other than an order that could have been made by the Childrens Court in the proceeding appealed from.

**(2)** On an appeal of the kind mentioned in paragraph 380 (1) (d), (e) or (h), the Supreme Court may make an order that could have been made by the Childrens Court in the proceeding appealed from.

### **384 Review of decisions**

**(1)** Application may be made to the administrative appeals tribunal for a review of a decision of the chief executive—

- (a) under paragraph 338 (1) (b) to refuse to grant an approval in principle; or
- (b) under paragraph 345 (1) (b), to refuse to grant a licence; or
- (c) under paragraph 347 (1) (a), to renew a licence on the same terms and conditions, to renew a licence and vary a condition or to renew a licence and impose a new condition on it; or
- (d) under paragraph 347 (1) (b), to refuse to renew a licence; or
- (e) under section 349, to vary an approval in principle or a licence; or
- (f) under section 349, to refuse to vary an approval in principle or a licence; or
- (g) under subsection 350 (1), to cancel an approval in principle or a licence; or
- (h) under paragraph 358 (4) (a), to confirm the suspension of an approval in principle or a licence; or
- (i) under subsection 359 (1), to order that a childrens service stop operating; or
- (j) under section 374 to refuse to grant his or her consent, or to grant it subject to conditions; or
- (k) under section 375, prohibiting, or stating conditions in relation to, the employment of a child or young person.

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(2) If the chief executive makes a decision of the kind mentioned in subsection (1), he or she must cause notice in writing of the decision to be given to someone whose interests are affected by the decision.

(3) A notice under subsection (2) must be in accordance with the requirements of the code of practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

**385 Decision to refuse to grant licence may not be stayed or otherwise affected pending outcome of review**

(1) Subsection 41 (2) of the *Administrative Appeals Tribunal Act 1989* does not apply to a decision under paragraph 345 (1) (b) to refuse to grant a licence.

(2) The Supreme Court or a judge sitting in chambers may not make an order under section 16 of the *Administrative Decisions (Judicial Review) Act 1989* in relation to a decision under paragraph 345 (1) (b) to refuse to grant a licence.

## **CHAPTER 12—GENERAL OFFENCES**

### **386 Presumption of age**

If—

- (a) a person is charged with an offence against this Act in relation to someone who is alleged in the charge to be under a stated age (the *supposed child or young person*); and
- (b) the supposed child or young person appears to the court to be under that age;

there is a rebuttable presumption that the supposed child or young person is under that age.

### **387 False statements**

A person must not, under or in connection with this Act, knowingly make a statement that is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **388 Tattooing of children and young people**

A person must not in any manner tattoo a part of the body of a child or young person unless the person has first obtained the written permission of a parent of the child or young person to tattoo the child or young person in that manner on that part of the child's or young person's body.

Maximum penalty: 50 penalty units.

### **389 Offences in relation to child or young person subject to an order**

**(1)** If a child or young person is the subject of an order under this Act, a person must not, without lawful authority or other reasonable excuse—

- (a) enter the place in which the child or young person has been placed or is being accommodated for the purpose of contacting the child or young person; or
- (b) contact the child or young person otherwise than as mentioned in paragraph (a); or
- (c) remove the child or young person from the care of someone—
  - (i) who has a residence order in relation to him or her; or
  - (ii) into whose care or custody or under whose temporary control the child or young person has been placed, or by

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whom the child or young person is detained, under this Act;  
or

- (d) help the child or young person to leave the care of someone who has a residence order in relation to him or her; or
- (e) lurk or loiter around the place in which the child or young person has been placed or is being accommodated for the purpose of contacting the child or young person or removing the child or young person from someone who has a residence order in relation to him or her.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) This section applies whether the conduct occurs wholly within or wholly outside the Territory or partly within and partly outside the Territory.

(3) If conduct constitutes an offence under 2 or more laws, someone who is convicted or found guilty or acquitted of the offence under a law mentioned in paragraph (b) or (c) of the definition of *law* in subsection (4) is not liable to be prosecuted for the offence under this section.

(4) In subsection (3):

*law* means—

- (a) this section; or
- (b) a law of a State; or
- (c) a law of New Zealand.

(5) A prosecution for an offence under this section may only be commenced after the chief executive has been consulted about the matter.

**390 Offence to harbour or conceal child or young person**

A person must not—

- (a) harbour or conceal, or assist in harbouring or concealing, a child or young person; or
- (b) prevent, or assist in preventing, a child or young person from returning to a place or care;

if the person knows that the child or young person is absent without lawful authority or excuse from a place in which the child or young person has been placed or the person in whose care the child or young person has been placed under the authority of a care and protection order or an interim care and protection order.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**391 Obstruction**

A person must not hinder or obstruct someone else 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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**392 Impersonation and false representations**

A person must not—

- (a) impersonate someone appointed under this Act; or
- (b) falsely represent himself or herself to be engaged in, or associated with, the administration of this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.



## **CHAPTER 13—POWERS OF ENTRY AND SEARCH**

### **393 Things connected with offences**

For this Chapter, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been connected; or
- (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.

### **394 Extended meaning of offence**

In this Chapter:

*offence* includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

### **395 Search and seizure**

The chief executive or a police officer may enter on land or on or into premises or a vessel or vehicle, and may search for and seize anything that he or she reasonably believes 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 chief executive or police officer—

- (a) under a warrant issued under section 396; or
- (b) in circumstances of seriousness and urgency, in accordance with section 397; 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.

### **396 Search warrants**

**(1)** If an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be on any land or on 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 person named in the warrant, with reasonable and necessary assistance and such force as is necessary and reasonable—

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- (a) to enter on the land or on or into the premises, vessel or vehicle; and
  - (b) to search the land, premises, vessel or vehicle for things of that kind; and
  - (c) to seize anything of that kind found on the land or on or in the premises, vessel or vehicle that he or she reasonably believes to be connected with that offence.
- (2) A magistrate may not issue a warrant under subsection (1) unless—
- (a) the informant or some other person has given the magistrate, either orally or by affidavit, any further information 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) A warrant issued under this section must state—
- (a) the purpose for which the warrant is issued, which must include a reference to the nature of the offence in relation to which entry and search are authorised; and
  - (b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
  - (c) a description of the kind of things authorised to be seized; and
  - (d) the date, not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

**397 Entry in emergencies**

The chief executive or a police officer may enter on any land, or on or into any premises, vessel or vehicle, on or in which the chief executive or police officer reasonably believes that anything 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 on the land or on or in the premises, vessel or vehicle, if—

- (a) the chief executive or police officer reasonably believes that it is necessary to do so for 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 396.

