Australian Capital Territory

# Children and Young People Act 2008

**A2008-19**

**Republication No 72**

**Effective: 14 November 2019 – 30 November 2019**

Republication date: 14 November 2019

Last amendment made by A2019-42

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

## About this republication

### The republished law

This is a republication of the *Children and Young People Act 2008* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 14 November 2019. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 14 November 2019.

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

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

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

### Uncommenced provisions and amendments

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### Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

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Australian Capital Territory

# Children and Young People Act 2008

An Act about the welfare of children and young people, and for other purposes



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# Chapter 1 Preliminary

## Part 1.1 Introduction

### 1 Name of Act

This Act is the *Children and Young People Act 2008*.

### 3 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*, dictionary.' means that the term 'drug of dependence' is defined in the dictionary to that Act 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 s 156 (1)).

### 4 Notes

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

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



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## 5 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 all offences against this Act (see Code, pt 2.1).

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.

## 6 Application of Act to children and young people etc

The functions under this Act may be exercised for a child or young person, or a young offender or young detainee—

(a) who ordinarily lives in the ACT; or

(b) who does not ordinarily live in the ACT, but who is in the ACT; or

(c) about whom a report is made under—

(i) section 354 (Voluntary reporting of abuse and neglect) arising from something happening in the ACT; or

(ii) section 356 (Offence—mandatory reporting of abuse) arising from something happening in the ACT; or

(iii) section 362 (Prenatal reporting—anticipated abuse and neglect) if the pregnant woman ordinarily lives in the ACT or is in the ACT.



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# Part 1.2 Objects, principles and considerations

## 7 Main objects of Act

The objects of this Act include—

(a) providing for, and promoting, the wellbeing, care and protection of children and young people in a way that—

(i) recognises their right to grow in a safe and stable environment; and

(ii) takes into account the responsibilities of parents, families, the community and the whole of government for them; and

(b) ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide for their wellbeing, care and protection; and

(c) preventing abuse and neglect of children and young people by providing whole of government assistance to children and young people, their parents and families, the community, and others who have responsibility for them; and

(d) ensuring that Aboriginal and Torres Strait Islander people are included and participate in—

(i) providing for, and promoting, the wellbeing, care and protection of Aboriginal and Torres Strait Islander children and young people; and

(ii) preventing the abuse and neglect of Aboriginal and Torres Strait Islander children and young people; and

(iii) rehabilitating and reintegrating Aboriginal and Torres Strait Islander young offenders; and



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(e) ensuring that services provided by, or for, government for the wellbeing, care and protection of children and young people—

(i) are centred on the needs of children and young people; and

(ii) are informed by processes which engage children and young people, wherever possible, and take their views and wishes into account; and

(iii) foster and promote the health, education, developmental needs, spirituality, self-respect, self-reliance and dignity of children and young people; and

(iv) respect the individual race, ethnicity, religion, disability, sexuality and culture of children and young people; and

(f) ensuring that young offenders—

(i) receive positive support and opportunities to become rehabilitated and reintegrated community members; and

(ii) share responsibility for rehabilitation and reintegration with their parents and families, the community and the government in partnership; and

(g) imposing standards that must be complied with for the delivery of services to children and young people; and

(h) ensuring the protection of children and young people in employment.



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## 8 Best interests of children and young people paramount consideration

(1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.

(2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.

*Note 1* For the criminal matters chapters (see s 91), there are further provisions about how a decision-maker decides what is in the best interests of a child or young person, see s 94 (Youth justice principles).

*Note 2* For the care and protection chapters (see s 336), there are further provisions about how a decision-maker decides what is in the best interests of a child or young person (see s 349).

(3) To remove any doubt, a reference in any section of this Act to the best interests of a child or young person does not limit this section.

## 9 Principles applying to Act

(1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:

(a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;

(b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;

(c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;



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(d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.

*Note* In addition to these general principles, the following principles also apply:

(a) for the care and protection chapters—care and protection principles (see s 350);

(b) for ch 20—childcare services principles (see s 730).

(2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

## 10 Aboriginal and Torres Strait Islander children and young people principle

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:

(a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;

(b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the director-general as providing ongoing support services to the child or young person or the child's or young person's family;



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(c) the traditions and cultural values (including kinship rules) of Aboriginal and Torres Strait Islander people as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

*Note* For decisions about placement of an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer, see s 513 (Priorities for placement with out-of-home carer—Aboriginal or Torres Strait Islander child or young person).



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# Part 1.3 Important concepts

## Division 1.3.1 Definitions

### 11 Who is a *child*?

In this Act:

***child*** means a person who is under 12 years old.

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

In this Act:

***young person*** means a person who is 12 years old or older, but not yet an adult.

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

### 13 Who is a *family member* of a child or young person?

In this Act:

***family member***, of a child or young person—

(a) means the child's or young person's—

(i) parent, grandparent or step-parent; or

(ii) son, daughter, stepson or stepdaughter; or

(iii) sibling; or

(iv) uncle or aunt; or

(v) nephew, niece or cousin; and

(b) for an Aboriginal or Torres Strait Islander child or young person—includes a person who has responsibility for the child or young person in accordance with the traditions and customs of the child's or young person's Aboriginal or Torres Strait Islander community.



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### 14 Who is a *significant person* for a child or young person?

In this Act:

***significant person***, for a child or young person, means a person, (other than a family member) who the child or young person, a family member of the child or young person or the director-general considers is significant in the child's or young person's life.

**Examples—people who may be significant people**

1 a father-in-law, mother-in-law, brother-in-law or sister-in-law of a young person
2 a long-term friend of a child or young person
3 a person who normally lives with the child or young person
4 a domestic partner of a young person
5 a domestic partner of a parent of a child or young person
6 a boyfriend or girlfriend of a young person
7 a person who has responsibility for the child or young person in accordance with the cultural traditions and customs of the child's or young person's community

## Division 1.3.2 Parental responsibility

### 15 What is *parental responsibility*?

In this Act:

***parental responsibility***, for a child or young person, means all the duties, powers, responsibilities and authority parents have by law in relation to their children, including the following aspects of parental responsibility:

(a) daily care responsibility for the child or young person;

(b) long-term care responsibility for the child or young person.

*Note* Daily care responsibility is dealt with in s 19.
Long-term care responsibility is dealt with in s 20.



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## 16 Parents have parental responsibility

(1) Each parent of a child or young person has parental responsibility for the child or young person.

(2) To remove any doubt, ***parent*** includes a parent who is not an adult.

(3) This section is subject to the following sections:

(a) section 17 (Aspects of parental responsibility may be transferred);

(b) section 18 (Aspects of parental responsibility may be shared).

## 17 Aspects of parental responsibility may be transferred

(1) Parental responsibility may be transferred from a person to someone else under—

(a) a family group conference agreement; or

*Note* Family group conferences are dealt with in ch 3 and ch 12.

(b) an appraisal order including a temporary parental responsibility provision; or

*Note* Appraisal orders and temporary parental responsibility provisions are dealt with in s 372 and s 373.

(c) emergency action; or

*Note* Emergency action is dealt with in pt 13.1.

(d) a care and protection order including a parental responsibility provision; or

*Note* Care and protection orders are dealt with in ch 14.

(e) a safe custody warrant; or



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(f) a court order (under this Act or another law in force in the Territory); or

**Example—court order under another law**

a parenting order under the *Family Law Act 1975* (Cwlth)

(g) a provision of another law in force in the Territory.

*Note* If parental responsibility for a child or young person is transferred to the director-general, the director-general may delegate the responsibility to a responsible person for an approved kinship and foster care organisation (see s 883A). The responsible person may subdelegate it to a position in the organisation (see s 883B). However, the director-general must ensure that the delegated or subdelegated parental responsibility is properly exercised (see Legislation Act, s 238).

(2) If parental responsibility is transferred from a person to someone else—

(a) only the aspect of parental responsibility expressly stated to be transferred is transferred; and

(b) no-one else's parental responsibility, or aspect of parental responsibility, for the child or young person is diminished except to the extent expressly stated or necessary to give effect to the transfer.

## 18 Aspects of parental responsibility may be shared

(1) Parental responsibility may be shared between 2 or more people under—

(a) a family group conference agreement; or

*Note* Family group conferences are dealt with in ch 3 and ch 12.

(b) a voluntary care agreement; or

*Note* Voluntary care agreements are dealt with in pt 12.3.

(c) a care and protection order including a parental responsibility provision; or

*Note* Care and protection orders are dealt with in ch 14.



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(d) a court order (under this Act or another law in force in the Territory).

*Note* If parental responsibility for a child or young person is shared with the director-general, the director-general may delegate the responsibility to a responsible person for an approved kinship and foster care organisation (see s 883A). The responsible person may subdelegate it to a position in the organisation (see s 883B). However, the director-general must ensure that the delegated or subdelegated parental responsibility is properly exercised (see Legislation Act, s 238).

(2) If parental responsibility is shared between 2 or more people, either of them may discharge the responsibility.

(3) This section is subject to the following sections:

(a) section 475 (Director-general sharing daily care responsibility);

*Note* If the director-general shares daily care responsibility for a child or young person, no other person with daily care responsibility for the child or young person may discharge the responsibility in a way that would be incompatible with the director-general's discharge of the responsibility (see s 475 (2)).

(b) section 504 (Director-general sharing long-term care responsibility);

*Note* If the director-general shares long-term care responsibility for a child or young person and under a parental responsibility provision is required to consult with each other person who shares long-term care responsibility for the child or young person in making a decision about a long-term matter for the child or young person, and another person who has long-term care responsibility for the child or young person disagrees with the director-general's proposed decision, the person or director-general may apply to the Childrens Court for an order about the matter and the director-general is required to not make the decision without the person's agreement (see s 504 (2)).



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## 19 Daily care responsibility for children and young people

(1) A person who has ***daily care responsibility*** for a child or young person has responsibility for, and may make decisions about, the child's or young person's daily care.

**Examples—daily care responsibilities and decisions**

1 where and with whom the child or young person lives

2 people with whom the child or young person may, or must not, have contact

3 arrangements for temporary care of the child or young person by someone else

4 everyday decisions, including, for example, about the personal appearance of the child or young person

5 daily care decisions about education, training and employment

(2) A person who has daily care responsibility for a child or young person may do any of the following:

(a) consent to a health care assessment of the child or young person's physical or mental wellbeing and have access to the assessment report;

(b) on the advice of a health practitioner—consent to health care treatment, not including surgery (other than surgery mentioned in paragraph (c)), for the child or young person;

(c) on the advice of a dentist or dental therapist—consent to dental treatment, including minor dental surgery, for the child or young person.

(3) If the person makes a decision about the people with whom the child or young person may have contact, the person is also responsible for arrangements to give effect to the decision.



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

(a) a court order (under this Act or another law); and

**Examples**

1 A decision by a person who has daily care responsibility for a child about people with whom the child may or may not have contact is subject to a care and protection order that includes a contact provision about who may, or must not, have contact with the child.

2 A decision by a person who has daily care responsibility for a child or young person about where and with whom the child or young person lives is subject to a care and protection order that includes a residence provision.

3 The Childrens Court makes a care and protection order for a young person that includes a parental responsibility provision that a stated person who has daily care responsibility for the young person must exercise it in a stated way. The person's exercise of daily care responsibility for the young person is subject to the order.

(b) if there is a care plan in force for the child or young person—the care plan.

*Note* A care plan for a child or young person is a written plan of the director-general's proposals for the care and protection of the child or young person (see s 455).

(5) To remove any doubt, this section does not affect any right of a child or young person to consent to their own health care treatment.

(6) In this section:

***dental therapist***—

(a) means a person registered under the *Health Practitioner Regulation National Law (ACT) Act 2010* to practise the health profession of dental therapist (other than as a student); and



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(b) for an activity, includes a person mentioned in paragraph (a) holding limited or provisional registration, to the extent that the person is allowed to do the activity under the person's registration.

***health care assessment***, of a child or young person, means an assessment of the child's or young person's physical or mental wellbeing (including admission to hospital).

## 20 Long-term care responsibility for children and young people

(1) A person who has ***long-term care responsibility*** for a child or young person has—

(a) responsibility for the long-term care, protection and development of the child or young person; and

(b) all the powers, responsibilities and authority a guardian of a child or young person has by law in relation to the child or young person.

**Examples—long-term care responsibilities**

1 administration, management and control of the child's or young person's property

2 religion and observance of racial, ethnic, religious or cultural traditions

3 obtaining or opposing the issuing of a passport for the child or young person

4 long-term decisions about education, training and employment

(2) A person who has long-term care responsibility for a child or young person may, on the advice of a health practitioner, consent to health care treatment that involves surgery for the child or young person.

*Note* Consent to minor dental surgery may be given by a person who has daily care responsibility for the child or young person (see s 19 (2) (c)).



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(3) This section does not limit the matters for which the person has responsibility in relation to the child or young person, but is subject to—

(a) a court order (under this Act or another law); and

(b) if there is a care plan in force for the child or young person—the care plan.

*Note 1* The Childrens Court may make a care and protection order for a child or young person that includes a parental responsibility provision giving long-term care responsibility for the child or young person to someone, or removing the responsibility from someone, or stating how someone may exercise the responsibility (see pt 14.6).

