



Australian Capital Territory

# **Children and Young People Act 1999**

**A1999-63**

**Republication No 42**

**Effective: 16 April 2008 – 8 September 2008**

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Last amendment made by A2008-6

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Children and Young People Act 1999* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 16 April 2008. It also includes any amendment, repeal or expiry affecting the republished law to 16 April 2008.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

# Children and Young People Act 1999

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An Act about the welfare of children and young people

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## **Chapter 1 Preliminary**

### **Part 1.1 Introductory**

#### **1 Name of Act**

This Act is the *Children and Young People Act 1999*.

## Part 1.2 Interpretation

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*drug of dependence*—see the *Drugs of Dependence Act 1989*, section 3 (1).' means that the term 'drug of dependence' is defined in that subsection and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and 156).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### 3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1).

- s 160 (Dishonest reports—offence).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### 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
  - (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 1.3 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 under this Act may be exercised in relation to children and young people—

- (a) who ordinarily live in the ACT; or
- (b) who do not ordinarily live in the ACT, but who are present in the ACT; or
- (c) who are subject to an event or circumstances happening in the ACT giving rise to a report under section 157A (Prenatal reporting—anticipated abuse or neglect), section 158 (Voluntary reporting) or section 159 (Mandatory reporting).

## **Chapter 2            General objects, principles and parental responsibility**

### **Part 2.1            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 2.2 Principles applying to the Act

### 11 Best interests of child or young person paramount consideration

- (1) In making a decision or taking action under this Act in relation to a child or young person, the decision-maker or person taking the action must regard the best interests of the child or young person as the paramount consideration (the *best interests principle*).
- (2) This section does not apply to a decision under chapter 6 (Young offenders).

*Note* A decision-maker making a decision under ch 6 about a young person or young offender must have regard to the best interests of the young person or young offender (see s 68 (b)).

### 12 General principles

- (1) In making a decision or taking action under this Act in relation to a child or young person, the decision-maker or person taking the action must apply the following principles except when it would be contrary to the best interests of a child or young person:
  - (a) 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;
  - (b) 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;

- (c) 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;
- (d) 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;
- (e) 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 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;
- (f) 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;
- (g) the education, training or lawful employment of the child or young person should be encouraged and continued without unnecessary interruption;
- (h) 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
  - (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 Aboriginal or Torres Strait Islander child or young person, the decision-maker or person taking the action must take 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 Aboriginal or Torres Strait Islander child or young person, the decision-maker must make the decision in accordance with—

- (a) this section; and
  - (b) any indigenous cultural plan in force for the child or young person.
- (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.
- (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).

(5) In this section:

***indigenous cultural plan***, for a child or young person, means a plan to preserve and enhance the identity of the child or young person as an Aboriginal or Torres Strait Islander person, that is developed by the chief executive in consultation with—

- (a) the child or young person (taking into consideration the age and maturity of the child or young person); and
- (b) any Aboriginal or Torres Strait Islander people who have an interest in the wellbeing of the child or young person; and
- (c) any relevant indigenous organisation.

## Part 2.3 Parental responsibility

### 16 Meaning of *court order* for pt 2.3

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 and responsibilities parents ordinarily have by law in relation to their children.

*Note* **Power** includes authority (see Legislation Act, dict, pt 1).

(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 ACT 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 subsection (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;
  - (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 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 Ch 6 and ch 7—general representation of child or young person

- (1) In a proceeding under chapter 6 (Young offenders) or chapter 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 Childrens 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 Childrens Court.
- (3) The Childrens Court may give leave for 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 Ch 6, ch 7 and ch 8—legal representation of child or young person**

- (1) The Childrens Court may hear an application under chapter 6 (Young offenders), chapter 7 (Children and young people in need of care and protection) or chapter 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—
    - (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 Childrens 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 Childrens 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 Childrens Court in accordance with the instructions; or
  - (b) in any other case—act and make representations to the Childrens 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 Childrens Court may hear and decide the applications 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 Childrens 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 4.1 Chief executive**

#### **26 Chief executive's functions**

The chief executive has the following functions:

- (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.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

## **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 exercising a function or a power under the Act; and
  - (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 ACT);
  - (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
  - (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.
- (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.
- (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 by chief executive**

The chief executive may delegate the chief executive's functions under this Act or an interstate law to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

## Part 4.2 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 ACT.

### 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.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).
- (2) The Minister must ensure that there is always—
  - (a) at least 1 member who represents the interests of carers; and
  - (b) at least 1 member who represents the interests of Aboriginal and Torres Strait Islander people.
- (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 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 Ending of appointments**

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.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

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

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



## Part 4.3 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.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) A person may be appointed as official visitor for a term of not longer than 3 years.
- (4) 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.

*Note* The official visitor's appointment also ends if the official visitor resigns (see Legislation Act, s 210).

## 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) how the shelter, institution or place providing therapeutic protection is conducted; and
  - (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 public 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 public advocate or another appropriate entity.
- (2) If subsection (1) applies, the official visitor may provide information about the complaint to the public advocate or other entity in relation to the investigation.

#### 45 Assistance for public advocate

- (1) For the purpose of exercising a statutory function, the public 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 public 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—
    - (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 controlled drug; 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 Appointment of officers**

The chief executive may appoint a public servant as an officer for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

#### **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 ACT; or
    - (ii) cannot exercise the functions of the Childrens Court Magistrate for another reason.
- (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 Childrens 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 about—

- (a) the magistrate who is to be the Childrens Court Magistrate; and
- (b) the assignment under section 51 of magistrates to act as Childrens Court Magistrate; and
- (c) the assignment under section 53A of magistrates to deal with matters.

### **53 Childrens Court**

- (1) The Magistrates Court is known as the Childrens Court when it is constituted by the Childrens Court Magistrate exercising the jurisdiction given under section 54.
- (2) The Childrens Court Magistrate is responsible for dealing with all matters within the jurisdiction of the Childrens Court.
- (3) Subsection (2) is subject to—
  - (a) section 53A (Assignment of other magistrates to deal with Childrens Court matters); and
  - (b) section 53B (Completion of part-heard matters).

*Note* A magistrate assigned to act as Childrens Court Magistrate under s 51 is the Childrens Court Magistrate for this Act (see s 51(2)).

- (4) The Childrens Court must have a seal.

### **53A Assignment of other magistrates to deal with Childrens Court matters**

- (1) If the Childrens Court Magistrate is unable to deal with a matter because of a conflict of interest, or a perceived conflict of interest, the Chief Magistrate may assign another magistrate to deal with the matter.
- (2) Also, if the Childrens Court Magistrate is unable to deal with a matter or matters without a delay that is likely to prejudice the wellbeing of a child or young person, the Chief Magistrate may assign another magistrate to deal with the matter or matters.

- (3) A magistrate may be assigned under subsection (2) only if the Chief Magistrate is satisfied the assignment is necessary having regard to—
  - (a) the circumstances mentioned in that subsection; and
  - (b) the best interests principle; and
  - (c) the degree of urgency of the matter or matters to be dealt with by the assigned magistrate; and
  - (d) the views (if any) of the Childrens Court Magistrate on the proposed assignment.
- (4) The Magistrates Court is also known as the Childrens Court when it is constituted by a magistrate assigned under this section who is exercising the jurisdiction given under section 54.
- (5) This section does not create a right in relation to the assignment of a matter under this section.
- (6) Without limiting subsection (5), the decision to assign or not to assign a matter under this section—
  - (a) may not be challenged or called into question in any court; and
  - (b) is not subject to a prerogative order or injunction in any court.
- (7) This section is in addition to, and does not limit, section 51 (Restriction on assignment to act as Childrens Court Magistrate).

### **53B Completion of part-heard matters**

- (1) This section applies if—
  - (a) a magistrate begins to deal with a Childrens Court matter under this chapter; and
  - (b) the magistrate ceases to be the Childrens Court Magistrate or to hold an assignment under section 51 or 53A before the matter is finally decided.



- (2) The magistrate may continue to deal with the matter until it is finally decided.
- (3) The Magistrates Court is also known as the Childrens Court when it is constituted by a magistrate who is acting under subsection (2).

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

- (1) The Childrens Court has jurisdiction—
  - (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 function or power given to a magistrate under a provision of this Act; or
  - (b) exercising a power given to 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) The *Magistrates Court Act 1930* (other than chapter 4 (Civil proceedings)) applies to the Childrens Court in the exercise of its jurisdiction under section 54 (General jurisdiction of the Childrens Court) in relation to a proceeding under chapter 6 (Young offenders), other than section 128 (Special purpose leave).
- (2) The rules under the *Court Procedures Act 2004* applying in relation to civil proceedings in the Magistrates Court apply to the Childrens Court in the exercise of its jurisdiction under section 54 in relation to any other proceeding under this Act.

**57 Matters before Childrens Court**

The sittings of the Childrens 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.

**59 Orders about service**

The Childrens 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 Childrens 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 Childrens Court if the parent does not attend throughout the proceeding.
- (3) The Childrens 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 Childrens 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 ACT.
- (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 Childrens 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 public advocate or a person authorised by the public 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.

**61A Restriction on publication of certain identifying material from proceedings**

- (1) This section applies to a proceeding, in relation to a child or young person—
  - (a) under this Act; or

- (b) to which this Act applies; or
  - (c) under a State law if the law relates to the welfare of the child or young person.
- (2) In subsection (1):
- proceeding* includes a proceeding begun before the commencement of this section.
- (3) A person must not publish an account or report of the proceeding if the account or report—
- (a) discloses the identity of the child or young person or a family member; or
  - (b) allows the identity of the child or young person, or a family member, to be worked out.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (4) A prosecution for an offence against subsection (3) may be begun only by, or with the written consent of, the Attorney-General or director of public prosecutions.

## **62 Childrens Court may excuse parties from attendance**

- (1) The Childrens 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 Childrens Court may, at any time and by notice served on the party, require the party to attend the proceeding.

## Chapter 6 Young offenders

### Part 6.1 Interpretation for chapter 6

#### 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*—see the *Magistrates Court Act 1930*, section 146.

*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*—see the *Magistrates Court Act 1930*, section 146.

#### 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
- (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 where, 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 6.2 Dealing with young offenders in ACT**

### **Division 6.2.1 General provisions for part 6.2**

#### **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 ACT.

#### **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) regard must be had to the best interests of the young person or young offender;
- (c) 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;
- (d) a young person may only be detained in custody for an offence (whether on arrest, in remand or under sentence) as a last resort;
- (e) 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;



- (f) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
- (g) 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 Childrens Court, regard should be had to the age of the person at the time of the alleged offence.
- (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 Childrens 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 Childrens 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.

**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 had carried out, or is carrying out, conduct that makes up the physical elements of an offence, the police officer may apprehend the child, and for that purpose may use necessary and reasonable force.

*Note* The Criminal Code, div 2.3.1 deals with the criminal responsibility of children.

- (2) When exercising the power given 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 6.2.2 (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 in relation 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 ACT 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 ACT, 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;
  - (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 subsection (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 Childrens Court is satisfied that the young person should be dealt with under part 7.3 (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 Childrens 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 public 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 that 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 part 7.3.
- (3) The Childrens 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 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 section 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 Childrens 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 Childrens 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 written notice to the public advocate and the court—

- (c) of the action he or she has taken, is taking or proposes to take under part 7.3 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 part 7.3 in relation to the young person.
- (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 part 7.3 in relation to the young person who is the subject of the proceeding; and
  - (b) serves a copy of that application on the public advocate.
- (8) When a proceeding adjourned under subsection (1) comes before the Childrens Court again, the court must—
- (a) if the chief executive has given the court notice under subsection (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 subsection (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 part 7.3 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 6.2.2 Proceedings against young people**

### **76 Definitions for div 6.2.2**

In this division:

*authorised officer* means—

- (a) the chief police officer; or
- (b) a police officer exercising the functions of a superintendent or sergeant; or
- (c) another police officer authorised in writing by the chief police officer.

*interview* includes ask questions.

*police officer* includes a office-holder under an Act who, because of the Act, has the power to arrest or detain a person or to take a person into the office-holder's custody, but does not include a corrections officer.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

*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 ACT 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 subsection (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 against that Act, that the inspector reasonably believes was not committed by the young person.
- (4) Also, for this division, a young person is not *under restraint* if—
  - (a) the young person is 16 years old or older; and



- (b) a police officer suspects on reasonable grounds that the young person has committed 1 of the following offences:
- (i) the *Crimes Act 1900*, section 120 (Defacing premises—strict liability);
  - (ii) the *Crimes Act 1900*, section 393A (Urinating in public place);
  - (iii) the *Crimes Act 1900*, section 394 (2) (Noise abatement directions);
  - (iv) the *Liquor Act 1975*, section 139 (1) (Consumption of liquor in certain public places); and
- (c) the young person is in the company of the police officer for investigating whether to serve an infringement notice for the offence on the young person.

*Note 1* A police officer may serve an infringement notice for an offence on a person if the officer believes on reasonable grounds that the person has committed the offence (see the *Magistrates Court Act 1930*, s 120).

*Note 2* The *Magistrates Court (Crimes Infringement Notices) Regulation 2008* provides that an infringement notice under the *Magistrates Court Act 1930* may be issued for offences against the *Crimes Act 1900*, s 120, s 393A and s 394 (2).

*Note 3* The *Magistrates Court (Liquor Infringement Notices) Regulation 2008* provides that an infringement notice under the *Magistrates Court Act 1930* may be issued for an offence against the *Liquor Act 1975*, s 139 (1).

- (5) Also, for this division, a young person is not ***under restraint*** if—
- (a) the young person is 16 years old or older; and
  - (b) an inspector under the *Liquor Act 1975* suspects on reasonable grounds that the young person has committed an offence against the *Liquor Act 1975*, section 139 (1); and

- (c) the young person is in the company of the inspector for investigating whether to serve an infringement notice for the offence on the young person.
- (6) Also, for this division, a young person is not *under restraint* if—
  - (a) the young person is 16 years old or older; and
  - (b) an authorised person under the *Litter Act 2004* suspects on reasonable grounds that the young person has committed an offence against the *Crimes Act 1900*, section 120; and
  - (c) the young person is in the company of the authorised person for investigating whether to serve an infringement notice for the offence on the young person.
- (7) Despite subsection (4), a young person is *under restraint* if—
  - (a) the police officer decides not to serve an infringement notice for the offence on the young person; and
  - (b) the young person is in the company of the police officer for the further investigation of the offence.
- (8) In this section:  
*infringement notice*—see the *Magistrates Court Act 1930*, section 117.

## 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 1 of the following adults (who is not a police officer) is present:
    - (i) a person with parental responsibility for the young person;
    - (ii) a relative of the young person acceptable to the young person;
    - (iii) a lawyer acting for the young person or some other suitable person acceptable to the young person; 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 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 subsection (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 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 or not the person lives in the ACT; and
- (b) if the police officer is not an authorised officer, notify an authorised officer.

## **81 Limitations in relation to 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 the matters that 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 ACT or elsewhere, and the seriousness of that offence;
  - (e) whether a warning has been given to the young person in the ACT 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 impairment 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
  - (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 ACT 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 the *Crimes Act 1900*, section 212 (1) (b) (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 Childrens Court.
- (2) Subsection (1) applies whether or not the person with parental responsibility lives in the ACT.

## **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) However, if a young person is in lawful custody for an offence allegedly committed while the young person was 16 or 17 years old, an authorised officer or police officer may take prints of the young person's fingers or photographs of the young person, or cause them to be taken, without a magistrate's approval.
- (5) Subsection (4) does not apply if—
  - (a) there are reasonable grounds for the authorised officer or police officer concerned to believe that the young person does not have sufficient mental capacity to understand what is being done to him or her; and
  - (b) the young person has not been arrested and charged with the offence.
- (6) 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.
- (7) 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.



- (8) 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.
- (9) Identifying material of a young person may only be taken under this section in the presence of—
  - (a) a person with parental responsibility for the young person; or
  - (b) if a person with parental responsibility for the young person is unavailable, or is unacceptable to the young person—someone else (other than a police officer within the meaning of section 76) who can represent the interests of the young person and who is, as far as is practicable in the circumstances, acceptable to the young person.
- (10) If identifying material of a young person is taken under this section otherwise than in the presence of a person with parental responsibility for the young person, the authorised officer or police officer concerned must, as soon as practicable, take all reasonable steps to tell a person with parental responsibility for the young person about the action taken.

#### **84A Destruction of identifying material**

- (1) Identifying material taken under section 84 must be destroyed as soon as practicable if—
  - (a) 1 year has elapsed since the material was taken; and
  - (b) a proceeding has not been begun in relation to an offence to which the material relates or, if such a proceeding has been begun, the proceeding has been discontinued.
- (2) If identifying material of a young person has been taken under section 84 and—
  - (a) the young person is found to have committed an offence to which the identifying material relates, but no conviction is recorded; or

(b) the young person is acquitted of an offence to which the identifying material relates and—

- (i) no appeal is made against the acquittal; or
- (ii) an appeal is made against the acquittal, but the acquittal is confirmed or the appeal is withdrawn;

the identifying material must be destroyed as soon as practicable, unless an investigation or proceeding in relation to another offence to which the material relates is pending.

(3) On application by a police officer, a magistrate may, if satisfied that there are special reasons for doing so in relation to particular identifying material, extend—

- (a) the period of 1 year mentioned in subsection (1); or
- (b) that period as previously extended under this subsection.

(4) In this section:

*identifying material*—see section 84 (1).

## **85 Detention of young people generally**

(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 correctional 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 correctional centre and detained there; or
  - (b) in any other case—be taken to a shelter and detained there.

#### **85A Taking young person to and from court**

- (1) This section applies if a young person is detained at a place and it is necessary to take the young person—
  - (a) from the place to a court; or
  - (b) from a court to the place.
- (2) The young person must not be taken with an adult under detention unless it is impracticable to avoid doing so.
- (3) The young person must not be taken to the court and placed in a room in which an adult is placed unless it is impracticable to avoid doing so.

#### **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 subsection (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 Childrens Court**

- (1) If a young person has been charged with an offence and has not been released from detention, a police officer or a corrections officer must, as soon as practicable, bring the young person before the Childrens Court.
- (2) If the young person is not brought before the Childrens 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 Childrens 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 the Childrens 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 the Childrens 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), the Childrens Court may hear and decide a charge against a young person summarily if—
  - (a) the charge is an indictable offence; and
  - (b) the court is of the opinion that the case can properly be disposed of 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 Childrens Court must have regard to the matters that 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;
  - (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**

- (1) This section applies if a young person is charged before the Childrens Court with an indictable offence.
- (2) The Childrens Court must deal with the charge in accordance with the provisions of the *Magistrates Court Act 1930* relating to indictable offences if—
- (a) the court has no power to hear and decide the charge summarily; or
  - (b) the court has the power, but decides not to hear and decide the charge summarily.

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

- (1) The Childrens Court may not exercise its powers under section 89 (1) (Summary disposal of certain cases) without the consent of the young person.
- (2) Before proceeding to hear the charge, the Childrens 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 Childrens 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 Childrens Court may continue the hearing.
- (5) The Childrens 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 Childrens Court is satisfied that—
  - (a) the young person has a mental impairment; and



- (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 Childrens 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 Childrens Court makes an order under subsection (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 Childrens Court makes an order under subsection (2), the court must not make—
- (a) an order under any of the following provisions of the *Crimes (Sentencing) Act 2005* for the offence:
- (i) section 17 (Non-conviction orders—general);
- (ii) section 19 (Reparation orders—losses and expenses generally);
- (iii) section 20 (Reparation orders—stolen property); or
- (b) a good behaviour order with a community service condition under the *Crimes (Sentencing) Act 2005*.
- (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, to decide whether a young person has a mental impairment, the Childrens Court may make the orders 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 6.2.3 Disposition of young offenders**

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

- (1) If a young person has been convicted of an offence by the Childrens 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;
  - (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 subsection (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 Childrens 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**

- (1) This section applies if the Childrens Court is satisfied that a charge against a young person is proved but, having regard to the relevant criteria, the court is of the opinion that it should not proceed to a conviction.
- (2) The Childrens Court must, as soon as practicable but in any event within 6 months—
  - (a) dismiss the charge; or
  - (b) even though no conviction is entered, make 1 or more of the orders mentioned in section 96 (1) (a), (b), (f), (g) or (h) (which is about the disposition of young offenders).

(3) In this section:

*relevant criteria* means the following:

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

## **99 Prohibition on certain orders**

- (1) The Childrens 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 section 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) For subsection (1) (b), the Childrens Court may make a good behaviour order under the *Crimes (Sentencing) Act 2005*—
  - (a) section 13 (Good behaviour orders); or
  - (b) section 17 (2) (b) (Non-conviction orders—general).
- (3) However, the good behaviour order must not include any of the following conditions under the *Crimes (Sentencing) Act 2005*, section 13:
  - (a) that the young person give security for a stated amount, with or without sureties, for compliance with the order;
  - (b) a community service condition;
  - (c) a rehabilitation program condition;
  - (d) a probation condition.
- (4) Subsection (2) and (3) (d) do not limit the Childrens Court’s power to make a probation order under section 96 (Disposition of young offenders).

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

If the Childrens 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 Childrens 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 Childrens 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 given to the Childrens 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 Childrens 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 Childrens 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 a correctional centre because of a failure of the young person to pay a fine.
- (4) The registrar may, 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 the *Magistrates Court Act 1930*, division 3.9.2 (Enforcement of fines) 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 by the Executive.
- Note 1* For the remission of a fine by the Executive, see the *Crimes (Sentence Administration) Act 2005*, s 313 (Remission of penalties).
- Note 2* A fine also may have been remitted under the *Magistrates Court Act 1930*, s 159 (repealed) or the *Crimes Act 1900*, s 434 (repealed).
- (5) The period for which the young person is to be committed to an institution or State institution is the lesser of—
- (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) This section applies if—
  - (a) an order for reparation or compensation is made under section 96 (1) (f) (Disposition of young offenders) in relation to a young offender in favour of a person other than the Territory; and
  - (b) the young person in relation to whom the order is made fails to obey the order.
- (2) The Childrens 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.
- (3) If the young person does not appear before the Childrens 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 the Childrens 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 Childrens 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 avoidance of a repetition of the offence or of the commission of further offences.
- (3) The Childrens 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 Childrens 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 section 105A.



## **105A Issue of warrant to enter and inspect**

- (1) This section applies if an information on oath is laid before a magistrate—
  - (a) alleging that there are reasonable grounds for suspecting that—
    - (i) 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
    - (ii) it is necessary in the interests of the young person for the premises to be inspected and to meet and talk with the person; and
  - (b) setting out those grounds.
- (2) The magistrate may issue a search warrant authorising the supervisor of a young person, with reasonable and necessary assistance and force, to enter the premises—
  - (a) to inspect the premises; and
  - (b) to meet and talk with the young person on the premises.
- (3) However, a magistrate must not issue a warrant under this section unless—
  - (a) the informant or someone else has given to the magistrate, either orally or by affidavit, any further information the magistrate requires about 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 the recommendations with respect to the young person's attendance that the Childrens 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 Childrens Court, the chief executive must decide the days and times when the young person is required to report for community service after the first occasion.
- (7) The days and times when 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 the work by way of community service that 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 Childrens 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 section 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 Childrens 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 Childrens Court as directed, the court may issue a warrant for the apprehension of the person.
- (3) If the Childrens 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

- section 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 Childrens 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 under that other order.
- (5) The Childrens Court may not make an order under subsection (3)—
- (a) of the kind set out in section 96 (1) (c), (d), (e), (i), (j), (k) or (l), unless the court has first convicted the person of the offence in 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 Childrens Court may not specify, under subsection (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 the young person is to report at the attendance centre or 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 the recommendations about the young person's attendance that the Childrens 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 Childrens Court, the chief executive must decide the days and times when the young person is required to report at the attendance centre after the first occasion.
- (7) The days and times when 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 where 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 Childrens 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 where the young person is required to report; or
  - (c) contravenes section 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.