**398 Consent to entry**

(1) Before obtaining the consent of someone—

- (a) for subsection 105 (2)—the supervisor; or
- (b) for paragraph 395 (c)—the chief executive or police officer;

must tell the person that the person may refuse to give his or her consent.

(2) If the supervisor, chief executive or police officer obtains the consent of someone, he or she must ask the person to sign a written acknowledgment—

- (a) that the person has been told that he or she may refuse to give his or her consent; and
- (b) that the person has given his or her consent; and
- (c) of the day and time when the person gave his or her consent.

(3) Entry by a supervisor, the chief executive or a police officer following the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) If it is material, in a proceeding—

- (a) for a court to be satisfied of the voluntary consent of someone for subsection 105 (2) or paragraph 395 (c); and
- (b) an acknowledgment, in accordance with subsection (2), signed by the person is not provided in evidence;

the court must assume, unless the contrary is proved, that the person did not voluntarily give consent.

**399 Power to conduct personal search of child or young person**

(1) In this section:

*personal search* means a search of a child or young person or of articles in the possession of a child or young person that may include—

- (a) requiring the child or young person to remove all of his or her garments; and
- (b) an examination of the child's or young person's body (but not of his or her body cavities) and of those garments.

(2) This section applies to a child or young person—

- (a) who is under a therapeutic protection order; or

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- (b) who is detained at a shelter or hospital because he or she has been charged with an offence and not admitted to bail; or
  - (c) committed to an institution under section 96 (Disposition of young offenders) who is at an institution.
- (3) Nothing in this section applies to a child or young person to whom the *Remand Centres Act 1976* applies.
- (4) A personal search of a child or young person to whom this section applies may only be conducted if—
- (a) the chief executive reasonably suspects that the child or young person has in his or her possession a thing that may, if used or allowed to remain there—
    - (i) cause serious damage to the health of the child or young person or of someone else; or
    - (ii) threaten the life of the child or young person or of someone else; and
  - (b) the chief executive reasonably suspects that it is necessary to conduct a personal search of the child or young person in order to recover that thing.
- (5) Subject to section 400, a personal search may be conducted in the presence of a medical practitioner who may assist in the search.
- (6) A person conducting a personal search may use such force as is necessary and reasonable in the circumstances.
- (7) Anything of a kind mentioned in paragraph (3) (a) that is found during a personal search may be seized.

**400 Rules for conduct of personal search**

- (1) A personal search of a child or young person under section 399—
- (a) must be conducted in a private area; and
  - (b) must be conducted by the chief executive or, if the chief executive is not of the same sex as the child or young person, by someone who is of the same sex as the child or young person; and
  - (c) may not be conducted in the presence or view of someone who is of the opposite sex to the child or young person being searched; and
  - (d) may not be conducted in the presence or view of someone whose presence is not necessary for the search; and

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- (e) may not be conducted on a child who is under 10 years old; and
  - (f) if the child or young person being searched is 10 years old or older—must be conducted in the presence of—
    - (i) someone with parental responsibility for the child or young person; or
    - (ii) if that is not acceptable to the child or young person—someone else (other than the chief executive) who is capable of representing the interests of the child or young person and who, as far as is practicable in the circumstances, is acceptable to the child or young person; and
  - (g) may not involve a search of a child's or young person's body cavities; and
  - (h) may not involve the removal of more garments than the chief executive conducting the search reasonably believes to be necessary to decide whether the person has in his or her possession the thing searched for; and
  - (i) may not involve more visual inspection than the chief executive reasonably believes to be necessary to decide whether the child or young person has a thing of the type sought on his or her body.
- (2)** For paragraph (1) (b), if a personal search of a child or young person is to be conducted and the chief executive is not of the same sex as the child or young person, anyone else of the same sex as the child or young person who has been requested to conduct the search by the chief executive may conduct the search.
- (3)** No action or proceeding, civil or criminal, lies against someone who conducts a personal search on request under subsection (2) if the search would have been lawful if conducted by the chief executive.
- (4)** Despite paragraph (1) (c), a personal search may be conducted in the presence of a medical practitioner of the opposite sex to the child or young person searched if a medical practitioner of the same sex as the child or young person is not available within a reasonable time.
- (5)** Paragraph (1) (d) does not apply to someone with parental responsibility for, or a personal representative of, the child or young person being searched if the child or young person has no objection to the person being present.

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(6) If a garment of a child or young person is seized as a result of a personal search, the child or young person is to be provided with adequate clothing.

**401 Safekeeping of things seized**

(1) If the chief executive seizes anything as a result of a personal search of a child or young person, he or she must make a record of the thing seized, including a description of it and the date on which it was seized.

(2) The chief executive is responsible for the safekeeping of anything seized as a result of a personal search of a child or young person.

(3) The chief executive must, when the child or young person from whom a thing was seized is released from therapeutic protection or from detention at the shelter, take reasonable steps to return the thing to the child or young person or, if the child or young person is not entitled to possession, to the owner of the thing.

(4) However, the chief executive is not required to return to a child or young person a thing that, in the possession of the child or young person, is likely—

- (a) to cause serious damage to the health of the child or young person or the health of someone else; or
- (b) to threaten the life of the child or young person or the life of someone else.

(5) If a thing is not returned to the child or young person from whom it was seized or the owner, the chief executive must—

- (a) make a note on the record indicating the thing has been retained; and
- (b) take reasonable steps to give a copy of that record to the child or young person from whom the thing was seized.

## CHAPTER 14—STANDARDS

### 402 Making standards

- (1) The chief executive may, in writing, make standards, not inconsistent with this Act, prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the standards may make provision with respect to—
  - (a) the care to be provided by the chief executive for children or young people for whom he or she has parental responsibility; and
  - (b) the conduct of family group conferences.