*Note 2* A care plan for a child or young person is a written plan of the director-general's proposals for the care and protection of the child or young person (see s 455).

(4) To remove any doubt, this section does not affect any right of a child or young person to consent to their own health care treatment.

## 21 Parents or people with parental responsibility who cannot be found

(1) This section applies if a provision of this Act requires a person to act in relation to a parent of, or a person with parental responsibility for, a child or young person.

(2) The person is not required to act in relation to the parent or other person if the person cannot after reasonable inquiry find the parent or other person.



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# Chapter 2 Administration

*Notes to ch 2*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8 (1)).

In making a decision under this chapter otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8 (2)).

## Part 2.1 Director-general

*Note to pt 2.1*

For provisions applying when the director-general has parental responsibility for a child or young person, see ch 15.

### 22 Director-general's functions

(1) The director-general has the following functions:

(a) providing, or assisting in providing, services directed to strengthening and supporting families in relation to the wellbeing, care and protection of their children and young people;

(b) supporting the community in preventing, or reducing, abuse and neglect of children and young people;

(c) providing, or assisting in providing, information to parents, kinship carers and foster carers, prospective kinship carers and foster carers, government agencies, non-government agencies and members of the community about the operation of this Act;

(d) providing, or assisting in providing, information to people who are required to report suspected abuse of children and young people to help them perform their legal obligation;



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(e) providing, or assisting in providing, information to people who report suspected abuse or neglect of children and young people and encouraging those people to continue their involvement in matters arising from their report;

(f) exercising aspects of parental responsibility for children and young people;

(g) providing, or assisting in providing, information, services or assistance to children and young people who have left the director-general's care;

(h) providing, or assisting in providing, services for young offenders, including by ensuring the provision of the care, support, rehabilitation and guidance necessary for them to become rehabilitated and reintegrated community members;

(i) working with other government agencies and community organisations, to coordinate and promote the care and protection of children and young people, including young offenders.

(2) The director-general has all the functions of an authorised person.

*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***).

## 23 Director-general instructions

(1) The director-general may make instructions, consistent with this Act, for the management or operation of any administrative function under this Act.

(2) A person exercising an administrative function under this Act must comply with the instructions.



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## 24 Ministerial directions to director-general

(1) The Minister may give directions to the director-general about the exercise of functions under this Act.

**Example—direction**

a direction to make policies or operating procedures to ensure that functions are exercised in accordance with a particular decision of the Supreme Court or a particular finding of a board of inquiry or royal commission

(2) The director-general must comply with a direction under this section.

(3) A direction is a notifiable instrument.

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

## 25 Director-general may ask for assistance, etc

(1) The director-general may ask a territory entity or an ACT education provider to provide assistance, facilities or services relevant to the physical or emotional wellbeing of a child or young person.

(2) A territory entity or a government school or school-related institution that receives a request under subsection (1) must comply with the request promptly.

(3) In this section:

***ACT education provider*** means any of the following:

(a) a government or non-government school under the *Education Act 2004*;

(b) a school-related institution under the *Education Act 2004*;

(c) a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cwlth), section 3;

(d) a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth).



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***territory entity*** means any of the following:

(a) an administrative unit;

(b) a territory authority (other than the legal aid commission or the human rights commission);

(c) a territory instrumentality;

(d) a public employee (other than a judge or magistrate);

(e) a police officer.

## 26 Director-general must give identity cards

(1) This section applies if the director-general delegates a power under this Act or another territory law to someone else (an ***authorised person***).

*Note* The director-general may delegate a power under the *Public Sector Management Act 1994*, s 36C.

(2) However, this section does not apply to a delegation under section 883A (Director-general delegations—approved care and protection organisations) or a subdelegation under section 883B (Subdelegations—approved care and protection organisations).

(3) The director-general must give an authorised person an identity card stating the person's name and that the person is an authorised person.

(4) The identity card must show—

(a) a recent photograph of the person; and

(b) the card's date of issue and expiry; and

(c) anything else prescribed by regulation.



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(5) A person commits an offence if the person—

(a) stops being an authorised person; and

(b) does not return the person's identity card to the director-general as soon as practicable, but not later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

(6) An offence against this section is a strict liability offence.



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# Part 2.2 Children and Youth Services Council

## 27 Establishment of council

(1) The Minister may establish a council (a ***Children and Youth Services Council***) from time to time to exercise stated functions for a stated period in relation to services for children and young people in the ACT.

(2) The instrument establishing the council is a notifiable instrument.

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

## 28 Council members

(1) A Children and Youth Services Council must have at least 5, but not more than 10, members.

(2) The Minister must appoint the members.

*Note 1* For the making of appointments (including acting appointments), see the 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).



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# Part 2.3 Official visitors

*Note* At least 2 official visitors (including a visitor who is an Aboriginal or Torres Strait Islander person) must be appointed for this Act under the *Official Visitor Act 2012* (the ***OV Act***).

The OV Act sets out the functions of official visitors which includes visiting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is an ***entitled person*** and a ***visitable place*** for the OV Act. This part also prescribes other matters for the OV Act.

## 37 Meaning of *entitled person* and *visitable place*

In this Act:

***entitled person***—

(a) means a child or young person who is—

(i) detained in a detention place; or

(ii) confined at a therapeutic protection place; or

(iii) accommodated in a place of care; and

(b) includes—

(i) a young detainee who is 18 years old or older; and

(ii) a person prescribed by regulation.

***visitable place*** means—

(a) a detention place; or

(b) a place outside a detention place if a detainee is, or has been, directed to work or participate in an activity at the place; or

(c) a therapeutic protection place; or

(d) a place of care.



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## 38 Appointment of official visitors—additional suitability requirement

A person must not be appointed as an official visitor for a visitable place unless the person is a suitable entity.

*Note* Suitable entities are dealt with in pt 2.4.

## 39 Request for sensitive information by official visitors

(1) This section applies if—

(a) a complaint is made to an official visitor for a visitable place in relation to the place under the *Official Visitor Act 2012*, section 22; and

(b) the visitor intends to ask the operating entity for the visitable place for assistance in exercising the visitor's functions at the place; and

(c) the request involves giving sensitive information.

*Note* An operating entity for a visitable place must give an official visitor any reasonable assistance the official visitor asks for to exercise the official visitor's functions at the place (see *Official Visitor Act 2012*, s 18).

(2) Before asking the operating entity for assistance, the official visitor must consider whether the complaint would be better dealt with by, and should be referred to, an investigative entity.

(3) In this section:

***operating entity***, for a visitable place—see the *Official Visitor Act 2012*, dictionary.



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# Part 2.4 Suitable entities for purposes under Act

## 60 Definitions—Act and pt 2.4

(1) In this Act:

***suitability information***—see section 65.

***suitable entity***—see section 61.

(2) In this part:

***requirement notice***—see section 68 (2).

***suitability information notice***—see section 66 (2).

***suitable entities register***—see section 72.

## 61 Who is a *suitable entity*?

In this Act:

***suitable entity***, for a stated purpose, means an entity approved by the director-general under section 63 as a suitable entity for the purpose.

**Examples—suitable entities for purposes stated in Act**

1 family group conference facilitators (see s 78)

2 approved care and protection organisations (see s 352C)

3 responsible person for an approved care and protection organisation (see s 352D)

4 childcare service proprietors and controlling people (see s 746)

5 researchers and others having contact with children or young people for a research project (see s 809)



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## 62 Entity may apply to be suitable entity for purpose

(1) An entity may apply, in writing, to the director-general for approval as a suitable entity for a stated purpose.

*Note* If a form is approved under s 886 for this provision, the form must be used.

(2) The director-general may make guidelines about applications (the ***suitability approval application guidelines***).

(3) A suitability approval application guideline is a disallowable instrument.

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

## 63 Director-general may approve suitable entity for purpose

(1) The director-general may, in writing, approve an entity as a suitable entity for a stated purpose if satisfied that the entity is suitable for the purpose.

*Note 1* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

*Note 2* The director-general must establish a suitable entities register (see s 72).

(2) The director-general must not approve an entity as a suitable entity for a stated purpose if—

(a) the purpose involves engaging in a regulated activity within the meaning of the Working with Vulnerable People Act; and

(b) the entity is required to be registered under that Act to engage in the activity; and

(c) the entity is not registered under that Act.



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## 64 Director-general must consider suitability information, etc

(1) In deciding whether an entity is a suitable entity for a stated purpose, the director-general—

(a) must consider each of the following:

(i) suitability information under section 65 (1), definition of ***suitability information***, paragraphs (a), (b) and (c) about the entity;

(ii) if the director-general requires the entity to provide a reference or report under section 68 (2) (a)—the reference or report;

(iii) if the director-general requires the entity to undergo a test or medical examination under section 68 (2) (b)—the result of the test or medical examination; and

(b) may consider suitability information under section 65 (1), definition of ***suitability information***, paragraphs (d), (e), (f), (g) and (h) about the entity.

(2) If the director-general is considering suitability information under section 65 (1), definition of ***suitability information***, paragraph (d) or (e), the director-general must give the entity written notice of that fact.

(3) In deciding whether an organisation is a suitable entity for a care and protection purpose, the director-general must consider whether the organisation—

(a) complies, and is likely to continue to comply, with the care and protection organisation standards; and



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(b) is likely to have at least 1 responsible person for the organisation at all times during the term of the approval.

*Note 1* ***Care and protection organisation standards***—see s 887.
***Care and protection purpose***, for an organisation—see s 352B.
***Organisation***—see s 352A.
***Responsible person***, for an approved care and protection organisation—see s 352D.

*Note 2* See also s 70 (Offence—ongoing duty to update suitability information).

## 65 What is *suitability information*?

(1) In this Act:

***suitability information***, about an entity, means information about the following:

(a) any conviction of, or finding of guilt against, the entity for—

(i) an offence relating to the provision of services for children or young people; or

(ii) an offence against a child or young person; or

(iii) an offence involving a child or young person; or

(iv) an offence involving violence; or

(v) a sex offence; or

(vi) an offence involving dishonesty or fraud; or

(vii) an offence involving possession of, or trafficking in, a drug of dependence or controlled drug; or

(viii) an offence against an animal;



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(b) any proven noncompliance by the entity with a legal obligation in relation to providing services for children or young people;

**Example**

the entity is a licensed proprietor of a childcare service and the licence is suspended for safety reasons under s 763 or under a law of another jurisdiction that substantially corresponds to s 763

(c) any refusal of an application for a licence or other authority (however described) in relation to providing services for children or young people;

(d) the soundness of the entity's financial reputation and the stability of the entity's financial background;

(e) the entity's reputation for honesty and integrity;

(f) whether the entity has proven experience or demonstrated capacity in providing services for children and young people;

(g) whether a child concern report about the entity has been received by the director-general and any action that has been taken in response to the report by the director-general or a court or tribunal;

(h) for an entity in relation to suitability for the purpose of foster care—information in paragraphs (a) to (g) for each other adult member of the entity's household;

(i) any other consideration relevant to the entity's ability to provide high quality services for children or young people.

(2) To remove any doubt, the information may be about any circumstance or thing mentioned in subsection (1) whether inside or outside the ACT.

**Example**

refusal in Queensland of an application for a licence in relation to providing services for children or young people



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## 66 Director-general may require suitability information

(1) This section applies if the director-general is making a decision about whether an entity is a suitable entity for a stated purpose.

(2) The director-general may, by written notice given to the entity (a ***suitability information notice***), require the entity to give the director-general stated suitability information about the entity not later than a stated reasonable time.

(3) A suitability information notice must also tell the entity that giving false or misleading information is an offence against the Criminal Code, section 338 (Giving false or misleading information).

## 67 Director-general need not decide suitability if information not provided

(1) This section applies if—

(a) the director-general has given an entity a suitability information notice; and

(b) the entity does not give the director-general the suitability information in accordance with the notice.

(2) The director-general need not decide whether the entity is a suitable entity for a stated purpose.

## 68 Director-general may require test etc

(1) This section applies if the director-general is making a decision about whether an entity is a suitable entity for a stated purpose.

(2) The director-general may, by written notice given to the entity (a ***requirement notice***), require the entity to do 1 or both of the following not later than a stated reasonable time:

(a) provide a stated reference or report;



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(b) undergo a stated test or medical examination.

**Example—medical examination**

a psychiatric examination

## 69 Director-general need not decide suitability if test not taken, etc

(1) This section applies if—

(a) the director-general has given the entity a requirement notice; and

(b) the entity does not do the thing required in accordance with the requirement notice.

(2) The director-general need not decide whether the entity is a suitable entity for a stated purpose.

## 70 Offence—ongoing duty to update suitability information

(1) This section applies to an entity if—

(a) either—

(i) the director-general is deciding whether the entity is a suitable entity for a stated purpose; or

(ii) the director-general has decided that the entity is a suitable entity for a stated purpose and the entity is exercising functions for the purpose; and

(b) the entity has given the director-general suitability information about the entity.

*Note* ***Suitability information*** is defined in s 65.

