



Australian Capital Territory

# **Children and Young People Act 1999**

**A1999-63**

**Republication No 45**

**Effective: 27 October 2008 – 13 February 2009**

Republication date: 27 October 2008

Last amendment made by A2008-26  
(republication for amendments by A2008-20)

Uncommenced repeal: see endnote 3

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Children and Young People Act 1999* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 27 October 2008. It also includes any amendment, repeal or expiry affecting the republished law to 27 October 2008.

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

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- 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 includes 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.



Australian Capital Territory

# Children and Young People Act 1999

## Contents

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	Page
<b>Chapter 1</b>	<b>Preliminary</b>
<b>Part 1.1</b>	<b>Introductory</b>
1	Name of Act 2
<b>Part 1.2</b>	<b>Interpretation</b>
2	Dictionary 3
3	Notes 3
3A	Offences against Act—application of Criminal Code etc 4
4	Orders <i>in favour of</i> a person 4
5	Meaning of <i>carer</i> 5
<b>Part 1.3</b>	<b>Application of the Act</b>
6	Application of Act generally 6

---

R45 27/10/08	Children and Young People Act 1999 Effective: 27/10/08-13/02/09	contents 1
-----------------	--	------------

## Contents

---

		Page
7	Who is a child?	6
8	Who is a young person?	6
9	Children and young people to whom Act applies	6
<b>Chapter 2</b>	<b>General objects, principles and parental responsibility</b>	
<b>Part 2.1</b>	<b>General objects</b>	
10	Objects	7
<b>Part 2.2</b>	<b>Principles applying to the Act</b>	
11	Best interests of child or young person paramount consideration	9
12	General principles	9
13	How to apply the best interests principle	12
14	Indigenous children and young people principle	13
<b>Chapter 3</b>	<b>Proceedings under Act generally</b>	
22	Entitlement to take part	14
23	Ch 6 and ch 7—general representation of child or young person	14
24	Ch 6, ch 7 and ch 8—legal representation of child or young person	15
25	Applications may be heard together	16
<b>Chapter 4</b>	<b>Administration</b>	
<b>Part 4.1</b>	<b>Chief executive</b>	
26	Chief executive's functions	17
27	Duties and particular powers of chief executive	18
28	Who can the chief executive get help from?	19
34	Delegation by chief executive	19
<b>Part 4.2</b>	<b>Childrens services council</b>	
35	Childrens Services Council	20
36	Members of the council	20
contents 2	Children and Young People Act 1999	R45
	Effective: 27/10/08-13/02/09	27/10/08

	Page
37 Chairperson	21
38 Meetings of the council	21
39 Ending of appointments	21
40 Advice and assistance by chief executive and public advocate	22
<b>Part 4.3 Other officials</b>	
45 Assistance for public advocate	23
46 Giving information protected	23
47 Suitable entities	23
48 Appointment of officers	25
49 Identity cards	25
<b>Chapter 5 The Childrens Court</b>	
50 Childrens Court Magistrates	26
51 Restriction on assignment to act as Childrens Court Magistrate	26
52 Arrangement of business of Childrens Court	26
53 Childrens Court	27
53A Assignment of other magistrates to deal with Childrens Court matters	27
53B Completion of part-heard matters	28
54 General jurisdiction of Childrens Court	29
55 Decisions about jurisdiction by reference to age	29
56 Procedure of Childrens Court	30
57 Matters before Childrens Court	30
59 Orders about service	30
60 Attendance of parents at court	31
61 Proceedings not open to public	32
61A Restriction on publication of certain identifying material from proceedings	32
62 Childrens Court may excuse parties from attendance	33

	Page
<b>Chapter 6</b>	<b>Young offenders</b>
<b>Part 6.1</b>	<b>Interpretation for chapter 6</b>
63	Definitions for ch 6 34
64	Meaning of <i>young offender</i> 34
65	Meaning of <i>State institution</i> 35
66	Special meaning of <i>young person</i> in ch 6 35
<b>Part 6.2</b>	<b>Dealing with young offenders in ACT</b>
<b>Division 6.2.1</b>	<b>General provisions for part 6.2</b>
67	Saving of other laws 36
69	Decisions about criminal jurisdiction by reference to age 36
70	Proceedings where young person jointly charged with adult 37
72	Power to apprehend under-age children 37
73	Powers of court in relation to reports 38
74	Reports to be made available 39
75	Care and protection considerations 39
<b>Division 6.2.2</b>	<b>Proceedings against young people</b>
76	Definitions for div 6.2.2 42
77	Meaning of <i>under restraint</i> 42
78	Committing an offence 45
79	Interviewing young people 45
80	Notification of arrest 47
81	Limitations in relation to criminal proceedings against young people 47
82	Procedure by summons 50
83	Charge against young person—informing person with parental responsibility 50
84	Identifying material 50
84A	Destruction of identifying material 52
85	Detention of young people generally 53
88	Exclusion of evidence unlawfully obtained 54
89	Summary disposal of certain cases 55
90	Committal for trial in certain cases 56
91	Young person may elect to be committed for trial 56

	Page
92	57
93	57
94	57
95	58
<b>Division 6.2.3 Disposition of young offenders</b>	
96	59
97	61
98	61
99	62
100	63
101	63
102	63
103	64
104	65
105	66
105A	66
106	67
107	68
108	69
109	70
110	71
111	72
112	73
114	74
115	74
116	74
117	76
118	77
<b>Division 6.2.5 Miscellaneous</b>	
123	78
124	79
125	80
127	80