### 403 Publication in Gazette

- (1) The chief executive must cause to be published in the Gazette on or before the date on which a standard is made under section 402, notice of the making of the standard—
  - (a) stating the date on which the standard takes effect; and
  - (b) stating the place or places at which copies of the standard may be purchased; and
  - (c) containing a statement to the effect that a copy of the standard may be inspected by members of the public at the place or places stated in the notice.
- (2) The chief executive must ensure that—
  - (a) a copy of the standard is made available for public inspection at the place or places stated in the notice; and
  - (b) copies of the standard are available for purchase at the place or places stated in the notice.
- (3) In this section:  
*standard* includes any document, or part of a document, the provisions of which are applied by a standard.

## CHAPTER 15—CONFIDENTIALITY AND IMMUNITY

### 404 Confidentiality generally

(1) A person must not, other than for this Act or as required by law, make a record of or divulge or communicate to anyone else information or a document that the person acquired under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) This section does not affect the operation of section 405 or any other law relating to the confidentiality of information or documents.

### 405 Information required not to be disclosed

A person who is or has been the chief executive, the community advocate, an officer or an authorised person must not directly or indirectly (except in the performance of a duty or function under this Act or the *Community Advocate Act 1991*) make a record of, or divulge or communicate to anyone else, information that—

- (a) is contained in—
  - (i) a report under section 158 or 159 (a *Territory report*); or
  - (ii) a record of a child protection appraisal made because of a report under section 158 or 159 (an *appraisal record*); or
  - (iii) a report made under a provision of a law of a State corresponding to section 158 or 159 that is provided to the chief executive under a section corresponding to section 29 or 323 (an *interstate report*); or
- (b) identifies, or tends to identify—
  - (i) material contained in a Territory report, an appraisal record or an interstate report; or
  - (ii) the person who made a Territory report or an interstate report; or
  - (iii) anything said or done at a family group conference; or
  - (iv) information or a report provided to the conference; or
- (c) is prescribed under the regulations for this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.



**406 Civil liability**

A person is not subject to civil liability for answering a question, producing a document or providing a report under this Act in good faith and no action may be taken or claim or demand made against the person for taking the relevant action.

**407 Immunity from suit**

- (1) This section applies to a person who is or has been—
- (a) the chief executive; or
  - (b) an officer; or
  - (c) an authorised person; or
  - (d) someone acting under the direction or authority of the chief executive, an officer or an authorised person.
- (2) No civil proceeding lies against a person to whom this section applies in relation to—
- (a) an act done or omitted to be done in good faith and without negligence by the person in the exercise, or purported exercise, of a power or the performance, or purported performance, of a function or duty, under or in relation to this Act; or
  - (b) the provision by the person, in good faith and without negligence, of information or advice in relation to this Act or another Act, including an Act of the Commonwealth, a State or another Territory.
- (3) Subsection (2) does not affect any liability that the Territory would, but for that subsection, have in respect of an act or omission mentioned in that subsection.

## **CHAPTER 16—MISCELLANEOUS**

### **408 Understanding proceedings**

In a proceeding under this Act or another law of the Territory in any court having jurisdiction in the Territory to which a child or young person is a party, the court must endeavour to ensure that the child or young person and any other party present at the hearing of the proceeding—

- (a) understand the nature and purpose of the proceeding and of any order that the court proposes to make or has made; and
- (b) if any relevant right of appeal exists—are aware of the existence of a right of appeal against the relevant finding or order of the court.

### **409 Right of appearance**

(1) At the hearing in any court—

- (a) of an information or complaint against a child or young person; or
- (b) of an application, proceeding or matter under this Act or in relation to which this Act applies;

the chief executive or community advocate, or someone authorised by the chief executive or community advocate for this section, is entitled to appear and be heard and may call witnesses.

(2) However, nothing in subsection (1) applies to an application, proceeding or matter under Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action) or to which that Part applies.

### **410 Power of person without parental responsibility**

A person who provides care, whether regular and substantial care or otherwise, for a child or young person may do what is reasonable in the circumstances to safeguard or promote the care, welfare and development of the child or young person.

### **411 Notification of location of child or young person**

If the person in charge, or occupier, of a hospital, police station or refuge (the *place*) reasonably believes, reasonably suspects or knows that nobody with parental responsibility for a child or young person who has

voluntarily entered the place is aware of the child's or young person's location, he or she may—

- (a) tell anyone with parental responsibility for the child or young person of the location of the child or young person; and
- (b) if the place is not at a police station—notify a police officer that the child or young person is at the hospital or refuge, or cause such notice to be given.

**412 Declaration of attendance centres, institutions and shelters**

The Minister may, in writing, declare that a place is an attendance centre, an institution or a shelter for this Act.

**413 Child's or young person's name may be given**

(1) This section applies if—

- (a) a child or young person 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 or young person has been charged with an offence against a law of the Commonwealth or of the Territory.

(2) If this section applies and the commissioner of police or a police officer authorised by him or her reasonably believes that someone has suffered loss by reason of an act or offence by the child or young person, the commissioner or officer may provide to the person the name, age and address of the child or young person and particulars of the act or offence.

(3) If this section applies, the registrar may, on application, provide the applicant with the name, age and address of the child or young person, particulars of the act or offence and the disposition of the matter by the court.

(4) An application under subsection (3) must be in writing signed by the applicant to the effect that he or she intends to make an application for compensation under the *Victims of Crime (Financial Assistance) Act 1983* and that the information is required for the compensation application.

(5) A person must only use information obtained under this section in an application for compensation under the *Victims of Crime (Financial Assistance) Act 1983*.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**414 Chief executive to notify births in some circumstances**

(1) If the chief executive becomes aware that a child or young person was born as a result of a pregnancy that was the subject of a substitute parent agreement, the chief executive must—

- (a) 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 under the *Births, Deaths and Marriages Registration Act 1997* in relation to the child or young person; and
- (b) provide 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) someone agrees to become, or to attempt to become, pregnant and that a child born as a result of the pregnancy is taken to be (whether by adoption, agreement or otherwise) the child of someone else; or
- (b) someone who is pregnant agrees that a child born as a result of the pregnancy is taken to be (whether by adoption, agreement or otherwise) the child of someone else.