(2) The entity commits an offence if—

(a) the entity's suitability information under section 65 (1), definition of ***suitability information***, paragraph (a), (b) or (c) changes; and



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(b) the entity does not tell the director-general about the change as soon as practicable, but not later than 7 days after the change happens.

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

(3) The entity commits an offence if—

(a) the director-general gave the entity written notice that the suitability information under section 65 (1), definition of ***suitability information***, paragraph (d) was being considered in deciding whether the entity was a suitable entity; and

(b) the entity becomes bankrupt or personally insolvent; and

(c) the entity does not tell the director-general about becoming bankrupt or personally insolvent as soon as practicable, but not later than 7 days after becoming bankrupt or personally insolvent.

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

*Note* ***Bankrupt or personally insolvent***—see the Legislation Act, dictionary, pt 1.

(4) The entity commits an offence if—

(a) the director-general gave the entity written notice that the suitability information under section 65 (1), definition of ***suitability information***, paragraph (e) was being considered in deciding whether the entity was a suitable entity; and



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(b) any of the following occurs:

(i) a court convicts the entity, or finds the entity guilty, of an offence involving fraud or dishonesty;

**Example**

A conviction, or finding of guilt, against the entity under the Criminal Code, ch 3 (Theft, fraud, bribery and related offences).

(ii) a tribunal, or an authority or person with the power to require the production of documents or the answering of questions, makes a finding against the entity about its honesty or integrity; and

(c) the entity does not tell the director-general about the finding as soon as practicable, but not later than 7 days after the finding is made.

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

*Note* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

## 71 Director-general may employ etc suitable entity

The director-general may appoint, engage, employ or authorise a suitable entity for a stated purpose (whether for payment or as a volunteer) for children and young people under this Act.

## 72 Suitable entities register

(1) The director-general must establish a register of suitable entities (a ***suitable entities register***) for this Act.

(2) A suitable entities register must include the following details for each suitable entity:

(a) the entity's name;



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(b) the purpose for which the entity is approved;

(c) any other detail the director-general considers appropriate.

*Note 1* If the entity is an approved care and protection organisation (see s 352C), further details must be recorded in the approved care and protection organisations register (see s 352V).

*Note 2* Power to make a statutory instrument includes power to make different provision in relation to different matters or classes of matters (see Legislation Act, s 48).



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# Chapter 3 Family group conferences

## Part 3.1 Family group conferences—general

### 73 Definitions—Act

In this Act:

***family group conference***—see section 75.

***family group conference agreement***—see section 76.

***family group conference facilitator***—see section 78.

***participant***, for a family group conference, means a person who attends the conference at the invitation of the family group conference facilitator.

***parties***, for a family group conference agreement, means the participants who enter (or propose to enter) a family group conference agreement under section 85.

***relevant conference participant***, for a family group conference about a child or young person, means a participant who has parental responsibility for the child or young person.

*Note* ***Parental responsibility***, for a child or young person, is dealt with in div 1.3.2.

### 74 Family group conferences—objects

The objects of a family group conference about a child or young person are to—

(a) encourage the child or young person and his or her family members, to take part in decisions affecting the child or young person; and



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(b) increase the support for the child or young person by his or her family members and significant people; and

(c) make arrangements for the care of the child or young person to reduce the likelihood of the child or young person being in need of care and protection in the future.

## 75 What is a *family group conference*?

In this Act:

***family group conference*** means a conference about a child or young person to give the participants an opportunity to—

(a) reach an agreement about a matter relating to the wellbeing of the child or young person; and

(b) enter into a family group conference agreement detailing the agreed arrangements for the wellbeing of the child or young person; and

(c) if a family group conference agreement is already in force for the child or young person—review the agreement.

## 76 What is a *family group conference agreement*?

(1) In this Act:

***family group conference agreement*** means an agreement that—

(a) arises from a family group conference about a child or young person; and

(b) is between—

(i) the director-general; and

(ii) a relevant conference participant; and

(iii) for an agreement about a young person who is 15 years old or older—the young person; and



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(c) details the arrangements agreed to by the parties for the wellbeing of the child or young person; and

(d) is in writing and signed by—

(i) the director-general; and

(ii) the relevant conference participant; and

(iii) any other conference participant who agrees with the arrangements; and

(e) may, but need not, include a requirement for the director-general to arrange for a family group conference to review the family group conference agreement not later than a stated day.

(2) However, a family group conference agreement must not—

(a) transfer parental responsibility for the child or young person from a person to the director-general; or

(b) share parental responsibility for the child or young person with the director-general.

## 77 Offence—publish details of family group conferences

(1) A person commits an offence if the person publishes all or part of—

(a) a family group conference agreement; or

(b) a family group conference outcome report; or

(c) a record or report prepared for and presented to a family group conference.

Maximum penalty: 50 penalty units.



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(2) A person commits an offence if the person publishes anything said or done at a family group conference.

Maximum penalty: 50 penalty units.

(3) This section does not apply if the publication is made under this Act or another territory law.

*Note* Ch 25 contains further provisions about information secrecy and sharing.



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# Part 3.2 Family group conferences—facilitators

## 78 Family group conference facilitators—appointment

(1) The director-general may appoint a person as a facilitator (a ***family group conference facilitator***) for this chapter.

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

(2) However, the director-general may appoint a person to be a family group conference facilitator only if satisfied—

(a) that the person has suitable qualifications and experience to exercise the functions of a family group conference facilitator; and

(b) if the person is not a public employee—that the person is a suitable entity to be a family group conference facilitator.

*Note* Suitable entities to provide services are dealt with in pt 2.4.

(3) An appointment is a notifiable instrument.

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

## 79 Family group conference facilitators—functions

A family group conference facilitator has the function of facilitating each family group conference to which the facilitator is assigned by the director-general under section 82.

**Examples—ways facilitator may facilitate family group conference**

1 preparing for a family group conference by—

(a) meeting with proposed participants; and

(b) providing mediation between proposed participants; and

(c) resolving conflict between proposed participants

2 consulting someone with knowledge of a particular culture

3 asking someone to give information or a report to the conference without inviting the person to be a participant



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4 inviting someone to attend the conference as a participant, at any time

5 allowing someone to take part in the conference by telephone, video-conference or in another way

6 deciding when and where the family group conference will take place

*Note 1* A family group conference facilitator may give the director-general protected information (including sensitive information) about a child or young person if the family group conference facilitator considers that giving the information is in the best interests of the child or young person (see s 853).

*Note 2* 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***).



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# Part 3.3 Family group conferences—arrangement and conduct

## 80 Family group conferences—criteria

(1) The director-general may arrange for a family group conference about a child or young person if satisfied that the family group conference may help to promote the wellbeing and best interests of the child or young person.

**Examples**

1 if a family group conference agreement is already in force for the child or young person and the director-general considers that the agreement should be reviewed

2 if the child or young person is in out-of-home care and the director-general considers that a family group conference may promote the child's or young person's contact with his or her family members or significant people

3 if the child or young person is about to be released from a detention place and the director-general considers that a family group conference may help the child's or young person's transition back into the community

(2) The director-general may also arrange for a family group conference about a child or young person if the director-general believes on reasonable grounds that—

(a) the child or young person is in need of care and protection; and

(b) arrangements should be made to secure the child's or young person's care and protection.

**Examples**

1 The director-general has appraised 3 child protection reports in relation to neglect of 2 year old Billy. Billy's parents have longstanding drug and alcohol use issues. The director-general believes that Billy is in need of care and protection and arranges a family group conference involving Billy's family members to formulate a plan for Billy's care and protection.

2 Jane is 14 years old and frequently absconds from her parent's home for extended periods because of conflict with her parents. The director-general believes Jane is in need of care and protection and arranges a family group conference to ensure Jane's care and protection.



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3 The director-general appraises a child protection report of sexual abuse in relation to 8 year old Sally. The director-general substantiates the abuse by Sally's stepfather and decides that Sally is in need of care and protection. The director-general decides to arrange a family group conference for Sally's care and protection as an alternative to seeking a care and protection order for Sally.

## 81 Family group conferences—criteria for review conference

(1) This section applies if a family group conference agreement is in force for a child or young person.

(2) The director-general must arrange for a family group conference to review the family group conference agreement if the director-general is—

(a) required to do so in the agreement; or

(b) asked to do so by—

(i) the child or young person; or

(ii) a participant in the family group conference at which the family group conference agreement was reached.

(3) However, the director-general is not required to arrange a family group conference under subsection (2) (b) if the director-general—

(a) has already arranged a conference to review the agreement because of a request under subsection (2) (b); or

(b) considers it is not in the best interests of the child or young person to do so.

## 82 Family group conferences—facilitator to organise

(1) If the director-general arranges a family group conference about a child or young person, the director-general must assign a family group conference facilitator to the conference.



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(2) The family group conference facilitator must, as soon as practicable after being assigned to the family group conference—

(a) decide, under section 83 (1) (b) to (e), who should be invited to the conference; and

(b) take reasonable steps to tell each person to be invited to the conference when and where the conference will take place; and

(c) conduct the conference.

## 83 Family group conferences—who must be invited

(1) A family group conference facilitator for a family group conference must take all reasonable steps to invite the following people to the conference:

(a) the director-general;

(b) if the family group conference facilitator is satisfied that the child or young person can understand and take part in the conference—the child or young person;

(c) each parent of the child or young person, unless the family group conference facilitator considers that it would not be in the best interests of the child or young person for the parent to attend;

(d) each other person (if any) who has parental responsibility for the child or young person, unless the family group conference facilitator considers that it would not be in the best interests of the child or young person for the person to attend;

*Note* ***Parental responsibility***, for a child or young person, is dealt with in div 1.3.2.

(e) any person with an interest in, or knowledge of, the care, wellbeing or development of the child or young person who the family group conference facilitator considers should attend the conference.



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(2) If a child or young person invited to a family group conference does not take part in the conference, the family group conference facilitator must take all reasonable steps—

(a) to find out the views and wishes of the child or young person; and

(b) to make the views and wishes of the child or young person known to each other person taking part in the conference; and

(c) to ensure that the views and wishes of the child or young person are considered in reaching any agreement at the conference.

(3) Subsection (2) does not create any requirement for a child or young person to express a view or wish about any matter.

(4) A participant may not be represented at a family group conference by a lawyer.

(5) However, for a participant mentioned in subsection (1) (b), (c), (d) or (e), a support person chosen by the participant may attend the family group conference to assist the participant if the family group conference facilitator considers the support person appropriate and capable of giving the participant assistance.

**Example—assistance**

assisting the participant to express his or her views

## 84 Family group conferences—compliance with standards

A family group conference facilitator must conduct a family group conference in a way that complies with the family group conference standards (if any).

*Note* The Minister may make family group conference standards under s 887.



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## 85 Family group conferences—parties reach agreement

(1) This section applies if the family group conference facilitator for a family group conference about a child or young person is satisfied that the director-general and all relevant conference participants (the ***parties***) have reached agreement about an issue relating to the wellbeing of the child or young person.

*Note* ***Relevant conference participant*** means a participant who has parental responsibility for the child or young person (see s 73).

(2) The facilitator may propose that the parties enter into a family group conference agreement detailing the agreed arrangements for the wellbeing of the child or young person.

(3) Before the parties enter into a family group conference agreement—

(a) the facilitator must—

(i) give the relevant conference participants an opportunity to get legal advice about the meaning and effect of the proposed family group conference agreement; and

(ii) if the facilitator is satisfied that the child or young person has sufficient maturity and developmental capacity to understand the proposed family group conference agreement—

(A) find out and consider the child's or young person's views and wishes about the proposed family group conference agreement; and

(B) if the proposed family group conference agreement is about a young person who is 15 years old or older—give the young person an opportunity to get legal advice about the meaning and effect of the proposed family group conference agreement; and



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(b) for a family group conference agreement reached at a family group conference arranged under section 80 (2) (Family group conferences—criteria)—the director-general must be satisfied that the proposed family group conference agreement is in the best interests of the child or young person.

## 86 Family group conferences—agreement of young person

(1) This section applies if a family group conference agreement proposed under section 85 (2) is about a young person who is 15 years old or older.

(2) The parties may enter the proposed family group conference agreement only if the facilitator for the family group conference is satisfied that the young person either—

(a) agrees to the proposed family group conference agreement; or

(b) does not have sufficient maturity or developmental capacity to understand and agree to the proposed family group conference agreement.

## 87 Family group conferences—before family group conference agreement

(1) This section applies if the family group conference facilitator for a family group conference about a child or young person—

(a) has, under section 85—

(i) proposed that the parties enter into a family group conference agreement; and

(ii) given the relevant conference participants an opportunity to get legal advice; and

(iii) if required, found out and considered the child's or young person's views and wishes; and



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(b) for a young person who is 15 years old or older—is satisfied under section 86 that the young person either—

(i) agrees to the proposed family group conference agreement; or

(ii) does not have sufficient maturity or developmental capacity to understand and agree to the proposed family group conference agreement.

(2) The facilitator must encourage the parties to enter into the proposed family group conference agreement by putting the agreement in writing and seeking—

(a) the signatures of the parties; and

(b) the signature of any other participant who agrees with the arrangements in the agreement.