## Contents

---

		Page
130	Other rights and freedoms not affected	81
131	Royal prerogative of mercy not affected	81

## **Chapter 9            Childrens services**

### **Part 9.1            General**

324	Definitions for ch 9	82
325	Objects	82
326	Principles	83
327	What is a childrens service?	83
328	What is a child-care centre?	83
329	What is a family day care scheme?	84
330	Situations where ch 9 does not apply	84
331	Exemptions	85

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

#### **Division 9.2.1    General**

332	Deciding if suitable	86
333	Duty of disclosure	87
334	Register	88

#### **Division 9.2.2    Approval in principle**

335	Advertising intention to apply	89
336	Application	89
337	Eligibility for approval in principle	89
338	Grant or refusal of approval in principle	90
339	Certificate of approval in principle	92
340	Term	92
341	Chief executive to report	92

#### **Division 9.2.3    Licences**

342	Advertising intention to apply	93
343	Application	93
344	Eligibility for licence	93
345	Grant or refusal of licence	94



	Page
346	96
347	96
<b>Division 9.2.4</b>	<b>Matters common to approvals in principle and licences</b>
348	97
349	97
350	99
351	100
352	100
<b>Part 9.3</b>	<b>Enforcement</b>
353	101
354	102
355	102
356	104
357	105
358	106
359	108
360	108
<b>Part 9.4</b>	<b>Offences</b>
361	110
362	110
363	110
364	111
365	111
366	111
<b>Chapter 10</b>	<b>Employment of children and young people</b>
367	113
368	113
368A	113
369	114
370	114

## Contents

---

	Page
371	Light work excepted 115
372	Family businesses excepted 116
373	Employment not to interfere with schooling etc 116
374	Dangerous employment 116
375	Regulation of employment of children and young people 117
376	Duty of employers of children and young people 118
377	Child or young person not to render certain measures ineffective 118
378	Ch 10 subject to certain provisions of Education Act 118

### **Chapter 11 Appeals and review**

379	Meaning of <i>order</i> 119
380	Appeal to Supreme Court 119
381	Application of Magistrates Court Act etc 121
382	Barring of appeal if order to review granted 122
383	Orders that Supreme Court may make 122
384	Review of decisions 123
385	Decision to refuse to grant licence may not be stayed or otherwise affected pending outcome of review 124

### **Chapter 12 General offences**

386	Presumption of age 125
388	Tattooing of children and young people 125

### **Chapter 13 Powers of entry and search**

393	Things <i>connected</i> with offences 126
394	Extended meaning of offence 126
395	Search and seizure 126
396	Search warrants 127
397	Entry in emergencies 128
398	Consent to entry 128

---

	Page
<b>Chapter 15</b>	<b>Confidentiality and immunity</b>
407	Immunity from suit 130
<b>Chapter 16</b>	<b>Miscellaneous</b>
408	Understanding proceedings 131
409	Right of appearance 131
410	Power of person without parental responsibility 132
411	Notification of location of child or young person 132
412	Declaration of attendance centres, institutions and shelters 132
413	Child's or young person's name may be given 132
414	Chief executive to notify births in some circumstances 133
415	Evidentiary certificates 134
416	Determination of fees 135
416A	Approval of forms by chief executive 135
417	Regulation-making power 136
<b>Schedule 1</b>	<b>Applications under part 7.3 (Care and protection orders and emergency action)</b> 138
<b>Dictionary</b>	141
<b>Endnotes</b>	
1	About the endnotes 152
2	Abbreviation key 152
3	Legislation history 153
4	Amendment history 159
5	Earlier republications 201
6	Uncommenced amendments 205





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

### **U** 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.

## 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.

**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

### 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.

### **U** 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.

#### **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.

## **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 6.2.5      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 Adjourment 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.

### **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.

**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.

## 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

#### **U** 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.

**U** 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—
- (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.

## 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.

## Chapter 15 Confidentiality and immunity

### 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

<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

**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>
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



## **U** 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

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## 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

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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)

## Endnotes

3 Legislation history

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**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)

**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)

## Endnotes

3 Legislation history

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### **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))



**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))

## Endnotes

3 Legislation history

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### **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)

### **Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 2 pt 2.2, sch 3 pt 3.4**

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 2 pt 2.2 commenced 9 September 2008 (s 2 (3) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

sch 3 pt 3.4 commenced 27 October 2008 (s 2 (4) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

### **Medicines, Poisons and Therapeutic Goods Act 2008 A2008-26 sch 2 pt 2.3**

notified LR 14 August 2008

s 1, s 2 commenced 14 August 2008 (LA s 75 (1))

sch 2 pt 2.3 awaiting commencement (s 2)

*Note* default commencement under LA s 79: 14 February 2009

as repealed by

**Children and Young People (Consequential Amendments) Act 2008  
A2008-20 sch 5 pt 5.3**

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 4 commenced 18 July 2008 (s 2 (1))

sch 5 pt 5.3 commences 27 February 2009 (s 2 (5) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

## 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  
am A2008-26 amdt 2.4

### 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

### 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

## Endnotes

### 4 Amendment history

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#### **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  
om A2008-20 amdt 3.5