**415 Evidentiary certificates**

(1) In a proceeding under this Act, a certificate purporting to be signed by a police officer stating that—

- (a) he or she was, on a date or during a period stated in the certificate, an authorised officer; and
- (b) on the date stated in the certificate, he or she consented to the prosecution of the person named in the certificate for the offence stated in the certificate and that consent has not been revoked;

is evidence of the matters stated in the certificate.

(2) In a proceeding under this Act, a certificate purporting to be signed by the chief executive stating—

- (a) that, on a date or during a period stated in the certificate, the chief executive had parental responsibility for the person named in the certificate is evidence of the matters stated in the certificate; or
- (b) that—

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- (i) on the date stated in the certificate, the person named in the certificate was committed to the shelter, institution or State institution named in the certificate; and
- (ii) on the date stated 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 stated in the certificate, the chief executive had not granted leave of absence to the person or had granted the leave of absence at the times or during the periods stated in the certificate;

is evidence of the matters stated in the certificate.

**416 Determination of fees**

The chief executive may, in writing, determine fees for the purpose of this Act.

**417 Regulations**

- (1) The Executive may make regulations for the purposes of this Act.
- (2) Without limiting 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; people providing child care to which Chapter 9 (Childrens services) applies; and
  - (b) make provision for or with respect to—
    - (i) the duties of people in charge of shelters, attendance centres and institutions; and
    - (ii) the health and safety of children or young people attending attendance centres or detained in shelters and institutions; and
    - (iii) travel and transport arrangements for children or young people attending attendance centres or performing community service; and
    - (iv) calculating the periods mentioned in subsections 106 (4) (Community service orders) and 110 (4) (Attendance centre orders); and

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- (c) prescribe penalties, not exceeding 10 penalty units in respect of offences against the regulations.

**418 Review**

The Minister must review the operation of this Act within 3 years after the commencement of this section.

## CHAPTER 17—TRANSITIONAL PROVISIONS

### 419 Definitions for ch 17

In this Chapter:

***child***—

- (a) in relation to the repealed Act—means a child within the meaning of that Act; and
- (b) in any other case—means a child or young person.

***commencement day*** means the day this Chapter commences.

***CSA application*** means an application for an order under the repealed Act made, but not decided, before the commencement day.

***CSA order*** means an order made under the repealed Act and in force immediately before the commencement day.

***director*** means the Director of Family Services under the repealed Act.

***equivalent application***, in relation to a CSA application, means the application that is to be taken to have been made under this Act because of this Chapter instead of the CSA application.

***equivalent order***, in relation to a CSA order, means the order taken to have been made under this Act because of this Chapter instead of the CSA order.

***repealed Act*** means the *Children's Services Act 1986* as in force immediately before the commencement day.

### 420 Repeal of Children's Services Act

The *Children's Services Act 1986* is repealed.

### 421 Things done by Minister or director before the commencement day

Anything done by the Minister or director under the repealed Act is, on and after the commencement day, taken to have been done by the chief executive under this Act.

**422 First meeting of the Childrens Services Council**

- (1) The Minister must convene the first meeting of the Childrens Services Council after the commencement day.
- (2) This section ceases to apply after the first meeting of the Childrens Services Council after the commencement day.

**423 Orders naming director**

An order made under the repealed Act that names the director is, on and after the commencement day, taken to name the chief executive.

*Example of translation of order*

Original order: Child to accept the supervision of the Director of Family Services subject to the following provision: the parents of the child to attend at X for urinalysis once per month or on random basis as reasonably requested by Director.

Translated order: Child to accept the supervision of the chief executive subject to the following provision: the parents of the child to attend at X for urinalysis once per month or on random basis as reasonably requested by chief executive.

**424 Childrens Court Magistrate**

Until the Chief Magistrate declares a magistrate to be the Childrens Court Magistrate under section 50, the Chief Magistrate is the Childrens Court Magistrate.

**425 Parts 4 and 4A of the repealed Act**

- (1) A proceeding in relation to a child or young offender under Part 4 or 4A the repealed Act that was commenced but not decided before the commencement day, continues in accordance with the provisions of the repealed Act.
- (2) However, final disposition of the young offender is to be made in accordance with this Act.
- (3) An order made under section 47 (Disposition of young offenders) or 49 (Disposition without proceeding to conviction) of the repealed Act, in force immediately before the commencement day, is taken to be an order of the same name made under section 96 (Disposition of young offenders) or 98 (Disposition without proceeding to conviction) respectively of this Act.

**426 Emergency action—s 73 and s 74 of repealed Act**

- (1) If, within 48 hours immediately preceding the commencement day, an authorised person within the meaning of the repealed Act took



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emergency action under section 73 (Proceedings with respect to children in need of care) or 74 (Children in hospital) of that Act, the action is taken to have been taken by the chief executive under Chapter 7 (Children and young people in need of care and protection), Part 2 (Care and protection orders and emergency action), Division 4 (Emergency action).

(2) This section ceases to have effect at the end of 2 days commencing on the commencement day.

**427 Emergency action—s 75 and s 76 of repealed Act**

(1) An application under section 75 (Direction for release of child) or 76 (Application to Court for detention order) of the repealed Act made, but not decided before the commencement day, is to be heard and decided under the repealed Act as if it had not been repealed.

(2) The provisions of the repealed Act continue to apply to an order made under section 75 or 76 of that Act that is in force immediately before the commencement day.

(3) This section ceases to have effect at the end of the period of 17 days beginning on the commencement day.

**428 CSA applications**

(1) A CSA application made under the provision of the repealed Act mentioned in an item of column 2 of the table in Part 1 of Schedule 2 is taken to be an application made under this Act of a kind mentioned in column 3 of that item.

(2) If—

- (a) a person had applied to the court under section 87 (Applications by other persons) of the repealed Act for leave to make an application under section 78 (Application for declaration that child is in need of care) of that Act; and
- (b) immediately before the commencement day the court had not decided the application;

the chief executive is to be taken to have made a final care and protection application and the person's application is taken to be a cross-application on the final care and protection application.