(3) If the child or young person (not being a young person mentioned in subsection (1) (b)) agrees to the proposed family group conference agreement, the child or young person may also sign the agreement.

## 88 Family group conferences—outcome report

(1) Within 28 days after a family group conference ends, the family group conference facilitator must give a written report about the outcome of the conference (the ***family group conference outcome report***) to—

(a) the director-general; and

(b) the child or young person; and

(c) each person invited to attend the conference.

(2) A family group conference outcome report must include the following:

(a) details of when and where the conference took place;



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(b) the name of—

(i) the family group conference facilitator; and

(ii) each person invited to the conference and whether they attended; and

(iii) the name of anyone else who was not a participant but who provided information or a report to the conference.

(3) If the conference resulted in a family group conference agreement, the family group conference outcome report must include a copy of the agreement.

(4) Despite anything else in this section, the family group conference facilitator must not give a copy of the family group conference outcome report, or a copy of the family group conference agreement, to the child or young person if the facilitator believes on reasonable grounds—

(a) that it would not be in the child's or young person's best interests to be given information contained in the report or agreement; or

(b) that the child or young person is not able to understand the report or agreement.

## 89 Family group conference agreement—when takes effect

A family group conference agreement takes effect—

(a) when it has been signed by all parties to the agreement; or

(b) if the parties agree to a later time of effect—at that time.



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## 90 Family group conference agreements—implementation

After receiving a family group conference agreement, the director-general must implement the arrangements in the agreement in a way that complies with the family group conference standards (if any).

*Note 1* The Minister may make family group conference standards under s 887.

*Note 2* The parties to a family group conference agreement may agree that parental responsibility for a child or young person be transferred to, or shared with, someone else (other than the director-general (see s 76)). If the family group conference was arranged because the director-general believed the child or young person to be in need of care and protection, the Childrens Court may be able to register the family group conference agreement. A registered family group conference agreement has effect as if it were a care and protection order and may be enforced accordingly. Registration of family group conference agreements is dealt with in pt 12.2.



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# Chapter 4 Children and young people and criminal matters—general

## 91 What are the *criminal matters chapters*?

In this Act:

***criminal matters chapter***—each of the following is a ***criminal matters chapter***:

(a) this chapter;

(b) chapter 5 (Criminal matters—transfers);

(c) chapter 6 (Criminal matters—detention places);

(d) chapter 7 (Criminal matters—search and seizure at detention places);

(e) chapter 8 (Criminal matters—discipline at detention places);

(f) chapter 9 (Criminal matters—conduct of disciplinary reviews).

## 92 Overview of the criminal matters chapters

(1) This chapter sets out the principles (the youth justice principles) that apply in the criminal matters chapters, sets out general rules about keeping young detainees separate from adult detainees and defines some important concepts.

(2) Chapter 5 deals with transfers of young detainees and young offenders.

(3) Chapter 6 deals with detention places generally.

(4) Chapter 7 deals with search and seizure at detention places.

(5) Chapter 8 deals with the discipline of young detainees at detention places.



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(6) Chapter 9 deals with the conduct of disciplinary reviews.

*Note* Other laws relevant to children and young people and criminal matters include the following:

- the *Crimes Act 1900*, pt 10 (Criminal investigation) and the *Crimes Act 1914* (Cwlth), pt 1C (which applies in relation to the investigation of certain ACT offences)
- the *Bail Act 1992*
- the *Magistrates Court Act 1930* (in particular ch 4A (The Childrens Court))
- the *Supreme Court Act 1933*
- the *Court Procedures Act 2004* (in particular pt 7A (Procedural provisions—proceedings involving children or young people))
- the *Crimes (Sentencing) Act 2005* (in particular ch 8A (Sentencing young offenders))
- the *Crimes (Sentence Administration) Act 2005* (in particular ch 14A (Sentence administration—young offenders))
- the *Crimes (Restorative Justice) Act 2004*

## 93 Application of criminal matters chapters generally

(1) The criminal matters chapters apply to young offenders and young detainees who are adults in the same way as they apply to young offenders and young detainees who are under 18 years old.

(2) However, the following provisions apply only to young detainees who are under 18 years old:

(a) section 185 (2) (m) (Register of young detainees);

(b) section 255 (Strip searches of young detainees under 18 years old—no-one with parental responsibility available);

(c) section 267 (Body searches of young detainees under 18 years old—no-one with parental responsibility available).



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(3) Also, certain requirements of the following provisions are different for young detainees who are under 18 years old and young detainees who are adults:

(a) section 113 (Transfer—notifying people responsible for or nominated by young detainees);

(b) section 157 (Detention—notifying people responsible for or nominated by young detainees);

(c) section 182 (Injury etc—notifying people responsible for or nominated by young detainees);

(d) section 207 (Notice of segregation directions—safe room and other);

(e) section 221 (Notice of decision about segregation direction);

(f) section 237 (Alcohol and drug testing of young detainees);

(g) section 251 (Notice of strip and body searches—person responsible for or nominated by young detainee);

(h) section 254 (Strip searches on admission to detention place);

(i) section 266 (People present at body searches).

## 94 Youth justice principles

(1) For the criminal matters chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that is relevant (the ***youth justice principles***):

(a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;

(b) a child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;



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(c) a child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;

(d) if practicable and appropriate, decisions about an Aboriginal or Torres Strait Islander child or young person should be made in a way that involves their community;

(e) if a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;

(f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;

(g) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances;

(h) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;

(i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.

(2) The decision-maker may also consider any other relevant matter.



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(3) The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence.

**Example**

Convention on the Rights of the Child

(4) A reference in subsection (1) to a child or young person includes a reference to a person who is at least 18 years old but is being dealt with in relation to an offence committed, or alleged to have been committed, when her or she was under 18 years old.

## 95 Who is a *young detainee*?

(1) A child or young person is a ***young detainee*** if—

(a) the child or young person is—

(i) in custody following arrest; or

(ii) remanded in custody under the *Crimes (Sentence Administration) Act 2005*; or

(iii) in detention under the *Crimes (Sentencing) Act 2005*; or

(iv) otherwise in custody or detention under this Act or another territory law or a law of the Commonwealth or a State; and

(b) the child or young person is required to be held in the director-general's custody.

(2) A person who is at least 18 years old but under 21 years old is a ***young detainee*** if any of the following apply to the person and the person is required to be held in the director-general's custody:

(a) the person is—

(i) in custody following arrest; or

(ii) remanded in custody under the *Crimes (Sentence Administration) Act 2005*; or



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(iii) in detention under the *Crimes (Sentencing) Act 2005*;

for an offence committed, or allegedly committed, when the person was under 18 years old;

(b) the person is—

(i) in custody following arrest; or

(ii) remanded in custody under the *Crimes (Sentence Administration) Act 2005*;

for a breach, or alleged breach, of a sentencing order that is supervised by the director-general;

(c) the person is otherwise in custody or detention under this Act or another territory law or a law of the Commonwealth or a State.

*Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

## 96 Who is a *youth detention officer*?

In the criminal matters chapters:

***youth detention officer*** means an authorised person to whom the director-general has delegated functions of a youth detention officer under the criminal matters chapters.

*Note* A person is an authorised person for this Act if the director-general delegates a power under the Act to the person.

## 97 Treating doctors—health service appointments

(1) The director-general responsible for the administration of the *Health Act 1993* must appoint a doctor (a ***treating doctor***) for each detention place.

(2) The treating doctor's functions are—

(a) to provide health services to young detainees; and

(b) to protect the health of young detainees (including preventing the spread of disease at detention places).



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(3) A treating doctor appointed for a detention place must be available to provide health services at the detention place at least once each week.

(4) The treating doctor may give written directions to the director-general for subsection (2) (b).

(5) The director-general must ensure that each direction under subsection (4) is complied with unless the director-general believes on reasonable grounds that compliance would undermine security or good order at the detention place.

## 98 Health practitioners—non-treating functions

(1) The director-general may, orally or in writing, authorise a health practitioner (a ***non-treating health practitioner***) to exercise non-treating functions under the criminal matters chapters.

(2) In this section:

***non-treating function*** does not include a health service or other function mentioned in section 97.

## 99 Transporting young detainees to and from court—young detainees to be kept separate from adult detainees

(1) This section applies if it is necessary to transport a young detainee who is under 18 years old—

(a) from a detention place to a court; or

(b) from a court to a detention place.

(2) The young detainee must not be transported with an adult who is under detention.

(3) The young detainee must not be placed in a room with an adult who is under detention.



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## 100 Detaining young detainees at court—young detainees to be kept separate from adult detainees

(1) This section applies if a young detainee who is under 18 years old has been transported—

(a) from a detention place to a court; or

(b) from a court to a detention place.

(2) The young detainee may be detained at the court—

(a) before a hearing relating to the young detainee; or

(b) after a hearing relating to the young detainee but before the young detainee is transported to the detention place.

(3) However, the young detainee must not be placed in a room with an adult who is under detention.

*Note* The *Corrections Management Act 2007*, s 33 (Detention in court cells) and s 33A (Detention in court cells—additional provisions for young detainees) also apply to young detainees.



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# Chapter 5 Criminal matters—transfers

## Part 5.1 Transfers within ACT

### Division 5.1.1 Transfers within ACT—general

#### 101 Directions to escort officers

(1) For the criminal matters chapters, the director-general may give directions to an escort officer in relation to a young detainee, including directions to take the young detainee into custody or to a place stated in the direction.

(2) Without limiting the authority that may be given by a direction under subsection (1), the direction authorises the escort officer to have custody of, and deal with, the young detainee in accordance with the direction.

#### 102 Orders to bring young detainee before court etc

(1) This part is additional to, and does not limit, any other power of a court or other entity to require a young detainee or other child or young person to be brought before the court or entity.

(2) Without limiting subsection (1), the director-general must arrange for a young detainee or child or young person in the director-general's custody to be brought before a court or other entity in accordance with any order or direction (however described) of the court or entity.

*Note* A court may also order the director-general to bring a young detainee before the court in a civil proceeding if the young detainee consents (see s 876A).



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## Division 5.1.2 Escorting young detainees etc

### 103 Arrangements for escorting people

The director-general may make an arrangement for escorting a child, a young person or a young detainee as required under this Act with—

(a) the director-general responsible for administering the *Corrections Management Act 2007*; and

(b) the chief police officer.

### 104 Escort officer functions etc

(1) This section applies if, under a law in force in the Territory (other than part 5.2 (Interstate transfers)), a young detainee required to be held in the director-general's custody is to be escorted anywhere by an escort officer.

(2) To remove any doubt—

(a) the escort officer is authorised to have custody of the young detainee for the purpose of escorting the young detainee; and

(b) the young detainee is also taken to be in the director-general's custody; and



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(c) an escort officer may, for the purpose of escorting the young detainee, exercise any function under this Act that the officer may exercise in relation to a young detainee admitted at a detention place.

**Examples—functions—par (c)**

1 functions delegated to the officer by the director-general (for example, giving directions to young detainees)

2 youth detention officer's functions under ch 7 (Criminal matters—search and seizure at detention places), including any use of force in accordance with div 6.6.4

## 105 Escorting arrested person to court etc

(1) This section applies if an arrested person—

(a) has not been released on bail; and

(b) is in police custody; and

(c) is required by law to be brought before a court or tribunal.

(2) A police officer may require an escort officer to bring the arrested person before the court or tribunal.

(3) The escort officer must bring the arrested person before the court or tribunal and, for that purpose, may—

(a) take the arrested person into custody; and

(b) arrange for the arrested person to be detained under this Act until the arrested person is brought before the court or tribunal.

(4) In this section:

***arrested person*** means—

(a) a child or young person who is arrested; or

(b) someone else who is under 21 years old and is arrested in relation to an offence he or she is alleged to have committed when under 18 years old.



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## 106 Custody etc during proceedings

Subject to any order or direction of a court, an escort officer who is required to bring a young detainee to a court must, as far as practicable, ensure—

(a) the safe custody of the young detainee for the purposes of the proceeding; and

(b) that the young detainee does not obstruct or hinder the proceeding.

## 107 Executing warrants of commitment or remand etc

(1) The director-general may make escort officers available to attend at a court or tribunal—

(a) to take a young detainee into custody; or

(b) to arrange for a young detainee be kept in custody; or

(c) to transfer or otherwise deal with a young detainee.

(2) An order or direction of the court or tribunal addressed to all escorts—

(a) is taken to be addressed to each escort; and

(b) may be executed by any escort.



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### 108 Other powers not limited

To remove any doubt, this division is additional to, and does not limit, any other provision relating to the escorting of young detainees under a territory law or a law of the Commonwealth or a State.

**Examples—other provisions**

1 the *Crimes (Sentence Administration) Act 2005*, pt 3.3 (Committal—miscellaneous)—

- s 20 (Directions to escort officers)
- s 21 (Orders to bring offender or remandee before court etc)

2 a law of a State relating to the escort of prisoners through the ACT

*Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

## Division 5.1.3 Transfers to health facilities

### 109 Transfers to health facilities

(1) The director-general may direct that a young detainee be transferred to a health facility at a detention place, or outside a detention place, if the director-general believes on reasonable grounds that it is necessary or prudent for the young detainee to receive health services at the facility.