#### **Parental responsibility**

pt 2.3 hdg (prev ch 2 pt 3 hdg) renum 2001 No 65 s 4  
om A2008-20 amdt 3.6

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

s 16 om A2008-20 amdt 3.6

#### **What is parental responsibility?**

s 17 am A2003-56 amdt 3.22  
om A2008-20 amdt 3.6

#### **Who has parental responsibility?**

s 18 om A2008-20 amdt 3.6

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

s 19 om A2008-20 amdt 3.6

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

s 20 om A2008-20 amdt 3.6

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

s 21 om A2008-20 amdt 3.6

#### **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

#### **Power to give and receive information**

s 29 om A2008-20 amdt 3.7

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

s 30 om A2008-20 amdt 3.7

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

s 31 om A2008-20 amdt 3.7

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

s 32 om A2008-20 amdt 3.7

**After care assistance**

s 33 om A2008-20 amdt 3.7

**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)  
om A2008-20 amdt 3.8

**Functions of official visitor**

s 42 am A2005-47 amdt 1.7

om A2008-20 amdt 3.8

**Making and hearing complaints**

s 43 om A2008-20 amdt 3.8

**No requirement to investigate complaint**

s 44 am A2005-47 amdt 1.7

om A2008-20 amdt 3.8

**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

## Endnotes

4 Amendment history

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### **Suitable entities**

s 47 am A2004-56 amdt 1.5; A2008-26 amdt 2.5

### **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

### **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  
om A2008-20 amdt 2.4

**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

## Endnotes

4 Amendment history

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### 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

om A2008-20 amdt 2.5

### Private property

s 86 om A2008-20 amdt 2.5

### 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

om A2008-20 amdt 2.5

### 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

### 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

## Endnotes

### 4 Amendment history

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#### **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)  
om A2008-20 amdt 2.6

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

s 119 om A2008-20 amdt 2.6

#### **Transfer directions**

s 120 am A2006-23 amdt 1.23  
om A2008-20 amdt 2.6

#### **Reporting transfers**

s 121 am A2005-47 amdt 1.7  
om A2008-20 amdt 2.6

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

s 122 sub A2006-23 amdt 1.24  
om A2008-20 amdt 2.6

#### **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  
om A2008-20 amdt 2.7

#### **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  
om A2008-20 amdt 2.7

#### **Medical examinations and surgical operations**

s 129 om A2008-20 amdt 2.7

#### **Royal prerogative of mercy not affected**

s 131 am A2006-23 amdt 1.27

#### **Interstate transfer**

pt 6.3 hdg (prev ch 6 pt 3 hdg) renum 2001 No 65 s 4  
om A2008-20 amdt 2.8

**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)  
om A2008-20 amdt 2.8

**Definitions for pt 6.3**

s 132 om A2008-20 amdt 2.8  
def **arrangement** om A2008-20 amdt 2.8  
def **escort** om A2008-20 amdt 2.8  
def **person responsible** om A2008-20 amdt 2.8  
def **receiving State** om A2008-20 amdt 2.8  
def **sending State** om A2008-20 amdt 2.8  
def **transfer order** om A2008-20 amdt 2.8

**General agreements with other jurisdictions**

s 133 om A2008-20 amdt 2.8

**Arrangements for transfer—general**

s 134 om A2008-20 amdt 2.8

**Power to arrange for transfers**

s 135 am A2003-56 amdt 3.126  
om A2008-20 amdt 2.8

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

s 136 om A2008-20 amdt 2.8

**Provisions to be contained in each arrangement**

s 137 om A2008-20 amdt 2.8

**Reporting of transfers**

s 138 am A2005-47 amdt 1.7  
om A2008-20 amdt 2.8

**Transfer order**

s 139 am A2003-56 amdt 3.52; A2006-23 amdt 1.28  
om A2008-20 amdt 2.8

**Temporary custody pending interstate transfer**

s 140 sub A2006-23 amdt 1.29  
om A2008-20 amdt 2.8

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

s 141 om A2008-20 amdt 2.8

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

s 142 om A2008-20 amdt 2.8

## Endnotes

4 Amendment history

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### **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)  
om A2008-20 amdt 2.8

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

s 143 om A2008-20 amdt 2.8

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

s 144 om A2008-20 amdt 2.8

### **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)  
om A2008-20 amdt 2.8

### **Lawful custody for transit through ACT**

s 145 om A2008-20 amdt 2.8

### **Escape from temporary control**

s 146 am A2003-56 amdt 3.53  
om A2008-20 amdt 2.8

### **Search warrants**

s 147 om A2008-20 amdt 2.8

### **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)  
om A2008-20 amdt 2.8

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

s 148 am A2003-56 amdt 3.126  
om A2008-20 amdt 2.8

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

s 149 om A2008-20 amdt 2.8

### **Reports etc**

s 150 om A2008-20 amdt 2.8

### **Children and young people in need of care and protection**

ch 7 hdg om A2008-20 amdt 3.9

### **General**

pt 7.1 hdg (prev ch 7 pt 1 hdg) renum 2001 No 65 s 4  
om A2008-20 amdt 3.9

### **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)  
om A2008-20 amdt 3.9

**What is *abuse*?**

s 151 am 2001 No 90 amdt 1.14; A2005-13 amdt 1.9  
sub A2006-6 s 11  
om A2008-20 amdt 3.9