(3) If—

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- (a) a parent appealed to the court for the review of a decision of the director under section 94 (Child care agreements) of the repealed Act; and
- (b) immediately before the commencement day, the court had not reviewed the decision;

the repealed Act continues to apply in relation to the review.

**429 Community advocate a party**

The community advocate is taken to be a party to the equivalent application to a CSA application which had not been decided immediately before the commencement day.

**430 Procedural changes in relation to CSA applications**

(1) If a procedural order has been made in relation to a CSA application, or a procedure has been followed in relation to a CSA application—

- (a) the order or procedure is taken to be in accordance with this Act; and
- (b) the court may, when the application next comes before it, give such direction or make such order in relation to procedure as it could make in relation to an application under this Act.

(2) If—

- (a) the equivalent application in relation to a CSA application is required to be served on a person (the *relevant person*); and
- (b) the relevant person was not required to be served with the CSA application under the repealed Act, and was not served;

the court, when the proceeding next comes before it—

- (c) must decide whether the relevant person should be served with a copy of the application; and
- (d) may dispense with the service without affecting the validity of an order made on the application.

(3) Where the equivalent application to a CSA application may only be made with the leave of the court, the equivalent application is to be taken to have been made with leave.

**431 Adjourment orders under CSA**

**(1)** An order made under subsection 81 (1) (Adjournment of hearing) of the repealed Act is, on the commencement day, taken to be an order under this Act that the hearing be adjourned, subject to section 432 (Length of s 81 orders) of this Act, for the stated period.

**(2)** An order under paragraph 81 (2) (a) of the repealed Act that a child live or continue to live at home is, on and after the commencement day, taken to be—

- (a) if everyone with parental responsibility for the child lives at the home—a residence order specifying the home as residence; or
- (b) if someone with parental responsibility lives at the home and someone else with parental responsibility does not—a residence order in favour of the person who lives at the home; or
- (c) if no-one with parental responsibility lives at the place the child calls home—a residence order in favour of a person with whom the child is to live at the home.

**(3)** An order under paragraph 81 (2) (b) of the repealed Act that a child be placed, or remain, in the custody of a specified suitable person, is, on and after the commencement day, taken to be—

- (a) an interim residence order in favour of the person; and
- (b) an interim specific issues order conferring responsibility for the day-to-day care, welfare and development of the child on the person.

**(4)** An order under paragraph 81 (2) (c) or (d) of the repealed Act that a child live, or continue to live, in an approved home or a shelter is, on and after the commencement day, taken to be—

- (a) an interim residence order in favour of the chief executive; and
- (b) an interim specific issues order conferring responsibility for the day-to-day care, welfare and development of the child on the chief executive.

**(5)** An order under paragraph 81 (2) (e) of the repealed Act that a child be detained in a specified hospital is, on and after the commencement day, taken to be—

- (a) an interim residence order naming the hospital; and

- (b) an interim specific issues order conferring responsibility for day-to-day care, welfare and development of the child on the chief executive.
- (6) This section only applies to orders in force immediately before the commencement day.

#### **432 Length of s 81 orders**

(1) If the period for which an order made under section 81 of the repealed Act is stated to be in force is longer than the period for which the equivalent order may be made, the court must—

- (a) on its own initiative, list the application in relation to which the order was made (the *relevant application*) for mention (the *mention hearing*) within 8 weeks after the commencement day; and
  - (b) notify the parties to the proceeding that the application is listed.
- (2) At the mention hearing, the court must treat the proceeding as a proceeding on an equivalent application.

(3) If, for any reason, the court does not list the relevant application in accordance with paragraph (1) (a), the equivalent order in force in relation to the application continues in force until the relevant application comes before the court for any reason, even if the equivalent order may not be made for such a period.

#### **433 Final care orders in force immediately before commencement day**

A final care order made under the repealed Act and mentioned in an item of column 2 of the table in Part 2 of Schedule 2 in force immediately before the commencement day, is, on and after the commencement day, taken to be a final care and protection order of a type mentioned in column 4 of the item.

#### **434 Declarations made immediately before commencement day**

(1) A declaration made under section 80 (Hearing and determination of application) of the repealed Act in relation to a child in relation to which no order under that section had been made before the commencement day, is taken to be a declaration under subsection 255 (1) (Final care and protection orders) of this Act.

(2) If, before the commencement day, a child was referred to the mental health tribunal under section 83A (Referral to the mental health tribunal) of the repealed Act, but no order had been made in relation to the child as a result of the referral before the commencement day, on and after the commencement day the referral is taken to have been made under section 255 of this Act.

**435 Information laid for warrant**

If, before the commencement day, an information was laid for a warrant under subsection 85 (3) (Residential orders and supervision orders: entry and inspection by Director etc.) of the repealed Act but the magistrate had not issued a warrant or refused to issue a warrant, the laying of information is, on and after the commencement day, taken to be an application for the issue of a warrant under section 270 (Circumstance in which child or young person may be taken into safe custody) of this Act.

**436 Access orders**

A CSA order that a person have access to a child in force immediately before the commencement day is, on and after the commencement day, taken to be an order under this Act that the child have contact with the person.

**437 Periodical review of orders**

(1) The provisions of the repealed Act continue to apply in relation to an application for a review under section 89 of that Act of an order if the application had not been decided immediately before the commencement day.

(2) If, but for this subsection, an order mentioned in subsection (1) would end before it is reviewed, the order remains in force until reviewed.

**438 Notations**

(1) A notation on a CSA order in force immediately before the commencement day is, on and after that day, taken to be a notation on the equivalent order.

(2) A party to a proceeding in which a CSA order was made that had a notation on it may apply to the court under this Act to vary the equivalent order by making an order to give effect to the notation.

(3) An application for variation that is limited to giving effect to a notation is not taken to be an application for the purposes of deciding whether the person applying has made an application for variation within the previous 12 months.

#### **439 Undertakings**

If—

- (a) someone gave an undertaking in relation to a child or a proceeding under the repealed Act; and
- (b) the undertaking is effective immediately before the commencement day;

the undertaking is to be taken to have been made in relation to a child or proceeding under this Act.