## **114 Residential orders**

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

- (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 the place 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 Childrens Court finds an offence against this section 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 subsection (2) (a), the Childrens 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 under that other order.
- (4) The Childrens Court may only make an order under subsection (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 Childrens 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 section 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 Childrens 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 public advocate; or
    - (ii) the public advocate—on the chief executive; or
    - (iii) someone other than the chief executive or the public advocate—on the chief executive and the public 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 or not the person is resident in the ACT; and
  - (c) on the young offender; and
  - (d) on any other person that the Childrens Court directs.
- (3) The Childrens 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 section 96 (1), but the Childrens 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 Childrens

Court may not, unless the court first convicts the young person of the offence, make—

- (a) an order of the kind mentioned in section 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 ACT, 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 Childrens Court of an offence; and
  - (b) the court is satisfied that the young person has a mental impairment.
- (2) If this section applies, the Childrens 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 has a mental impairment; and
  - (b) if the tribunal decides that the young person has a mental impairment—to make recommendations as to how the young person should be dealt with.
- (3) If the tribunal notifies the Childrens Court that the young person has a mental impairment, the court must make such orders as it considers appropriate.

- (4) The orders that the Childrens 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 6.2.4      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 section 96 (1) (1) (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 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, corrections officer 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 public advocate.

## **122 Temporary custody before transfer between institutions**

- (1) If the chief executive gives a transfer direction under section 120 for a person, the person may be placed in a shelter or correctional centre until the person is transferred.

*Note* *Correctional centre* is defined in the Legislation Act, dict, pt 1.

- (2) However, the person must not be placed in a correctional centre without the written approval of—
  - (a) the chief executive; and
  - (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (3) The person must not be kept in a shelter for longer than 14 days without the written approval of the chief executive.
- (4) The person must not be kept at a correctional centre for longer than 14 days without the written approval of—
  - (a) the chief executive; and

- (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (5) A transfer direction for a person is authority for an officer, corrections officer or police officer—
  - (a) to take the person to and from a shelter or correctional centre for this section; and
  - (b) to take the person to the institution in accordance with the direction.
- (6) The authority under subsection (5) (a) is subject to the direction.

## **Division 6.2.5      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 subsection (1) (c), a young person is sentenced to imprisonment, the sentence has effect subject to a law of a State where the young person is detained relating to the detention of young people (however described).



## **124 Adjourning of criminal proceedings**

- (1) If the hearing of a charge against a young person is adjourned by the Childrens Court, the adjournment may not, except in special circumstances, be for a period that exceeds 15 days.
- (2) If the Childrens 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 correctional centre; or
  - (c) if the person in charge of a hospital consents, order that the young person be placed in the hospital.
- (3) The Childrens Court may not order that a young person be placed in a correctional 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 correctional centre

- (1) If the Childrens Court commits a young person to an institution or State institution, the young person must be placed in a shelter or correctional centre until the young person is removed to the institution.

*Note* **Correctional centre** is defined in the Legislation Act, dict, pt 1.

- (2) The young person must not be kept in a shelter or correctional centre for longer than 14 days without an order of the Childrens Court or the written approval of the chief executive.
- (3) An order committing a young person to an institution or State institution is authority for an officer, corrections officer or police officer to do 1 or more of the following:
- (a) take the young person to and from a shelter or correctional centre for this section;
  - (b) take the young person to the institution or State institution;
  - (c) for 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.
- (4) The authority under subsection (3) (a) is subject to the order.

## 126 Young people in correctional centres

If a young person is in a correctional centre under this Act, the *Corrections Management Act 2006* applies in relation to the young person as if the young person were a full-time detainee under that Act.

*Note* **Correctional centre** is defined in the Legislation Act, dict, pt 1.

## 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 Childrens 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  $\frac{1}{3}$  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;
  - (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 Childrens 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 Childrens Court may by order confirm, vary or revoke the decision of the chief

executive and may make any other orders 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 section 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 ACT; 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.

*Note* For remissions, pardons and the prerogative of mercy, see the *Crimes (Sentence Administration) Act 2005*, pt 13.2.

## **Part 6.3 Interstate transfer**

### **Division 6.3.1 Interstate transfer generally**

#### **132 Definitions for pt 6.3**

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 ACT; or
  - (b) through the ACT 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 ACT to the State; or
  - (b) to the ACT 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 ACT to a State in the circumstances mentioned in section 135.

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**135 Power to arrange for transfers**

- (1) The chief executive may make an arrangement for the transfer of a young offender from the ACT to a State on application by the young offender or a person responsible for a young offender, or if 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 if 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
  - (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 Childrens Court to which the young offender is subject.
- (2) In deciding whether to arrange for the transfer of a young offender from the ACT 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 ACT 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 Childrens 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 ACT may not be made unless the chief executive is satisfied that there are adequate facilities in the ACT 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 ACT 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 ACT 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 public advocate.

### **139 Transfer order**

- (1) If the chief executive makes an arrangement under this Act for the transfer of a young offender from the ACT 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 given to an escort by this section is given only to an escort who is—
  - (a) a police officer; or
  - (b) a corrections officer; 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 ACT to a State in the temporary control of an escort mentioned in section 139 (2), the offender may be placed in a shelter or correctional centre until the offender is delivered to the escort.

*Note* **Correctional centre** is defined in the Legislation Act, dict, pt 1.

- (2) However, the young offender must not be placed in a correctional centre without the written approval of—
- (a) the chief executive; and
  - (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (3) The young offender must not be kept in a shelter for longer than 14 days without the written approval of the chief executive.
- (4) The young offender must not be kept at a correctional centre for longer than 14 days without the written approval of—
- (a) the chief executive; and
  - (b) the chief executive of the administrative unit responsible for the *Crimes (Sentence Administration) Act 2005*.
- (5) An arrangement under subsection (1) is authority for an officer, corrections officer or police officer to take the young offender to and from a shelter or correctional centre for this section.
- (6) The authority under subsection (5) is subject to the arrangement.

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

If, under an arrangement for the transfer of a young offender to the ACT, an escort authorised under the arrangement brings the young offender into the ACT, the escort, while in the ACT 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 ACT and to the temporary control stated in the arrangement.

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

A young offender in respect of whom an order under section 96 (1) (l) has been made—

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

commits an offence against this Act and is liable for committal to an institution for not more than 6 months.

**Division 6.3.2 Transfer of sentence or order**

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

If a young offender is transferred from the ACT 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 ACT before that time, ceases to have effect in the ACT except for the purpose of—

- (a) an appeal against or review of a conviction, judgment, sentence or order made, imposed or fixed by a Territory court; 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 that is or has been paid in discharge or partial discharge of the sentence or order.

#### **144 Transfer to ACT of sentence or order**

- (1) If a young offender is transferred to the ACT from a State under an arrangement, then, from the time the young offender arrives in the ACT—
  - (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 the Territory court 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 ACT) is to be considered as having been imposed or made by the Territory court 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 the Territory court stated in the arrangement.
- (2) A sentence, order or direction has effect in the ACT as stated in the arrangement and the laws of the Territory apply as if the Territory court 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 6.3.3 Transit through ACT

#### 145 Lawful custody for transit through ACT

- (1) The chief executive may authorise the superintendent of an institution to receive, at the institution, young offenders being transferred through the ACT from a State to another State in accordance with an agreement.
- (2) If a young offender is brought into the ACT by an escort authorised by such an agreement to have temporary control of the young offender, then—
  - (a) while in the ACT, 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 ACT from a State to another State by an escort in accordance with an agreement may be apprehended by a person without a warrant.
- (2) If a young offender being transferred through the ACT 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 ACT 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 police officer 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 ACT 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 the assistance, and with the force, that 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 6.3.4      Revocation of transfer orders**

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

- (1) The Childrens 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 ACT.

**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 ACT 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 7.1 General

#### Division 7.1.1 Preliminary

##### 151 What is *abuse*?

In this chapter:

*abuse*, of 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 has suffered or is suffering in a way that has caused or is causing significant harm to his or her wellbeing or development; or
- (d) emotional abuse (including psychological abuse) if—
  - (i) the child or young person has been or is being exposed to conduct that is domestic violence under the *Domestic Violence and Protection Orders Act 2001*; and
  - (ii) the exposure has caused or is causing significant harm to the wellbeing or development of the child or young person.

##### 151A What is *neglect*?

In this chapter:

*neglect*, of a child or young person, means a failure to provide the child or young person with a necessity of life that has caused or is

causing significant harm to the wellbeing or development of the child or young person.

**Examples of necessities of life**

- 1 food
- 2 shelter
- 3 clothing
- 4 medical care

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**151B When is a child or young person *at risk of abuse or neglect*?**

For this chapter, a child or young person is *at risk of abuse or neglect* if, on the balance of probabilities, there is a significant risk of the child or young person being abused or neglected.

**Examples of when a child is at risk of abuse or neglect**

- 1 Jane is 3 months old and the chief executive has already received 5 reports about her. Jane's parents are long-term drug users and Jane was born with neonatal withdrawal syndrome. Jane's parents' relationship is violent and, although Jane herself has not been physically harmed, she has been in her mother's arms when her father assaulted her mother. Police have been called to the family home a number of times because of reports of family violence. This usually results in Jane's parents separating for a short period then reconciling. Jane's mother has 3 older children from earlier relationships who are subject to care and protection orders and are being cared for by kin (under s 31 (1) (b)) because of emotional abuse from witnessing violence between their mother and Jane's father. Jane's parents have agreed to work with the chief executive to address their drug use and violent behaviour. However, they have not actually made the changes they agreed to make. Jane's parents do not have contact with extended family and Jane is not regularly seen by any health professionals or other community support people. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Jane being abused or neglected. Jane is therefore a child at risk of abuse or neglect.
- 2 Michael is 7 years old and in the full-time care of his mother. He has never had any contact with his father. Michael's mother has a mental illness

characterised by episodes of psychosis. When Michael's mother has been unwell, she has locked Michael and herself in the home for weeks at a time. Michael sometimes says that 'bad people' are after him and will hurt him and his mother. Michael's mother attempted suicide by driving off a bridge with Michael in the car. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Michael being abused or neglected. Michael is therefore a child at risk of abuse or neglect.

- 3 Tom is 9 years old and is in the sole care of his father. Since Tom was 6 years old, the chief executive has received numerous reports that Tom's father calls him derogatory names and yells at him on a daily basis, often in the presence of other people. Tom's school counsellor reports that Tom appears anxious, is fearful of loud noises in the school environment and regularly cries for insignificant reasons. Tom is assessed as being at risk of childhood depression by the school counsellor. Tom's father considers his parenting of Tom to be good and will not allow the chief executive to visit the family home to talk to Tom. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Tom being abused or neglected. Tom is therefore a child at risk of abuse or neglect.
- 4 Amy is 13 years old and regularly goes missing from home to avoid the constant fighting between her mother and stepfather. Amy is engaging in indiscriminate sexual activity and regularly consumes alcohol and illicit drugs which she pays for through prostitution. Amy has intentionally overdosed on medication 3 times and each overdose has required medical treatment. Amy's parents consider that she is now making her own choices and there is nothing they can do to help her. In these circumstances, the chief executive may decide that, on the balance of probabilities, there is a significant risk of Amy being abused or neglected. Amy is therefore a child at risk of abuse or neglect.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **152**      **Meaning of *contact***

In this chapter:

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

### **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 Childrens 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 Childrens 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
  - (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.

**155A Helping families understand care and protection procedures**

- (1) A decision-maker making a decision under this chapter for a child or young person must endeavour to ensure that the relevant people for the decision—
  - (a) understand what the decision is going to be about; and
  - (b) understand the decision-making process; and
  - (c) know that the child or young person and people with parental responsibility for the child or young person may take part in the decision-making process and have their views and wishes heard; and
  - (d) are informed of, and understand, the decision.
- (2) The chief executive must give the relevant people for the decision sufficient information about the decision-making process, in language and a way that they can understand, to allow the child or young person, and people with parental responsibility for the child or young person to take part fully in the decision-making process.
- (3) In this section:
  - relevant people***, for a decision for a child or young person, means—
    - (a) the child or young person or, if the child is represented, the representative of the child or young person; and
  - Note* Representation of children and young people is further dealt with in s 23 and s 24.
  - (b) a person with parental responsibility for the child or young person.

- (4) This section is subject to any order of a court.

*Note 1* 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 (see s 22).

*Note 2* A court must also take steps to ensure that the child or young person and other people understand proceedings etc (see s 408).

## **Division 7.1.2 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) the child or young person—
    - (i) has been abused or neglected; or
    - (ii) is being abused or neglected; or
    - (iii) is at risk of abuse or neglect; and
  - (b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person 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

- (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 Incident need not have happened in ACT**

- (1) This section applies if a person believes that a child or young person is in need of care and protection under section 156 because the child or young person—
  - (a) has been abused or neglected; or

- (b) is being abused or neglected; or
  - (c) is at risk of abuse or neglect.
- (2) It does not matter whether conduct giving rise to the belief happened completely or partly outside the ACT.

### **157A Prenatal reporting—anticipated abuse or neglect**

- (1) This section applies if, during a pregnancy, a person suspects or believes that a child who may be born as a result of the pregnancy may be in need of care and protection.
- (2) The person may report the suspicion or belief, and the supporting reasons, to the chief executive.
- (3) The chief executive may, with the consent of the pregnant woman, take whatever action the chief executive considers appropriate in relation to the report, including any of the following:
  - (a) providing a voluntary assessment of whether the child is likely to be in need of care and protection after the child is born;
  - (b) providing or arranging voluntary support services for the pregnant woman, and any family member who may be involved in caring for the child.
- (4) The chief executive is not required to act in relation to a report under this section.
- (5) The chief executive must ensure, as far as practicable, that any action taken because of this section is appropriate and consistent with the pregnant woman's human rights.

### **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
  - (b) a dentist; or
  - (c) a nurse; or
  - (d) an enrolled nurse; or
  - (e) a midwife; or
  - (f) a teacher at a school; or
  - (g) a police officer; or
  - (h) a person employed to counsel children or young people at a school; or
  - (i) a person caring for a child at a child-care centre; or
  - (j) a person coordinating or monitoring the provision of home-based care on behalf of a family day care scheme licensee; or
  - (k) a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families; or
  - (l) the public advocate; or
  - (m) the official visitor; or
  - (n) 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.

- (3) Subsection (2) does not apply to a person if the person reasonably believes that—
- (a) someone else has made a report to the chief executive about—
    - (i) the same child or young person; and
    - (ii) the same abuse or injury; and
  - (b) the other person has reported the same grounds for their suspicion as the person has for their suspicion.

## **160 Dishonest reports—offence**

A person must not dishonestly make a report under section 157A, section 158 or section 159.

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.
- (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 Chief executive must record reports**

The chief executive must make and keep a written record of—

- (a) each of the following:
  - (i) a report made to the chief executive under section 157A (Pre-natal reporting—anticipated abuse or neglect);
  - (ii) any assessment made because of the report; and
- (b) each of the following:
  - (i) a report made to the chief executive under section 158 (Voluntary reporting) or section 159 (Mandatory reporting);
  - (ii) any child protection appraisal made because of the report.

## **163 Protection of people making reports**

- (1) If a person honestly makes a report under section 157A (Prenatal reporting—anticipated abuse or neglect), section 158 (Voluntary reporting) or section 159 (Mandatory reporting)—
  - (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) 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) Subsection (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) Subsection (1) (c) and (d) do not apply—
  - (a) in a proceeding before the Childrens 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 Childrens 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 function under this Act.



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

If the public 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 public 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 public advocate to the chief executive as if he or she had made the report honestly.

## Part 7.2 Voluntary action

### Division 7.2.1 Family group conferences

#### 165 Definitions for div 7.2.1

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 section 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

- (1) The chief executive may appoint a person as a facilitator for this division.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) An appointment is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**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
  - (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 (whether or not the conference actually takes place), including, for example, all or any of the following:
  - (a) prepare for the conference, including, for example—
    - (i) meeting with people; and
    - (ii) consulting with people with knowledge of or experience in a particular culture; and
    - (iii) providing mediation; and

(iv) resolving conflicts;

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) asking a person to give information or a report to a conference without inviting that person to be a participant at the conference;
  - (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
- (b) 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 the steps 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) This division does not prevent the chief executive from taking action under another division of this part or under part 7.3 (Care and protection orders and emergency action) in relation to a child or young person.

#### **175 Application for registration**

- (1) This section applies if—
  - (a) a conference has resulted in a signed agreement in relation to a child or young person; and
  - (b) the agreement proposes that parental responsibility for the child or young person—



- (i) be transferred from a person to someone else (other than the chief executive); or
- (ii) be shared with a person (other than the chief executive) who would not otherwise have it.

*Note* If a form is approved under s 416A for an agreement, the form must be used.

- (2) The chief executive may apply to the Childrens Court to register the signed agreement.
- (3) However, the chief executive may not apply to register an agreement the effect of which would be equivalent to an enduring parental responsibility order.
- (4) An application to register an agreement must be accompanied by—
  - (a) a copy of the signed agreement; and
  - (b) a statement signed by each signatory to the agreement to the effect that he or she has had an opportunity to get legal advice about the meaning and effect of the agreement.
- (5) If the chief executive makes an application, he or she must send a copy of the application to the public advocate.

## **176 Registration of agreements**

- (1) On application, the Childrens 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 Childrens Court may not register an agreement the effect of which would be equivalent to an enduring parental responsibility order.

- (3) If the Childrens Court registers an agreement, it must give notice that it has done so to—
  - (a) the chief executive; and
  - (b) the public advocate.
- (4) On receiving a notice, the chief executive must provide a copy of that notice to each person mentioned in section 174 (1) (a).
- (5) If the Childrens 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 Childrens 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
  - (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 Childrens 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 about 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 section 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 section 173 (1) is admissible in a proceeding under part 7.3 (Care and protection orders and emergency action) for the purpose of proving that an agreement was or was not reached.

## Division 7.2.2 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 previous 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 Childrens 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 Childrens 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 7.2.3 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.

### **189A Public advocate to be told about some incidents**

- (1) This section applies if—
  - (a) the chief executive receives a report about a child or young person under section 158 (Voluntary reporting) or section 159 (Mandatory reporting); and



- (b) because of the report, the chief executive makes a child protection appraisal for the child or young person; and
- (c) at the time of the incident that gave rise to the report—
  - (i) the chief executive had parental responsibility (sole or shared) for the child or young person; and
  - (ii) someone else (the *authorised carer*) was exercising parental responsibility for the child or young person under section 31 (Authorisation to exercise parental responsibility for particular child or young person) on behalf of the chief executive; and
- (d) the incident either—
  - (i) involved the authorised carer; or
  - (ii) happened while the child or young person was in an approved care placement.

*Note* The chief executive may have parental responsibility for a child or young person under any of the following provisions:

- under a family group conference agreement (see div 7.2.1)
  - under a voluntary care agreement (see div 7.2.2)
  - under a care and protection order (see pt 7.3)
  - after emergency action is taken (see div 7.3.4).
- (2) The chief executive must give a report to the public advocate about—
    - (a) the incident; and
    - (b) what action (if any) the chief executive has taken because of the appraisal.
  - (3) For this section, a child or young person is in an *approved care placement* if the child or young person is—
    - (a) placed in out-of-home care in the form of—
      - (i) foster care; or

- (ii) kinship care; or
- (iii) care provided under a residence order (see s 207); or
- (b) taking part in a contact visit with someone and the contact is—
  - (i) allowed under a contact order (see s 206); or
  - (ii) approved by the chief executive.

## **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;
  - (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 chief police officer in carrying out a child protection appraisal or a special assessment.
- (2) The chief police officer 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.

*Note* The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

- (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 subsection (3) (d).

Maximum penalty: 50 penalty units.

- (7) 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.

- (8) 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 Childrens 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 7.3 Care and protection orders and emergency action

### Division 7.3.1 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 7.3.7 (Final care and protection orders) (other than a protection order or interim order), or a contact order, residence order or therapeutic protection order made as a final care and protection order.

*final protection order*—see the *Domestic Violence and Protection Orders Act 2001*, dictionary, definition of *final order*.

*interim protection order*—see the *Domestic Violence and Protection Orders Act 2001*, dictionary, definition of *interim 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 7.3.2 (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 7.3.3 (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 Childrens Court to make an application in relation to the child or young person.
- (2) The Childrens 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 Childrens Court's leave, a copy of it must be served on the chief executive and the public 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 Childrens 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 Childrens 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 written notice 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 Childrens 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 Childrens 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 Childrens 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 Childrens 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 Childrens Court may not make an interim assessment order.
- (3) If making an interim care and protection order, the Childrens 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 Childrens 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 Childrens Court may make interim protection order

- (1) The Childrens Court may make an interim protection order in relation to a child or young person at any time on an application (the *care and protection application*) for a care and protection order in relation to the child or young person—
  - (a) on its own initiative, on further application by a party to the care and protection application or on application by the public advocate; and
  - (b) if the court is satisfied that it is necessary to make the interim protection order to ensure the safety of the child or young person until the care and protection application is decided.

*Note* The grounds for making an interim protection order are intended to mirror the grounds mentioned in the *Domestic Violence and Protection Orders Act 2001*, s 49.

- (2) To remove doubt, the Childrens Court may not make an interim protection order that the Magistrates Court could not make on an application for a final protection order made in accordance with the *Domestic Violence and Protection Orders Act 2001*.

### Example

The Childrens Court could not make an interim protection order for a period longer than that allowed for interim protection orders under the *Domestic Violence and Protection Orders Act 2001*.

## 205A When Childrens Court may make final protection order

- (1) The Childrens Court may make a final protection order in relation to a child or young person on an application (the *care and protection application*) for a care and protection order in relation to the child or young person—
  - (a) on its own initiative, on further application by a party to the care and protection application or on application by the public advocate; and
  - (b) if the person against whom the final protection order is proposed to be made—
    - (i) has engaged in domestic violence in relation to the child or young person; or
    - (ii) has engaged in personal violence towards the child or young person and may engage in personal violence towards the child or young person during the time the order is proposed to be made if the order is not made.

*Note* The grounds for making a final protection order are intended to mirror the grounds mentioned in the *Domestic Violence and Protection Orders Act 2001*, s 40.

- (2) To remove doubt, the Childrens Court may not make a final protection order that the Magistrates Court could not make on an application for a final protection order made in accordance with the *Domestic Violence and Protection Orders Act 2001*.

- (3) In this section:

*domestic violence*—see the *Domestic Violence and Protection Orders Act 2001*, section 9 (1).

*personal violence*—see the *Domestic Violence and Protection Orders Act 2001*, dictionary.