**What is *neglect*?**

s 151A ins A2006-6 s 11  
om A2008-20 amdt 3.9

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

s 151B ins A2006-6 s 11  
om A2008-20 amdt 3.9

**Meaning of *contact***

s 152 om A2008-20 amdt 3.9

**Meaning of *former caregiver***

s 153 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Person apparently a child or young person**

s 154 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

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

s 155 om A2008-20 amdt 3.9

**Helping families understand care and protection procedures**

s 155A ins A2006-6 s 12  
om A2008-20 amdt 3.9

**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)  
om A2008-20 amdt 3.9

**In need of care and protection**

s 156 am A2006-6 s 13  
om A2008-20 amdt 3.9

**Incident need not have happened in ACT**

s 157 sub A2006-6 s 14  
om A2008-20 amdt 3.9

**Prenatal reporting—anticipated abuse or neglect**

s 157A ins A2007-4 s 6  
om A2008-20 amdt 3.9

**Voluntary reporting**

s 158 om A2008-20 amdt 3.9

## Endnotes

4 Amendment history

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### **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  
om A2008-20 amdt 3.9

### **Dishonest reports—offence**

s 160 sub A2007-4 s 7  
om A2008-20 amdt 3.9

### **Action on report**

s 161 om A2008-20 amdt 3.9

### **Chief executive must record reports**

s 162 am A2005-47 amdt 1.7  
sub A2006-6 s 17; A2007-4 s 8  
om A2008-20 amdt 3.9

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

s 163 am A2003-56 amdt 3.55, amdt 3.126; A2007-4 s 9  
om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

### **Voluntary action**

pt 7.2 hdg (prev ch 7 pt 2 hdg) renum 2001 No 65 s 4  
om A2008-20 amdt 3.9

### **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)  
om A2008-20 amdt 3.9

### **Definitions for div 7.2.1**

s 165 om A2008-20 amdt 3.9  
def **child** om A2008-20 amdt 3.9  
def **conference** om A2008-20 amdt 3.9  
def **participant** om A2008-20 amdt 3.9  
def **signed agreement** om A2008-20 amdt 3.9  
def **young person** om A2008-20 amdt 3.9

### **Facilitators**

s 166 sub 2001 No 44 amdt 1.665  
am A2003-56 amdt 3.56, amdt 3.57  
om A2008-20 amdt 3.9

**Register**

s 167 om A2008-20 amdt 3.9

**Purpose of conferences**

s 168 om A2008-20 amdt 3.9

**Action by facilitator**

s 169 am A2006-6 s 18  
om A2008-20 amdt 3.9

**Financial assistance**

s 170 om A2008-20 amdt 3.9

**Conduct of conference**

s 171 om A2008-20 amdt 3.9

**Agreements arising from conferences**

s 172 pars renum R35 LA  
om A2008-20 amdt 3.9

**Outcome of conference**

s 173 om A2008-20 amdt 3.9

**Action by chief executive**

s 174 am A2003-56 amdt 3.58  
om A2008-20 amdt 3.9

**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  
om A2008-20 amdt 3.9

**Registration of agreements**

s 176 am A2003-56 amdt 3.126; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

**Effect of registration**

s 177 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

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

s 178 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

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

s 179 om A2008-20 amdt 3.9

**Publication of information about conferences**

s 180 om A2008-20 amdt 3.9

## Endnotes

### 4 Amendment history

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#### **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)  
om A2008-20 amdt 3.9

#### **Meaning of *party***

s 181 om A2008-20 amdt 3.9

#### **Voluntary care agreements**

s 182 om A2008-20 amdt 3.9

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

s 183 om A2008-20 amdt 3.9

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

s 184 om A2008-20 amdt 3.9

#### **Agreements not void**

s 185 om A2008-20 amdt 3.9

#### **Early termination**

s 186 om A2008-20 amdt 3.9

#### **Action on expiration or termination**

s 187 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

#### **Parental contributions**

s 188 om A2008-20 amdt 3.9

#### **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)  
om A2008-20 amdt 3.9

#### **Child protection appraisals**

s 189 om A2008-20 amdt 3.9

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

s 189A ins A2006-6 s 19  
om A2008-20 amdt 3.9

#### **Special assessment**

s 190 om A2008-20 amdt 3.9

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

s 191 om A2008-20 amdt 3.9

#### **Assistance with assessment**

s 192 am 2002 No 11 amdt 2.12, amdt 2.13; ss renum R7 LA;  
A2003-56 amdt 3.61  
om A2008-20 amdt 3.9



**Report**

s 193 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Care and protection orders and emergency action**

pt 7.3 hdg (prev ch 7 pt 3) renum 2001 No 65 s 4  
om A2008-20 amdt 3.9

**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)  
om A2008-20 amdt 3.9

**Definitions for ch 7**

s 194 om A2008-20 amdt 3.9  
def **care and protection application** om A2008-20 amdt 3.9  
def **care and protection order** om A2008-20 amdt 3.9  
def **final care and protection order** sub 2001 No 90  
amdt 1.16  
om A2008-20 amdt 3.9  
def **final protection order** ins 2001 No 90 amdt 1.17  
am A2005-13 amdt 1.10  
om A2008-20 amdt 3.9  
def **interim protection order** ins 2001 No 90 amdt 1.17  
am A2005-13 amdt 1.10  
om A2008-20 amdt 3.9  
def **residence order** om A2008-20 amdt 3.9  
def **short care and protection order** om A2008-20 amdt 3.9  
def **specific issues order** om A2008-20 amdt 3.9  
def **therapeutic protection order** om A2008-20 amdt 3.9

**Basis for orders**

s 195 om A2008-20 amdt 3.9

**Applications by other people**

s 196 am A2003-56 amdt 3.62, amdt 3.126; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