#### **440 Child care centres**

(1) A licence granted under section 120 (Licences) of the repealed Act in force immediately before the commencement day under which the licensee was providing care for a child at a child-care centre is, on and after the commencement day, taken to have been granted under this Act.

(2) Nothing in this section applies to a licence granted under section 120 of the repealed Act in relation to care provided for a child to which Chapter 9 (Childrens Services) of this Act does not apply.

#### **441 Suspension of licences and directions to comply**

(1) A suspension in force under section 121 (Emergency suspension of licences) or subsection 123 (4) (Cancellation etc. of licences) of the repealed Act immediately before the commencement day is taken to be a suspension under subsection 358 (2) (Notice to enforce requirements) of this Act.

(2) If, before the commencement day, the Minister had given notice under section 122 (Adjournment of criminal proceedings) or subsection 123 (3) of the repealed Act but had not made a decision about whether to suspend or cancel the licence or vary or revoke a condition of the licence, the notice is, on and after the commencement day, taken to be a notice under subsection 358 (1) of this Act.

**442 Family day care schemes**

Section 361 (Provision of care as part of family day care scheme) does not apply to the provision of care under a family day care scheme operating immediately before the commencement day, for a period of 6 months commencing on that date, if an application is made for approval in principle of the scheme not later than 3 months after the commencement day.

**443 Attendance centres, institutions and shelters**

If, before the commencement day—

- (a) a place was declared to be an attendance centre, institution or shelter; and
- (b) the declaration was not revoked before the commencement date;

the place is taken to have been declared to be an attendance centre, institution or shelter under this Act.

**444 AAT appeals**

On appeal from a decision of the director, the administrative appeals tribunal must—

- (a) treat the decision as if it had been made by the chief executive; and
- (b) if it proposes to vary the decision under review—vary it in a way that it could be varied under this Act; and
- (c) if it proposes to make a decision in substitution for the decision of the director—make a decision that could be made by the chief executive under this Act.

**445 Modification of ch 17's operation**

(1) The regulations may modify the operation of this Chapter to make provision with respect to any matter that is not already, or is not adequately, dealt with in this Chapter.

(2) A regulation that is expressed to modify the operation of this Chapter may take the form of a change to the text of this Chapter (whether by omission, insertion, addition or substitution) so that this Chapter operates as modified but the regulation does not amend its text.

**446 Expiry of ch 17**

This Chapter ceases to have effect 1 year after it commences.

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**SCHEDULE 1**

(See s 275)

**APPLICATIONS UNDER CHAPTER 7 (CHILDREN AND YOUNG PEOPLE IN NEED OF CARE AND PROTECTION), PART 3 (CARE AND PROTECTION ORDERS AND EMERGENCY ACTION)**

1	2	3	4
item	type of application	application to be served on	notice of hearing
1	for short care and protection order (other than therapeutic protection order)	the child or young person; each person with parental responsibility for the child or young person; the community advocate	except for an application under section 228, 1 working day
2	cross-application on short care and protection order	each party to the proceeding; the community advocate	1 working day
3	for variation, extension or revocation of short care and protection order	the child or young person; each person with parental responsibility for the child or young person; the chief executive; the community advocate	1 working day
4	under section 231 for release of child or young person while chief executive or police officer has parental responsibility as a result of taking emergency action	the child or young person; each person with parental responsibility for the child or young person; each former caregiver of the child or young person; the chief executive; the community advocate	none prescribed



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**SCHEDULE 1—continued**

1	2	3	4
item	type of application	application to be served on	notice of hearing
5	for therapeutic protection order	the child or young person; each person with parental responsibility for the child or young person; the community advocate	1 working day
6	for final care and protection order	the child or young person; each person with parental responsibility; the chief executive; the community advocate	3 working days
7	for variation of interim order on adjournment of a proceeding for final care and protection order	each party to the proceeding; the community advocate	3 working days
8	application for contact order	each party to the proceeding; the community advocate	none prescribed
9	for variation, extension or revocation of final care and protection order	each party to the original order; the community advocate	3 working days
10	under section 285 to remove a party to a proceeding	each party to the proceeding; the community advocate	none prescribed
11	under section 24 for child or young person to have legal representation	all parties to the proceeding; the community advocate	none prescribed

**SCHEDULE 2**

(See s 428 and s 433)

**TRANSLATION OF CERTAIN APPLICATIONS  
AND ORDERS**

*Part 1—Applications*

<b>1</b> item	<b>2</b> CSA provision	<b>3</b> application	<b>4</b> to be treated as (under this Act)
1	78 (1)	for declaration that child is in need of care	application for a final care and protection order
2	84 (1)	for access	application for a contact order
3	88 (1)	to revoke or vary order (the <i>original order</i> )	application to revoke or vary a final care and protection order in terms of the original order
4	92 (1)	for order resolving a disagreement	application to vary a final care and protection order

*Part 2—Final care and protection orders*

<b>1</b> item	<b>2</b> provision of CSA	<b>3</b> order under CSA	<b>4</b> type of order under this Act
1	83 (1) (a)	a supervision order without a provision naming the director of family services as supervisor	a final care and protection order of the type mentioned in paragraph 255 (4) (a)

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**SCHEDULE 2**—continued

1 item	2 provision of CSA	3 order under CSA	4 type of order under this Act
2	83 (1) (a)	a supervision order (the <b><i>original order</i></b> ) without a provision where someone other than the director of family services is named as supervisor	a final care and protection order in the same terms as the original order
3	83 (1) (a), (4)	a supervision order naming the director of family services as supervisor with a provision	a final care and protection order of the type mentioned in paragraph 255 (4) (a) and a final care and protection order in terms of the provision
4	83 (1) (a), (4)	a supervision order (the <b><i>original order</i></b> ) naming a person other than the director of family services as supervisor with a provision	a final care and protection order in the same terms as the original order and a final care and protection order in terms of the provision
5	83 (1) (b)	a residential order	a residence order in favour of the chief executive or person named in the order and specific issues order conferring responsibility for day-to-day care, welfare and development of the child or young person on the chief executive or person