**205B Can someone apply for protection order if no care and protection proceedings?**

- (1) This section applies if—
- (a) someone wants to apply for a protection order in relation to a child or young person; and
  - (b) no application for a final care and protection order has been made in relation to the child or young person.

*Note* A final care and protection order does not include a protection order (see s 194, def of final care and protection order).

- (2) The person may not apply for a protection order under this Act.
- (3) To remove doubt, this section does not stop the person from applying for a protection order under the *Domestic Violence and Protection Orders Act 2001*.

**205C What is effect of making protection order under this Act?**

- (1) A protection order made under this Act is taken to have been made under the *Domestic Violence and Protection Orders Act 2001*.

**Examples of consequences of protection order being taken to have been made under Domestic Violence and Protection Orders Act**

- 1 The protection order can be amended (including by extension) or revoked under that Act.
- 2 The provisions about consent orders under that Act apply to the amendment (including by extension) or revocation of the protection order.
- 3 The provisions dealing with the end of protection orders under that Act apply to the order.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 (3), s 132).

- (2) The making of the protection order on an application for a care and protection order does not affect the validity of the protection order.

- (3) In applying the *Domestic Violence and Protection Orders Act 2001*, section 13 (Who may apply to amend or revoke a protection order?) to the protection order, the public advocate is taken to have been a party to the application for the protection order.
- (4) In applying the *Domestic Violence and Protection Orders Act 2001* to an interim protection order made under this Act—
- (a) a reference in that Act to a **final order** is taken to be a reference to a final care and protection order; and
- (b) a reference in that Act to the **application** or **proceeding** is taken to be a reference to the application or proceeding under this Act in relation to which the interim protection order was made.

**Example for par (a)**

The *Domestic Violence and Protection Orders Act 2001*, section 53 (c) provides that an interim order ends in certain circumstances when the final order is made. Applying paragraph (a), the interim protection order ends when the final care and protection order is made in those circumstances.

## **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 that may lead to the making of an order that has the effect of separating the child or young person from a significant person in his or her life.
- (2) The Childrens 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 Childrens 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 Childrens 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 Childrens 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
    - (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 ACT.

## **Division 7.3.2 Short care and protection orders**

### **211 Initial consideration of applications**

- (1) The Childrens 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.

- (2) The Childrens 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 Childrens 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 Childrens 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 Childrens 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 section 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 Childrens Court may extend, vary or revoke the original order.
- (3) If—
  - (a) an application has been filed; and
  - (b) the Childrens Court cannot hear and decide the application before the date when, 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 Childrens Court may extend or vary an order only if—
- (a) the effect of the extension or variation does not make the total period of the order extended or varied (including any extension, whether under subsection (3) (d) or otherwise) longer than the relevant period; or
  - (b) the court is satisfied that there are exceptional circumstances that justify the extension or variation.
- (5) In subsection (4):
- relevant period* means—
- (a) in relation to an assessment order or therapeutic protection order—8 weeks; or
  - (b) in any other case—18 weeks.

## **Division 7.3.3      Assessment orders**

### **215      Applications for assessment orders**

- (1) The chief executive may apply to the Childrens 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 Childrens 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 Childrens 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 Childrens 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 Childrens Court must—
  - (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 Childrens Court so orders—the court.

Maximum penalty: 5 penalty units.

## **221 Childrens Court may act on recommendations**

The Childrens 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 7.3.4 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.
- (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 the assistance that 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
  - (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 Childrens 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 Childrens 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.

(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 public advocate; and

(c) the Childrens 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 section 225 (2), the chief executive applies to the Childrens 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 Childrens 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 public advocate.
- (3) The Childrens 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 7.3.5 Therapeutic protection orders**

**232 Effect of div 7.3.5 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 Childrens 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 Childrens 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 giving day-to-day responsibility for the care, welfare and development of the child or young person to the chief executive.

## **236 Restriction on making, varying and extending**

- (1) The Childrens 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 Childrens 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 Childrens 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 the force that 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 Childrens 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 public 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 Childrens 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 Childrens 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 public 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 public 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 public 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 7.3.7 (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 must 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 7.3.6 Specific issues orders**

**246 Specific issues orders**

- (1) On application under this part, the Childrens 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);
  - (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 has a mental impairment; and
    - (ii) if the tribunal decides that the child or young person has a mental impairment—to make recommendations to the Childrens 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 Childrens 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 Childrens 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
  - (b) served on the chief executive and the public advocate; and
  - (c) given to—
    - (i) the chief police officer; and
    - (ii) each other person who was a party to the proceeding; and
    - (iii) any other person the court considers appropriate.

- (3) Despite subsection (2) (a), if it appears to the Childrens 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 Childrens 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 Childrens Court gives a direction for service by a police officer, the chief police officer must, when requested to do so by the registrar, arrange for the document to be served by a police officer.

## **Division 7.3.7 Final care and protection orders**

### **249 Initial consideration of applications**

- (1) The Childrens 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 Childrens 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 Childrens 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 Childrens Court—
  - (a) must define the matters that are in dispute and consider the length of hearing required; and
  - (b) must make the directions 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 section 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 giving interim parental responsibility for the child or young person to the chief executive or someone else;
  - (ii) a contact order;
  - (iii) an assessment order;
  - (iv) a specific issues order.
- (2) The types of directions that the Childrens Court may give under subsection (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 Childrens 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 Childrens Court under section 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 Childrens 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 Childrens Court.
- (4) The person presiding at a meeting must report the outcome of the meeting to the Childrens Court.

## **253 Variation of interim orders**

- (1) A party to the proceeding may apply to the Childrens Court for the variation of an interim order.
- (2) The Childrens 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 Childrens Court must—
- (a) vary the terms of the interim order; or
  - (b) make another order available under section 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 Childrens 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 Childrens 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 Childrens 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 Childrens 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 giving parental responsibility for the child or young person to the chief executive or someone else;
  - (c) an enduring parental responsibility order that has effect until the child or young person turns 18;



- (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 has a mental impairment; and
  - (ii) if the tribunal decides that the child or young person has a mental impairment—to make recommendations to the Childrens Court as to how the child or young person should be dealt with;
- (e) any other order the Childrens 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 Childrens 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, or a protection 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 Childrens 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 that 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 about 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 Childrens 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 Childrens 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 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 giving parental responsibility for the day-to-day and long-term care, welfare and development of the child or young person to the proposed carer while the order is in force.

## **261 Restriction on making enduring parental responsibility orders**

The Childrens 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 Childrens Court makes a final care and protection order giving parental responsibility (whether sole or shared) for a child or young person to 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 Childrens 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 Childrens 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 Childrens 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 Childrens 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.
- (2) The Childrens 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 Childrens 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.
- (4) An application for a variation must specify—
  - (a) the provision sought to be varied; and
  - (b) the nature of the proposed variation.
- (5) On application under subsection (1), the Childrens 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.
- (6) At a directions hearing in relation to an application under subsection (1), the Childrens 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 section 264 (1), the Childrens 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 Childrens 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 Childrens Court may make when varying an order under subsection (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 section 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) This section applies 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.
- (2) The chief executive must give a report under this section to each of the following people:
  - (a) the child or young person;
  - (b) each person with parental responsibility for the child or young person;
  - (c) a carer caring for the child or young person;
  - (d) the public advocate;
  - (e) the Childrens Court.
- (3) 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.



- (4) A report under this section for a final care and protection order for a child or young person must be given—
  - (a) each year; or
  - (b) if the order is in force for less than 1 year—at least 1 month, but not earlier than 2 months, before the order expires.
- (5) 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.
- (6) 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 subsection (2) (a), (b) or (c) or (5), make the minor alterations to the report to protect the privacy and confidentiality of a person named in the report that the chief executive considers appropriate.

## **268 Waiving of obligation to give report**

- (1) The chief executive may apply to the Childrens Court for an order waiving the need to comply with section 267 (2) in relation to someone mentioned in section 267 (2) (a), (b) or (c) if—
  - (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.
- (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 Childrens Court must order—

- (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 subsection (3) (b) must specify whether the copy of the report is to be provided in full or in part.
  - (5) If the Childrens Court makes an order under subsection (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 in the absence of a party.

## **269 Failure to give report**

- (1) The public advocate may apply to the Childrens Court for an order requiring the chief executive to give a report to a person to whom a report is required to be given under section 267 if the chief executive has not—
  - (a) given the report in accordance with the section; and
  - (b) obtained an order waiving the requirement to give the report to the person.
- (2) The public advocate must cause a copy of an application to be served on the chief executive.
- (3) If, on application, the Childrens 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) The Childrens Court may extend the period of a final care and protection order so that it ends not more than 1 month after the day the order is made if—
- (a) the court orders the chief executive to give a report in relation to the final care and protection order; and
  - (b) the final care and protection order ends within a month after the day the order is made.

### **Division 7.3.8      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 in writing by the chief executive, an officer or a police officer.

*Note*      If a form is approved under s 416A (Approval of forms by chief executive) for an application, the form must be used.

- (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 the force that 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 Childrens Court.
- (5) However, the child or young person is not required to be brought before the Childrens 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 Childrens Court's power 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 Childrens Court under section 270, the Childrens 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 7.3.9 Representation of wishes of child or young person**

### **272 Opportunity for child or young person to be heard**

The Childrens 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 Childrens Court may inform itself of child's or young person's wishes**

The Childrens 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 Childrens 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 7.3.10 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 Material to accompany applications**

An application under this part must be accompanied by the following:

- (a) a written statement of the substance of the oral evidence that the applicant intends to present at the hearing of the application;
- (b) a written copy of any document or expert report that the applicant intends to rely on at the hearing of the application.

**277 Form of statements and reports**

Unless otherwise directed by the Childrens 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 Childrens 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 Childrens 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 Childrens Court does not give directions under subsection (2) in relation to an oral application, no service is required under this Act.

### **279 Hearing of applications in party's absence**

If someone makes an application under this part, the person may, at the same time, seek the leave of the Childrens Court to have the application heard in the absence of any other party.

### **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 Childrens 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 public 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 Childrens 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**

- (1) If, in a proceeding on an application under this part, the Childrens Court is satisfied that it should make an order binding on or affecting someone who is not a party to the proceeding, the court may join that person as a party to the proceeding.
- (2) However, the court must allow the person a reasonable opportunity to make representations to the court about why the order should not be made—



- (a) before making the order; or
- (b) 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.

### **283 Joining parties—on application**

- (1) The Childrens 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 public advocate, the Childrens 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 Childrens 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**

If the Childrens 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 the further orders or directions for the conduct of the proceeding that the court thinks fit.

## **285 Removal of parties**

- (1) This section applies if, on application by a party to a proceeding or on its own initiative, the Childrens 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.
- (2) The Childrens Court may—
  - (a) order that the party cease to be a party; and
  - (b) make any other orders or directions for the conduct of the proceeding that the Childrens Court considers appropriate.
- (3) 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 Childrens 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 Childrens 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 Childrens 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 Childrens 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 ACT 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 Childrens 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 Childrens 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 the part of the hearing of the proceeding that 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 Childrens 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 Childrens 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 Childrens Court must cause a copy of the order to be served on—

- (a) the chief executive; and
- (b) the public 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 a party is not represented by a lawyer and has, before the date of the order, filed a notice of address for service—the party.

**291 Childrens Court may inform itself as appropriate**

- (1) In a proceeding under this part, the Childrens 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 Childrens 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 Childrens 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 Childrens Court considers that the presence of the person is necessary to allow the court to hear and decide the application;

the court may give the directions or issue and cause to be executed the summonses or warrants, that 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 Childrens 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) 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 Childrens 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 Childrens Court.
- (2) Even if the Childrens 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 Childrens Court to be necessary or convenient for the proper determination of the matters at issues 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 Childrens 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 Childrens Court a draft of an order (the *draft order*) that, if made, would have the consent of the parties.
- (2) The draft order must be signed by—
  - (a) each party to the application; and
  - (b) 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.
- (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 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 8.1            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 ACT and a State or between the ACT 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 welfare body.

*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.



***child welfare law*** means—

- (a) part 7.3 (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 part 7.3.

***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 this chapter; 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 where 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.

***State Childrens Court***, of a State, means the court with jurisdiction to hear and decide a child care and protection proceeding in the State at first instance.

***welfare body***, for a State, means—

- (a) a Minister of the State; or
  - (b) a government department or statutory authority of the State; or
  - (c) a person who is the chief executive of a government department or statutory authority of the State or otherwise holds an office or position in, or is employed in, a government department or statutory authority of the State; or
  - (d) an organisation, or the chief executive (however described) of an organisation, in the State.
- (2) The Minister may, in writing, declare a law of a State to be a child welfare law for this chapter if satisfied that the law substantially corresponds to part 7.3 (Care and protection orders and emergency action).
  - (3) The Minister may, in writing, 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, in writing, 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.
  - (5) A declaration under subsection (2), (3) or (4) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **Part 8.2**                      **Transfer of certain child care and protection orders**

### **Division 8.2.1**              **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 section 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
  - (b) if the order relates to a young person—the young person; and
  - (c) the public 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 relevant rules of 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 8.2.2 Judicial transfers**

### **304 When Childrens Court may make order under div 8.2.2**

The Childrens 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 part 7.3 (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 Childrens 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 Childrens 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 Childrens 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 Childrens 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 Childrens Court considers appropriate.

### **307 Childrens Court to have regard to certain matters**

In deciding what order to make on an application under this division, the Childrens 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 Childrens Court must consider report from chief executive**

- (1) The Childrens 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 Childrens 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 relevant rules of 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 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 8.3**                      **Transfer of child care and protection proceedings**

### **310**                      **When Childrens Court may make order under pt 8.3**

- (1) The Childrens Court may make an order (the *transfer order*) under this part transferring a child care and protection proceeding pending in the court to the State Childrens Court of 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 Childrens Court when the transfer order is registered in the State Childrens Court of 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 State Childrens Court of 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 public advocate.

**312 Childrens Court to have regard to certain matters**

In deciding whether to make an order transferring a proceeding under this part, the Childrens 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 Childrens 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 State Childrens Court of 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 State Childrens Court of 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 relevant rules of 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.
- (6) After deciding the appeal, the Supreme Court may make any order 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 8.4 Registration**

### **315 Filing and registration of interstate documents**

- (1) The chief executive must as soon as possible file in the Childrens Court for registration a copy of a child care and protection order transferred to the ACT under an interstate law.
- (2) The chief executive must as soon as possible file in the Childrens Court for registration a copy of an order under an interstate law to transfer a child care and protection proceeding to the ACT, together with a copy of any interim order made at the same time.
- (3) The chief executive may not file in the Childrens 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 State Childrens Court of 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 Childrens 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 Childrens 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 Childrens 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 (Filing and registration of interstate documents) may be made to the Childrens 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 State 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.
- (3) The Childrens Court may revoke the registration of a document filed under section 315 only if satisfied that it was inappropriately registered because, under the interstate law—
  - (a) the decision of the interstate officer or the order of the State Childrens Court of the sending State to transfer the order or proceeding was subject to appeal or review, or a stay, at the time of registration; or
  - (b) the time for beginning an appeal or seeking a review had not ended.
- (4) The registrar of the Childrens Court must send each document filed under section 315 to the State Childrens Court of 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 8.5 Miscellaneous

### 319 Effect of registration of transferred order

- (1) A child care and protection order made by the Childrens Court under part 7.3 (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 Childrens Court file

The registrar of the Childrens Court must send 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 the State Childrens Court of a participating State if, under this chapter—

- (a) the child care and protection order or proceeding is transferred to the State Childrens Court; and
- (b) the transfer decision or order is not subject to appeal or review or a stay; and
- (c) the time for beginning an appeal or seeking a review has ended.

**321 Special provision with respect to Maori children and young people**

If an order or proceeding is transferred under an interstate law to the ACT 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 Childrens 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 Deciding transferred proceeding**

In deciding a child care and protection proceeding transferred to the Childrens Court under an interstate law, the court—

- (a) is not bound by a finding of fact made in the proceeding in the State Childrens Court of the sending State before its transfer; and
- (b) may have regard to the transcript of, or evidence presented in, the proceeding mentioned in paragraph (a).

**323 Disclosure of information**

- (1) The chief executive may disclose to an interstate officer information that has come to the chief executive's notice in the exercise of functions under this Act if the chief executive considers it necessary to disclose the information to allow the interstate officer to exercise functions under a child welfare law or an interstate law.

*Note* **Function** includes authority, duty and power (see Legislation Act, dict, pt 1).

- (2) This section has effect despite any other provision of this Act.

## Part 8.6 Interstate transfer for non-participating States

### 323A Definitions for pt 8.6

For this part:

*declaration* means a declaration under section 323C (2).

*interstate order*, in relation to a child or young person, means an order about the welfare or protection of a child or young person that relates to an aspect of parental responsibility if the order is in favour of a welfare body of the State.

*non-participating State* means a State other than a participating State.

*parental responsibility*, in relation to a non-participating State, means parental responsibility within the meaning of this Act whether or not the words ‘parental responsibility’ are used in the law of the State.

### 323B Object of pt 8.6

The object of this part is to facilitate the transfer of—

- (a) interstate orders from non-participating States to the Territory; and
- (b) orders made under part 7.3 (Care and protection orders and emergency action) to non-participating States.

### **323C Transfer from non-participating State**

- (1) This section applies if—
  - (a) there is an interstate order in relation to a child or young person in favour of a welfare body of a non-participating State; and
  - (b) the child or young person is in the ACT or is about to enter the ACT; and
  - (c) the welfare body asks the chief executive to assume parental responsibility for the child or young person under this section; and
  - (d) either—
    - (i) the time for appealing against the decision to ask the chief executive to assume parental responsibility in the non-participating State has ended; or
    - (ii) if an appeal is made against the decision—the appeal has been decided.
- (2) The chief executive may make a written declaration in relation to the interstate order.
- (3) The declaration must state—
  - (a) that there is a residence order, a final care and protection order or both in relation to the child or young person and in favour of the chief executive; and
  - (b) the terms of each order.
- (4) The chief executive must endeavour to ensure that the effect of the order or orders mentioned in the declaration is as close as possible to the effect of the interstate order, subject to any changes the chief executive considers necessary or desirable to allow the order or orders to operate in the ACT.

### 323D Effect of declaration

- (1) If a declaration is made in relation to an interstate order, the residence order, final care and protection order or both mentioned in the declaration are taken to have been made under this Act in the terms set out in the declaration.
- (2) The residence order, final care and protection order or both remain in force for the remainder of the period of the interstate order or until the child or young person who is the subject of the order turns 18 years old.

### 323E Notice of declaration

- (1) After making the declaration in relation to the child or young person, the chief executive must—
  - (a) give a copy of the declaration to anyone the chief executive knows about with parental responsibility for the child or young person and explain the effect of the declaration; and
  - (b) give a copy of the declaration to the public advocate.
- (2) However, subsection (1) (a) does not require the chief executive to give a copy of the declaration to someone who cannot, after reasonable inquiry, be found.
- (3) Also, the chief executive may, before giving a copy of the declaration to someone (the *receiver*) other than the public advocate, omit material from the copy if—
  - (a) the chief executive believes on reasonable grounds that it would not be in the best interests of the child or young person who is the subject of the declaration for the receiver to be given the material; and
  - (b) the omission does not prevent the receiver being given adequate notice of the declaration.

**323F Effect of State becoming participating State**

- (1) This section applies if—
  - (a) a declaration is made in relation to an interstate order; and
  - (b) after the declaration is made, the State that made the interstate order becomes a participating State.
- (2) The order or orders in the declaration are not affected by the State becoming a participating State.

**323G Transfer to non-participating State**

- (1) This section applies if the chief executive proposes (the *proposal*) to ask a welfare body in a non-participating State to assume parental responsibility for a child or young person for whom the chief executive has parental responsibility.
- (2) The chief executive may ask the welfare body to assume parental responsibility for the child or young person only if the chief executive has given written notice of the proposal to the following people:
  - (a) the child or young person;
  - (b) anyone (other than the chief executive) with parental responsibility for the child or young person;
  - (c) if the child is in the care of a carer who has moved or is moving to the non-participating State—the carer.
- (3) The notice must state the following:
  - (a) the reason for the proposal, including any relevant fact giving rise to the reason;
  - (b) that the person given the notice may, within the period stated in the notice, make a written submission to the chief executive about why the proposal should not go ahead.

- (4) The period for making submissions stated in the notice must be at least 14 days after the person is given the notice.
- (5) If, after considering any written submission made within the time for making submissions, the chief executive considers an adequate ground for going ahead with the proposal exists, the chief executive may ask the welfare body to assume parental responsibility for the child or young person.
- (6) However, the chief executive may give parental responsibility to the welfare body only when—
  - (a) the time for appealing against the decision to go ahead with the proposal has ended; or
  - (b) if an appeal is made against the decision—the appeal is decided.

*Note* Under s 384, a person whose rights are affected by the decision of the chief executive to ask the welfare body to assume parental responsibility for the child or young person has a right to appeal to the administrative appeals tribunal.

### **323H Expiry of pt 8.6**

This part and section 384 (1) (aa) expire on the day after the last non-participating State becomes a participating State.



## **Chapter 9          Childrens services**

### **Part 9.1          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 where 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 a government school or non-government school under the *Education Act 2004*, whether provided during or outside school hours; or
- (f) that is incidental to the child's participation in religious instruction, sporting, educational, recreational or cultural events or activities; or
- (g) that 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
- (h) while the child is a patient in—
  - (i) a public hospital; or
  - (ii) a private hospital; 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, in writing, exempt a class of children's services from provisions of this chapter.
- (2) An exemption is subject to any terms or conditions stated in it.
- (3) An exemption remains in force for the period stated in it unless sooner revoked.
- (4) An exemption is a disallowable instrument.

*Note*      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **Part 9.2                      Approvals in principle and licences**

### **Division 9.2.1              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 controlled drug; 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 or controlled drug;
  - (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 9.2.2 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 ACT 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; and
  - (b) accompanied by a copy of the advertisement of the applicant's intention to apply.

*Note 1* A fee may be determined under s 416 (Determination of fees) for this subsection.

*Note 2* If a form is approved under s 416A (Approval of forms by chief executive) for an application, the form must be used.

- (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—
  - (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;
  - (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 9.2.3 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 ACT 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; and
  - (b) accompanied by a copy of the advertisement of the applicant's intention to apply.

*Note 1* A fee may be determined under s 416 (Determination of fees) for this section.

*Note 2* If a form is approved under s 416A (Approval of forms by chief executive) for an application, the form must be used.

### 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, 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;
  - (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 in writing.

*Note 1* A fee may be determined under s 416 (Determination of fees) for this subsection.

*Note 2* If a form is approved under s 416A (Approval of forms by chief executive) for an application, the form must be used.

(3) The chief executive may consider an application for renewal of a licence that is received less than 30 days before the licence expires but before the licence expires.

*Note* An additional fee may be determined under s 416 (Determination of fees) for an application to which this subsection applies.

### **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.

(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 9.2.4 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 (a)—of his or her own initiative, after consultation with the proprietor of the service provided under the approval or licence; or
  - (b) on written application by the proprietor.

*Note 1* A fee may be determined under s 416 (Determination of fees) for this subsection.