*Note* ***Health facility***—see the dictionary.

(2) The director-general must have regard to the advice of a treating doctor when considering whether to make a direction under subsection (1).

(3) The director-general may direct an escort officer to escort the young detainee—

(a) to or from the health facility; or

(b) for a facility other than a secure mental health facility—while at the facility.



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(4) The young detainee may be discharged from the health facility only if—

(a) the health practitioner in charge of the young detainee's care approves the discharge; or

(b) the director-general directs that the young detainee be removed from the facility.

**Example—direction for removal of young detainee from health facility**
where the young detainee is a danger to the safety of people at the facility

(5) The director-general must have regard to the health of the young detainee when considering whether to make a direction under subsection (4).

(6) The director-general may give a direction for ensuring that a young detainee discharged from a health facility under subsection (4) is returned to a detention place stated in the direction.

(7) For chapter 8 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to health care.

## 109A Transfer to mental health facility—notice of change in status

(1) This section applies if the director-general has made a direction under section 109 for the transfer of a young detainee from a detention place to an approved mental health facility or approved community care facility.



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(2) The director-general must tell the director-general responsible for the *Mental Health Act 2015* in writing about any change in the young detainee's status as a young detainee.

**Examples**

1 the person's sentence of imprisonment ends

2 the person is released on parole

3 the person is otherwise released from detention

(3) In this section:

***approved community care facility***—see the *Mental Health Act 2015*, dictionary.

***approved mental health facility***—see the *Mental Health Act 2015*, dictionary.

## Division 5.1.4 Transfers of young detainees who become adults

### 110 Application—div 5.1.4

This division applies to a young detainee serving a sentence of imprisonment or otherwise in custody at a detention place who is an adult.

### 111 Transfers to correctional centres—under 21 years old

(1) The director-general may, on the director-general's own initiative or on application, direct that a young detainee to whom this division applies be transferred to a correctional centre.

(2) However, the director-general must not give a direction under subsection (1) unless satisfied that the transfer is in the best interests of the young detainee or other young detainees.



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(3) In deciding whether the transfer is in the best interests of the young detainee or other young detainees, the director-general must consider the following:

(a) the young detainee's views and wishes;

(b) the young detainee's maturity and any known history;

(c) the young detainee's developmental capacity;

(d) if the young detainee is serving a sentence—the time remaining to be served by the young detainee;

(e) the behaviour of the young detainee, particularly if it presents a risk to the safety of other young detainees or staff at the detention place;

(f) whether the young detainee is likely to be vulnerable in a correctional centre;

(g) the availability of services or programs appropriate for the young detainee at the correctional centre;

(h) whether the young detainee is more likely to be rehabilitated in the detention place or correctional centre.

(4) The director-general may also consider any other relevant matter.

(5) If the director-general gives a direction under this section for a young detainee, the director-general may direct an escort officer to escort the young detainee from the detention place to the correctional centre.

(6) The young detainee must be dealt with as a detainee under the *Corrections Management Act 2007* once the young detainee is admitted to the correctional centre.



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### 112 Transfers to correctional centres—21 year olds

(1) A young detainee who is 21 years old or older cannot be detained at a detention place, but must be detained at a correctional centre.

(2) The director-general must give the directions necessary to ensure that a young detainee at a detention place who turns 21 years old is transferred to a correctional centre.

## Division 5.1.5 Notifying people of transfers

### 113 Transfer—notifying people responsible for or nominated by young detainees

(1) This section applies if a young detainee is transferred under—

(a) division 5.1.3 (Transfers to health facilities); or

(b) division 5.1.4 (Transfers of young detainees who become adults).

(2) If the young detainee is under 18 years old, the director-general must take reasonable steps to tell someone who has daily care responsibility, or long-term care responsibility, for the young detainee about the transfer.

(3) If the director-general and someone else share daily care responsibility, or long-term care responsibility, for the young detainee, the director-general must act under subsection (2) in relation to the other person.

(4) If the young detainee is 18 years old or older, the director-general must take reasonable steps to tell the young detainee's nominated person about the transfer.



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# Part 5.2 Interstate transfers

## Division 5.2.1 Interstate transfer generally

### 114 Definitions—pt 5.2

In this part:

***Minister of a State*** means—

(a) for a State other than the Northern Territory—a Minister of the Crown of the State; or

(b) for the Northern Territory—a person holding ministerial office under the *Northern Territory (Self-Government) Act 1978* (Cwlth).

***person responsible***, for a young offender, means—

(a) a parent of the young offender or someone else who has daily care responsibility, or long-term care responsibility, for the young offender; or

(b) a person who has the care of the young offender, whether or not the person has parental responsibility (however described) for the young offender; or

(c) for a young offender who is detained—a person who had the care of the young offender before the young offender was detained, whether or not the person has, or had, parental responsibility (however described) for the young offender.

***receiving State*** means the State to which a young offender is transferred.

***sending State*** means the State from which a young offender is transferred.

***transfer agreement***—see section 115.

***transfer arrangement***—see section 116.



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***transfer escort*** means a person who is authorised under a transfer agreement, transfer arrangement or transfer order to take and keep custody of a young offender.

***transfer order***—see section 120.

***young offender*** means a person who—

(a) has been convicted or found guilty of an offence by a court; and

(b) was under 18 years old when the offence was committed; and

(c) has been sentenced for the offence.

## 115 General agreements with other jurisdictions

(1) The Minister may enter into an agreement (a ***transfer agreement***) with a Minister of a State, or a person authorised to enter into a transfer arrangement for the Minister, providing generally for the transfer of young offenders—

(a) from or to the ACT; or

(b) through the ACT from a State to another State.

(2) A transfer agreement relating to a State must not be entered into unless a declaration under subsection (3) has been notified under the Legislation Act in relation to the State.

(3) The Minister may declare that a State has enacted legislation dealing with the interstate transfer of young offenders.

(4) A declaration is a notifiable instrument.

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



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## 116 Transfer arrangements—general

(1) If a transfer agreement with a Minister of a State is in force, the director-general may make an arrangement (a ***transfer arrangement***) with the Minister, or a person authorised to enter into a transfer arrangement for the Minister, for the transfer of a particular young offender—

(a) from the ACT to the State; or

(b) to the ACT from the State.

(2) The director-general may also make a transfer arrangement with the Minister, or a person authorised to enter into a transfer arrangement for the Minister, to fix a mistake in a transfer arrangement.

(3) The director-general may only make a transfer arrangement for a particular young offender from the ACT to a State in the circumstances mentioned in section 117.

## 117 Power to arrange for transfers

(1) The director-general may make a transfer arrangement for the transfer of a young offender from the ACT to a State—

(a) on application by the young offender or a person responsible for the young offender; or

(b) if the director-general has daily care responsibility, or long-term care responsibility, for the young offender.



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(2) However, the director-general may only make a transfer arrangement for the transfer of a young offender from the ACT to a State if—

(a) the director-general believes on reasonable grounds that the transfer is appropriate, having regard to all the circumstances, including—

(i) the place or intended place of residence of the parents of the young offender and other people (if any) who have daily care responsibility, or long-term care responsibility, for the young offender, or the young offender's family members; and

(ii) the present and future education, training or employment of the young offender; and

(iii) the medical needs of the young offender; and

(iv) the safety, health and wellbeing of the young offender; and

(b) either—

(i) the young offender agrees to the transfer; or

(ii) the director-general decides that the particular circumstances of the case indicate that the transfer should be arranged without the young offender's agreement; and

(c) the young offender has been given independent legal advice about the effect of the transfer arrangement; and

(d) the director-general is satisfied that there is no appeal pending against an order of a Childrens Court to which the young offender is subject.

(3) In deciding whether to arrange for the transfer of a young offender on an application under subsection (1) (a), the director-general may ask the following people for relevant information:

(a) the young offender;

(b) a person responsible for the young offender.



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(4) The director-general may refuse to make a transfer arrangement if information asked for is not supplied within the time stated by the director-general.

(5) The director-general may make a transfer arrangement to transfer a young offender from the ACT to a State other than under subsection (1) if—

(a) the young offender is detained in a detention place; and

(b) the director-general believes on reasonable grounds that the behaviour of the young offender in the detention place puts at risk the safety, health or wellbeing of other people detained in the detention place or of staff at the detention place; and

(c) the young offender has been given independent legal advice about the effect of the transfer arrangement; and

(d) the director-general is satisfied that there is no appeal pending against an order of the Childrens Court to which the young offender is subject.

(6) This section does not apply to a transfer arrangement to fix a mistake.

## 118 Transfer arrangements—facilities must be adequate

A transfer arrangement for the transfer of a young offender from a State to the ACT may be made only if the director-general is satisfied that there are adequate facilities in the ACT for the young offender to be accepted and dealt with as provided in the transfer arrangement.

## 119 Transfer arrangements—content

(1) A transfer arrangement for the transfer of a young offender from or to the ACT must—

(a) be in writing; and

(b) provide for the acceptance of, and means of dealing with, the young offender in the receiving State; and



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(c) state each order of a court of the sending State to which the young offender is subject (including an order required by a previous transfer arrangement with the Territory or with a State to be treated as having been made by a court of the sending State).

(2) For each order mentioned in subsection (1) (c), the transfer arrangement must state—

(a) the way that the order must operate in the receiving State, which must be as similar as possible to the way that it would operate in the sending State if the transfer arrangement were not made; and

(b) the maximum time for which the order may operate, which must not be longer than the maximum time for which it could operate in the sending State if the transfer arrangement were not made; and

(c) any entitlement of the young offender to a reduction in detention in the sending State and how that entitlement must operate in the receiving State, which must be as similar as possible to the way that it would operate in the sending State if the transfer arrangement were not made; and

(d) that a young offender who is subject to a nonprobation period may be treated as being subject to an equivalent nonparole period, if the laws of the receiving State do not provide for nonprobation periods.

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



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## 120 Custody of person on transfer order

(1) If the director-general makes a transfer arrangement under this Act for the transfer of a young offender from the ACT to a State in the custody of a transfer escort, the director-general must make a written order (a ***transfer order***) that—

(a) directs the person who has custody of the young offender to deliver the young offender to the custody of the transfer escort; and

(b) authorises the transfer escort to take and keep custody of the young offender for the purpose of transferring the young offender to the place in the receiving State, and to the custody, mentioned in the transfer arrangement.

(2) The authority given to a transfer escort by a transfer order is given only to a transfer escort who is—

(a) a police officer; or

(b) a corrections officer; or

(c) a youth detention officer; or

(d) a person acting as a transfer escort with the approval of the director-general.

## 121 Custody pending interstate transfer

If the director-general makes a transfer arrangement under this Act for the transfer of a young offender from the ACT to a State in the custody of a transfer escort mentioned in section 120 (2), the young offender may be detained in a detention place until the young offender is delivered to the transfer escort.



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## 122 Transfer to ACT in custody of transfer escort

(1) This section applies if, under a transfer arrangement for the transfer of a young offender to the ACT, a transfer escort authorised under the arrangement brings the young offender into the ACT.

(2) While in the ACT, the transfer escort is authorised to take and keep custody of the young offender to transfer the young offender to the place in the ACT, and to the custody, stated in the transfer arrangement.

## 123 Powers of transfer escorts

(1) A transfer escort escorting a young offender under a transfer order may, to keep custody of the young offender under the order—

(a) give the young offender any direction that the transfer escort believes on reasonable grounds is necessary and reasonable; and

(b) use force in accordance with division 6.6.4 (Use of force).

(2) A transfer escort escorting a young offender under a transfer order may conduct a scanning search, frisk search or ordinary search of the young offender if the transfer escort suspects on reasonable grounds that the young offender may be carrying a prohibited thing.

(3) The following provisions apply, with any necessary changes and any changes prescribed by regulation, in relation to a search under this section:

(a) part 7.2 (Searches generally);

(b) part 7.3 (Scanning, frisk and ordinary searches);

(c) part 7.9 (Seizing property).



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### 124 Offence—escapes during transfer

A person commits an offence if—

(a) an order sentencing the person to imprisonment has been made; and

(b) the person is in custody under a transfer arrangement made for the person's transfer from the ACT to a State; and

(c) the person escapes from that custody while the person is not in the ACT or the receiving State.

Maximum penalty: imprisonment for 6 months.

## Division 5.2.2 Transfer of sentence or order

### 125 Transfer from ACT of sentence or order

(1) This section applies if a young offender is transferred from the ACT to a State under a transfer arrangement.

(2) From the time the young offender arrives in the State, a sentence imposed on, or order made in relation to, the young offender in the ACT before that time, ceases to have effect in the ACT except for—

(a) an appeal against or review of a conviction, judgment, sentence or order made, imposed or fixed by a Territory court; and

(b) taking into account a period of detention served before that time by the young offender or a reduction of the period of detention granted before that time; and

(c) taking into account anything done before that time by the young offender in carrying out the order; and

(d) allowing for a remittance of money to the Territory that is or has been paid in discharge or partial discharge of the sentence or order.



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## 126 Transfer to ACT of sentence or order

(1) This section applies if a young offender is transferred to the ACT from a State under a transfer arrangement.