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**SCHEDULE 2**—continued

1 item	2 provision of CSA	3 order under CSA	4 type of order under this Act
6	83 (1) (d)	an order committing a child to an institution	a residence order naming the institution and a specific issues order conferring responsibility for day-to-day care, welfare and development of the child or young person on the chief executive
7	83 (1) (e)	an order that a child become a ward of the director without a limit on the exercise of the director's power in respect of the ward	a residence order in favour of the chief executive and a specific issues order conferring responsibility for day-to-day and long-term care, welfare and development of the child or young person on the chief executive

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**SCHEDULE 2**—continued

1 item	2 provision of CSA	3 order under CSA	4 type of order under this Act
8	83 (7)	an order that a child become a ward of the director with a limit on the exercise of the director's power in respect of the ward	a residence order in favour of the chief executive and specific issues order conferring responsibility for day-to-day and long-term care, welfare and development of the child or young person on the chief executive with the limit on the exercise of the chief executive's power in relation to the child or young person that was on the director's power in respect of the ward

**DICTIONARY**

(See s 3)

**Aboriginal** means a person who—

- (a) is a descendant of the indigenous inhabitants of Australia; and
- (b) regards himself or herself as an Aboriginal or, if the person is a child or young person, is regarded as an Aboriginal by a parent or kin.

**abuse**—see section 151.

**Act** includes the regulations.

**adult** means someone who is 18 years old or older.

**approval in principle**—see section 324.

**arrangement**, for Chapter 6 (Young offenders), Part 3 (Interstate transfer)—see section 132.

**assessment order** means an order under section 217.

**attendance centre** means a place that is declared under section 412 to be an attendance centre.

**attendance centre order**—see section 110.

**authorised officer**—see section 76.

**best interests principle**—see paragraph 12 (1) (a) and section 13.

**body** includes agencies and organisations.

**care and protection application**, for Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action)—see section 194.

**care and protection order**, for Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action)—see section 194.

**care plan**—see section 259.

**carer**—see section 5.

**child**—

- (a) for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 1 (Family group conferences)—see section 165; or
- (b) in any other case—see section 7.

**DICTIONARY**—continued

***child care and protection order***, for Chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299.

***child care and protection proceeding***, for Chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299.

***child-care centre***—see section 328.

***child protection appraisal*** means assessment under section 189.

***Childrens Court***—

- (a) for Chapter 8 (Transfer of child care and protection orders and proceedings), in relation to a State—see section 299; or
- (b) in any other case—see section 53.

***childrens service***—see section 327.

***child welfare law***, for Chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299.

***community service order***—see section 106.

***conditional discharge order***—see section 63.

***conference***, for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 1 (Family group conferences)—see section 165.

***contact***—see section 152.

***contact order*** means an order made under section 206.

***controlling person***, for Chapter 9 (Childrens services)—see section 324.

***council*** means the Childrens Services Council.

***court*** means the Childrens Court established under this Act.

***court order***, for Chapter 2 (General objects, principles and parental responsibility), Part 3 (Parental responsibility)—see section 16.

***custodial escort***, for Chapter 6 (Young offenders), means an escort under the *Custodial Escorts Act 1998* other than an escort who is a police officer.

***decision-maker*** includes any court exercising jurisdiction under this Act.

**DICTIONARY**—continued

**determined fee**, in relation to a provision of this Act, means a fee determined under section 416 for the provision.

**domestic violence order** means an order under Part 2 of the *Domestic Violence Act 1986*.

**drug of dependence**—see the *Drugs of Dependence Act 1989*, subsection 3 (1).

**emergency action** means action taken by the chief executive or a police officer under Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action), Division 4 (Emergency action).

**employer**, for Chapter 10 (Employment of children and young people), in relation to a child or young person, means someone who is deemed to employ the child or young person.

**enduring parental responsibility order**—see section 260.

**escort**, for Chapter 6 (Young offenders), Part 3 (Interstate transfer)—see section 132.

**facilitator**, for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 1 (Family group conferences), means a person who is appointed as a facilitator under section 166.

**family day care scheme**—see section 329.

**family group conference** means a conference convened under Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary action), Division 1 (Family group conferences).

**final care and protection order**—see section 194.

**fine**, for Chapter 6 (Young offenders)—see section 63.

**former caregiver**, for Chapter 7 (Children and young people in need of care and protection)—see section 153.

**indigenous**, for a person, means Aboriginal or Torres Strait Islander.

**indigenous organisation** means an organisation whose purpose is to represent the interests of indigenous people.



**DICTIONARY**—continued

***indigenous placement principle***—see section 15.

***in favour of***—see section 4.

***institution*** means a place that is declared to be an institution under section 412.

***interim order***, for Chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299.

***interstate law*** means—

- (a) a law that, under a notice under subsection 299 (3) that has not been revoked, is declared to be an interstate law for Chapter 8 (Transfer of child care and protection orders and proceedings); and
- (b) a law of a State that corresponds to Chapter 8.

***interstate officer***, for Chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299.

***interim order***, for Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action), Division 7 (Final care and protection orders), means an order under paragraph 251 (1) (e).

***interview***, for Chapter 6 (Young offenders), Part 2 (Within the Territory), Division 2 (Criminal proceedings against young people)—see section 76.

***Legislative Assembly Standing Committee*** means the Legislative Assembly Standing Committee the terms of reference of which include examination of matters related to the administration of justice.

***licence***—see section 324.

***mental dysfunction***—see the *Mental Health (Treatment and Care) Act 1994*, section 4.

***mental health order***—see the *Mental Health (Treatment and Care) Act 1994*, section 4.

***mental health tribunal*** means the mental health tribunal established under the *Mental Health (Treatment and Care) Act 1994*.

**DICTIONARY**—continued

**mental illness**—see the *Mental Health (Treatment and Care) Act 1994*, section 4.

**Minister**, for Chapter 6 (Young offenders)—see section 63.

**neglect**—see section 151.

**offence**—

- (a) includes an offence against a Commonwealth law; and
- (b) for Chapter 13 (Powers of entry and search)—see section 394.