*Note 2* If a form is approved under s 416A (Approval of forms by chief executive) for an application, the form must be used.

- (4) 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.
- (5) 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.
- (6) 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.
- (7) For 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—
  - (a) given the proprietor written notice 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 section 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 9.3 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 in a court, evidence may be given about the grounds contained in a report for the belief that this chapter or a condition of a licence is being contravened.
- (4) However, the following evidence is admissible in a proceeding only if the court in which the proceeding is brought gives leave for the evidence to be given or if the person who made the report (the *reporter*) consents in writing to the admission of the evidence:

- (a) evidence that a particular matter is contained in a report;
  - (b) evidence that identifies the reporter or is likely to lead to the identification of the reporter.
- (5) 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.

- (6) It is a defence to a prosecution for an offence against subsection (5) if the defendant proves that the reporter consented to the disclosure.
- (7) 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 in the exercise of his or her 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 the assistance that 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.
- (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 written consent 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
  - (b) seize the thing if the officer reasonably believes that it is necessary to seize it 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 that 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 later than 7 days after the date of issue of the warrant, when 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 written notice, 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.
- (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.
- (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 9.4                      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 that 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*

In this chapter:

*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.

### 368A Work experience not employment

- (1) For section 368 (Employing a child or young person), a child or young person is taken not to be employed by a person if—
  - (a) the engagement of the child or young person by the person is arranged by an educational institution where the child or young person is enrolled; and
  - (b) the engagement is part of a work experience program (however described) conducted by the educational institution.



(2) In this section:

*educational institution* means—

- (a) a school, college or other educational institution established or maintained on behalf of the Territory; or
- (b) an approved educational entity.

(3) The Minister may approve an entity (an *approved educational entity*) for subsection (2) (b).

(4) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### **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 chapter, 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 chapter, section 370 (1) does not apply to the employment of a young child for the following purposes:
- (a) babysitting;
  - (b) going on errands;
  - (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 chapter, section 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) contravenes the *Education Act 2004* 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 written notice 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
  - (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 subsection (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 Ch 10 subject to certain provisions of Education Act**

This chapter has effect subject to the *Education Act 2004*, section 11 (Compulsory attendance) and section 14 (Exemption certificates).

## Chapter 11 Appeals and review

### 379 Meaning of *order*

In this chapter:

*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 part 6.2 (Dealing with young offenders in ACT), other than an order made under section 92 (Committal of guilty young person to Supreme Court) or section 128 (Special purpose leave);
  - (b) an appeal, by the young person charged, from a decision of the Childrens 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 Childrens Court under section 128;
  - (d) an appeal, by way of an order to review, by the informant from an order of the Childrens Court dismissing an information under part 6.2;
  - (e) an appeal, by way of an order to review, by the child against whom the order was made, from an order under part 6.2;
  - (f) an appeal, by way of order to review, by the informant from a decision of the Childrens 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 Childrens 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 Childrens Court under division 6.2.3 (Disposition of young offenders).
- (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 protection 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 and Protection Orders Act 2001*; or

- (c) in accordance with chapter 8 (Interstate transfer of proceedings).
- (5) This chapter does not limit the *Magistrates Court Act 1930*, part 3.10 (Criminal appeals) or another Territory law that makes provision about the appellate jurisdiction of the Supreme Court.

### **381 Application of Magistrates Court Act etc**

- (1) The provisions of the *Magistrates Court Act 1930*, division 3.10.2 (Appeals in criminal matters), other than section 219 (Barring right of appeal under div 3.10.2 if order to review granted) apply in relation to an appeal mentioned in section 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 that Act, section 214 (Appeals in cases other than civil cases) applied; and
  - (c) a reference in that division to the Magistrates Court were a reference to the Childrens Court; and
  - (d) all other necessary changes, and any changes prescribed under the regulations, were made.
- (2) The provisions of the *Magistrates Court Act 1930*, part 4.5 (Civil appeals) apply in relation to an appeal mentioned in section 380 (1) (c) or (2) as if—
  - (a) it were an appeal from a judgment or order mentioned in that Act, section 274 (2) ; and
  - (b) all other necessary changes, and any changes prescribed under the regulations, were made.
- (3) The provisions of the *Magistrates Court Act 1930* division 3.10.3 (Orders to review in criminal matters) apply in relation to an appeal mentioned in section 380 (1) (d), (e), (f), (g) or (h) as if—



- (a) it were an appeal from—
  - (i) for an appeal mentioned in section 380 (1) (d)—an order mentioned in that Act, section 219 B (1) (a); or
  - (ii) for an appeal mentioned in section 380 (1) (e)—an order mentioned in that Act, section 219B (1) (c); or
  - (iii) for an appeal mentioned in section 380 (1) (f)—a decision mentioned in that Act, section 219B (1) (e); or
  - (iv) for an appeal mentioned in section 380 (1) (g)—a decision mentioned in that Act, section 219B (1) (d); or
  - (v) for an appeal mentioned in section 380 (1) (h)—a decision mentioned in that Act, section 219B (1) (f).
- (b) all other necessary changes, and any changes prescribed under the regulations, were made.

### **382 Barring of appeal if order to review granted**

If an order nisi to review a decision of the kind mentioned in section 380 (1) (d) or (e) has been granted under the *Magistrates Court Act 1930*, division 3.10.3 (Orders to review in criminal matters) in its application under this chapter—

- (a) the person getting the order nisi is not entitled to make any other appeal to the Supreme Court under this chapter 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 section 380 (1) (a), (b) or (c) or (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 section 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—
- (aa) under section 323G (5) (Transfer to non-participating State) to ask a welfare body in a non-participating State to assume parental responsibility for a child or young person; or
  - (a) under section 338 (1) (b) to refuse to grant an approval in principle; or
  - (b) under section 345 (1) (b), to refuse to grant a licence; or
  - (c) under section 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 section 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 section 350 (1), to cancel an approval in principle or a licence; or
  - (h) under section 358 (4) (a), to confirm the suspension of an approval in principle or a licence; or
  - (i) under section 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.
- (2) If the chief executive makes a decision of the kind mentioned in subsection (1), he or she must cause written notice 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 the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**385 Decision to refuse to grant licence may not be stayed or otherwise affected pending outcome of review**

- (1) The *Administrative Appeals Tribunal Act 1989*, section 41 (2) does not apply to a decision under section 345 (1) (b) to refuse to grant a licence.
- (2) The Supreme Court may not make an order under the *Administrative Decisions (Judicial Review) Act 1989*, section 16 in relation to a decision under section 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 hearing the charge to be under that age;

there is a rebuttable presumption that the supposed child or young person is under that age.

### 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 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 ACT or partly within and partly outside the ACT.
- (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 the definition of *law*, paragraph (b) or (c) 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 against 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 where 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.

## 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 the force that is necessary and reasonable—
  - (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 about 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, when 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 section 105 (2)—the supervisor; or
  - (b) for section 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 section 105 (2) or 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 who is under a therapeutic protection order.
- (3) 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 to recover that thing.
- (4) Subject to section 400, a personal search may be conducted in the presence of a medical practitioner who may assist in the search.
  - (5) A person conducting a personal search may use the force that is necessary and reasonable in the circumstances.
  - (6) Anything of a kind mentioned in subsection (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

- (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 subsection (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 subsection (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) Subsection (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.
- (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.
- (7) However, if a child or young person who is a transgender or intersex person is searched under section 399, the child or young person may require that the search be conducted by either a male or a female.

*Note 1* For the meaning of **transgender person**, see Legislation Act, s 169A.

*Note 2* For the meaning of **intersex person**, see Legislation Act, s 169B.

- (8) If the child or young person requires that the search be conducted by a male, the child or young person is taken, for this section, to be male.
- (9) If the child or young person requires that the search be conducted by a female, the child or young person is taken, for this section, to be female.

#### **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 when 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 13A Detainees—search and seizure

### Part 13A.1 Preliminary

#### 401AA Application—ch 13A

- (1) This chapter applies to a child or young person (each of whom is a *detainee*) who is required to be kept or detained at a shelter or institution—
  - (a) because he or she has been charged with an offence and not admitted to bail; or
  - (b) under any of the following:
    - (i) section 96 (Disposition of young offenders);
    - (ii) section 122 (Temporary custody before transfer between institutions);
    - (iii) section 123 (Powers of Supreme Court);
    - (iv) section 124 (Adjournment of criminal proceedings);
    - (v) section 125 (Placing in shelter or correctional centre);
    - (vi) section 140 (Temporary custody pending interstate transfer); or
  - (c) under any other provision of a territory law or a law of the Commonwealth, a State or another territory.
- (2) To remove any doubt, this chapter does not apply to a child or young person only because the child or young person is under a therapeutic protection order.

#### 401AB Definitions—ch 13A

In this chapter:

**authorised doctor** means a doctor authorised under section 401AE.

**authorised health professional** means a health professional authorised under section 401AE.

**authorised nurse** means a nurse authorised under section 401AE.

**body search**, of a detainee, means a search of the detainee's body, including an examination of an orifice or cavity of the detainee's body.

**detainee**—see section 401AA (1).

**frisk search**, of a detainee, means—

- (a) a search of the detainee conducted by quickly running the hands over the detainee's outer clothing; and
- (b) an examination of anything worn or carried by the detainee that is conveniently and voluntarily removed by the detainee.

**health service**—see the *Health Professionals Act 2004*, section 15.

**ordinary search**, of a detainee, means a search of the detainee, or of anything in the detainee's possession, and may include—

- (a) requiring the detainee to remove only the detainee's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear; and
- (b) an examination of anything removed.

**prohibited thing** means a thing declared to be a prohibited thing under section 401AD.



**scanning search**, of a detainee, means a search of the detainee by electronic or other means that does not require the detainee to remove the detainee's clothing or be touched by someone else.

**Examples of scanning searches**

- 1 passing a portable electronic or other device over or close to a detainee
- 2 requiring a detainee to pass by or through an electronic or other device

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**shelter** does not include the shelter known as Marlow Cottage.

**strip search**, of a detainee, means a search of the detainee, or of anything in the detainee's possession, under section 401AM (Admission to youth detention centre—strip search for initial assessment) or section 401AQ (Strip searches directed by chief executive) that may include—

- (a) requiring the detainee to remove all of the detainee's clothing; and
- (b) an examination of—
  - (i) the detainee's body (but not the detainee's body orifices or cavities); and
  - (ii) the detainee's clothing.

**youth detention centre** means a shelter, institution or other place (other than a correctional centre) at which a child or young person may be kept or detained under this Act.

**youth detention officer** means an officer whose functions include the detention of a detainee at a youth detention centre.

#### 401AC Relationship with other laws

To remove any doubt, this chapter is additional to, and does not limit, any other provision in relation to searches of detainees under another territory law, or a law of the Commonwealth, a State or another territory.

#### 401AD Prohibited things

- (1) The chief executive may declare a thing to be a prohibited thing if the chief executive believes, on reasonable grounds, that the declaration is necessary or prudent to ensure security or good order at a youth detention centre.
- (2) A declaration is a notifiable instrument.

##### Examples of prohibited things

- 1 a weapon or something crafted as a weapon
- 2 alcohol
- 3 a controlled drug under the Criminal Code
- 4 a mobile phone

*Note 1* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

*Note 2* The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

*Note 3* A notifiable instrument must be notified under the Legislation Act.

#### 401AE Authorised health professionals

- (1) The chief executive may authorise a health professional to exercise functions under this chapter.

*Note* **Health professional** includes a doctor and nurse registered under the *Health Professionals Act 2004*.

- (2) However, the chief executive must ensure, as far as practicable, that a detainee's treating health professional is not asked to exercise a function as an authorised health professional under this chapter in relation to the detainee.
- (3) Subsection (2) does not apply if the chief executive believes on reasonable grounds that—
- (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
  - (b) compliance with subsection (2) would exacerbate the threat.
- (4) In this section:
- treating health professional*, in relation to a detainee, means a health professional who has a professional relationship with the detainee for the provision of health services.

## Part 13A.2 Searches generally

### 401AF Intrusiveness of searches

A person conducting a search of a detainee under this chapter must ensure, as far as practicable, that the search—

- (a) is the least intrusive kind of search that is necessary and reasonable in the circumstances; and
- (b) is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

**Example**

searching for a prohibited thing by a scanning search rather than a frisk search

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 401AG Register of searches

- (1) This section applies to a search under any of the following sections:
  - (a) section 401AM (Admission to youth detention centre—strip search for initial assessment);
  - (b) section 401AQ (Strip searches directed by chief executive);
  - (c) section 401AW (Body searches directed by chief executive);
  - (d) section 401AZG (Searches—premises and property generally);
  - (e) section 401AZH (Searches of detainee cells—privileged material);
  - (f) section 401AZI (Searches of detainee cells—suspected privileged material).

- (2) The chief executive must keep a register containing the following details in relation to each search:
  - (a) the name of each detainee searched;
  - (b) the reason for the search;
  - (c) when and where the search was conducted;
  - (d) the name of each person present at any time during the search;
  - (e) details of anything seized during the search;
  - (f) details of any force used for conducting the search, and why force was used;
  - (g) anything else prescribed by regulation.
- (3) The register may contain any other details the chief executive considers relevant.
- (4) The register must be available for inspection by any of the following:
  - (a) a judge or magistrate;
  - (b) the official visitor;
  - (c) the human rights commissioner;
  - (d) the privacy commissioner;
  - (e) the public advocate;
  - (f) the ombudsman;
  - (g) anyone else prescribed by regulation.
- (5) The public advocate must inspect the register at least once every 3 months.

#### **401AH Searches of transgender and intersex detainees**

- (1) This section applies if a transgender or intersex detainee is to be searched under this chapter.
- (2) The detainee may require that either a male or a female conduct the search.
- (3) If the detainee requires that a male conduct the search, the detainee is taken, for this chapter, to be male.
- (4) If the detainee requires that a female conduct the search, the detainee is taken, for this chapter, to be female.

*Note* For the meaning of *transgender person* and *intersex person*, see the Legislation Act, s 169A and s 169B.

#### **401AI Notice of strip and body searches—person with parental responsibility for detainee**

The chief executive must ensure, as far as practicable, that another person with parental responsibility for a detainee is told about any strip search or body search of the detainee—

- (a) before the search is conducted; or
- (b) if it is impracticable to tell the person before the search—as soon as practicable after the search.

*Note 1* In some circumstances the chief executive is a person with parental responsibility for a detainee (see s 224).

*Note 2* A proposed strip or body search need not be conducted in the presence of the person notified (see s 401AM, s 401AQ and s 401AY).

## Part 13A.3                      Scanning, frisk and ordinary searches

### 401AJ      Directions for scanning, frisk and ordinary searches

- (1) The chief executive may, at any time, direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a detainee if the chief executive believes, on reasonable grounds, that the search is prudent to ensure security or good order at a detention centre.
- (2) Also, a youth detention officer may conduct a scanning search, frisk search or ordinary search of a detainee if the officer suspects, on reasonable grounds, that the detainee is carrying—
  - (a) a prohibited thing; or
  - (b) something that may be used by the detainee in a way that may involve—
    - (i) an offence; or
    - (ii) a risk to the personal safety of the detainee or someone else; or
    - (iii) a risk to security or good order at a youth detention centre.

### 401AK      Requirements for scanning, frisk and ordinary searches

- (1) The youth detention officer who conducts a scanning search, frisk search or ordinary search of a detainee must—
  - (a) tell the detainee about the search and the reasons for the search and ask for the detainee's cooperation; and

- (b) for a frisk search or ordinary search—conduct the search in a private area or an area that provides reasonable privacy for the detainee; and
  - (c) if clothing is seized because of the search—ensure the detainee searched is left with, or given, reasonably appropriate clothing to wear.
- (2) A frisk search or ordinary search of a detainee must not be conducted in the presence or sight of—
  - (a) another detainee; or
  - (b) someone else whose presence is not necessary for the search.
- (3) A frisk search of a detainee must be done by a youth detention officer of the same sex as the detainee.
- (4) Subsection (3) does not apply if the chief executive believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
  - (b) compliance with subsection (3) would exacerbate the threat.



## Part 13A.4 Strip searches

### 401AL Admission to youth detention centre—initial assessment

- (1) The chief executive must ensure that—
  - (a) each detainee admitted to a youth detention centre is assessed as soon as practicable to identify any immediate—
    - (i) physical or mental health needs or risks; and
    - (ii) safety or security needs or risks; and
  - (b) any needs and risks identified by the assessment are addressed.
- (2) The assessment under subsection (1) of a detainee's health needs or risks (the *health assessment*) must be made within 24 hours after the detainee's admission to a youth detention centre.
- (3) The health assessment must—
  - (a) be made by a doctor or nurse who is not an authorised doctor or authorised nurse in relation to the detainee; and
  - (b) include an assessment (the *self-harm assessment*) of the detainee's risk of self-harm.
- (4) However, the self-harm assessment may be made by a health professional other than the nurse or doctor.

*Note* The *Mental Health (Treatment and Care) Act 1994* also includes provision for assessment orders, and emergency detention and care, under that Act.

**401AM Admission to youth detention centre—strip search for initial assessment**

- (1) The chief executive may direct a youth detention officer to strip search a detainee if the chief executive believes on reasonable grounds that the strip search is necessary for an assessment under section 401AL.
- (2) The strip search must be conducted in the presence of a person with parental responsibility for the detainee if—
  - (a) the chief executive believes, on reasonable grounds, that it is necessary and prudent for the person to be present; and
  - (b) the detainee agrees to the person being present.
- (3) In making a decision under subsection (1) or (2), the chief executive must have regard to the detainee's age, maturity and any known history.

**401AN Strip search on admission—no-one with parental responsibility for detainee available**

- (1) This section applies in relation to a strip search of a detainee under section 401AM if—
  - (a) a person with parental responsibility for the detainee cannot be contacted before the search is conducted; or  

*Note* For a requirement to contact a person with parental responsibility, see s 401AI.
  - (b) no-one with parental responsibility for the detainee is available to be present at the search; or
  - (c) the detainee does not agree to a person with parental responsibility for the detainee being present at the search.
- (2) The chief executive must ensure that the strip search is conducted in the presence of someone (a *support person*) who—

- (a) the chief executive believes on reasonable grounds can support and represent the interests of the detainee; and
- (b) the detainee agrees should be present at the search.

*Note* In some circumstances the chief executive is a person with parental responsibility for a detainee (see s 224).

- (3) However, the search may continue in the absence of a support person if—
  - (a) the detainee does not agree to a support person being present; or
  - (b) the chief executive directs the support person to leave under section 401AO (2).

#### **401AO Strip search on admission—directing person to leave**

- (1) This section applies if a strip search of a detainee under section 401AM is being conducted in the presence of—
  - (a) a person with parental responsibility for the detainee; or
  - (b) a support person under section 401AN (2).
- (2) The chief executive may direct the person to leave if the chief executive believes, on reasonable grounds, that the person is preventing or hindering the conduct of the search.

#### **401AP Removing people from search area**

- (1) The chief executive may direct a youth detention officer to enforce a direction under section 401AO (2) if the person given the direction contravenes the direction.
- (2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

#### **401AQ Strip searches directed by chief executive**

- (1) The chief executive may direct a youth detention officer to strip search a detainee only if—
  - (a) the chief executive suspects, on reasonable grounds, that the detainee has something concealed on the detainee that—
    - (i) is a prohibited thing; or
    - (ii) may be used by the detainee in a way that may involve an offence, a risk to the personal safety of the detainee or someone else, or a risk to security or good order at a youth detention centre; and
  - (b) a scanning search, frisk search or ordinary search of the detainee has failed to detect the thing.
- (2) To remove any doubt, the strip search need not be conducted in the presence of a person with parental responsibility for the detainee.
- (3) This section does not apply to a strip search under section 401AM (Admission to youth detention centre—strip search for initial assessment).

#### **401AR Obligations of youth detention officer before strip search**

- (1) This section applies if a youth detention officer proposes to strip search a detainee.
- (2) The youth detention officer must tell the detainee—
  - (a) whether the detainee will be required to remove clothing during the search; and
  - (b) if the detainee will be required to remove clothing, why the removal is necessary.
- (3) If the detainee asks why the search is being conducted in a particular way, the youth detention officer must tell the detainee the reasons.

- (4) The youth detention officer must ask for the detainee's cooperation for the search.

#### **401AS Youth detention officers at strip searches**

- (1) A strip search of a detainee must be conducted—
  - (a) by a youth detention officer of the same sex as the detainee; and
  - (b) in the presence of 1 or more other youth detention officers each of whom must be the same sex as the detainee.
- (2) However, the number of youth detention officers present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.
- (3) The youth detention officer conducting the search may direct another youth detention officer mentioned in subsection (1) (b) to provide assistance that the conducting officer believes, on reasonable grounds, is necessary and reasonable for the search.
- (4) The requirement in subsection (1) (b) that a youth detention officer be the same sex as the detainee does not apply if the chief executive believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
  - (b) compliance with that requirement would exacerbate the threat.

#### **401AT Strip searches—general rules**

- (1) The youth detention officer conducting a strip search of a detainee must conduct the search—
  - (a) in a way that—
    - (i) provides reasonable privacy for the detainee; and

- (ii) is appropriate, having regard as far as practicable, to the detainee's sexuality and any known impairment, condition or history; and
- (b) as quickly as practicable.
- (2) The strip search must be conducted in a private area or an area that provides reasonable privacy for the detainee.
- (3) The strip search must not be conducted—
  - (a) in the presence of someone of the opposite sex to the detainee, other than—
    - (i) a person present under section 401AM (2) (Admission to youth detention centre—strip search for initial assessment) or section 401AN (Strip searches on admission—no-one with parental responsibility for detainee available); or
    - (ii) another youth detention officer present under section 401AS (4); or
  - (b) in the presence or sight of someone else whose presence is not necessary for the search or for the safety of anyone present.
- (4) Subject to part 13A.7 (Searches—use of force), the strip search must not involve any touching of the detainee's body by a youth detention officer.

**401AU Strip searches—rules about visual inspection of detainee's body**

- (1) A youth detention officer conducting a strip search of a detainee must not visually inspect the genital area of the detainee and, for a female detainee, the detainee's breasts, unless the officer suspects, on reasonable grounds, that it is necessary to do so for the search.

- (2) A strip search of a detainee must not involve more visual inspection of the detainee's body than is necessary and reasonable for the search.
- (3) Without limiting subsection (2), during the strip search of the detainee, any visual inspection of the detainee's genital area, anal area, buttocks and, for a female detainee, the detainee's breasts must be kept to a minimum.

**401AV Strip searches—rules about detainee's clothing**

- (1) A strip search of a detainee must not involve—
  - (a) the removal from the detainee of more clothes than is necessary and reasonable for the search; or
  - (b) the removal from the detainee of more clothes at any time than is necessary and reasonable for the search; or
  - (c) without limiting paragraph (b), both the upper and lower parts of the detainee's body being uncovered at the same time.
- (2) A detainee who has been strip-searched must be allowed to dress in private as soon as the search is finished.
- (3) If clothing from a detainee is seized during a strip search, the youth detention officer conducting the search must ensure that the detainee is left with, or given, reasonably appropriate clothing to wear.