**Burden of proof**

s 197 om A2008-20 amdt 3.9

**Information not required to be disclosed**

s 198 om A2008-20 amdt 3.9

**Orders in relation to third parties**

s 199 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Contents of care and protection applications**

s 200 om A2008-20 amdt 3.9

## Endnotes

4 Amendment history

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

s 201 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Restriction on leave to cross apply**

s 202 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Interim care and protection orders**

s 203 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

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

s 204 am A2003-56 amdt 3.63  
om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

### **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 amdts 1.12-1.14;  
A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

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

s 205C ins 2001 No 90 amdt 1.18  
am A2005-13 amdts 1.16-1.18; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

### **Contact orders**

s 206 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Residence orders**

s 207 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Temporary absence**

s 208 om A2008-20 amdt 3.9

**Supervision order**

s 209 om A2008-20 amdt 3.9

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

s 210 om A2008-20 amdt 3.9

**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)  
om A2008-20 amdt 3.9

**Initial consideration of applications**

s 211 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Consideration of applications**

s 212 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

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

s 213 om A2008-20 amdt 3.9

**Extension, variation or revocation of orders**

s 214 am A2003-56 amdt 3.66, amdt 3.126  
om A2008-20 amdt 3.9

**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)  
om A2008-20 amdt 3.9

**Applications for assessment orders**

s 215 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Cross applications on assessment orders**

s 216 om A2008-20 amdt 3.9

**Assessment orders**

s 217 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Restrictions on making assessment orders**

s 218 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Assistance with assessment**

s 219 om A2008-20 amdt 3.9

**Report**

s 220 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

## Endnotes

4 Amendment history

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

s 221 am A2003-56 amdt 3.67  
om A2008-20 amdt 3.9

### **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)  
om A2008-20 amdt 3.9

### **Taking emergency action**

s 222 om A2008-20 amdt 3.9

### **Emergency action by police officer**

s 223 om A2008-20 amdt 3.9

### **Parental responsibility following emergency action**

s 224 om A2008-20 amdt 3.9

### **Keeping and losing parental responsibility**

s 225 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Notice of emergency action**

s 226 am A2003-56 amdt 3.126; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

### **Action by chief executive**

s 227 om A2008-20 amdt 3.9

### **Early initial consideration of care and protection application**

s 228 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Contact with siblings and people with parental responsibility**

s 229 om A2008-20 amdt 3.9

### **Record of action**

s 230 om A2008-20 amdt 3.9

### **Application for release of child or young person**

s 231 am A2003-56 amdt 3.126; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

### **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)  
om A2008-20 amdt 3.9

### **Effect of div 7.3.5 on other powers of chief executive**

s 232 om A2008-20 amdt 3.9

### **What is therapeutic protection?**

s 233 om A2008-20 amdt 3.9

**Restriction on provision of therapeutic protection**

s 234 om A2008-20 amdt 3.9

**Therapeutic protection orders**

s 235 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Restriction on making, varying and extending**

s 236 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Action by chief executive under therapeutic protection order**

s 237 om A2008-20 amdt 3.9

**Restriction on cross-application**

s 238 om A2008-20 amdt 3.9

**Application for variation or revocation of therapeutic protection order**

s 239 am A2003-56 amdt 3.126; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

**Time for hearing and deciding applications**

s 240 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Limitations on restricting contact**

s 241 am A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

**Separation of children and young people from offenders**

s 242 om A2008-20 amdt 3.9

**Provision of schedule of therapeutic protection**

s 243 am A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

**Therapeutic protection order made as final care and protection order**

s 244 om A2008-20 amdt 3.9

**Review**

s 245 am 2000 No 80 amdt 3.2  
om A2008-20 amdt 3.9

**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)  
om A2008-20 amdt 3.9

**Specific issues orders**

s 246 am A2003-56 amdt 3.126; A2006-14 amdt 1.5  
om A2008-20 amdt 3.9

## Endnotes

4 Amendment history

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### **Restriction on cross-application**

s 247 om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

### **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)  
om A2008-20 amdt 3.9

### **Initial consideration of applications**

s 249 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Restriction on cross-application**

s 250 om A2008-20 amdt 3.9

### **Before application adjourned**

s 251 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Court-ordered meeting**

s 252 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Variation of interim orders**

s 253 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Appeal from assessment and specific issues interim orders**

s 254 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Final care and protection orders**

s 255 am 2001 No 90 amdt 1.20; A2003-56 amdt 3.126; A2006-14  
amdt 1.6  
om A2008-20 amdt 3.9

### **Therapeutic protection order made as final care and protection order**

s 256 om A2008-20 amdt 3.9

### **Parental responsibility**

s 257 om A2008-20 amdt 3.9

### **Restriction on making final care and protection orders**

s 258 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**What is a care plan?**

s 259 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Enduring parental responsibility orders**

s 260 am A2003-56 amdt 3.70, amdt 3.126  
om A2008-20 amdt 3.9

**Restriction on making enduring parental responsibility orders**

s 261 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Effect of enduring parental responsibility order on others with parental responsibility**

s 262 om A2008-20 amdt 3.9

**Financial contributions and burdens**

s 263 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Application for variation and revocation of orders**

s 264 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Variation and revocation of orders**

s 265 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Continuation of existing orders**

s 266 om A2008-20 amdt 3.9

**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  
om A2008-20 amdt 3.9

**Waiving of obligation to give report**

s 268 am A2003-56 amdt 3.74, amdt 3.75, amdt 3.126  
om A2008-20 amdt 3.9

**Failure to give report**

s 269 am A2003-56 amdt 3.76, amdt 3.77, amdt 3.126; A2005-47  
amdt 1.7  
om A2008-20 amdt 3.9