(2) From the time the young offender arrives in the ACT—

(a) a sentence imposed on, or order made in relation to, the young offender by a court of the sending State and stated in the transfer arrangement must be considered as having been imposed or made by the Territory court stated in the transfer arrangement; and

(b) a sentence or order considered by a previous transfer arrangement with the Territory, or with a State, to have been imposed or made by a court of the sending State, which is a sentence or order stated in the transfer arrangement under which the young offender is transferred to the ACT, must be considered as having been imposed or made by the Territory court stated in the transfer arrangement; and

(c) a direction given or order made by a court of the sending State concerning the time when anything must be done under an order made by a court of that State is, as far as practicable, to be considered as having been given or made by the Territory court stated in the transfer arrangement.

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

(a) had, at the relevant time, power to impose the sentence and to make or give the order or direction; and

(b) did in fact impose the sentence and make or give the order or direction when it was imposed, made or given.



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## Division 5.2.3 Transit through ACT

### 127 Director-general may receive young offenders

The director-general may receive, at a detention place, young offenders being transferred through the ACT from a State to another State under a transfer agreement.

### 128 Lawful custody for transit through ACT

(1) This section applies if a young offender is brought into the ACT by a transfer escort authorised by a transfer agreement to have custody of the young offender.

(2) While in the ACT, the transfer escort is authorised to take and keep custody of the young offender for the transfer.

(3) The director-general may, at the request of the transfer escort and on receiving from the transfer escort written authority for the transfer of the young offender as provided in the transfer agreement—

(a) receive and detain the young offender at a detention place under the custody and for the time that the transfer escort requests, if reasonably necessary for the transfer; and

(b) at the end of that time, deliver the young offender into the custody of the transfer escort.

### 129 Escapees may be apprehended without warrant

A young offender who escapes from the custody of a transfer escort while being transferred through the ACT from a State to another State by a transfer escort under a transfer agreement may be apprehended by a transfer escort or police officer without a warrant.



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## 130 Escapees to be brought before magistrate

(1) This section applies if a young offender being transferred through the ACT from a State to another State in the custody of a transfer escort—

(a) escapes and is apprehended; or

(b) attempts to escape.

(2) The young offender may be taken before a magistrate and the magistrate may, by warrant, order the young offender to be detained in custody at a detention place.

(3) The warrant may be executed according to its terms.

## 131 Court may arrange transfer of apprehended escapees

(1) A young offender who is apprehended under a warrant under section 130 must, as soon as practicable, be brought before—

(a) if the young offender is 18 years old or older—the Magistrates Court; or

(b) in any other case—the Childrens Court.

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

(a) be delivered to the custody of a transfer escort; or

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

(3) If a young offender who is the subject of an order made by a magistrate is not, under the order, delivered into the custody of a transfer escort before the end of 7 days after the day the order is made, the order has no further effect.

(4) If an order ceases to have further effect under subsection (3), a further order may be made under subsection (2).



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(5) In this section:

***transfer escort***, for a young offender being transferred through the ACT from a State to another State under a transfer agreement, means—

(a) the transfer escort authorised by the transfer agreement to have custody of the young offender; or

(b) if the young offender has escaped or attempted to escape—1 or more of the following people:

(i) the transfer escort;

(ii) a police officer of the sending State;

(iii) a person appointed in writing by the Minister of the sending State, or a person authorised to enter into a transfer arrangement for that Minister, to be a transfer escort to carry out an order of a court of the sending State.

## 132 Search warrants for escapees

(1) A transfer escort or police officer may apply to a magistrate for a search warrant if the transfer escort or police officer believes on reasonable grounds that a young offender who has escaped from the custody of a transfer escort while being transferred through the ACT from a State to another State under a transfer agreement is at premises.

(2) The magistrate may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant with the assistance, and with the force, that is necessary and reasonable to—

(a) enter stated premises; and

(b) inspect the premises for evidence of the young offender who has escaped from custody; and

(c) observe and converse with a person apparently living there; and



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(d) apprehend the young offender at the premises.

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

(a) why the warrant is issued, including the name and description of the young offender for whom entry and search are authorised; and

(b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(c) a date, not being later than 14 days after the date of issue of the warrant, on which the warrant ceases to have effect.

(4) A police officer may—

(a) accompany a transfer escort executing a search warrant issued under this section; and

(b) take all reasonable steps to assist in the apprehension of the young offender at the premises.

(5) In this section:

***transfer escort*** means the transfer escort authorised by the transfer agreement to have custody of the young offender.

## Division 5.2.4 Revocation of transfer orders

### 133 Revocation of transfer order—offence during transfer

(1) The Childrens Court may, on application by the director-general, revoke a transfer order in relation to a young offender if the young offender has, while being transferred, committed—

(a) the offence of escaping or attempting to escape; or

(b) another offence.



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(2) This section applies whether or not—

(a) the offence was an offence against a law of—

(i) the Territory; or

(ii) the receiving State; or

(iii) a State through which the young offender was being transferred; or

(b) an information has been laid for the offence; or

(c) a conviction has been recorded for the offence.

## 134 Revocation of transfer order by director-general

(1) The director-general may revoke a transfer order in relation to a young offender at any time before the young offender is delivered in the receiving State into the custody stated in the transfer arrangement for the young offender.

(2) If the director-general revokes a transfer order, the director-general may make a further transfer arrangement with the receiving State for the return of the young offender to the ACT.

## 135 Director-general may consider reports etc

(1) In forming an opinion or exercising a discretion under this part, the director-general may—

(a) be informed as the director-general considers appropriate; and

(b) consider reports from—

(i) a person responsible for a young offender in the ACT or a State; or

(ii) a person who has had the custody, care or supervision of a young offender in the ACT or a State.



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(2) A report that relates to an ACT young offender may be sent to a Minister of a State who has entered into a transfer agreement, or on whose behalf a transfer agreement has been entered into, or to a person authorised under a transfer agreement to make transfer arrangements with the director-general.



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# Chapter 6 Criminal matters—detention places

## Part 6.1 Detention places—general

### 136 Application—ch 6

This chapter applies to young detainees.

*Note* ***Young detainee***—see s 95.

### 137 Definitions—ch 6

In this chapter:

***accredited person***, in relation to a young detainee, means each of the following:

(a) the director-general if the director-general is a person who has daily care responsibility, or long-term care responsibility, for the young detainee;

(b) a representative, approved by the director-general, of an entity providing a service or program to the young detainee at a detention place;

(c) a lawyer representing the young detainee;

(d) an official visitor;

(e) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(f) the ombudsman;

(g) a person prescribed by regulation.

***case management plan***, for a young detainee, means the young detainee's case management plan maintained under section 188.



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***non-treating doctor*** means a doctor authorised under section 98 (Health practitioners—non-treating functions).

***prohibited thing*** means a thing declared to be a prohibited thing under section 148.

***register of young detainees*** means the register kept under section 185.

***security classification***, for a young detainee, means the young detainee's security classification under section 190.

***visiting conditions***, at a detention place, means conditions declared under section 228 in relation to the place.

***visitor***, in relation to a detention place, includes a person wishing to enter the place as a visitor.

***young remandee***—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

***youth detention policy*** means a youth detention policy made by the director-general under section 143.

## 138 Treatment of young detainees generally

Functions under the criminal matters chapters in relation to a young detainee must be exercised as follows:

(a) to respect and protect the young detainee's human rights;

(b) to ensure the young detainee's decent, humane and just treatment;

(c) to preclude torture or cruel, inhuman or degrading treatment;

(d) to ensure the young detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;



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(e) to ensure the young detainee's conditions in detention comply with section 141 (Detention places—minimum living conditions);

(f) to promote, as far as practicable, the young detainee's reintegration into society;

(g) for a young detainee who is a young offender—to promote, as far as practicable, the young detainee's rehabilitation.

## 139 Treatment of young remandees

(1) Functions under the criminal matters chapters in relation to a young remandee must also be exercised to recognise and respect that—

(a) the young remandee must be presumed innocent of any offence for which the young remandee is remanded in custody; and

(b) the detention is not imposed as punishment of the young remandee.

(2) Subsection (1) does not apply if the young remandee—

(a) has been convicted or found guilty of the offence for which the young remandee is detained; or

(b) is under a sentence of imprisonment in relation to another offence.

**Example—s (2) (a)**

a convicted young person remanded in custody for sentencing

## 140 Treatment of certain young detainees

(1) This section applies to a young detainee (other than a sentenced young offender or young remandee) while the young detainee is required to be held in custody or detention under a territory law or a law of the Commonwealth, a State or another Territory.



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(2) Functions under the criminal matters chapters in relation to the young detainee must be exercised to recognise and respect the purpose for which the young detainee is held in custody or detention.

(3) The criminal matters chapters apply in relation to the young detainee, with any changes prescribed by regulation.

## 141 Detention places—minimum living conditions

(1) To protect the human rights of young detainees in detention at detention places, the director-general must ensure, as far as practicable (including during any emergency declared under section 149), that conditions at detention places meet at least the following minimum standards:

(a) young detainees must have access to sufficient nutritional food and drink to avoid hunger and poor nourishment;

(b) young detainees must have access to sufficient suitable clothing that does not degrade or humiliate young detainees;

(c) young detainees must have access to suitable facilities for personal hygiene;

(d) young detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort;

(e) young detainees must have reasonable access to the open air and exercise;

(f) young detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community;



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(g) young detainees must have reasonable opportunities to receive visits from family members, significant people and accredited people;

*Note 1* ***Accredited person***—see s 137.

*Note 2* One family member or a significant person may visit for at least 1 hour each week (see s 177).

*Note 3* For further provisions about access, see div 6.6.5.

(h) young detainees must have reasonable opportunities to communicate with their lawyers;

(i) young detainees must have reasonable access to news and education services and facilities to maintain contact with society;

(j) young detainees must have access to suitable health services and health facilities;

(k) young detainees must have reasonable opportunities for religious, spiritual and cultural observances.

**Example—par (k)**

observances and practices relating to religious or spiritual beliefs, including the spiritual beliefs of Aboriginal or Torres Strait Islander people

(2) Part 6.5 applies to living conditions at detention places.



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# Part 6.2 Administration

## Division 6.2.1 Administration—general

### 142 Detention places—declaration

(1) The Minister may declare a place to be a detention place.

(2) A declaration is a notifiable instrument.

**Example—declaration**

the declaration of a place, including a buffer zone surrounding a secure perimeter, to be a detention place

*Note 1* A notifiable instrument must be notified under the Legislation Act.

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

(3) For the *Smoke-Free Public Places Act 2003*, a detention place is a public place.

### 143 Youth detention policies and operating procedures

(1) The director-general may make youth detention policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of detention services for young detainees.

(2) Each youth detention policy or operating procedure is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* The amendment or repeal of a youth detention policy or operating procedure is also a notifiable instrument. See the Legislation Act, s 46 (Power to make instrument includes power to amend or repeal).



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(3) Each youth detention policy and operating procedure—

(a) must be available for inspection by anyone at each detention place; and

(b) may be made available for inspection at any other place decided by the director-general.

## 144 Exclusion of matters from notified youth detention policies etc

(1) The director-general may exclude from a youth detention policy or operating procedure notified or available for inspection in accordance with section 143 any matter that the director-general believes on reasonable grounds would be likely to disclose—

(a) information that may endanger public safety or security or good order at a detention place; or

(b) anything prescribed by regulation.

(2) If subsection (1) applies to a youth detention policy or operating procedure—

(a) the policy or procedure must contain a statement about the effect of this section; and

(b) the excluded matter must be available for inspection, on request, by any of the following:

(i) a judge;

(ii) a magistrate;

(iii) a member of the Legislative Assembly;

(iv) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(v) the ombudsman;

(vi) an official visitor;



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(vii) anyone to whom this section applies because of a declaration under subsection (3).

(3) The Minister may declare that this section applies to a stated person.

(4) A declaration is a notifiable instrument.

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

## 145 Copies of Act, policies etc to be available for inspection at detention place

The director-general must ensure copies of the following are available for inspection by young detainees at each detention place:

(a) this Act;

(b) youth detention policies and operating procedures available under section 143.

## 146 Director-general directions

(1) The director-general may give reasonable directions in relation to a young detainee about anything related to the criminal matters chapters.

(2) Without limiting subsection (1), the director-general may give a direction that the director-general considers necessary and reasonable in relation to any of the following:

(a) the wellbeing or safety of the young detainee or anyone else;

(b) security or good order at a detention place;

(c) ensuring compliance with any requirement under this Act or another territory law.

(3) A direction may be given orally or in writing, and may apply to a particular young detainee or 2 or more young detainees.



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(4) A direction by the director-general under this Act, or anything done under the direction, is not invalid because of a defect or irregularity in or in relation to the direction.

## 147 Prohibited areas

(1) The director-general may, in writing, declare an area of a detention place to be a prohibited area if the director-general believes on reasonable grounds that the declaration is necessary or prudent to ensure 1 or more of the following:

(a) the safety of anyone at the detention place;

(b) security or good order at a detention place;

(c) that the best interests of detainees are protected.

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

(2) The director-general must take all reasonable steps to ensure that the prohibited area is brought to the attention of all young detainees.