## **Part 13A.5 Body searches**

### **401AW Body searches directed by chief executive**

- (1) The chief executive may direct an authorised doctor to conduct a body search of a detainee if the chief executive suspects, on reasonable grounds, that the detainee—
  - (a) has ingested or inserted something in the detainee’s body that may jeopardise the detainee’s health or wellbeing; or
  - (b) has a prohibited thing concealed within the detainee’s body that may be used in a way that may pose a substantial risk to security or good order at a youth detention centre.
- (2) In making a decision under subsection (1), the chief executive must have regard to the detainee’s age, maturity and any known history.

### **401AX Obligations of chief executive before body search**

- (1) This section applies if the chief executive proposes to direct a body search of a detainee under section 401AW.
- (2) The chief executive must tell the detainee—
  - (a) whether the detainee will be required to remove clothing during the search; and
  - (b) if the detainee will be required to remove clothing, why the removal is necessary.
- (3) If the detainee asks why the search is to be conducted in a particular way, the chief executive must tell the detainee the reasons.
- (4) The chief executive must ask for the detainee’s cooperation for the search.



- (5) The chief executive must ensure that a body search is conducted—
- (a) in a private area or an area that provides reasonable privacy for the detainee; and
  - (b) in a way that provides reasonable privacy.

**401AY People present at body searches**

- (1) An authorised nurse must be present during the body search of a detainee.
- (2) If the authorised doctor conducting the body search is not the same sex as the detainee, the authorised nurse present must be the same sex as the detainee.
- (3) The chief executive may direct 1 or more youth detention officers to be present during the search, each of whom must be the same sex as the detainee.
- (4) However, the number of youth detention officers present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.
- (5) The requirement in subsection (3) that a youth detention officer be the same sex as the detainee does not apply if the chief executive believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and
  - (b) compliance with that requirement would exacerbate the threat.
- (6) The search must be conducted in the presence of a person with parental responsibility for the detainee if—
  - (a) the chief executive believes that it is necessary and prudent for the person to be present; and
  - (b) the detainee agrees to the person being present.

- (7) In making a decision under subsection (6), the chief executive must have regard to the detainee's age, maturity and any known history.

**401AZ Body searches—no-one with parental responsibility for detainee available**

- (1) This section applies in relation to a body search of a detainee if—
- (a) a person with parental responsibility for the detainee can not be contacted before the search is conducted; or
- Note* For a requirement to contact a person with parental responsibility, see s 401AI.
- (b) no-one with parental responsibility for the detainee is available to be present at the search; or
  - (c) the detainee does not agree to a person with parental responsibility for the detainee being present at the search.
- (2) The chief executive must ensure that the body search is conducted in the presence of someone (a *support person*) who—
- (a) the chief executive believes on reasonable grounds can support and represent the interests of the detainee; and
  - (b) the detainee agrees should be present at the search.
- Note* In some circumstances the chief executive is a person with parental responsibility for a detainee (see s 224).
- (3) However, the body search may continue in the absence of a support person if—
- (a) the detainee does not agree to a support person being present; or
  - (b) the chief executive directs the support person to leave under section 401AZA (2).

#### **401AZA Body search—directing person to leave**

- (1) This section applies if a body search of a detainee is being conducted in the presence of—
  - (a) a person with parental responsibility for the detainee; or
  - (b) a support person under section 401AZ.
- (2) The chief executive may direct the person to leave if the chief executive believes, on reasonable grounds, that the person is preventing or hindering the conduct of the search.

#### **401AZB Removing people from search area**

- (1) The chief executive may direct a youth detention officer to enforce a direction under section 401AZA (2) if the person given the direction contravenes the direction.
- (2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

#### **401AZC Help for body searches**

- (1) This section applies if the authorised doctor conducting a body search of a detainee asks the chief executive for assistance that the doctor believes on reasonable grounds is necessary and reasonable for the search.
- (2) The chief executive may direct, a youth detention officer, or authorise someone else present at the search (the *assistant*), to assist in the conduct of the search.
- (3) However, the assistant must be the same sex as the detainee.
- (4) Subsection (3) does not apply if the chief executive believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the detainee or someone else; and

- (b) compliance with subsection (3) would exacerbate the threat.

**401AZD Body searches—rules about detainee’s clothing**

- (1) A body search of a detainee must not involve—
- (a) the removal from the detainee of more clothes than is necessary and reasonable for the search; or
  - (b) the removal from the detainee of more clothes at any time than is necessary and reasonable for the search; or
  - (c) without limiting paragraph (b), both the upper and lower parts of the detainee’s body being uncovered at the same time.
- (2) A detainee who has been body searched must be allowed to dress in private as soon as the search is finished.
- (3) If clothing from a detainee is seized during a body search, the chief executive must ensure that the detainee is left with, or given, appropriate clothing to wear.

**401AZE Body searches—rules about touching detainee**

For the body search of a detainee, the authorised doctor or authorised nurse may touch the detainee and examine the detainee’s orifices, but only if the doctor or nurse is of the same sex as the detainee.

**401AZF Seizing things discovered during body search**

- (1) An authorised doctor conducting a body search of a detainee may seize anything mentioned in section 401AW (Body searches directed by chief executive) that is discovered during the search if seizing the thing would not be likely to cause injury to the detainee or someone else.
- (2) The doctor must give the thing seized to a youth detention officer as soon as practicable.

## Part 13A.6 Searches of premises and property

### 401AZG Searches—premises and property generally

- (1) The chief executive may, at any time, direct a youth detention officer to search—
  - (a) any part of a youth detention centre; or
  - (b) anything at a youth detention centre, including anything in the custody or possession of anyone at a youth detention centre; or
  - (c) any vehicle used for transporting a detainee.

#### Examples of searches under this section

a search of any of the following for a prohibited thing:

- any area or building or part of a building (including a cell) at a youth detention centre
- any storage area, including an area used by detainees or youth detention officers, at a youth detention centre
- any vehicle, machinery or equipment at a youth detention centre

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, this section does not authorise a search of—
  - (a) anyone at a youth detention centre; or
  - (b) any clothing being worn at the time of the search by anyone at a youth detention centre.
- (3) In this section:  
*search* includes search—
  - (a) with a device using electronic or other technology; and

(b) by physical means.

**401AZH Searches of detainee cells—privileged material**

- (1) This section applies if a detainee has privileged material at a youth detention centre.
- (2) A youth detention officer may search the detainee's cell under section 401AZG in the absence of the detainee if—
  - (a) the detainee removes the privileged material from the cell; or
  - (b) the privileged material is stored in accordance with arrangements under subsection (3).
- (3) The chief executive may make arrangements for the secure storage at a youth detention centre of privileged material for detainees.

**401AZI Searches of detainee cells—suspected privileged material**

- (1) If a youth detention officer suspects, on reasonable grounds, that a detainee's cell contains privileged material, the officer may search the cell only if the detainee is present.
- (2) A search under subsection (1) may include an examination of any privileged material, and anything containing the material, found in the cell.
- (3) However, the officer may not read any privileged material found in the cell.
- (4) The officer need not comply with subsection (1) or (3) if the officer believes, on reasonable grounds, that urgent circumstances exist and that compliance with the subsection would create a risk of injury to the officer, the detainee or anyone else.

## Part 13A.7 Searches—use of force

### 401AZJ Searches—managing use of force

- (1) The chief executive must ensure, as far as practicable, that the use of force in relation to a detainee under this chapter is always—
  - (a) the last resort and does not involve more force than necessary and reasonable in the circumstances; and
  - (b) by a youth detention officer of the same sex as the detainee; and
  - (c) in accordance with—
    - (i) this section; and
    - (ii) the standing orders.
- (2) The standing orders may make provision in relation to the use of force, including provision in relation to the following:
  - (a) the circumstances in which, and by whom, force may be used;
  - (b) the kinds of force that may be used;
  - (c) the use of restraints and weapons;
  - (d) requirements for medical examination after the use of force.

*Note* The power to make standing orders includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

### 401AZK Searches—authorised use of force

- (1) A youth detention officer may use force that is necessary and reasonable—
  - (a) to conduct a search under this chapter; or

- (b) to assist at a body search under section 401AZC (Help for body searches); or
  - (c) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- (2) A youth detention officer may use force in relation to a detainee under this chapter only if the officer—
- (a) gives a clear warning of the intended use of force; and
  - (b) allows enough time for the warning to be observed; and
  - (c) uses no more force than is necessary and reasonable in the circumstances; and
  - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
- (3) However, the officer need not comply with subsection (2) (b) if the officer believes, on reasonable grounds, that urgent circumstances exist and that compliance with subsection (2) (b) would create a risk of injury to the officer, the detainee or anyone else.

**Example of urgent circumstances**

the detainee is assaulting someone or engaging in self-harm

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



## Part 13A.8 Seizing property

### 401AZL Seizing mail etc

- (1) The chief executive may seize anything in a detainee's protected mail if the chief executive believes, on reasonable grounds, that the thing—
  - (a) may physically harm the addressee or anyone else; or
  - (b) is a prohibited thing.
- (2) The chief executive may seize other mail of a detainee, or anything in the mail, if the chief executive suspects, on reasonable grounds, that the seizure is necessary—
  - (a) to stop any of the following entering or leaving a youth detention centre:
    - (i) a prohibited thing;
    - (ii) anything that may be used by the detainee in a way that may involve an offence, a risk to the personal safety of someone else, or a risk to security or good order at a youth detention centre; or
  - (b) to stop threatening or otherwise inappropriate correspondence entering or leaving a youth detention centre; or
  - (c) to stop the detainee obtaining or buying goods without the chief executive's approval.

**Example of inappropriate correspondence—par (b)**

mail addressed to a person by someone convicted of a sexual offence against the person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The chief executive may seize a document under this section only if the chief executive believes, on reasonable grounds, that the document is not privileged.
- (4) If the chief executive believes on reasonable grounds that a document seized under subsection (3) is privileged, the chief executive must return the document to the detainee immediately.

- (5) In this section:

*mail* means postal mail.

*protected mail* means mail between a detainee and any of the following:

- (a) a lawyer representing the detainee;
- (b) the official visitor;
- (c) the director of public prosecutions;
- (d) the human rights commissioner;
- (e) the privacy commissioner;
- (f) the public advocate;
- (g) the ombudsman;
- (h) anyone else prescribed by regulation.

#### **401AZM Seizing property—general**

- (1) The chief executive may seize—
  - (a) a prohibited thing found on a detainee or in a detainee's custody or possession, unless the detainee has the written approval of the chief executive to possess the thing; or
  - (b) anything found at a youth detention centre, whether or not in a person's custody or possession, that the chief executive suspects, on reasonable grounds—

- (i) is being used, or is intended, for the commission of an offence; or
  - (ii) jeopardises or is likely to jeopardise security or good order at a youth detention centre or the safety of anyone at a youth detention centre or elsewhere.
- (2) To remove any doubt, this section extends to anything found in a search under this chapter.
- (3) The chief executive may seize a document under this section only if the chief executive believes, on reasonable grounds, that the document is not privileged.
- (4) If the chief executive believes on reasonable grounds that a document seized under subsection (3) is privileged, the chief executive must return the document to the detainee immediately.

#### **401AZN Notice of seizure**

- (1) The chief executive must prepare written notice of a seizure under section 401AZL (Seizing mail etc) or section 401AZM (Seizing property—general).
- (2) Not later than 7 days after the day of the seizure, the chief executive must give written notice of the seizure to—
  - (a) the owner of the thing seized; or
  - (b) if the owner can not be identified after reasonable inquiries (given the thing's apparent value)—the person from whom the thing was seized.
- (3) The notice must—
  - (a) identify the thing seized; and
  - (b) outline the grounds for the seizure; and
  - (c) include a statement about the effect of section 401AZO; and
  - (d) include anything else prescribed by regulation.

(4) In this section:

*owner*, of a thing, includes a person entitled to possession of the thing.

#### **401AZO Forfeiture of things seized**

(1) A thing seized under section 401AZL (Seizing mail etc) or section 401AZM (Seizing property—general) is forfeited to the Territory if the chief executive decides, on reasonable grounds—

(a) that—

(i) after making reasonable inquiries (given the thing's apparent value), the owner of the thing cannot be found; or

(ii) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner; or

(b) that—

(i) possession of the thing by a detainee is an offence; or

(ii) it is necessary to keep the thing to stop it being used for the commission of an offence; or

(iii) the thing is inherently unsafe.

(2) The chief executive may deal with a thing forfeited to the Territory under this section, or dispose of it, as the chief executive considers appropriate.

##### **Examples**

1 giving a forfeited weapon to a youth detention officer

2 dumping a forfeited thing of little value

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, subsection (2) is subject to any order under the *Crimes Act 1900*, section 249 (Seizure of forfeited articles).

*Note 1* The *Crimes Act 1900* also provides for articles forfeited under any law in force in the ACT to be seized by a member of the police force, taken before the Magistrates Court and for the court to order disposal of the article by the public trustee (see s 249 and s 250).

*Note 2* The *Uncollected Goods Act 1996* provides generally for the disposal of uncollected goods, including goods abandoned on premises controlled by the Territory.

#### **401AZP Return of things seized but not forfeited**

- (1) If a thing seized under section 401AZL (Seizing mail etc) or section 401AZM (Seizing property—general) is not forfeited, the chief executive must return it to its owner—
- (a) at the end of the 6 months after the day it was seized; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) However, if the thing was being kept as evidence of an offence and the chief executive believes, on reasonable grounds, that its retention as evidence is no longer necessary, the chief executive must return the thing immediately.
- (3) In this section:
- owner**, of a thing, includes a person entitled to possession of the thing.

## Chapter 14 Standards and standing orders

### 401A Definitions for ch 14

In this chapter:

*exempt provision*—see section 403A (2).

*place of detention* means an attendance centre, institution, shelter or other place that children and young people may be detained under this Act, but does not include a correctional centre.

### 402 Standard-making power

- (1) The chief executive may make standards for this Act.
- (2) The standards may make provision in relation to the following:
  - (a) the care to be provided by the chief executive for children or young people for whom the chief executive has parental responsibility;
  - (b) the conduct of family group conferences.
- (3) A standard is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### 403 Standing order-making power

- (1) The Minister may make standing orders for this Act.
- (2) The standing orders may make provision in relation to the following at or in relation to places of detention:
  - (a) safety, management and good order (including security);
  - (b) welfare, health and safety;
  - (c) powers of search, including of anyone entering, leaving or inside a place of detention;

- (d) use of force;
  - (e) personal property;
  - (f) education;
  - (g) visits;
  - (h) mail and phone calls;
  - (i) medical care and examinations;
  - (j) use of technology, including video surveillance and other monitoring devices;
  - (k) discipline, including penalties and the withdrawal of entitlements;
  - (l) behaviour management strategies;
  - (m) anything else prescribed by regulation.
- (3) To remove any doubt, the *Listening Devices Act 1992* does not apply in relation to the use of video surveillance or other monitoring devices in accordance with a standing order.
- (4) A standing order is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

*Note 2* Exempt provisions are not required to be notified.

#### **403A Standing orders—provisions about security etc**

- (1) The Minister may, in writing, certify that—
- (a) a stated provision of the standing orders applies to—
    - (i) the security of a place of detention; or
    - (ii) the safety of people at a place of detention; or
    - (iii) anything else prescribed by regulation; and

- (b) the publication of the provision would be contrary to the public interest.
- (2) The certificate must state in general terms the matter to which the provision (the *exempt provision*) applies.
- (3) A certificate under subsection (2) is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the Legislation Act.
- (4) The following provisions of the Legislation Act do not apply in relation to an exempt provision:
  - (a) section 61 (Notification of legislative instruments);
  - (b) section 62 (Effect of failure to notify legislative instrument);
  - (c) section 64 (Presentation of subordinate laws and disallowable instruments);
  - (d) section 65 (Disallowance by resolution of Assembly);
  - (e) section 68 (Amendment by resolution of Assembly).

#### **403B Standing orders—inspection**

The chief executive must ensure that a copy of the standing orders (including any exempt provisions) is always available at attendance centres, institutions and shelters for inspection by—

- (a) a judge or magistrate; or
- (b) the public advocate; or
- (c) the human rights commissioner; or
- (d) an official visitor; or
- (e) the ombudsman.



## Chapter 15 Confidentiality and immunity

### 404 When is information *divulged*?

In this chapter:

*divulge* includes communicate.

### 405 Who is an *information holder*?

For this chapter, a person is an *information holder* if—

- (a) the person is or has been—
  - (i) the chief executive; or
  - (ii) the public advocate; or
  - (iii) an official visitor; or
  - (iv) someone else exercising a function under this Act; or
  - (v) someone else engaged in the administration of this Act; or
- (b) the person has been given information under this Act by a person mentioned in paragraph (a).

*Note* Protected information may be given to people under various provisions of this Act, including:

- s 29 (Power to give and receive information)
- s 45 (Assistance for public advocate)
- s 73 (Powers of court in relation to reports)
- s 189A (Public advocate to be told about some incidents)
- s 405H (Information may be given in best interests of child or young person).

**405A What is *protected information*?**

- (1) For this chapter, information is *protected information* if it is information about a person that is disclosed to, or obtained by, an information holder because the person is, or has been, an information holder.
- (2) Without limiting subsection (1), *protected information* includes sensitive information.

**405B What is *sensitive information*?**

- (1) For this chapter, information is *sensitive information* if it is—
  - (a) child abuse information; or
  - (b) child abuse appraisal information; or
  - (c) interstate child abuse information; or
  - (d) family group conference information; or
  - (e) information prescribed by regulation for this section.
- (2) In this section:

*child abuse information* means information—

  - (a) in a report (a *child abuse report*) made under—
    - (i) section 157A (Prenatal reporting—anticipated abuse or neglect); or
    - (ii) section 158 (Voluntary reporting); or
    - (iii) section 159 (Mandatory reporting); or
  - (b) in a record (a *child abuse record*)—
    - (i) made under section 162 (Chief executive must record reports); or

- (ii) that relates to a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or
- (c) that would allow information in a child abuse report or child abuse record to be worked out; or
- (d) that identifies a person who made a child abuse report or would allow the identity of the person to be worked out.

***child abuse appraisal information*** means information—

- (a) in a record of a child protection appraisal (an ***appraisal record***) made under section 162 (b) (Chief executive must record reports); or
- (b) in a report (an ***incident report***) to the public advocate under section 189A (2) (Public advocate to be told about some incidents); or
- (c) that would allow information in an appraisal record or incident report to be worked out.

***interstate child abuse information*** means information—

- (a) in a report (an ***interstate child abuse report***) made under a provision of a law of a State corresponding (or substantially corresponding) to section 157A, section 158 or section 159 that is provided to the chief executive under a provision of the law of the State corresponding (or substantially corresponding) to—
  - (i) section 29 (Power to give and receive information); or
  - (ii) section 323 (Disclosure of information); or
- (b) that would allow information in an interstate child abuse report to be worked out; or
- (c) that identifies a person who made an interstate child abuse report or would allow the identity of the person to be worked out.

*family group conference information* means—

- (a) information about anything said or done in a meeting, or for mediation or conflict resolution, under section 169 (3) (a) (Action by facilitator) for a family group conference (whether or not the conference actually takes place); or
- (b) information, or information in a report, given under section 169 (3) (b) for a family group conference (whether or not the conference actually takes place); or
- (c) information in a signed agreement under section 172 (Agreements arising from conferences); or
- (d) information in a record under section 173 (Outcome of conference); or
- (e) information about anything said or done at a family group conference including information given in a report to the family group conference; or
- (f) information that would allow information mentioned in paragraphs (a) to (e) to be worked out.

**405C Offence—secrecy of protected information**

- (1) An information holder commits an offence if the information holder—
  - (a) makes a record of protected information about someone else; and
  - (b) is reckless about whether the information is protected information about someone else.

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

- (2) An information holder commits an offence if the information holder—
- (a) does something that divulges protected information about someone else; and
  - (b) is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being divulged to someone else.

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

- (3) This section is subject to the following sections:
- (a) section 405D (Exception—information given under this Act);
  - (b) section 405E (Exception—information given under another law);
  - (c) section 405F (Exception—information given with agreement).

#### **405D Exception—information given under this Act**

- (1) Section 405C (1) does not apply to the making of a record of protected information if the record is made—
- (a) under this Act; or
  - (b) in the exercise of a function, as an information holder, under this Act.
- (2) Section 405C (2) does not apply to the divulging of protected information if the information is divulged—
- (a) under this Act; or

- (b) in the exercise of a function, as an information holder, under this Act.

*Note* Various provisions of this Act provide for protected information to be given to people, including:

- s 29 (Power to give and receive information)
- s 45 (Assistance for public advocate)
- s 73 (Powers of court in relation to reports)
- s 189A (Public advocate to be told about some incidents)
- s 405H (Information may be given in best interests of child or young person).

**405E Exception—information given under another law**

- (1) Section 405C (1) does not apply to the making of a record of protected information if—
- (a) the information is not sensitive information; and
  - (b) the record is made—
    - (i) under another territory law; or
    - (ii) in the exercise of a function, as an information holder, under another territory law.
- (2) Section 405C (2) does not apply to the divulging of protected information if—
- (a) the information is not sensitive information; and
  - (b) the information is divulged—
    - (i) under another territory law; or
    - (ii) in the exercise of a function, as an information holder, under another territory law.

*Note* Other legislation may provide for information to be given to people, including:

- *Freedom of Information Act 1989*, s 10 (Right of access) (but see s 38)

- *Health Records (Privacy and Access) Act 1997*, s 10 (Statement of principle regarding right of access) (but see s 14).

#### **405F Exception—information given with agreement**

Section 405C (2) does not apply to protected information if the information—

- (a) is not sensitive information; and
- (b) is about a person; and
- (c) is divulged with the person's agreement.

#### **405G Giving protected or sensitive information to a court**

- (1) An information holder need not divulge protected information, that is not sensitive information, to a court unless it is necessary to do so for this Act or another territory law.
- (2) An information holder need not produce a document containing protected information, that is not sensitive information, to a court unless it is necessary to do so for this Act or another territory law.
- (3) An information holder need not divulge sensitive information to a court unless it is necessary to do so for this Act.
- (4) An information holder need not produce a document containing sensitive information to a court unless it is necessary to do so for this Act.
- (5) In this section:

***court*** includes a tribunal, authority or person with power to require the production of documents or the answering of questions.

***produce*** includes allow access to.

**405H Information may be given in best interests of child or young person**

- (1) The chief executive may give someone protected information (including sensitive information) about a child or young person if the chief executive considers that the giving of the information is in the best interests of the child or young person.
- (2) A facilitator may give the chief executive protected information (including sensitive information) about a child or young person if the facilitator considers that the giving of the information is in the best interests of the child or young person.

*Note* A person who is given information under this section must comply with s 405C (Offence—secrecy of protected information).