**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)  
om A2008-20 amdt 3.9

## Endnotes

4 Amendment history

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### **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  
om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

### **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)  
om A2008-20 amdt 3.9

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

s 272 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

### **No requirement to express views or wishes**

s 274 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **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)  
om A2008-20 amdt 3.9

### **Applications—scheduled matters**

s 275 om A2008-20 amdt 3.9

### **Material to accompany applications**

s 276 am 2001 No 44 amdt 1.669  
sub A2004-60 amdt 1.22  
om A2008-20 amdt 3.9

### **Form of statements and reports**

s 277 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Oral applications**

s 278 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9



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

s 279 sub A2003-56 amdt 3.82  
om A2008-20 amdt 3.9

**Parties**

s 280 am A2003-56 amdt 3.126; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

**Nonattendance of party**

s 281 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Joining parties—court initiated**

s 282 sub A2003-56 amdt 3.83  
om A2008-20 amdt 3.9

**Joining parties—on application**

s 283 am A2003-56 amdt 3.126; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

**Joined parties—filed material**

s 284 am A2003-56 amdt 3.84  
om A2008-20 amdt 3.9

**Removal of parties**

s 285 am A2003-56 amdt 3.85, amdt 3.126; ss renum R12 LA (see  
A2003-56 amdt 3.86)  
om A2008-20 amdt 3.9

**Notice of address for service**

s 286 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Representation**

s 287 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Procedure at hearing**

s 288 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Reasons for decisions**

s 289 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Service of orders**

s 290 am 2001 No 56 amdt 3.10; A2003-56 amdt 3.126; A2005-47  
amdt 1.7  
om A2008-20 amdt 3.9

## Endnotes

4 Amendment history

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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  
om A2008-20 amdt 3.9

### **Court may call witnesses**

s 292 am A2003-56 amdt 3.126; A2005-53 amdt 1.20, ss renum  
A2005-53 amdt 1.21  
om A2008-20 amdt 3.9

### **Child or young person as witness**

s 293 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Restriction on taking evidence**

s 294 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Withdrawal or discontinuance of applications**

s 295 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Consent orders**

s 296 am 2001 No 44 amdt 1.670; A2003-56 amdt 3.126; A2004-60  
amdt 1.23  
om A2008-20 amdt 3.9

### **Costs**

s 297 om A2008-20 amdt 3.9

### **Transfer of child care and protection orders and proceedings**

ch 8 hdg om A2008-20 amdt 3.9

### **Preliminary**

pt 8.1 hdg (prev ch 8 pt 1 hdg) renum 2001 No 65 s 4  
om A2008-20 amdt 3.9

### **Object of ch 8**

s 298 om A2008-20 amdt 3.9

### **Definitions for ch 8**

s 299 am 2001 No 44 amdt 1.671, amdt 1.672  
om A2008-20 amdt 3.9  
def **child care and protection order** sub 2001 No 65 s 5  
om A2008-20 amdt 3.9  
def **child care and protection proceeding** om A2008-20  
amdt 3.9  
def **child welfare law** om A2008-20 amdt 3.9  
def **Childrens Court** om A2003-56 amdt 3.87  
def **interim order** om A2008-20 amdt 3.9  
def **interstate law** om A2008-20 amdt 3.9

def **interstate officer** om A2008-20 amdt 3.9  
 def **participating state** om A2008-20 amdt 3.9  
 def **sending state** om A2008-20 amdt 3.9  
 def **State** om A2008-20 amdt 3.9  
 def **State Childrens Court** ins A2003-56 amdt 3.88  
 om A2008-20 amdt 3.9  
 def **welfare body** ins 2001 No 65 s 6  
 om A2008-20 amdt 3.9

**Transfer of certain child care and protection orders**

pt 8.2 hdg (prev ch 8 pt 2 hdg) renum 2001 No 65 s 7  
 om A2008-20 amdt 3.9

**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)  
 om A2008-20 amdt 3.9

**When chief executive may transfer order**

s 300 om A2008-20 amdt 3.9

**People whose consent is required**

s 301 om A2008-20 amdt 3.9

**Notification to child or young person and people with parental responsibility**

s 302 am A2005-47 amdt 1.7  
 om A2008-20 amdt 3.9

**Limited period for review of decision**

s 303 am A2004-60 amdt 1.24  
 om A2008-20 amdt 3.9

**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)  
 om A2008-20 amdt 3.9

**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  
 om A2008-20 amdt 3.9

**Service of application**

s 305 om A2008-20 amdt 3.9

**Type of order**

s 306 am A2003-56 amdt 3.126  
 om A2008-20 amdt 3.9

## Endnotes

4 Amendment history

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### **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  
om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