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## 148 Prohibited things

(1) The director-general may declare a thing to be a prohibited thing if the director-general believes on reasonable grounds that the declaration is necessary or prudent to ensure security or good order at a detention place.

**Examples—prohibited things**

1 a weapon or something crafted as a weapon

2 alcohol

3 a controlled drug under the Criminal Code

4 a mobile phone

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

(2) A declaration is a notifiable instrument.

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

## 149 Declaration of emergency

(1) This section applies if the director-general believes on reasonable grounds that an emergency (including an imminent emergency) exists in relation to a detention place that threatens or is likely to threaten—

(a) good order or security at the place; or

(b) the safety of anyone at the place or elsewhere.

(2) The director-general may declare that an emergency exists in relation to the detention place for a stated period of not more than—

(a) 3 days; or

(b) if another period is prescribed by regulation—the period prescribed.



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(3) To remove any doubt, the director-general may make declarations for 2 or more consecutive periods under this section in relation to the same emergency.

(4) A declaration commences—

(a) when it is made; or

(b) if it provides for a later commencement—on that later commencement.

(5) The first declaration in relation to an emergency is a notifiable instrument.

(6) A declaration for a second or subsequent consecutive period in relation to the same emergency is a disallowable instrument.

(7) An instrument under subsection (5) or (6) must be notified under the Legislation Act not later than the day after the day it is made.

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

## 150 Emergency powers

(1) While an emergency is declared under section 149 in relation to a detention place, the director-general may do 1 or more of the following:

(a) restrict any activity at the place;

(b) restrict access in, or to or from, the place or any part of the place;

(c) restrict communications between a young detainee and anyone else;

(d) authorise a police officer or public servant to exercise any function exercisable by a youth detention officer under the criminal matters chapters in accordance with any direction by the director-general.



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(2) The director-general must ensure that action taken under this section is necessary and reasonable in the circumstances.

*Note* Section 141 (Detention places—minimum living conditions) continues to apply during an emergency (see s 141 (1)).

## 151 Arrangements with police

(1) The director-general may make arrangements with the chief police officer for police assistance in relation to the administration of the criminal matters chapters.

(2) Subject to any arrangement under this section, the chief police officer must comply, as far as practicable, with any request by the director-general for police assistance mentioned in subsection (1).

(3) A police officer providing assistance under this section may exercise any function exercisable by a youth detention officer under the criminal matters chapters in accordance with any direction by the director-general.

## 152 Assistance from other directors-general

(1) The director-general may ask another director-general for assistance in relation to the exercise of functions under the criminal matters chapters.

**Examples—functions for which director-general may ask for assistance**

1 development of a case management plan for a young detainee under s 188

2 provision of an assessment or advice in relation to a health, education or other matter

3 arrangements for search dogs

4 escorting a young detainee to and from court or leave

(2) The director-general must comply with the request as far as practicable.



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(3) A corrections officer providing assistance under this section may exercise any function exercisable by a youth detention officer under the criminal matters chapters in accordance with any direction by the director-general.



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# Part 6.3 Inspection at detention places

## 153 Inspections by judicial officers, Assembly members etc

(1) This section applies to each of the following:

(a) a judge;

(b) a magistrate;

(c) a member of the Legislative Assembly;

(d) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(e) the ombudsman.

*Note* Official visitors must visit detention places (see pt 2.3 and *Official Visitor Act 2012*).

(2) A person mentioned in subsection (1) may, at any reasonable time, enter and inspect—

(a) a detention place; or

(b) a place outside a detention place where a detainee is, or has been, directed to work or participate in an activity.

**Example—time that would not be reasonable**

a time when an emergency declaration is in force

## 154 Relationship with other inspection laws

(1) The criminal matters chapters must be construed and administered in a way that is consistent with an inspection law unless the contrary intention appears from this Act or that law.

(2) The criminal matters chapters are taken to be consistent with an inspection law to the extent that they are capable of operating concurrently with that law.



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(3) The director-general may make arrangements with a person responsible for the exercise of functions under an inspection law to ensure, as far as practicable, the safety of an inspector (however described) or anyone else affected by the exercise of the function in relation to a young detainee or detention place.

(4) A person exercising a function under an inspection law in relation to a young detainee or detention place must exercise the function in accordance with any reasonable direction by the director-general in relation to—

(a) the safety of anyone at the detention place; or

(b) security or good order at the detention place.

(5) In this section:

***inspection law*** means an Act that provides for the entry and inspection of premises, or the search of people or premises.

**Examples—inspection laws**

- *Crimes Act 1900*
- *Emergencies Act 2004*
- *Food Act 2001*
- *Public Health Act 1997*



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# Part 6.4 Admission to detention places

## 155 Meaning of *admission*—pt 6.4

In this part:

***admission***, of a young detainee to a detention place, means admission of the young detainee to the place for detention.

## 156 Authority for detention

(1) A young detainee must not be admitted to, or detained at, a detention place unless the detention is authorised by a warrant or other authority (however described), under a territory law or a law of the Commonwealth or a State.

**Examples—other authority authorising detention**

1 a young detainee refused bail by an authorised person under the *Bail Act 1992*

2 a young detainee in immigration detention under the *Migration Act 1958* (Cwlth)

3 an interstate young detainee on leave in the ACT held in custody overnight

*Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) Before a young detainee is admitted to a detention place, the director-general must be given the warrant or other authority for the detention.

(3) The validity of a young detainee's detention at a detention place is not affected by a defect or irregularity in or in relation to the warrant or the evidence of other authority for the detention.



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## 157 Detention—notifying people responsible for or nominated by young detainees

(1) If a young detainee who is under 18 years old is detained at a detention place, the director-general must take reasonable steps to tell someone who has daily care responsibility, or long-term care responsibility, for the young detainee about—

(a) the young detainee's admission to a detention place; and

(b) if the young detainee is required to appear before a court or tribunal—the time and place of each appearance.

(2) If the director-general and someone else share daily care responsibility, or long-term care responsibility, for the young detainee, the director-general must act under subsection (1) in relation to the other person.

(3) If a young detainee who is 18 years old or older is detained at a detention place, the director-general must take reasonable steps to tell the young detainee's nominated person about the matters mentioned in subsection (1) (a) and (b).

## 158 Identification of young detainees

(1) For the identification of a young detainee admitted to a detention place, the director-general may direct that 1 or more of the following be taken of or from the young detainee:

(a) prints of the young detainee's hands or fingers;

(b) a photograph or video recording;

(c) a buccal swab or saliva sample;

(d) anything else prescribed by regulation.



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(2) Anything taken from a young detainee under subsection (1) must be destroyed if—

(a) the young detainee is found not guilty of any offence to which the detention relates, other than on the ground of unsoundness of mind; or

(b) a proceeding for any offence to which the detention relates is discontinued or dismissed.

(3) However, subsection (2) does not apply if, for any part of the period of detention for an offence, the young detainee was also being detained for another offence—

(a) of which the young detainee has been convicted; or

(b) for which a proceeding (including any appeal proceeding) is still pending.

*Note* The *Crimes (Forensic Procedures) Act 2000* includes provision for carrying out forensic procedures on people in custody. See particularly pt 2.7 (Carrying out of certain forensic procedures after conviction of serious offenders).

## 159 Information—entitlements and obligations

(1) As soon as practicable after a young detainee is admitted to a detention place, the director-general must take reasonable steps to explain the following to the young detainee:

(a) the young detainee's entitlements and obligations under this Act;

(b) the case management plan arrangements;

(c) the role of official visitors;

(d) the procedures for seeking information and making complaints to official visitors;



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(e) which areas of the detention place are prohibited areas;

*Note* Prohibited areas are declared under s 147.

(f) if the young detainee is a national of a foreign country—that the young detainee may ask the director-general to tell a diplomatic or consular representative of the country about the detention;

(g) anything else the director-general considers necessary or desirable.

**Examples—par (g)**

1 youth detention policies and operating procedures relevant to the young detainee

2 the scope and effect of the director-general's directions

(2) The explanation under subsection (1)—

(a) may be in general terms; and

(b) as far as practicable, must be in language the young detainee can readily understand.

(3) The director-general must arrange for the assistance of an interpreter in complying with subsection (1) or (2) if the director-general believes on reasonable grounds that the young detainee is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in English.

(4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.

(5) The director-general must tell a diplomatic or consular representative of a foreign country about the detention of a national of that country, if asked by the young detainee or if the director-general, after making reasonable inquiries, considers it in the best interests of the young detainee to do so.



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## 160 Initial assessment

(1) The director-general must ensure that—

(a) each young detainee admitted to a detention place is assessed as soon as practicable, and in any event within 24 hours after admission, to identify any immediate—

(i) physical or mental health needs or risks (including any risk of self-harm); and

(ii) safety or security needs or risks; and

(b) any needs and risks identified by the assessment are addressed.

*Note* For an initial assessment, the director-general may direct a youth detention officer to strip search a young detainee (see s 254).

(2) In particular, the director-general must ensure that any ongoing needs and risks are addressed in the young detainee's case management plan (if any).

## 161 Health assessment

(1) The assessment under section 160 of a young detainee's physical health needs and risks must be made by a treating doctor or a nurse.

(2) The assessment under section 160 of a young detainee's mental health needs and risks may be made by a treating doctor, a nurse or another suitable health practitioner.

*Note* The *Mental Health Act 2015* also includes provision for assessment orders, and emergency detention and care, under that Act.

(3) An assessment under section 160 made by a health practitioner other than a treating doctor must be reviewed by a treating doctor.

(4) A treating doctor who makes an assessment or reviews an assessment made under section 160 must give a report of the assessment to the director-general.



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## 162 Alcohol and drug tests on admission

(1) For an assessment under section 160, the director-general may direct the young detainee, orally or in writing, to provide a test sample.

(2) Division 6.7.2 (Alcohol and drug testing—detainees) applies in relation to the direction and any sample given under the direction.

## 163 Security classification

The director-general must arrange for a young detainee to be given a security classification under section 190 (Security classification—basis etc) as soon as practicable after the young detainee's admission to a detention place.

## 164 Case management plan

(1) The director-general must arrange for a case management plan to be prepared for a young detainee (other than a young remandee) as soon as practicable after the young detainee's admission to a detention place.

(2) The director-general may prepare a case management plan for a young detainee at a detention place who is a young remandee.

*Note* The scope of case management plans, and the criteria for deciding whether to maintain one for a young remandee, are set out in s 188.

## 165 Entries in register of young detainees

The director-general must ensure that details of each young detainee admitted to a detention place are entered in the register of young detainees on the young detainee's admission to the detention place.

*Note* The director-general must keep a register of young detainees at a detention place (see s 185).



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## 166 Requirements and considerations about placement and separation of young detainees

(1) A youth detention policy or operating procedure may make provision, consistent with this section, in relation to the placement and separation of young detainees, including separation for—

(a) use of facilities; and

(b) participation in education or other activities.

(2) In placing a young detainee, the director-general must ensure that—

(a) young remandees are segregated from other young detainees; and

(b) male young detainees are segregated from female young detainees; and

(c) a young detainee who is under 18 years old is not placed with an adult.

(3) Subsection (2) does not apply if the director-general believes on reasonable grounds that another placement will be in the best interests of all affected detainees.

(4) When deciding where to place a young detainee, the director-general must consider the following:

(a) the needs and special requirements of the young detainee because of the young detainee's age, sex, emotional or psychological state, physical health, cultural background, vulnerability or any other relevant matter;

(b) if it is proposed that a young detainee be isolated in detention, whether the isolation is in the best interests of the young detainee;



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(c) the desirability of the care provided to a young detainee being suited to the particular needs of the young detainee in order to protect the young detainee's physical and emotional wellbeing;

(d) that it is in the best interests of young detainees to be separated from co-offenders.

(5) When deciding where to place a young detainee, the director-general may also consider any security classification given to the young detainee under section 163.



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# Part 6.5 Living conditions at detention places

*Note to pt 6.5*

Anything expressed in this part to be an entitlement for ch 8 (Criminal matters—discipline at detention places) is not affected by anything that happens under that chapter.

## 167 Food and drink

(1) The director-general must ensure that—

(a) sufficient nutritional food and drink are provided for young detainees to avoid hunger and poor nourishment; and

(b) meals are provided for young detainees at times consistent with the cultural norms of Australia; and

(c) clean drinking water is provided to meet the needs of young detainees.

(2) The director-general must also ensure, as far as practicable, that allowance is made for the religious, spiritual and cultural needs of young detainees in relation to the provision of food and drink.

(3) If a doctor (other than a non-treating doctor) prescribes a particular diet for a young detainee, the director-general must ensure that reasonable steps are taken to provide the young detainee with that diet.

(4) A youth detention policy or operating procedure may include provision for any of the following:

(a) the nutritional standards to be met by food and drink for young detainees;

(b) the provision of nutritional advice about food and drink provided to young detainees;

(c) the appointment of a nutritionist.



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(5) For chapter 8, a young detainee's entitlement in relation to food and drink includes anything expressed to be an entitlement in a youth detention policy or operating procedure made for subsection (4).