**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 honestly and without negligence by the person in the exercise, or purported exercise, of a function 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 Territory law in any court having jurisdiction in the ACT 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 public advocate, or someone authorised by the chief executive or public 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 part 7.3 (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**

- (1) The Minister may, in writing, declare that a place is an attendance centre, an institution or a shelter for this Act.
- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation 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 the chief police officer, or a police officer authorised by the chief police officer, believes on reasonable grounds that someone has suffered loss because of an act or offence by the child or young person, the officer may give 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 that disposed of the charge.
- (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—
- (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**

- (1) The chief executive may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

#### **416A Approval of forms by chief executive**

- (1) The chief executive may, in writing, approve forms for this Act (other than for use in relation to the Childrens Court).
- (2) If the chief executive approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**417 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may—

- (a) make provision in relation 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 in relation to—

(i) the duties of people in charge of shelters, attendance centres and institutions; and

(ii) the health and safety (including medical examinations) of children or young people, and other people, at places of detention; and

(iii) travel and transport arrangements for children or young people attending attendance centres or performing community service; and

(iv) the discipline and security (including the use of force, inspection of mail, and the use of video surveillance and other monitoring devices) at or in relation to places of detention; and

(v) the safety, management and good order of places of detention; and

- (vi) working out the periods mentioned in section 106 (4) (Community service orders) and section 110 (4) (Attendance centre orders).
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

- (4) In this section:

*place of detention* means an attendance centre, institution, shelter or other place that children and young people may be detained under this Act, but does not include a correctional centre.



## **Schedule 1      Applications under part 7.3 (Care and protection orders and emergency action)**

(see s 275)

<b>column 1 item</b>	<b>column 2 type of application</b>	<b>column 3 application to be served on</b>	<b>column 4 notice of hearing</b>
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 public 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 public 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 public advocate	1 working day

**Schedule 1**

Applications under part 7.3 (Care and protection orders and emergency action)

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<b>column 1 item</b>	<b>column 2 type of application</b>	<b>column 3 application to be served on</b>	<b>column 4 notice of hearing</b>
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 public advocate	none prescribed
5	for therapeutic protection order	the child or young person; each person with parental responsibility for the child or young person; the public 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 public 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 public advocate	3 working days
8	application for contact order	each party to the proceeding; the public advocate	none prescribed

<b>column 1 item</b>	<b>column 2 type of application</b>	<b>column 3 application to be served on</b>	<b>column 4 notice of hearing</b>
9	for variation, extension or revocation of final care and protection order	each party to the original order; the public advocate	3 working days
10	under section 285 to remove a party to a proceeding	each party to the proceeding; the public advocate	none prescribed
11	under section 24 for child or young person to have legal representation	all parties to the proceeding; the public advocate	none prescribed

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- administrative appeals tribunal
- chief executive (see s 163)
- correctional centre
- Criminal Code
- disallowable instrument (see s 9)
- doctor
- document
- enrolled nurse
- Executive
- human rights commissioner
- individual
- in relation to
- judge
- lawyer
- magistrate
- mental health tribunal
- midwife
- Minister (see s 162)
- notifiable instrument (see s 10)
- nurse
- ombudsman
- penalty unit (see s 133)
- police officer
- privacy commissioner
- property

- public advocate
- State
- the Territory
- working day.

**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.

**adult** means someone who is 18 years old or older.

**approval in principle**—see section 324.

**arrangement**, for part 6.3 (Interstate transfer)—see section 132.

**assessment order** means an order under section 217.

**at risk of abuse or neglect**, for chapter 7 (Children and young people in need of care and protection)—see section 151B.

**attendance centre** means a place that is declared under section 412 to be an attendance centre.

**attendance centre order**—see section 110.

**authorised doctor**, for chapter 13A—see section 401AB.

**authorised health professional**, for chapter 13A—see section 401AB.

**authorised nurse**, for chapter 13A—see section 401AB.

**authorised officer**—see section 76.

**best interests principle**—see section 11 (1).

**body** includes an agency or organisation.

**body search**, for chapter 13A—see section 401AB.

***care and protection application***, for part 7.3 (Care and protection orders and emergency action)—see section 194.

***care and protection order***, for part 7.3 (Care and protection orders and emergency action)—see section 194.

***care plan***—see section 259.

***carer***—see section 5.

***child***—

(a) for division 7.2.1 (Family group conferences)—see section 165; or

(b) in any other case—see section 7.

***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***—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 division 7.2.1 (Family group conferences)—see section 165.

***contact***—see section 152.

***contact order*** means an order made under section 206.

***controlled drug***—see the Criminal Code, section 600.

***controlling person***, for chapter 9 (Childrens services)—see section 324.

***corrections officer***—see the *Corrections Management Act 2006*, section 20.

***council*** means the Childrens Services Council.

***court order***, for part 2.3 (Parental responsibility)—see section 16.

***decision-maker*** includes any court exercising jurisdiction under this Act.

***declaration***, for part 8.6 (Interstate transfer for non-participating States), means a declaration under section 323C (2) (Transfer from non-participating States).

***detainee***, for chapter 13A—see subsection 401AA.

***divulge***, for chapter 15 (Confidentiality and immunity)—see section 404.

***drug of dependence***—see the *Drugs of Dependence Act 1989*, section 3 (1).

***emergency action*** means action taken by the chief executive or a police officer under division 7.3.4 (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 part 6.3 (Interstate transfer)—see section 132.

***facilitator*** 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 division 7.2.1 (Family group conferences).

**final care and protection order**—see section 194.

**final protection order**, for chapter 7 (Children and young people in need of care and protection)—see section 194 (Definitions for ch 7).

**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.

**frisk search**, for chapter 13A—see section 401AB.

**health professional**—see the *Health Professionals Act 2004*, section 14.

**health service**, for chapter 13A—see section 401AB.

**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.

**information holder**, for chapter 15 (Confidentiality and immunity)—see section 405.

**in need of care and protection**, for chapter 7 (Children and young people in need of care and protection)—see section 156.

**in favour of**—see section 4.

**institution** means a place that is declared to be an institution under section 412.

**interim order**—

- (a) for part 7.3 (Care and protection orders and emergency action), means an order under section 251 (1) (e); and
- (b) for chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299.



***interim protection order***, for chapter 7 (Children and young people in need of care and protection)—see section 194 (Definitions for ch 7).

***interstate law*** means—

- (a) a law that, under a declaration under section 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.

***interstate order***, for part 8.6 (Interstate transfer for non-participating States)—see section 323A (Definitions for pt 8.6).

***interview***, for division 6.2.2 (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 health order***—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

***mental impairment***—see the Criminal Code, section 27.

***Minister***, for chapter 6 (Young offenders)—see section 63.

***neglect***, for chapter 7 (Children and young people in need of care and protection)—see section 151A.

***non-participating State***, for part 8.6 (Interstate transfer for non-participating States), means a State other than a participating State.

***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.

***ordinary search***, for chapter 13A—see section 401AB.

***outstanding fine***, for chapter 6 (Young offenders)—see section 63.

***parental responsibility***—

- (a) see section 17; and
- (b) for part 8.6 (Interstate transfer for non-participating States)—see section 323A (Definitions for pt 8.6).

***participant***, for division 7.2.1 (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 division 7.2.2 (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 division 6.2.2 (Criminal proceedings against young people)—see section 76.

***privileged***—a thing is ***privileged*** if—

- (a) client legal privilege attaches to the thing; or
- (b) it includes a protected confidence under the *Evidence (Miscellaneous Provisions) Act 1991*, division 4.5 (Protection of counselling communications).

***probation order***—see section 104.

***prohibited thing***, for chapter 13A—see section 401AB.

***proprietor***, for chapter 9 (Childrens services)—see section 324.

***protected information***, for chapter 15 (Confidentiality and immunity)—see section 405A.

***protection order***—see the *Domestic Violence and Protection Orders Act 2001*, dictionary.

***reasonably believes*** means believes on reasonable grounds.

***reasonably suspects*** means suspects on reasonable grounds.

***receiving State***, for part 6.3 (Interstate transfer)—see section 132.

***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.

***scanning search***, for chapter 13A—see section 401AB.

***school*** means—

- (a) a government or non-government school under the *Education Act 2004*; or
- (b) an educational institution conducted by the Canberra Institute of Technology.

***school-leaving age*** means 15 years old.

**sending State**, for part 6.3 (Interstate transfer)—see section 132.

**sensitive information**, for chapter 15 (Confidentiality and immunity)—see section 405B.

**serious offence**, for division 6.2.2 (Criminal proceedings against young people)—see section 76.

**shelter**—

(a) for the Act generally—means a place declared to be a shelter under section 412; and

(b) for chapter 13A—see section 401AB.

**short care and protection order**, for part 7.3 (Care and protection orders and emergency action)—see section 194.

**signed agreement**, for division 7.2.1 (Family group conferences)—see section 165.

**special assessment** means an assessment of a person that may include the matters mentioned in section 190.

**specific issues order**, for part 7.3 (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 Childrens Court**, for chapter 8—see section 299.

**State institution**, for chapter 6 (Young offenders)—see section 65.

**strip search**, for chapter 13A—see section 401AB.

**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 sections 47 (1) and 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**, for division 6.3.4 (Transfer between institutions)—see section 119.

**transfer order**, for part 6.3 (Interstate transfer)—see section 132.

**under restraint**, for division 6.2.2 (Criminal proceedings against young people)—see section 77.

**voluntary care agreement**, for division 7.2.2 (Voluntary care agreements), means an agreement entered into under section 182.

**welfare body**, for chapter 8 (Transfer of child care and protection orders and proceedings)—see section 299 (1) (Definitions for ch 8).

**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 division 7.2.1 (Family group conferences)—see section 165; and

(b) see section 8.

***youth detention centre***, for chapter 13A—see section 401AB.

***youth detention officer***, for chapter 13A—see section 401AB.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

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

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (IA s 10B))  
remainder commenced 10 May 2000 (IA s 10E)

as modified by

#### **Children and Young People (Modification) Regulations 2000 No 37 (as am by SL 2000 No 49)**

notified 22 September 2000 (Gaz 2000 No s 57)  
commenced 22 September 2000 (reg 2)

#### **Children and Young People Regulations 2000 SL No 41 reg 7**

notified 12 October 2000 (Gaz 2000 No S 59)  
commenced 12 October 2000 (reg 2)

as amended by

#### **Children and Young People Amendment Act 2000 No 11**

notified 6 April 2000 (Gaz 2000 No 14)  
s 1, s 2 commenced 6 April 2000 (s 2 (1))  
remainder commenced 10 May 2000 (s 2 (2))

#### **Statute Law Amendment Act 2000 No 80 amdt 3.2**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2 (1))

#### **Children and Young People Amendment Act 2001 No 23**

notified 8 May 2001 (Gaz 2001 No S24)  
s 1, s 2 commenced 8 May 2001 (IA s 10B)  
remainder commenced 10 May 2001 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 58**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 58 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)



**Statute Law Amendment Act 2001 (No 2) No 56 pt 3.7**

notified 5 September 2001 (Gaz 2001 No S65)  
s 1, s 2 commenced 5 September 2001 (s 2 (1))  
pt 3.7 commenced 5 September 2001 (s 2 (1))

**Crimes Legislation Amendment Act 2001 No 63 pt 2**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
pt 2 commenced 27 September 2001 (s 2 (2) and CN 2001 No 3)

**Children and Young People Amendment Act 2001 (No 2) 2001 No 65**

notified 10 September 2001 (Gaz 2001 No S66)  
commenced 10 September 2001 (s 2)

**Justice and Community Safety Legislation Amendment Act 2001  
No 70 sch 1**

notified LR 14 September 2001  
amnds commenced 14 September 2001 (s 2 (5))

**Protection Orders (Consequential Amendments) Act 2001 No 90  
sch 1 pt 2**

notified LR 27 September 2001  
s 1, s 2 commenced 27 September 2001 (LA s 75)  
sch 1 pt 2 commenced 27 March 2002 (s 2, see the Protection Orders  
Act 2001, s 3 and LA s 79)

**Legislation Amendment Act 2002 No 11 pt 2.6**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.6 commenced 28 May 2002 (s 2 (1))

**Workers Compensation (Acts of Terrorism) Amendment Act 2002  
No 22 pt 1.1**

notified LR 28 June 2002  
s 1, s 2 commenced 28 June 2002 (LA s 75)  
pt 1.1 commenced 1 July 2002 (s 2)

**Justice and Community Safety Legislation Amendment Act 2002  
No 27 pt 4**

notified LR 9 September 2002  
s 1, s 2 commenced 9 September 2002 (LA s 75)  
pt 4 commenced 10 September 2002 (s 2)

## Endnotes

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**Criminal Code 2002 No 51 pt 1.4**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75)  
pt 1.4 commenced 1 January 2003 (s 2 (1))

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003  
A2003-14 sch 1 pt 1.4**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 1 pt 1.4 commenced 28 March 2003 (s 2)

**Statute Law Amendment Act 2003 (No 2) A2003-56 sch 3 pt 3.5**

notified LR 5 December 2003  
s 1, s 2 commenced 5 December 2003 (LA s 75 (1))  
sch 3 pt 3.5 commenced 19 December 2003 (s 2)

**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.16**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.16 commenced 9 April 2004 (s 2 (1))

**Education Act 2004 A2004-17 sch 2 pt 2.2**

notified LR 8 April 2004  
s 1, s 2 commenced 8 April 2004 (LA s 75 (1))  
sch 2 pt 2.2 commenced 1 January 2005 (s 2)

**Health Professionals Legislation Amendment Act 2004 A2004-39  
sch 6 pt 6.2**

notified LR 8 July 2004  
s 1, s 2 commenced 8 July 2004 (LA s 75 (1))  
sch 6 pt 6.2 commenced 17 January 2006 (s 2 and see Health  
Professionals Act 2004 A2004-38, s 2 (as am by A2005-28 amdt 1.1)  
and CN2006-2)

**Criminal Code (Serious Drug Offences) Amendment Act 2004  
A2004-56 sch 1 pt 1.2**

notified LR 6 September 2004  
s 1, s 2 commenced 6 September 2004 (LA s 75 (1))  
sch 1 pt 1.2 commenced 6 March 2005 (s 2 and LA s 79)

**Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.6**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.6 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Domestic Violence and Protection Orders Amendment Act 2005 A2005-13 sch 1 pt 1.2**

notified LR 24 March 2005  
s 1, s 2 commenced 24 March 2005 (LA s 75 (1))  
sch 1 pt 1.2 commenced 25 March 2005 (s 2)

**Children and Young People Amendment Act 2005 A2005-33**

notified LR 1 July 2005  
s 1, s 2 commenced 1 July 2005 (LA s 75 (1))  
remainder commenced 2 July 2005 (s 2)

**Public Advocate Act 2005 A2005-47 sch 1 pt 1.2 (as am by A2006-3 amdt 1.8)**

notified LR 2 September 2005  
s 1, s 2 commenced 2 September 2005 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 March 2006 (s 2 (1) as am by A2006-3 amdt 1.8))

**Mental Health (Treatment and Care) Amendment Act 2005 A2005-48 sch 1 pt 1.1**

notified LR 6 September 2005  
s 1, s 2 commenced 6 September 2005 (LA s 75 (1))  
sch 1 pt 1.1 commenced 7 September 2005 (s 2)

**Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.2**

notified LR 26 October 2005  
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))  
sch 1 pt 1.2 commenced 23 November 2005 (s 2)

**Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 sch 1 pt 1.3**

notified LR 1 December 2005  
s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))  
sch 1 pt 1.3 commenced 22 December 2005 (s 2 (4))

## Endnotes

3 Legislation history

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### **Human Rights Commission Legislation Amendment Act 2006 A2006-3 amdt 1.8**

notified LR 22 February 2006

s 1, s 2 commenced 22 February 2006 (LA s 75 (1))

amdt 1.8 commenced 23 February 2006 (s 2)

*Note* This Act only amends the Public Advocate Act 2005 A2005-47

### **Children and Young People Amendment Act 2006 A2006-6**

notified LR 16 March 2006

s 1, s 2 commenced 16 March 2006 (LA s 75 (1))

s 17 commenced 7 July 2006 (s 2 and CN2006-16)

s 19, s 21 commenced 1 July 2006 (s 2 and CN2006-9)

s 23 commenced 30 March 2006 (s 2 and CN2006-3)

remainder commenced 1 August 2006 (s 2 and CN2006-9)

### **Criminal Code (Mental Impairment) Amendment Act 2006 A2006-14 sch 1 pt 1.1**

notified LR 6 April 2006

s 1, s 2 commenced 6 April 2006 (LA s 75 (1))

sch 1 pt 1.1 commenced 7 April 2006 (s 2)

### **Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.3**

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

sch 1 pt 1.3 commenced 2 June 2006 (s 2 (1) and see Crimes  
(Sentence Administration) Act 2005 A2005-59 s 2, Crimes  
(Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

### **Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.7**

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 2 pt 2.7 commenced 29 September 2006 (s 2 (1))

### **Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.4**

notified LR 26 October 2006

s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))

sch 3 pt 3.4 commenced 16 November 2006 (s 2 (1))

**Health Legislation Amendment Act 2006 (No 2) A2006-46 sch 2 pt 2.2**

notified LR 17 November 2006

s 1, s 2 commenced 17 November 2006 (LA s 75 (1))

sch 2 pt 2.2 commenced 18 November 2006 (s 2 (1))

**Children and Young People Amendment Act 2006 (No 2) A2006-52**

notified LR 27 November 2006

s 1, s 2 commenced 27 November 2006 (LA s 75 (1))

remainder commenced 28 November 2006 (s 2)

**Children and Young People Amendment Act 2007 A2007-4**

notified LR 20 March 2007

s 1, s 2 commenced 20 March 2007 (LA s 75 (1))

s 3 commenced 25 July 2007 (LA s 75AA)

ss 4-10, 13-15 commenced 25 July 2007 (s 2 and CN2007-9)

remainder commenced 20 September 2007 (s 2 and LA s 79)

**Crimes Amendment Act 2008 A2008-6 pt 2**

notified LR 15 April 2008

s 1, s 2 commenced 15 April 2008 (LA s 75 (1))

pt 2 commenced 16 April 2008 (s 2)

**4 Amendment history****Introductory**

pt 1.1 hdg (prev ch 1 pt 1 hdg) renum 2001 No 65 s 4

**Name of Act**

s 1 sub A2003-56 amdt 3.19

**Interpretation**

pt 1.2 hdg (prev ch 1 pt 2 hdg) renum 2001 No 65 s 4

**Dictionary**s 2 om 2001 No 44 amdt 1.660  
ins A2003-56 amdt 3.20**Notes**

s 3 sub A2003-56 amdt 3.20

**Offences against Act—application of Criminal Code etc**

s 3A ins A2007-4 s 4

**Application of the Act**

pt 1.3 hdg (prev ch 1 pt 3 hdg) renum 2001 No 65 s 4

## Endnotes

4 Amendment history

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

s 9 am A2003-56 amdt 3.21; A2007-4 s 5

### **General objects**

pt 2.1 hdg (prev ch 2 pt 1 hdg) renum 2001 No 65 s 4

### **Principles applying to the Act**

pt 2.2 hdg (prev ch 2 pt 2 hdg) renum 2001 No 65 s 4

### **Best interests of child or young person paramount consideration**

s 11 sub A2006-6 s 4

### **General principles**

s 12 am A2006-6 s 5; pars renum R35 LA

### **Indigenous children and young people principle**

s 14 hdg sub A2006-6 s 6

s 14 am A2006-6 s 6

### **Indigenous placement principle**

s 15 am A2006-6 s 7, s 8

### **Parental responsibility**

pt 2.3 hdg (prev ch 2 pt 3 hdg) renum 2001 No 65 s 4

### **What is parental responsibility?**

s 17 am A2003-56 amdt 3.22

### **Ch 6 and ch 7—general representation of child or young person**

s 23 am A2003-56 amdt 3.23, amdt 3.126

### **Ch 6, ch 7 and ch 8—legal representation of child or young person**

s 24 am A2003-56 amdt 3.126

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

s 25 am A2003-56 amdt 3.126

### **Chief executive**

pt 4.1 hdg (prev ch 4 pt 1 hdg) renum 2001 No 65 s 4

### **Chief executive's functions**

s 26 hdg sub A2003-56 amdt 3.24

s 26 am A2003-56 amdt 3.24, amdt 3.25

### **Delegation by chief executive**

s 34 sub A2003-56 amdt 3.26

### **Childrens services council**

pt 4.2 hdg (prev ch 4 pt 2 hdg) renum 2001 No 65 s 4

### **Members of the council**

s 36 am A2003-56 amdt 3.27; A2006-6 s 9

**Ending of appointments**

s 39 hdg sub A2003-56 amdt 3.28  
s 39 am A2003-56 amdt 3.29

**Advice and assistance by chief executive and public advocate**

s 40 hdg am A2005-47 amdt 1.7  
s 40 am A2005-47 amdt 1.7

**Other officials**

pt 4.3 hdg (prev ch 4 pt 3 hdg) renum 2001 No 65 s 4

**Official visitor**

s 41 am A2003-56 amdt 3.30-3.32; ss renum R12 LA (see  
A2003-56 amdt 3.33)

**Functions of official visitor**

s 42 am A2005-47 amdt 1.7

**No requirement to investigate complaint**

s 44 am A2005-47 amdt 1.7

**Assistance for public advocate**

s 45 hdg am A2005-47 amdt 1.7  
s 45 am A2005-47 amdt 1.7

**Giving information protected**

s 46 am A2005-47 amdt 1.7

**Suitable entities**

s 47 am A2004-56 amdt 1.5

**Appointment of officers**

s 48 sub A2003-56 amdt 3.34  
(2)-(4) exp 19 December 2004 (s 48 (4))

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

s 51 am A2003-56 amdt 3.35

**Arrangement of business of Childrens Court**

s 52 sub 2002 No 27 s 14

**Childrens Court**

s 53 sub 2002 No 27 s 14  
am A2005-60 amdt 1.10

**Assignment of other magistrates to deal with Childrens Court matters**

s 53A ins 2002 No 27 s 14  
am A2006-40 amdt 2.60

**Completion of part-heard matters**

s 53B ins 2002 No 27 s 14

**General jurisdiction of Childrens Court**

s 54 am A2003-56 amdt 3.126

## Endnotes

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### **Procedure of Childrens Court**

s 56 am 2001 No 44 amdts 1.661-1.663; A2003-56 amdt 3.126  
sub A2004-60 amdt 1.17

### **Matters before Childrens Court**

s 57 am A2003-56 amdt 3.126

### **Approval of forms for Childrens Court**

s 58 sub 2001 No 44 amdt 1.664  
om A2004-60 amdt 1.18

### **Orders about service**

s 59 am A2003-56 amdt 3.126

### **Attendance of parents at court**

s 60 am A2003-56 amdt 3.126

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

s 61 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

### **Restriction on publication of certain identifying material from proceedings**

s 61A ins 2001 No 70 amdt 1.1

### **Childrens Court may excuse parties from attendance**

s 62 hdg am A2003-56 amdt 3.126  
s 62 am A2003-56 amdt 3.126

### **Interpretation for chapter 6**

pt 6.1 hdg (prev ch 6 pt 1 hdg) renum 2001 No 65 s 4  
sub A2003-56 amdt 3.36

### **Definitions for ch 6**

s 63 def *fine* sub A2004-60 amdt 1.19  
def *outstanding fine* sub A2004-60 amdt 1.20

### **Dealing with young offenders in ACT**

pt 6.2 hdg (prev ch 6 pt 2 hdg) renum 2001 No 65 s 4  
sub A2003-56 amdt 3.37

### **General provisions for part 6.2**

div 6.2.1 hdg (prev ch 6 pt 2 div 1 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.13)  
sub A2003-56 amdt 3.38