### **Appeals**

s 309 am A2004-60 amdt 1.25  
om A2008-20 amdt 3.9

### **Transfer of child care and protection proceedings**

pt 8.3 hdg (prev ch 8 pt 3 hdg) renum 2001 No 65 s 7  
om A2008-20 amdt 3.9

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

s 310 sub A2003-56 amdt 3.89  
om A2008-20 amdt 3.9

### **Service of application**

s 311 am A2003-56 amdt 3.90; A2005-47 amdt 1.7  
om A2008-20 amdt 3.9

### **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  
om A2008-20 amdt 3.9

### **Interim order**

s 313 am A2003-56 amdt 3.93, amdt 3.126  
om A2008-20 amdt 3.9

### **Appeals**

s 314 am A2003-56 amdt 3.93; A2004-60 amdt 1.26  
om A2008-20 amdt 3.9

### **Registration**

pt 8.4 hdg (prev ch 8 pt 4 hdg) renum 2001 No 65 s 7  
om A2008-20 amdt 3.9

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

s 315 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

### **Notification by appropriate registrar**

s 316 am A2003-56 amdt 3.93  
om A2008-20 amdt 3.9

**Effect of registration**

s 317 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Revocation of registration**

s 318 am A2003-56 amdt 3.94, amdt 3.95  
om A2008-20 amdt 3.9

**Miscellaneous**

pt 8.5 hdg (prev ch 8 pt 5 hdg) renum 2001 No 65 s 7  
om A2008-20 amdt 3.9

**Effect of registration of transferred order**

s 319 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Transfer of Childrens Court file**

s 320 sub A2003-56 amdt 3.96  
om A2008-20 amdt 3.9

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

s 321 am A2003-56 amdt 3.126  
om A2008-20 amdt 3.9

**Deciding transferred proceeding**

s 322 sub A2003-56 amdt 3.97  
om A2008-20 amdt 3.9

**Disclosure of information**

s 323 sub A2003-56 amdt 3.97  
om A2008-20 amdt 3.9

**Interstate transfer for non-participating States**

pt 8.6 hdg ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

**Definitions for pt 8.6**

s 323A ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)  
def **declatration** ins A2001-65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)  
def **interstate order** ins A2001-65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)  
def **non-participating State** ins A2001-65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)  
def **parental responsibility** ins A2001-65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

**Object of pt 8.6**

s 323B ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

## Endnotes

4 Amendment history

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

s 323C ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

### **Effect of declaration**

s 323D ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

### **Notice of declaration**

323E ins 2001 No 65 s 8  
am A2005-47 amdt 1.7  
exp 19 September 2008 (s 323H and NI2008-428)

### **Effect of State becoming participating State**

s 323F ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

### **Transfer to non-participating State**

s 323G ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

### **Expiry of pt 8.6**

s 323H ins 2001 No 65 s 8  
exp 19 September 2008 (s 323H and NI2008-428)

### **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; A2008-26 amdt 2.5

### **Duty of disclosure**

s 333 am A2004-56 amdt 1.7; A2008-26 amdt 2.5

### **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)

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<b>Application</b>	
s 336	am 2001 No 44 amdt 1.674
<b>Licences</b>	
div 9.2.3 hdg	(prev ch 9 pt 2 div 3 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)
<b>Application</b>	
s 343	am 2001 No 44 amdt 1.675
<b>Application for renewal</b>	
s 346	am 2001 No 44 amdts 1.676-1.678
<b>Matters common to approvals in principle and licences</b>	
div 9.2.4 hdg	(prev ch 9 pt 2 div 4 hdg) renum R2 LA (see also 2001 No 90 amdt 1.21)
<b>Variation of an approval in principle or a licence</b>	
s 349	am 2001 No 44 amdts 1.679-1.681; R2 LA (see 2001 No 44 amdt 1.682)
<b>Enforcement</b>	
pt 9.3 hdg	(prev ch 9 pt 3 hdg) renum 2001 No 65 s 9
<b>Reporting breach</b>	
s 353	am A2003-56 amdt 3.99, amdt 3.100; ss renum R12 LA (see A2003-56 amdt 3.101)
<b>Offences</b>	
pt 9.4 hdg	(prev ch 9 pt 4 hdg) renum 2001 No 65 s 9
<b>Meaning of <i>young child</i></b>	
s 367	am A2003-56 amdt 3.102
<b>Work experience not employment</b>	
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
<b>Employment of young children</b>	
s 370	am A2003-56 amdt 3.102
<b>Light work excepted</b>	
s 371	am A2003-56 amdt 3.102
<b>Family businesses excepted</b>	
s 372	am A2003-56 amdt 3.102
<b>Employment not to interfere with schooling etc</b>	
s 373	am A2004-17 amdt 2.4

## Endnotes

4 Amendment history

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### **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  
(1) (aa) exp 19 September 2008 (s 323H and NI2008-428)

### **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

### **Offences in relation to child or young person subject to an order**

s 389 om A2008-20 amdt 3.10

### **Offence to harbour or conceal child or young person**

s 390 om A2008-20 amdt 3.10

### **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  
om A2008-20 amdt 3.11

### **Rules for conduct of personal search**

s 400 am A2003-14 amdt 1.11  
om A2008-20 amdt 3.11

### **Safekeeping of things seized**

s 401 om A2008-20 amdt 3.11



**Detainees—search and seizure**

ch 13A hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Preliminary**

pt 13A.1 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Application—ch 13A**

s 401AA ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Definitions—ch 13A**

s 401AB ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **authorised doctor** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **authorised health professional** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **authorised nurse** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **body search** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **detainee** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **frisk search** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **health service** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **ordinary search** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **prohibited thing** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **scanning search** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **shelter** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **strip search** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **youth detention centre** ins A2007-4 s 12  
om A2008-20 amdt 2.9  
def **youth detention officer** ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Relationship with other laws**

s 401AC ins A2007-4 s 12  
om A2008-20 amdt 2.9

## Endnotes

### 4 Amendment history

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#### **Prohibited things**

s 401AD ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Authorised health professionals**

s 401AE ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Searches generally**