**official visitor** means the Official Visitor appointed under section 41.

**officer**—see section 48.

**order**, for Chapter 11 (Appeals and review), includes a decision.

**outstanding fine**, for Chapter 6 (Young offenders)—see section 63.

**parental responsibility**—see section 17.

**participant**, for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 1 (Family group conferences)—see section 165.

**participating State**, for Chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299.

**party**, for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 2 (Voluntary care agreements)—see section 181.

**personal search**, for Chapter 13 (Powers of entry and search)—see section 399.

**person responsible**, for Chapter 6 (Young offenders), Part 3 (Interstate transfer)—see section 132.

**place** includes premises.

**police officer**, for Chapter 6 (Young offenders), Part 2 (Within the Territory), Division 2 (Criminal proceedings against young people)—see section 76.

**probation order**—see section 104.

**proprietor**, for Chapter 9 (Childrens services)—see section 324.

**DICTIONARY**—continued

***reasonably believes*** means believes on reasonable grounds.

***reasonably suspects*** means suspects on reasonable grounds.

***receiving State***, for Chapter 6 (Young offenders), Part 3 (Interstate transfer)—see section 132.

***remand centre***—see the *Remand Centres Act 1976*, section 3.

***representative***, for a child or young person, means a lawyer or other person representing the child or young person, but does not include a child or young person who represents himself or herself.

***residence order*** means an order under section 207.

***residential order***—see section 114.

***restraining order*** means a restraining order made under Part 10 (Restraining orders) of the *Magistrates Court Act 1930*.

***school*** means a school conducted on behalf of the Territory, a school registered or provisionally registered under the *Education Act 1937* or an educational institution conducted by the Canberra Institute of Technology.

***school-leaving age***—see the *Education Act 1937*, section 5.

***sending State***, for Chapter 6 (Young offenders), Part 3 (Interstate transfer)—see section 132.

***serious offence***, for Chapter 6 (Young offenders), Part 2 (Within the Territory), Division 2 (Criminal proceedings against young people)—see section 76.

***shelter*** means a place that is declared to be a shelter under section 412.

***short care and protection order***, for Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action)—see section 194.

***signed agreement***, for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 1 (Family group conferences)—see section 165.

***special assessment*** means an assessment of a person that may include the matters mentioned in section 190.

**DICTIONARY**—continued

***specific issues order***, for Chapter 7 (Children and young people in need of care and protection), Part 3 (Care and protection orders and emergency action)—see section 194.

***State*** includes another Territory and in Chapter 8 (Transfer of child care and protection orders and proceedings) includes New Zealand.

***State institution***, for Chapter 6 (Young offenders)—see section 65.

***supervision order***, in relation to a child or young person, means an order made by a court placing the child or young person under the supervision of—

- (a) the chief executive or someone else designated by the chief executive; or
  - (b) a person named in the order;
- for the period stated in the order.

***supervisor***, for a child or young person in relation to whom a probation order or a supervision order is in force, means the person under whose supervision the child or young person is placed by order.

***suitable***—see subsection 47 (1) and section 332.

***suitable carer***—see section 30.

***therapeutic protection***—see section 233.

***therapeutic protection order*** means an order under section 235.

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

- (a) is a descendant of the indigenous inhabitants of the Torres Strait Islands; and
- (b) regards himself or herself as a Torres Strait Islander or, if he or she is a child or young person, is regarded as a Torres Strait Islander by a parent or kin.

***transfer direction***, Chapter 6 (Young offenders), Part 3 (Within the Territory), Division 4 (Transfer between institutions)—see section 119.

***transfer order***, for Chapter 6 (Young offenders), Part 3 (Interstate transfer)—see section 132.

**DICTIONARY**—continued

***under restraint***, for Chapter 6 (Young offenders), Part 2 (Within the Territory), Division 2 (Criminal proceedings against young people)—see section 77.

***voluntary care agreement***, for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 2 (Voluntary care agreements), means an agreement entered into under section 182.

***working day*** means a day other than a Saturday, Sunday or public holiday.

***young child***, for Chapter 10 (Employment of children and young people), means someone who is not school-leaving age or older.

***young offender***—see section 64.

***young person***—

- (a) for Chapter 7 (Children and young people in need of care and protection), Part 2 (Voluntary Action), Division 1 (Family group conferences)—see section 165; and
  - (b) see section 8.
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**ENDNOTES**

**1 About this republication**

This is a republication of the *Children and Young People Act 1999* effective from 10 May 2000 to 21 September 2000.

Amending laws are annotated in the table of legislation and table of amendments.

**2 Abbreviation key**

Key to abbreviations in tables

am = amended	pres = present
amdt = amendment	prev = previous
ch = chapter	(prev...) = previously
cl = clause	prov = provision
def = definition	pt = part
dict = dictionary	r = rule/subrule
div = division	reg = regulation/subregulation
exp = expires/expired	renum = renumbered
Gaz = Gazette	reloc = relocated
hdg = heading	R[X] = Republication No
ins = inserted/added	s = section/subsection
LR = Legislation (Republication) Act 1996	sch = schedule
mod = modified	sdiv = subdivision
No = number	sub = substituted
notfd = notified	SL = Subordinate Law
o = order	sp = spent
om = omitted/repealed	* SL unless otherwise stated
orig = original	† Act or Ordinance unless otherwise stated
p = page	
par = paragraph	

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**3 Table of legislation**

Act†	Year and number†	Gazette notification	Commencement	Transitional provisions
<i>Children and Young People Act 1999</i>	1999 No 63	10 Nov 1999	ss 1 and 2: 10 Nov 1999 remainder: 10 May 2000	
<i>Children and Young People Amendment Act 2000</i>	2000 No 11	6 Apr 2000	ss 1 and 2: 6 Apr 2000 remainder: 10 May 2000 (see s 2 (2))	—

**4 Table of amendments**

Provision	How affected†
s 71 .....	am 2000 No 11 s 4
s 72 .....	am 2000 No 11 s 5

**5 Penalties in this republication**

The penalties in this republication have been revised in accordance with the *Interpretation Act 1967*, s 63. The value of a penalty unit for an offence against this Act at the date of publication is, therefore—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

See *Interpretation Act 1967*, s 33AA for additional information.

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