### **Principles**

s 68 am A2006-6 s 10; pars renum R35 LA

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

s 69 am A2003-56 amdt 3.126

### **Age of criminal responsibility**

s 71 am 2000 No 11 s 4  
om 2002 No 51 amdt 1.5



**Power to apprehend under-age children**

s 72 am 2000 No 11 s 5; 2002 No 51 amdt 1.6

**Care and protection considerations**

s 75 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

**Criminal proceedings against young people**

div 6.2.2 hdg (prev ch 6 pt 2 div 2 hdg) renum R2 LA (see also 2001 No 90 amdt 1.13)

**Definitions for div 6.2.2**

s 76 def *authorised officer* sub 2001 No 63 s 4  
def *police officer* sub A2006-23 amdt 1.16

**Meaning of *under restraint***

s 77 am A2008-6 s 4

**Interviewing young people**

s 79 am A2003-56 amdt 3.39

**Limitations in relation to criminal proceedings against young people**

s 81 am A2006-14 amdt 1.1

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

s 83 am A2003-56 amdt 3.126

**Identifying material**

s 84 am 2001 No 63 s 5, s 6; R3 LA (see 2001 No 63 s 7)

**Destruction of identifying material**

s 84A ins 2001 No 73 s 8

**Detention of young people generally**

s 85 hdg sub A2003-56 amdt 3.40  
s 85 am A2003-56 amdt 3.41; A2006-23 amdt 1.17

**Taking young person to and from court**

s 85A ins A2003-56 amdt 3.42

**Bringing arrested young people before Childrens Court**

s 87 hdg am A2003-56 amdt 3.126  
s 87 am A2003-56 amdt 3.126; A2006-23 amdt 1.18

**Exclusion of evidence unlawfully obtained**

s 88 am A2003-56 amdt 3.43, amdt 3.126

**Summary disposal of certain cases**

s 89 am A2003-56 amdt 3.44, amdt 3.126

**Committal for trial in certain cases**

s 90 sub A2003-56 amdt 3.45

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

s 91 am A2003-56 amdt 3.126

## Endnotes

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

s 95 am A2003-56 amdt 3.126; A2006-14 amdt 1.2, amdt 1.3;  
A2006-23 amdt 1.19

### **Disposition of young offenders**

div 6.2.3 hdg (prev ch 6 pt 2 div 3 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.13)

### **Disposition of young offenders**

s 96 am A2003-56 amdt 3.126

### **Early release**

s 97 am A2003-56 amdt 3.126

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

s 98 sub A2003-56 amdt 3.46

### **Prohibition on certain orders**

s 99 am A2003-56 amdt 3.126; A2006-23 amdt 1.20

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

s 100 am A2003-56 amdt 3.126

### **Fines and similar orders**

s 101 am A2003-56 amdt 3.126

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

s 102 am A2003-56 amdt 3.126; A2004-60 amdt 1.21; A2006-23  
amdt 1.21, amdt 1.22; A2008-6 s 5

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

s 103 sub A2003-56 amdt 3.47

### **Probation orders**

s 104 am A2003-56 amdt 3.48, amdt 3.126

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

s 105 am A2003-56 amdt 3.49, amdt 3.50

### **Issue of warrant to enter and inspect**

s 105A ins A2003-56 amdt 3.51

### **Community service orders**

s 106 am A2003-56 amdt 3.126

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

s 107 am A2003-56 amdt 3.126

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

s 109 am A2003-56 amdt 3.126

### **Attendance centre orders**

s 110 am A2003-56 amdt 3.126

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

s 111 am A2003-56 amdt 3.126

**Compensation**

s 113 om 2002 No 22 amdt 1.1

**Residential orders**

s 114 am A2003-56 amdt 3.126

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

s 116 am A2003-56 amdt 3.126

**Revocation and variation of certain orders**

s 117 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

**Referral to mental health tribunal following conviction**

s 118 am A2003-56 amdt 3.126; A2006-14 amdt 1.4

**Transfer between institutions**

div 6.2.4 hdg (prev ch 6 pt 2 div 4 hdg) renum R2 LA (see also 2001 No 90 amdt 1.13)

**Transfer directions**

s 120 am A2006-23 amdt 1.23

**Reporting transfers**

s 121 am A2005-47 amdt 1.7

**Temporary custody before transfer between institutions**

s 122 sub A2006-23 amdt 1.24

**Miscellaneous**

div 6.2.5 hdg (prev ch 6 pt 2 div 5 hdg) renum R2 LA (see also 2001 No 90 amdt 1.13)

**Adjournment of criminal proceedings**

s 124 am A2003-56 amdt 3.126; A2006-23 amdt 1.25

**Placing in shelter or correctional centre**s 125 am A2003-56 amdt 3.126  
sub A2006-23 amdt 1.26**Young people in correctional centres**

s 126 sub A2006-23 amdt 1.26

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

s 127 am A2003-56 amdt 3.126

**Special purpose leave**

s 128 am A2003-56 amdt 3.126

**Royal prerogative of mercy not affected**

s 131 am A2006-23 amdt 1.27

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### **Interstate transfer**

pt 6.3 hdg (prev ch 6 pt 3 hdg) renum 2001 No 65 s 4

### **Interstate transfer generally**

div 6.3.1 hdg (prev ch 6 pt 3 div 1 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.13)

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

s 135 am A2003-56 amdt 3.126

### **Reporting of transfers**

s 138 am A2005-47 amdt 1.7

### **Transfer order**

s 139 am A2003-56 amdt 3.52; A2006-23 amdt 1.28

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

s 140 sub A2006-23 amdt 1.29

### **Transfer of sentence or order**

div 6.3.2 hdg (prev ch 6 pt 3 div 2 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.13)

### **Transit through Territory**

div 6.3.3 hdg (prev ch 6 pt 3 div 3 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.13)

### **Escape from temporary control**

s 146 am A2003-56 amdt 3.53

### **Revocation of transfer orders**

div 6.3.4 hdg (prev ch 6 pt 3 div 4 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.13)

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

s 148 am A2003-56 amdt 3.126

### **General**

pt 7.1 hdg (prev ch 7 pt 1 hdg) renum 2001 No 65 s 4

### **Preliminary**

div 7.1.1 hdg (prev ch 7 pt 1 div 1 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.13)

### **What is *abuse*?**

s 151 am 2001 No 90 amdt 1.14; A2005-13 amdt 1.9  
sub A2006-6 s 11

### **What is *neglect*?**

s 151A ins A2006-6 s 11

### **When is a child or young person *at risk of abuse or neglect*?**

s 151B ins A2006-6 s 11

**Meaning of former caregiver**

s 153 am A2003-56 amdt 3.126

**Person apparently a child or young person**

s 154 am A2003-56 amdt 3.126

**Helping families understand care and protection procedures**

s 155A ins A2006-6 s 12

**Abuse and neglect**

div 7.1.2 hdg (prev ch 7 pt 1 div 2 hdg) renum R2 LA (see also 2001 No 90 amdt 1.15)

**In need of care and protection**

s 156 am A2006-6 s 13

**Incident need not have happened in ACT**

s 157 sub A2006-6 s 14

**Prenatal reporting—anticipated abuse or neglect**

s 157A ins A2007-4 s 6

**Mandatory reporting**

s 159 am A2003-56 amdt 3.54; A2004-39 amdt 6.2; A2005-47 amdt 1.7; A2006-6 s 15, s 16; A2006-46 amdt 2.2; pars renum R38 LA

**Dishonest reports—offence**

s 160 sub A2007-4 s 7

**Chief executive must record reports**s 162 am A2005-47 amdt 1.7  
sub A2006-6 s 17; A2007-4 s 8**Protection of people making reports**

s 163 am A2003-56 amdt 3.55, amdt 3.126; A2007-4 s 9

**Protection of public advocate and person providing information to public advocate**s 164 hdg am A2005-47 amdt 1.7  
s 164 am A2005-47 amdt 1.7; A2007-4 s 10**Voluntary action**

pt 7.2 hdg (prev ch 7 pt 2 hdg) renum 2001 No 65 s 4

**Family group conferences**

div 7.2.1 hdg (prev ch 7 pt 2 div 1 hdg) renum R2 LA (see also 2001 No 90 amdt 1.15)

**Facilitators**s 166 sub 2001 No 44 amdt 1.665  
am A2003-56 amdt 3.56, amdt 3.57

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#### **Action by facilitator**

s 169 am A2006-6 s 18

#### **Agreements arising from conferences**

s 172 pars renum R35 LA

#### **Action by chief executive**

s 174 am A2003-56 amdt 3.58

#### **Application for registration**

s 175 am 2001 No 44 amdt 1.666, amdt 1.667; A2003-56 amdt 3.59;  
ss renum R12 LA (see A2003-56 amdt 3.60); A2005-47  
amdt 1.7

#### **Registration of agreements**

s 176 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

#### **Effect of registration**

s 177 am A2003-56 amdt 3.126

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

s 178 am A2003-56 amdt 3.126

#### **Voluntary care agreements**

div 7.2.2 hdg (prev ch 7 pt 2 div 2 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.15)

#### **Action on expiration or termination**

s 187 am A2003-56 amdt 3.126

#### **Appraisal and assessment**

div 7.2.3 hdg (prev ch 7 pt 2 div 3 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.15)

#### **Public advocate to be told about some incidents**

s 189A ins A2006-6 s 19

#### **Assistance with assessment**

s 192 am 2002 No 11 amdt 2.12, amdt 2.13; ss renum R7 LA;  
A2003-56 amdt 3.61

#### **Report**

s 193 am A2003-56 amdt 3.126

#### **Care and protection orders and emergency action**

pt 7.3 hdg (prev ch 7 pt 3) renum 2001 No 65 s 4

#### **General**

div 7.3.1 hdg (prev ch 7 pt 3 div 1 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.15)

**Definitions for ch 7**

- s 194 def *final care and protection order* sub 2001 No 90  
amdt 1.16  
def *final protection order* ins 2001 No 90 amdt 1.17  
am A2005-13 amdt 1.10  
def *interim protection order* ins 2001 No 90 amdt 1.17  
am A2005-13 amdt 1.10

**Applications by other people**

- s 196 am A2003-56 amdt 3.62, amdt 3.126; A2005-47 amdt 1.7

**Orders in relation to third parties**

- s 199 am A2003-56 amdt 3.126

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

- s 201 am A2003-56 amdt 3.126

**Restriction on leave to cross apply**

- s 202 am A2003-56 amdt 3.126

**Interim care and protection orders**

- s 203 am A2003-56 amdt 3.126

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

- s 204 am A2003-56 amdt 3.63

**When Childrens Court may make interim protection order**

- s 205 hdg sub A2003-56 amdt 3.64  
s 205 sub 2001 No 90 amdt 1.18  
am A2003-56 amdt 3.126; A2005-13 amdt 1.11; A2005-47  
amdt 1.7

**When Childrens Court may make final protection order**

- s 205A hdg sub A2003-56 amdt 3.65  
s 205A ins 2001 No 90 amdt 1.18  
am A2003-56 amdt 3.126; A2005-13 amdt 1.12-1.14;  
A2005-47 amdt 1.7

**Can someone apply for protection order if no care and protection proceedings?**

- s 205B ins 2001 No 90 amdt 1.18  
am A2005-13 amdt 1.15

**What is effect of making protection order under this Act?**

- s 205C ins 2001 No 90 amdt 1.18  
am A2005-13 amdt 1.16-1.18; A2005-47 amdt 1.7

**Contact orders**

- s 206 am A2003-56 amdt 3.126

**Residence orders**

- s 207 am A2003-56 amdt 3.126

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### **Short care and protection orders**

div 7.3.2 hdg (prev ch 7 pt 3 div 2 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.19)

### **Initial consideration of applications**

s 211 am A2003-56 amdt 3.126

### **Consideration of applications**

s 212 am A2003-56 amdt 3.126

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

s 214 am A2003-56 amdt 3.66, amdt 3.126

### **Assessment orders**

div 7.3.3 hdg (prev ch 7 pt 3 div 3hdg) renum R2 LA (see also 2001 No 90  
amdt 1.19)

### **Applications for assessment orders**

s 215 am A2003-56 amdt 3.126

### **Assessment orders**

s 217 am A2003-56 amdt 3.126

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

s 218 am A2003-56 amdt 3.126

### **Report**

s 220 am A2003-56 amdt 3.126

### **Childrens Court may act on recommendations**

s 221 am A2003-56 amdt 3.67

### **Emergency action**

div 7.3.4 hdg (prev ch 7 pt 3 div 4 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.19)

### **Keeping and losing parental responsibility**

s 225 am A2003-56 amdt 3.126

### **Notice of emergency action**

s 226 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

### **Early initial consideration of care and protection application**

s 228 am A2003-56 amdt 3.126

### **Application for release of child or young person**

s 231 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

### **Therapeutic protection orders**

div 7.3.5 hdg (prev ch 7 pt 3 div 5 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.19)

### **Therapeutic protection orders**

s 235 am A2003-56 amdt 3.126



**Restriction on making, varying and extending**

s 236 am A2003-56 amdt 3.126

**Application for variation or revocation of therapeutic protection order**

s 239 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

**Time for hearing and deciding applications**

s 240 am A2003-56 amdt 3.126

**Limitations on restricting contact**

s 241 am A2005-47 amdt 1.7

**Provision of schedule of therapeutic protection**

s 243 am A2005-47 amdt 1.7

**Review**

s 245 am 2000 No 80 amdt 3.2

**Specific issues orders**

div 7.3.6 hdg (prev ch 7 pt 3 div 6 hdg) renum R2 LA (see also 2001 No 90 amdt 1.19)

**Specific issues orders**

s 246 am A2003-56 amdt 3.126; A2006-14 amdt 1.5

**Notice of making, varying or extending certain specific issues orders**

s 248 am A2003-56 amdt 3.68, amdt 3.69, amdt 3.126; A2005-47 amdt 1.7

**Final care and protection orders**

div 7.3.7 hdg (prev ch 7 pt 3 div 7 hdg) renum R2 LA (see also 2001 No 90 amdt 1.19)

**Initial consideration of applications**

s 249 am A2003-56 amdt 3.126

**Before application adjourned**

s 251 am A2003-56 amdt 3.126

**Court-ordered meeting**

s 252 am A2003-56 amdt 3.126

**Variation of interim orders**

s 253 am A2003-56 amdt 3.126

**Appeal from assessment and specific issues interim orders**

s 254 am A2003-56 amdt 3.126

**Final care and protection orders**

s 255 am 2001 No 90 amdt 1.20; A2003-56 amdt 3.126; A2006-14 amdt 1.6

**Restriction on making final care and protection orders**

s 258 am A2003-56 amdt 3.126

## Endnotes

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### **What is a care plan?**

s 259 am A2003-56 amdt 3.126

### **Enduring parental responsibility orders**

s 260 am A2003-56 amdt 3.70, amdt 3.126

### **Restriction on making enduring parental responsibility orders**

s 261 am A2003-56 amdt 3.126

### **Financial contributions and burdens**

s 263 am A2003-56 amdt 3.126

### **Application for variation and revocation of orders**

s 264 am A2003-56 amdt 3.126

### **Variation and revocation of orders**

s 265 am A2003-56 amdt 3.126

### **Chief executive to report**

s 267 am A2003-56 amdt 3.71, amdt 3.72; ss renum R12 LA (see A2003-56 amdt 3.73); A2005-47 amdt 1.7; A2006-6 s 20

### **Waiving of obligation to give report**

s 268 am A2003-56 amdt 3.74, amdt 3.75, amdt 3.126

### **Failure to give report**

s 269 am A2003-56 amdt 3.76, amdt 3.77, amdt 3.126; A2005-47 amdt 1.7

### **Safe custody**

div 7.3.8 hdg (prev ch 7 pt 3 div 8 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)

### **Circumstances in which child or young person may be taken into safe custody**

s 270 am 2001 No 44 amdt 1.668; A2003-56 amdt 3.126

### **Childrens Court's power in relation to child or young person taken into safe custody**

s 271 hdg sub A2003-56 amdt 3.78

s 271 am A2003-56 amdt 3.79

### **Representation of wishes of child or young person**

div 7.3.9 hdg (prev ch 7 pt 3 div 9 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)

### **Opportunity for child or young person to be heard**

s 272 am A2003-56 amdt 3.126

### **Childrens Court may inform itself of child's or young person's wishes**

s 273 hdg sub A2003-56 amdt 3.80

s 273 am A2003-56 amdt 3.81

**No requirement to express views or wishes**

s 274 am A2003-56 amdt 3.126

**Procedures**

div 7.3.10 hdg (prev ch 7 pt 3 div 10 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)

**Material to accompany applications**

s 276 am 2001 No 44 amdt 1.669  
sub A2004-60 amdt 1.22

**Form of statements and reports**

s 277 am A2003-56 amdt 3.126

**Oral applications**

s 278 am A2003-56 amdt 3.126

**Hearing of applications in party's absence**

s 279 sub A2003-56 amdt 3.82

**Parties**

s 280 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

**Nonattendance of party**

s 281 am A2003-56 amdt 3.126

**Joining parties—court initiated**

s 282 sub A2003-56 amdt 3.83

**Joining parties—on application**

s 283 am A2003-56 amdt 3.126; A2005-47 amdt 1.7

**Joined parties—filed material**

s 284 am A2003-56 amdt 3.84

**Removal of parties**

s 285 am A2003-56 amdt 3.85, amdt 3.126; ss renum R12 LA (see A2003-56 amdt 3.86)

**Notice of address for service**

s 286 am A2003-56 amdt 3.126

**Representation**

s 287 am A2003-56 amdt 3.126

**Procedure at hearing**

s 288 am A2003-56 amdt 3.126

**Reasons for decisions**

s 289 am A2003-56 amdt 3.126

**Service of orders**

s 290 am 2001 No 56 amdt 3.10; A2003-56 amdt 3.126; A2005-47 amdt 1.7

## Endnotes

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### **Childrens Court may inform itself as appropriate**

s 291 hdg am A2003-56 amdt 3.126  
s 291 am A2003-56 amdt 3.126

### **Court may call witnesses**

s 292 am A2003-56 amdt 3.126; A2005-53 amdt 1.20, ss renum  
A2005-53 amdt 1.21

### **Child or young person as witness**

s 293 am A2003-56 amdt 3.126

### **Restriction on taking evidence**

s 294 am A2003-56 amdt 3.126

### **Withdrawal or discontinuance of applications**

s 295 am A2003-56 amdt 3.126

### **Consent orders**

s 296 am 2001 No 44 amdt 1.670; A2003-56 amdt 3.126; A2004-60  
amdt 1.23

### **Preliminary**

pt 8.1 hdg (prev ch 8 pt 1 hdg) renum 2001 No 65 s 4

### **Definitions for ch 8**

s 299 am 2001 No 44 amdt 1.671, amdt 1.672  
def **child care and protection order** sub 2001 No 65 s 5  
def **Childrens Court** om A2003-56 amdt 3.87  
def **State Childrens Court** ins A2003-56 amdt 3.88  
def **welfare body** ins 2001 No 65 s 6

### **Transfer of certain child care and protection orders**

pt 8.2 hdg (prev ch 8 pt 2 hdg) renum 2001 No 65 s 7

### **Administrative transfers**

div 8.2.1 hdg (prev ch 8 pt 2 div 1 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.21)

### **Notification to child or young person and people with parental responsibility**

s 302 am A2005-47 amdt 1.7

### **Limited period for review of decision**

s 303 am A2004-60 amdt 1.24

### **Judicial transfers**

div 8.2.2 hdg (prev ch 8 pt 2 div 2 hdg) renum R2 LA (see also 2001 No 90  
amdt 1.21)

### **When Childrens Court may make order under div 8.2.2**

s 304 hdg am A2003-56 amdt 3.126  
s 304 am A2003-56 amdt 3.126

**Type of order**

s 306 am A2003-56 amdt 3.126

**Childrens Court to have regard to certain matters**

s 307 hdg am A2003-56 amdt 3.126

s 307 am A2003-56 amdt 3.126

**Childrens Court must consider report from chief executive**

s 308 hdg am A2003-56 amdt 3.126

s 308 am A2003-56 amdt 3.126

**Appeals**

s 309 am A2004-60 amdt 1.25

**Transfer of child care and protection proceedings**

pt 8.3 hdg (prev ch 8 pt 3 hdg) renum 2001 No 65 s 7

**When Childrens Court may make order under pt 8.3**

s 310 sub A2003-56 amdt 3.89

**Service of application**

s 311 am A2003-56 amdt 3.90; A2005-47 amdt 1.7

**Childrens Court to have regard to certain matters**

s 312 hdg sub A2003-56 amdt 3.91

s 312 am A2003-56 amdt 3.92

**Interim order**

s 313 am A2003-56 amdt 3.93, amdt 3.126

**Appeals**

s 314 am A2003-56 amdt 3.93; A2004-60 amdt 1.26

**Registration**

pt 8.4 hdg (prev ch 8 pt 4 hdg) renum 2001 No 65 s 7

**Filing and registration of interstate documents**

s 315 am A2003-56 amdt 3.126

**Notification by appropriate registrar**

s 316 am A2003-56 amdt 3.93

**Effect of registration**

s 317 am A2003-56 amdt 3.126

**Revocation of registration**

s 318 am A2003-56 amdt 3.94, amdt 3.95

**Miscellaneous**

pt 8.5 hdg (prev ch 8 pt 5 hdg) renum 2001 No 65 s 7

**Effect of registration of transferred order**

s 319 am A2003-56 amdt 3.126

## Endnotes

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### **Transfer of Childrens Court file**

s 320 sub A2003-56 amdt 3.96

### **Special provision with respect to Maori children and young people**

s 321 am A2003-56 amdt 3.126

### **Deciding transferred proceeding**

s 322 sub A2003-56 amdt 3.97

### **Disclosure of information**

s 323 sub A2003-56 amdt 3.97

### **Interstate transfer for non-participating States**

pt 8.6 hdg ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

### **Definitions for pt 8.6**

s 323A ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

### **Object of pt 8.6**

s 323B ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

### **Transfer from non-participating State**

s 323C ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

### **Effect of declaration**

s 323D ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

### **Notice of declaration**

323E ins 2001 No 65 s 8  
am A2005-47 amdt 1.7  
exp on the day after the last non-participating State becomes a participating State (s 323H)

### **Effect of State becoming participating State**

s 323F ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

### **Transfer to non-participating State**

s 323G ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

**Expiry of pt 8.6**

s 323H ins 2001 No 65 s 8  
exp on the day after the last non-participating State becomes a participating State (s 323H)

**General**

pt 9.1 hdg (prev ch 9 pt 1 hdg) renum 2001 No 65 s 9

**Situations where ch 9 does not apply**

s 330 am A2003-56 amdt 3.98; A2004-17 amdt 2.2; pars renum R16 LA (see A2004-17 amdt 2.3)

**Exemptions**

s 331 sub 2001 No 44 amdt 1.673

**Approvals in principle and licences**

pt 9.2 hdg (prev ch 9 pt 2 hdg) renum 2001 No 65 s 9

**General**

div 9.2.1 hdg (prev ch 9 pt 2 div 1 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)

**Deciding if suitable**

s 332 am A2004-56 amdt 1.6

**Duty of disclosure**

s 333 am A2004-56 amdt 1.7

**Approval in principle**

div 9.2.2 hdg (prev ch 9 pt 2 div 2 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)