pt 13A.2 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Intrusiveness of searches**

s 401AF ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Register of searches**

s 401AG ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AH ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AI ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Scanning, frisk and ordinary searches**

pt 13A.3 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Directions for scanning, frisk and ordinary searches**

s 401AJ ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Requirements for scanning, frisk and ordinary searches**

s 401AK ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Strip searches**

pt 13A.4 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

#### **Admission to youth detention centre—initial assessment**

s 401AL ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AM ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AN ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Strip search on admission—directing person to leave**

s 401AO ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Removing people from search area**

s 401AP ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Strip searches directed by chief executive**

s 401AQ ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Obligations of youth detention officer before strip search**

s 401AR ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Youth detention officers at strip searches**

s 401AS ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Strip searches—general rules**

s 401AT ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AU ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AV ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Body searches**

pt 13A.5 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Body searches directed by chief executive**

s 401AW ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Obligations of chief executive before body search**

s 401AX ins A2007-4 s 12  
om A2008-20 amdt 2.9

**People present at body searches**

s 401AY ins A2007-4 s 12  
om A2008-20 amdt 2.9

## Endnotes

4 Amendment history

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

s 401AZ ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Body search—directing person to leave**

s 401AZA ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Removing people from search area**

s 401AZB ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Help for body searches**

s 401AZC ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AZD ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Body searches—rules about touching detainee**

s 401AZE ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Seizing things discovered during body search**

s 401AZF ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Searches of premises and property**

pt 13A.6 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Searches—premises and property generally**

s 401AZG ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Searches of detainee cells—privileged material**

s 401AZH ins A2007-4 s 12  
om A2008-20 amdt 2.9

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

s 401AZI ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Searches—use of force**

pt 13A.7 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Searches—managing use of force**

s 401AZJ ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Searches—authorised use of force**

s 401AZK ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Seizing property**

pt 13A.8 hdg ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Seizing mail etc**

s 401AZL ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Seizing property—general**

s 401AZM ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Notice of seizure**

s 401AZN ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Forfeiture of things seized**

s 401AZO ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Return of things seized but not forfeited**

s 401AZP ins A2007-4 s 12  
om A2008-20 amdt 2.9

**Standards and standing orders**

ch 14 hdg sub A2005-33 s 4  
om R45 LA

**Definitions for ch 14**

s 401A ins A2005-33 s 4  
om A2008-20 amdt 2.10  
def **exempt provision** ins A2005-33 s 4  
om A2008-20 amdt 2.10  
def **place of detention** ins A2005-33 s 4  
am A2006-23 amdt 1.31  
om A2008-20 amdt 2.10

**Standard-making power**

s 402 sub 2001 No 44 amdt 1.683; A2005-33 s 4  
om A2008-20 amdt 3.12

## Endnotes

4 Amendment history

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### **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  
om A2008-20 amdt 2.10

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

s 403A ins A2005-33 s 4  
am A2006-42 amdt 3.10, amdt 3.11  
om A2008-20 amdt 2.10

### **Standing orders—inspection**

s 403B ins A2005-33 s 4  
am A2005-47 amdt 1.7  
om A2008-20 amdt 2.10

### **When is information *divulged*?**

s 404 sub A2006-6 s 22  
om A2008-20 amdt 3.12

### **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  
om A2008-20 amdt 3.12

### **What is *protected information*?**

s 405A ins A2006-6 s 22  
om A2008-20 amdt 3.12

### **What is *sensitive information*?**

s 405B ins A2006-6 s 22  
am A2007-4 ss 13-15  
om A2008-20 amdt 3.12

### **Offence—*secrecy of protected information***

s 405C ins A2006-6 s 22  
om A2008-20 amdt 3.12

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

s 405D ins A2006-6 s 22  
om A2008-20 amdt 3.12

### **Exception—*information given under another law***

s 405E ins A2006-6 s 22  
om A2008-20 amdt 3.12

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

s 405F ins A2006-6 s 22  
om A2008-20 amdt 3.12

**Giving protected or sensitive information to a court**

s 405G ins A2006-6 s 22  
om A2008-20 amdt 3.12

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

s 405H ins A2006-6 s 22  
om A2008-20 amdt 3.12

**Civil liability**

s 406 om A2008-20 amdt 3.12

**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

**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)

## Endnotes

4 Amendment history

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### **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)

**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)

## Endnotes

4 Amendment history

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### **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 **drug of dependence** om A2008-26 amdt 2.6  
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  
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

## Endnotes

4 Amendment history

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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
R42 16 Apr 2008	16 Apr 2008– 8 Sept 2008	A2008-6	amendments by A2008-6
R43 9 Sept 2008	9 Sept 2008– 19 Sept 2008	<u>A2008-26</u>	amendments by A2008-20
R44 14 Oct 2008	20 Sept 2008– 26 Oct 2008	<u>A2008-26</u>	amendments by A2008-20



## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<b>Medicines, Poisons and Therapeutic Goods Act 2008 A2008-26 sch 2 pt 2.3</b>
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## Part 2.3 Children and Young People Act 1999

### [2.4] Section 2, note 1

*substitute*

*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 '*controlled drug*—see the Criminal Code, section 600.' means that the term 'controlled drug' is defined in that section and the definition applies to this Act.

### [2.5] Sections 47 (2) (a) (ii), 332 (1) (a) (ii) and 333 (1) (c)

*omit*

drug of dependence or

### [2.6] Dictionary, definition of *drug of dependence*

*omit*

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