**Application**

s 336 am 2001 No 44 amdt 1.674

**Licences**

div 9.2.3 hdg (prev ch 9 pt 2 div 3 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)

**Application**

s 343 am 2001 No 44 amdt 1.675

**Application for renewal**

s 346 am 2001 No 44 amdt 1.676-1.678

**Matters common to approvals in principle and licences**

div 9.2.4 hdg (prev ch 9 pt 2 div 4 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)

**Variation of an approval in principle or a licence**

s 349 am 2001 No 44 amdt 1.679-1.681; R2 LA (see 2001 No 44 amdt 1.682)

## Endnotes

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### **Enforcement**

pt 9.3 hdg (prev ch 9 pt 3 hdg) renum 2001 No 65 s 9

### **Reporting breach**

s 353 am A2003-56 amdt 3.99, amdt 3.100; ss renum R12 LA (see A2003-56 amdt 3.101)

### **Offences**

pt 9.4 hdg (prev ch 9 pt 4 hdg) renum 2001 No 65 s 9

### **Meaning of *young child***

s 367 am A2003-56 amdt 3.102

### **Work experience not employment**

s 368A hdg (prev s 451 hdg) sub A2006-52 s 5  
s 368A (prev s 451) ins A2006-6 s 23  
am A2006-52 s 6  
reloc and renum A2006-52 s 7

### **Employment of young children**

s 370 am A2003-56 amdt 3.102

### **Light work excepted**

s 371 am A2003-56 amdt 3.102

### **Family businesses excepted**

s 372 am A2003-56 amdt 3.102

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

s 373 am A2004-17 amdt 2.4

### **Ch 10 subject to certain provisions of Education Act**

s 378 hdg sub A2003-56 amdt 3.103  
s 378 am A2003-56 amdt 3.104  
sub A2004-17 amdt 2.5

### **Meaning of *order***

s 379 am A2003-56 amdt 3.105

### **Appeal to Supreme Court**

s 380 am 2001 No 90 amdt 1.22; A2003-56 amdt 3.106, amdt 3.107, amdt 3.126; A2004-60 amdt 1.27; A2005-13 amdt 1.19

### **Application of Magistrates Court Act etc**

s 381 sub A2004-60 amdt 1.28

### **Barring of appeal if order to review granted**

s 382 am A2004-60 amdt 1.29

### **Review of decisions**

s 384 am 2001 No 65 s 10  
s (1) (aa) exp on the day after the last non-participating State becomes a participating State (s 323H)



**Decision to refuse to grant licence may not be stayed or otherwise affected pending outcome of review**

s 385 am A2003-56 amdt 3.108

**Presumption of age**

s 386 am A2003-56 amdt 3.109

**False statements**

s 387 om A2004-15 amdt 2.42

**Obstruction**

s 391 om A2004-15 amdt 2.42

**Impersonation and false representations**

s 392 om A2004-15 amdt 2.42

**Power to conduct personal search of child or young person**

s 399 am A2006-23 amdt 1.30; A2007-4 s 11

**Rules for conduct of personal search**

s 400 am A2003-14 amdt 1.11

**Detainees—search and seizure**

ch 13A hdg ins A2007-4 s 12

**Preliminary**

pt 13A.1 hdg ins A2007-4 s 12

**Application—ch 13A**

s 401AA ins A2007-4 s 12

**Definitions—ch 13A**

s 401AB ins A2007-4 s 12

def **authorised doctor** ins A2007-4 s 12def **authorised health professional** ins A2007-4 s 12def **authorised nurse** ins A2007-4 s 12def **body search** ins A2007-4 s 12def **detainee** ins A2007-4 s 12def **frisk search** ins A2007-4 s 12def **health service** ins A2007-4 s 12def **ordinary search** ins A2007-4 s 12def **prohibited thing** ins A2007-4 s 12def **scanning search** ins A2007-4 s 12def **shelter** ins A2007-4 s 12def **strip search** ins A2007-4 s 12def **youth detention centre** ins A2007-4 s 12def **youth detention officer** ins A2007-4 s 12**Relationship with other laws**

s 401AC ins A2007-4 s 12

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### **Prohibited things**

s 401AD ins A2007-4 s 12

### **Authorised health professionals**

s 401AE ins A2007-4 s 12

### **Searches generally**

pt 13A.2 hdg ins A2007-4 s 12

### **Intrusiveness of searches**

s 401AF ins A2007-4 s 12

### **Register of searches**

s 401AG ins A2007-4 s 12

### **Searches of transgender and intersex detainees**

s 401AH ins A2007-4 s 12

### **Notice of strip and body searches—person with parental responsibility for detainee**

s 401AI ins A2007-4 s 12

### **Scanning, frisk and ordinary searches**

pt 13A.3 hdg ins A2007-4 s 12

### **Directions for scanning, frisk and ordinary searches**

s 401AJ ins A2007-4 s 12

### **Requirements for scanning, frisk and ordinary searches**

s 401AK ins A2007-4 s 12

### **Strip searches**

pt 13A.4 hdg ins A2007-4 s 12

### **Admission to youth detention centre—initial assessment**

s 401AL ins A2007-4 s 12

### **Admission to youth detention centre—strip search for initial assessment**

s 401AM ins A2007-4 s 12

### **Strip search on admission—no-one with parental responsibility for detainee available**

s 401AN ins A2007-4 s 12

### **Strip search on admission—directing person to leave**

s 401AO ins A2007-4 s 12

### **Removing people from search area**

s 401AP ins A2007-4 s 12

### **Strip searches directed by chief executive**

s 401AQ ins A2007-4 s 12

**Obligations of youth detention officer before strip search**

s 401AR ins A2007-4 s 12

**Youth detention officers at strip searches**

s 401AS ins A2007-4 s 12

**Strip searches—general rules**

s 401AT ins A2007-4 s 12

**Strip searches—rules about visual inspection of detainee's body**

s 401AU ins A2007-4 s 12

**Strip searches—rules about detainee's clothing**

s 401AV ins A2007-4 s 12

**Body searches**

pt 13A.5 hdg ins A2007-4 s 12

**Body searches directed by chief executive**

s 401AW ins A2007-4 s 12

**Obligations of chief executive before body search**

s 401AX ins A2007-4 s 12

**People present at body searches**

s 401AY ins A2007-4 s 12

**Body searches—no-one with parental responsibility for detainee available**

s 401AZ ins A2007-4 s 12

**Body search—directing person to leave**

s 401AZA ins A2007-4 s 12

**Removing people from search area**

s 401AZB ins A2007-4 s 12

**Help for body searches**

s 401AZC ins A2007-4 s 12

**Body searches—rules about detainee's clothing**

s 401AZD ins A2007-4 s 12

**Body searches—rules about touching detainee**

s 401AZE ins A2007-4 s 12

**Seizing things discovered during body search**

s 401AZF ins A2007-4 s 12

**Searches of premises and property**

pt 13A.6 hdg ins A2007-4 s 12

**Searches—premises and property generally**

s 401AZG ins A2007-4 s 12

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### **Searches of detainee cells—privileged material**

s 401AZH ins A2007-4 s 12

### **Searches of detainee cells—suspected privileged material**

s 401AZI ins A2007-4 s 12

### **Searches—use of force**

pt 13A.7 hdg ins A2007-4 s 12

### **Searches—managing use of force**

s 401AZJ ins A2007-4 s 12

### **Searches—authorised use of force**

s 401AZK ins A2007-4 s 12

### **Seizing property**

pt 13A.8 hdg ins A2007-4 s 12

### **Seizing mail etc**

s 401AZL ins A2007-4 s 12

### **Seizing property—general**

s 401AZM ins A2007-4 s 12

### **Notice of seizure**

s 401AZN ins A2007-4 s 12

### **Forfeiture of things seized**

s 401AZO ins A2007-4 s 12

### **Return of things seized but not forfeited**

s 401AZP ins A2007-4 s 12

### **Standards and standing orders**

ch 14 hdg sub A2005-33 s 4

### **Definitions for ch 14**

s 401A ins A2005-33 s 4  
def **exempt provision** ins A2005-33 s 4  
def **place of detention** ins A2005-33 s 4  
am A2006-23 amdt 1.31

### **Standard-making power**

s 402 sub 2001 No 44 amdt 1.683; A2005-33 s 4

### **Standing order-making power**

s 403 om 2001 No 44 amdt 1.684  
ins A2005-33 s 4  
am A2006-6 s 21; A2006-52 s 4

### **Standing orders—provisions about security etc**

s 403A ins A2005-33 s 4  
am A2006-42 amdt 3.10, amdt 3.11

**Standing orders—inspection**

s 403B ins A2005-33 s 4  
am A2005-47 amdt 1.7

**When is information *divulged*?**

s 404 sub A2006-6 s 22

**Who is an *information holder*?**

s 405 am A2003-56 amdt 3.110; A2005-47 amdts 1.4-1.7  
(2)-(4) exp 1 April 2006 (s 405 (4) (LA s 88 declaration  
applies))  
sub A2006-6 s 22

**What is *protected information*?**

s 405A ins A2006-6 s 22

**What is *sensitive information*?**

s 405B ins A2006-6 s 22  
am A2007-4 ss 13-15

**Offence—*secrecy of protected information***

s 405C ins A2006-6 s 22

**Exception—*information given under this Act***

s 405D ins A2006-6 s 22

**Exception—*information given under another law***

s 405E ins A2006-6 s 22

**Exception—*information given with agreement***

s 405F ins A2006-6 s 22

**Giving *protected or sensitive information to a court***

s 405G ins A2006-6 s 22

**Information may be given in *best interests of child or young person***

s 405H ins A2006-6 s 22

**Immunity from suit**

s 407 am A2003-56 amdt 3.111

**Right of appearance**

s 409 am A2005-47 amdt 1.7

**Declaration of *attendance centres, institutions and shelters***

s 412 am A2003-56 amdt 3.112, amdt 3.113

**Child's or young person's name may be given**

s 413 am A2003-56 amdt 3.114, amdt 3.115

**Determination of fees**

s 416 sub 2001 No 44 amdt 1.685

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#### **Approval of forms by chief executive**

s 416A ins 2001 No 44 amdt 1.685

#### **Regulation-making power**

s 417 hdg sub 2001 No 44 amdt 1.686  
s 417 am 2001 No 44 amdts 1.686-1.690; A2003-56 amdt 3.116;  
A2005-33 s 5, s 6; A2006-23 amdt 1.32

#### **Transitional**

ch 17 hdg exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

#### **Standing orders may operate retrospectively etc**

s 418 am A2003-56 amdt 3.117, amdt 3.118  
exp 10 May 2004 (s 418 (2))  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

#### **Review of initial standing orders**

s 419 exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

#### **Effect of declaration in NI2005-179 etc**

s 420 exp 10 May 2001 (s 446) (and see 2001 No 44 amdt 1.691)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

#### **Periodical review of orders under CSA**

s 420A ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)

#### **Effect of declarations in NI2005-180 and NI2005-181**

s 421 exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

#### **Effect of declaration in NI2005-222**

s 422 exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

**Effect of approval in NI1988-1**

s 423 exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

**Effect of appointment of official visitors**

s 424 exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

**Expiry—ch 17**

s 425 exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 June 2001 (s 426)  
ins A2005-33 s 7  
exp 2 November 2005 (s 425)

**Agreements and arrangements about interstate transfer**

s 425A ins as mod SL 2000 No 41 reg 7 (1)  
exp 10 May 2001 (SL 2000 No 41 reg 7 (2))

**Expiry**

s 426 exp 10 May 2001 (s 446)  
ins 2001 No 23 s 4  
exp 10 May 2002 (s 426)

**Emergency action—s 75 and s 76 of repealed Act**

s 427 exp 10 May 2001 (s 446)

**CSA applications**

s 428 exp 10 May 2001 (s 446)

**Community advocate a party**

s 429 exp 10 May 2001 (s 446)

**Procedural changes in relation to CSA applications**

s 430 exp 10 May 2001 (s 446)

**Adjournment orders under CSA**

s 431 exp 10 May 2001 (s 446)

**Length of s 81 orders**

s 432 exp 10 May 2001 (s 446)

**Final care orders in force immediately before commencement day**

s 433 exp 10 May 2001 (s 446)

## Endnotes

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### **Declarations made immediately before commencement day**

s 434 exp 10 May 2001 (s 446)

### **Information laid for warrant**

s 435 exp 10 May 2001 (s 446)

### **Access orders**

s 436 exp 10 May 2001 (s 446)

### **Periodical review of orders**

s 437 exp 10 May 2001 (s 446)

### **Notations**

s 438 exp 10 May 2001 (s 446)

### **Undertakings**

s 439 exp 10 May 2001 (s 446)

### **Notifications**

s 439A ins as mod SL 2000 No 37 reg 3 (as am SL 2000 No 49 reg 3)  
exp 10 May 2001 (SL 2000 No 37 reg 4)

### **Child care centres**

s 440 exp 10 May 2001 (s 446)

### **Suspension of licences and directions to comply**

s 441 exp 10 May 2001 (s 446)

### **Family day care schemes**

s 442 exp 10 May 2001 (s 446)

### **Attendance centres, institutions and shelters**

s 443 exp 10 May 2001 (s 446)

### **AAT appeals**

s 444 exp 10 May 2001 (s 446)

### **Modification of ch 17's operation**

s 445 exp 10 May 2001 (s 446)

### **Expiry of ch 17**

s 446 exp 10 May 2001 (s 446)

### **Transitional—Children and Young People Amendment Act 2006**

ch 18 hdg ins A2006-6 s 23  
om A2006-52 s 8

### **Transitional—references to public advocate**

s 450 ins A2006-6 s 23  
exp 30 March 2006 (s 450 (3) (LA s 88 declaration applies))

### **Work experience not employment**

s 451 reloc and renum as s 368A



**Applications under part 7.3 (Care and protection orders and emergency action)**

sch 1 am A2005-47 amdt 1.7

**Translation of certain applications and orders**

sch 2 exp 10 May 2002 (s 426)

**Applications**sch 2 pt 2.1 hdg (prev sch 2 pt 1 hdg) renum R2 LA  
exp 10 May 2002 (s 426)**Final care and protection orders**sch 2 pt 2.2 hdg (prev sch 2 pt 2 hdg) renum R2 LA  
exp 10 May 2002 (s 426)**Dictionary**

dict hdg sub A2003-56 amdt 3.119  
 dict ins A2003-56 amdt 3.119  
 am A2006-23 amdt 1.33; A2006-46 amdt 2.3; A2007-4 s 16  
 def **Act** om 2001 No 44 amdt 1.692  
 def **at risk of abuse or neglect** ins A2006-6 s 24  
 def **authorised doctor** ins A2007-4 s 17  
 def **authorised health professional** ins A2007-4 s 17  
 def **authorised nurse** ins A2007-4 s 17  
 def **best interests principle** sub A2006-6 s 25  
 def **body** sub A2003-56 amdt 3.120  
 def **body search** ins A2007-4 s 17  
 def **Childrens Court** sub A2003-56 amdt 3.121  
 def **controlled drug** ins A2004-56 amdt 1.8  
 def **corrections officer** ins A2006-23 amdt 1.34  
 def **court** om A2003-56 amdt 3.122  
 def **custodial escort** om A2006-23 amdt 1.35  
 def **declaration** ins 2001 No 65 s 11  
 def **detainee** ins A2007-4 s 17  
 def **determined fee** om 2001 No 44 amdt 1.692  
 def **divulge** ins A2006-6 s 26  
 def **domestic violence order** om 2001 No 90 amdt 1.23  
 def **facilitator** sub A2006-6 s 27  
 def **final protection order** ins 2001 No 90 amdt 1.24  
 def **frisk search** ins A2007-4 s 17  
 def **health professional** ins A2007-4 s 17  
 def **health service** ins A2007-4 s 17  
 def **indigenous placement principle** om A2006-6 s 28  
 def **information holder** ins A2006-6 s 29  
 def **in need of care and protection** ins A2006-6 s 29  
 def **interim order** ins 2001 No 90 amdt 1.25  
 def **interim order** for chapter 7 om 2001 No 90 amdt 1.26  
 def **interim order** for chapter 8 om 2001 No 90 amdt 1.25  
 def **interim protection order** ins 2001 No 90 amdt 1.27

## Endnotes

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def **interstate law** am 2001 No 44 amdt 1.693  
def **interstate order** ins 2001 No 65 s 12  
def **mental dysfunction** am A2005-48 amdt 1.1  
om A2006-14 amdt 1.7  
def **mental health order** am A2005-48 amdt 1.1  
def **mental health tribunal** om A2003-56 amdt 3.123  
def **mental illness** am A2005-48 amdt 1.1  
om A2006-14 amdt 1.8  
def **mental impairment** ins A2006-14 amdt 1.9  
def **neglect** sub A2006-6 s 30  
def **non-participating State** ins 2001 No 65 s 13  
def **ordinary search** ins A2007-4 s 17  
def **parental responsibility** sub 2001 No 65 s 14  
def **privileged** ins A2007-4 s 17  
def **prohibited thing** ins A2007-4 s 17  
def **protected information** ins A2006-6 s 31  
def **protection order** ins 2001 No 90 amdt 1.28  
am A2005-13 amdt 1.20  
def **remand centre** om A2006-23 amdt 1.35  
def **restraining order** om 2001 No 90 amdt 1.29  
def **scanning search** ins A2007-4 s 17  
def **school** sub A2004-17 amdt 2.6  
def **school-leaving age** sub A2004-17 amdt 2.7  
def **sensitive information** ins A2006-6 s 31  
def **shelter** sub A2007-4 s 18  
def **State Childrens Court** ins A2003-56 amdt 3.124  
def **strip search** ins A2007-4 s 19  
def **welfare body** ins 2001 No 65 s 15  
def **working day** om A2003-56 amdt 3.125  
def **youth detention centre** ins A2007-4 s 19  
def **youth detention officer** ins A2007-4 s 19

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 10 May 2000	10 May 2000– 21 Sept 2000	A2000-11	amendments by A2000-11
R1 (RI) 23 Oct 2003	10 May 2000– 21 Sept 2000	A2000-11	amendments by A2000-11 reissued electronic republication of printed version
R1A 23 Oct 2003	12 Oct 2000– 6 Dec 2000	SL2000-41	modifications by SL2000-37 and SL2000-41
R1B 23 Oct 2003	7 Dec 2000– 20 Dec 2000	SL2000-41	amendments to modifications by SL2000-49
R1C 23 Oct 2003	21 Dec 2000– 9 May 2001	A2000-80	amendments by A2000-80
R2 12 Sept 2001	12 Sept 2001– 13 Sept 2001	A2001-65	amendments by A2001-23, A2001-44, A2001-56 and A2001-65 and commenced expiry
R3 5 Oct 2001	14 Sept 2001– 26 Sept 2001	A2001-70	amendments by A2001-70
R4 5 Oct 2001	27 Sept 2001– 26 Mar 2002	<u>A2001-90</u>	amendments by A2001-63

## Endnotes

5 Earlier republications

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R5 27 Mar 2002	27 Mar 2002– 10 May 2002	A2001-90	amendments by A2001-90
R6 11 May 2002	11 May 2002– 27 May 2002	A2001-90	commenced expiry
R7* 28 May 2002	28 May 2002– 30 June 2002	A2002-11	amendments by A2002-11
R8 1 July 2002	1 July 2002– 9 Sept 2002	A2002-22	amendments by A2002-22
R9 10 Sept 2002	10 Sept 2002– 31 Dec 2002	A2002-27	amendments by A2002-27
R10 1 Jan 2003	1 Jan 2003– 27 Mar 2003	A2002-51	amendments by A2002-51
R11 28 Mar 2003	28 Mar 2003– 18 Dec 2003	A2003-14	amendments by A2003-14
R12* 19 Dec 2003	19 Dec 2003– 8 Apr 2004	A2003-56	amendments by A2003-56
R13 9 Apr 2004	9 Apr 2004– 10 May 2004	A2004-15	amendments by A2004-15
R14 11 May 2004	11 May 2004– 19 Dec 2004	<u>A2004-17</u>	commenced expiry
R15 20 Dec 2004	20 Dec 2004– 31 Dec 2004	<u>A2004-60</u>	commenced expiry
R16 1 Jan 2004	1 Jan 2004– 9 Jan 2004	<u>A2004-60</u>	amendments by A2004-17
R17 10 Jan 2005	10 Jan 2005– 5 Mar 2005	A2004-60	amendments by A2004-60
R18 6 Mar 2005	6 Mar 2005– 24 Mar 2005	A2004-60	amendments by A2004-56
R19* 25 March 2005	25 March 2005– 1 July 2005	A2005-13	amendments by A2005-13
R20 2 July 2005	2 July 2005– 6 July 2005	A2005-33	amendments by A2005-33

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R21 7 July 2005	7 July 2005– 6 Sept 2005	A2005-33	updated endnotes
R22 7 Sept 2005	7 Sept 2005– 2 Nov 2005	A2005-48	amendments by A2005-48
R23 3 Nov 2005	3 Nov 2005– 22 Nov 2005	<u>A2005-53</u>	commenced expiry
R24 23 Nov 2005	23 Nov 2005– 21 Dec 2005	A2005-53	amendments by A2005-60
R25 22 Dec 2005	22 Dec 2005– 16 Jan 2006	A2005-60	amendments by A2005-60
R26 17 Jan 2006	17 Jan 2006– 28 Feb 2006	A2005-60	amendments by A2004-39
R27 1 Mar 2006	1 Mar 2006– 29 Mar 2006	A2006-3	amendments by A2005-47 as amended by A2006-3
R28 30 Mar 2006	30 Mar 2006– 30 Mar 2006	<u>A2006-6</u>	amendments by A2006-6
R29 31 Mar 2006	31 Mar 2006– 1 Apr 2006	<u>A2006-6</u>	commenced expiry
R30 2 Apr 2006	2 Apr 2006– 6 Apr 2006	<u>A2006-6</u>	commenced expiry
R31 7 Apr 2006	7 Apr 2006– 1 June 2006	A2006-14	amendments by A2006-14
R32 2 June 2006	2 June 2006– 30 June 2006	A2006-23	amendments by A2006-23
R33 1 July 2006	1 July 2006– 6 July 2006	A2006-23	amendments by A2006-6
R34 7 July 2006	7 July 2006– 31 July 2006	A2006-23	amendments by A2006-6
R35 1 Aug 2006	1 Aug 2006– 28 Sept 2006	A2006-23	amendments by A2006-6

## Endnotes

5 Earlier republications

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<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R36 29 Sept 2006	29 Sept 2006– 15 Nov 2006	A2006-40	amendments by A2006-40
R37 16 Nov 2006	16 Nov 2006– 17 Nov 2006	A2006-42	amendments by A2006-42
R38 18 Nov 2006	18 Nov 2006– 27 Nov 2006	A2006-46	amendments by A2006-46
R39 28 Nov 2006	28 Nov 2006– 24 July 2007	A2006-52	amendments by A2006-52
R40 25 July 2007	25 July 2007– 19 Sept 2007	<u>A2007-4</u>	amendments by A2007-4
R41* 20 Sept 2007	20 Sept 2007– 15 Apr 2008	A2007-4	amendments by A2007-4

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