## 168 Clothing

(1) The director-general must ensure that—

(a) sufficient suitable clothing is provided for young detainees; and

(b) any particular clothing, including a uniform, issued to young detainees is not likely to degrade or humiliate young detainees.

(2) The director-general must also ensure, as far as practicable, that clothing provided for young detainees is clean and hygienic.

(3) For chapter 8, this section is taken to provide an entitlement for each young detainee in relation to clothing.

## 169 Personal hygiene

(1) The director-general must ensure that—

(a) toilet facilities and washing or showering facilities are available to young detainees; and

(b) the facilities are clean, hygienic and private enough to ensure the dignity and self-respect of young detainees.

(2) For chapter 8, this section is taken to provide an entitlement for each young detainee in relation to personal hygiene.

## 170 Sleeping areas

(1) The director-general must ensure that—

(a) young detainees have sleeping places, with beds and bedding, suitable to provide reasonable privacy and comfort; and

(b) sleeping places, including beds and bedding, are clean and hygienic.



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(2) For chapter 8, this section is taken to provide an entitlement for each young detainee in relation to sleeping areas.

## 171 Treatment of convicted and non-convicted young detainees

(1) Without limiting section 143 (Youth detention policies and operating procedures), the director-general must make a youth detention policy or operating procedure providing for different treatment of convicted young detainees and non-convicted young detainees.

**Example**

a youth detention policy or operating procedure, in accordance with the United Nations *Rules for the Protection of Juveniles Deprived of Liberty*, for non-convicted young detainees to:

- be provided, if possible, with opportunities to pursue work with remuneration and to continue education and training (r 18)
- receive and retain materials for their leisure and recreation that are compatible with the interests of the administration of justice (r 18)

(2) For chapter 8, a young detainee's entitlement in relation to treatment in detention includes anything expressed to be an entitlement in a youth detention policy or operating procedure made for subsection (1).

(3) In this section:

***convicted young detainee*** means a young detainee whose detention is because of the young detainee's conviction for an offence.

## 172 Access to open air and exercise

(1) The director-general must ensure, as far as practicable, that young detainees—

(a) have access to the open air for at least 2 hours each day; and

(b) can exercise for at least 2 hours each day.

(2) The standards under subsection (1) may both be satisfied during the same 2 hours on any day.



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(3) For chapter 8, this section is taken to provide an entitlement for each young detainee in relation to access to the open air and exercise.

## 173 Communication with family and others

(1) The director-general must ensure, as far as practicable, that adequate opportunities are provided for young detainees to be able to remain in contact with family members, friends, associates and others by telephone calls, mail and visits.

(2) For subsection (1), the director-general must have regard, in addition to any other relevant matter, to whether the young detainee's detention is for a reason other than conviction for an offence.

(3) The director-general must also ensure that the overall treatment of a young detainee, including any segregation or disciplinary action, does not unreasonably deprive the young detainee generally of all communication with other people.

(4) In particular, the director-general must ensure that the overall treatment of a young detainee does not unreasonably deprive the young detainee generally of all communication with any of the following:

(a) the courts;

(b) accredited people;

(c) a doctor of the young detainee's choice for health services;

(d) family members;

(e) other people with whom the young detainee may communicate under the criminal matters chapters.

(5) For chapter 8, subsections (1) to (4) are taken to provide an entitlement for each young detainee in relation to communication generally with other people.



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(6) However, this section is subject to the following:

(a) section 174 (Telephone calls);

(b) section 175 (Mail);

(c) section 177 (Visits by family members etc);

(d) section 178 (Contact with accredited people).

## 174 Telephone calls

(1) The director-general must ensure that each detention place has telephone facilities for young detainees to make and receive telephone calls.

(2) A young detainee may make—

(a) 1 telephone call on admission to a detention place; and

(b) 2 telephone calls each week to a family member or a significant person.

(3) A young detainee may also make and receive further telephone calls for necessary contact with a family member, significant person, friend or associate.

(4) The director-general must pay for telephone calls made by a young detainee unless the director-general believes on reasonable grounds that it is appropriate for the young detainee to pay for the calls.

(5) For chapter 8, subsections (2) and (3) are taken to provide entitlements for each young detainee in relation to telephone calls.

(6) However, the director-general may give directions denying or limiting the use of a telephone by a young detainee for a call mentioned in subsection (2) or (3) if the director-general suspects on reasonable grounds that—

(a) the call may—

(i) undermine security or good order at a detention place; or



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(ii) revictimise a victim; or

(iii) circumvent any process for investigating complaints or reviewing decisions under this Act; or

(iv) have the purpose of causing community distress; or

(v) cause harm to the young detainee; or

(b) the direction is necessary and reasonable to safeguard the best interests of the young detainee.

(7) Also, subsections (2) and (3) are subject to—

(a) section 200 (Monitoring telephone calls etc); and

(b) any operating procedure mentioned in subsection (8).

(8) An operating procedure may include provision regulating the following in relation to young detainees' telephone calls:

(a) the times for making or receiving calls;

(b) the frequency and length of calls;

(c) payment for the cost of calls made.

## 175 Mail

(1) The director-general must ensure, as far as practicable, that young detainees can send and receive as much mail as they wish.

(2) A young detainee may send mail to, and receive mail from any family member, significant person or other person nominated by the young detainee by written notice given to the director-general.

(3) For chapter 8, subsection (2) is taken to provide entitlements for each young detainee in relation to mail.



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(4) However, the director-general may give directions denying or limiting the sending or receiving of mail by a young detainee if the director-general suspects on reasonable grounds that—

(a) the mail may—

(i) undermine security or good order at a detention place; or

(ii) revictimise a victim; or

(iii) circumvent any process for investigating complaints or reviewing decisions under this Act; or

(iv) have the purpose of causing community distress; or

(v) cause harm to the young detainee; or

(b) the direction is necessary and reasonable to safeguard the best interests of the young detainee.

(5) Also, subsections (1) and (2) are subject to—

(a) section 201 (Monitoring ordinary mail); and

(b) section 202 (Monitoring protected mail); and

(c) any operating procedure mentioned in subsection (6).

(6) An operating procedure may include provision regulating the following in relation to young detainees' mail:

(a) the way mail is sent or received;

(b) the provision of writing and other material for sending mail;

(c) the storage, and return to the detainee, of mail for which a direction is given under subsection (4).



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## 176 News and education

(1) The director-general must ensure, as far as practicable, that young detainees have reasonable access to—

(a) newspapers, radio and television broadcasts and other mass media (including the internet) for news and information; and

(b) a library or library service; and

(c) education or training designed to meet the young detainee's individual needs.

(2) The director-general must, as part of a young detainee's case management plan, approve a young detainee participating in academic, vocational or cultural education or training if satisfied it would benefit the young detainee in any of the following ways:

(a) by providing the young detainee with suitable vocational skills;

(b) by promoting the young detainee's rehabilitation or reintegration into society;

(c) by contributing satisfactorily to the young detainee's personal development.

(3) For chapter 8, participation in education or training approved under subsection (2) is taken to be an entitlement for the young detainee in relation to news and education.

## 177 Visits by family members etc

(1) The director-general must ensure that each detention place has suitable facilities for young detainees to receive visits from family members and significant people.

(2) One family member or significant person may visit a young detainee for at least 1 hour each week.

*Note* A young detainee has a right to reasonable opportunities to receive visits from family members and significant people (see s 141 (1) (g)).



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(3) For chapter 8, subsection (2) is taken to provide an entitlement for each young detainee in relation to visits by family members.

(4) However, the director-general may give directions denying or limiting a visit mentioned in subsection (2) if the director-general suspects on reasonable grounds that—

(a) the visit may—

(i) undermine security or good order at a detention place; or

(ii) revictimise a victim; or

(iii) circumvent any process for investigating complaints or reviewing decisions under this Act; or

(iv) have the purpose of causing community distress; or

(v) cause harm to the young detainee; or

(b) the direction is necessary and reasonable to safeguard the best interests of the young detainee.

(5) Also, this section is subject to division 6.6.5 (Access to detention places).

## 178 Contact with accredited people

(1) The director-general must ensure that a young detainee has adequate opportunities for contact with an accredited person, whether by telephone or mail or by a visit by an accredited person.

*Note* ***Accredited person***—see s 137.

(2) For chapter 8, subsection (1) is taken to provide an entitlement for each young detainee in relation to contact with an accredited person.



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(3) However, the director-general may give directions denying or limiting a young detainee's contact with an accredited person if the director-general suspects on reasonable grounds that the contact may—

(a) undermine security or good order at a detention place; or

(b) circumvent any process for investigating complaints or reviewing decisions under this Act.

(4) Also, this section is subject to division 6.6.5 (Access to detention places).

## 179 Visits—protected communications

The director-general must not listen to, or record, a communication at a visit between a young detainee and any of the following people:

(a) a lawyer representing the young detainee;

(b) an official visitor;

(c) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(d) the ombudsman;

(e) a person prescribed by regulation.

*Note 1* Electronic communications between a young detainee and a person mentioned in this section must not be monitored, see s 200.

*Note 2* For restrictions on monitoring mail between a young detainee and a person mentioned in this section, see s 202.

## 180 Health care

(1) The director-general must ensure that—

(a) young detainees have a standard of health care equivalent to that available to other people in the ACT; and



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(b) arrangements are made to ensure the provision of appropriate health services for young detainees; and

(c) conditions in detention promote the health and wellbeing of young detainees; and

(d) as far as practicable, young detainees are not exposed to risks of infection.

*Note* The director-general may direct that a young detainee be transferred to a health facility (see s 109).

(2) In particular, the director-general must ensure that young detainees have access to—

(a) regular health checks; and

(b) timely treatment where necessary, particularly in urgent circumstances; and

(c) hospital care where necessary; and

(d) as far as practicable—

(i) specialist health services from health practitioners; and

(ii) necessary health care programs, including rehabilitation programs.

*Note* The director-general may also ask for a health report about a young detainee (see s 186).

(3) For chapter 8, subsections (1) and (2) are taken to provide an entitlement for each young detainee in relation to health care.

(4) A regulation may make provision in relation to health services for young detainees, including provision about the following:

(a) the provision of health service clinics for young detainees;

(b) appointments for young detainees with health practitioners;

(c) rehabilitation for young detainees who suffer personal injury arising out of or in the course of their detention;



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(d) security arrangements for young detainees visiting health practitioners or health facilities, particularly outside detention places.

(5) For chapter 8, a young detainee's entitlement in relation to health care includes anything expressed to be an entitlement in a regulation made for subsection (4).

## 181 Director-general's consent to medical treatment for young detainees

(1) This section applies if—

(a) a young detainee is a child or young person; and

(b) the young detainee needs medical treatment that requires the consent of a person who has daily care responsibility for the young detainee; and

(c) the director-general does not have daily care responsibility for the young detainee; and

(d) despite reasonable inquiries, the director-general is unable to locate a person who has daily care responsibility for the young detainee.

(2) The director-general may consent to medical treatment for the young detainee if delaying the treatment until a person who has daily care responsibility for the young detainee can be located would be detrimental to the young detainee's health.

(3) To remove any doubt, this section does not affect any right of a child or young person to consent to their own health care treatment.



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## 182 Injury etc—notifying people responsible for or nominated by young detainees

(1) This section applies if a young detainee has a condition that requires—

(a) clinical care for not less than 24 hours; or

(b) the young detainee's transfer under section 109 (Transfers to health facilities); or

(c) anything else prescribed by regulation.

(2) If the young detainee is under 18 years old, the director-general must take reasonable steps to tell a person who has daily care responsibility or long-term care responsibility for a young detainee about the condition.

(3) If the director-general and another person share daily care responsibility or long-term care responsibility for the young detainee, the director-general must act under subsection (2) in relation to the other person.

(4) If the young detainee is 18 years old or older, the director-general must take reasonable steps to tell the young detainee's nominated person about the condition.

## 183 Religious, spiritual and cultural needs

(1) The director-general must ensure, as far as practicable, that provision is made at detention places for the religious, spiritual and cultural needs of young detainees.

**Examples—religious, spiritual or cultural needs**

1 observances and practices relating to religious or spiritual beliefs, including the spiritual beliefs of Aboriginal or Torres Strait Islander people

2 observances or practices arising because a person belongs to a particular culture



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(2) In particular, the director-general must ensure, as far as practicable, that young detainees have reasonable access to—

(a) ministers of religion and other people with standing in a particular culture whom young detainees wish to see for religious, spiritual or cultural purposes; and

(b) religious services at the detention place; and

(c) books and other articles associated with their religious, spiritual or cultural practices.

(3) However, the director-general may give directions denying or limiting a young detainee's access under subsection (1) or (2) if the director-general suspects on reasonable grounds that it may—

(a) undermine security or good order at a detention place; or

(b) revictimise a victim; or

(c) circumvent any process for investigating complaints or reviewing decisions under this Act; or

(d) have the purpose of causing community distress.

(4) A young detainee must not be required to receive a visit from anyone representing a particular religion, spiritual belief or culture, or attend any related service or practice, if the young detainee does not wish to do so.

(5) For chapter 8, subsections (1) and (2) are taken to provide an entitlement for each young detainee in relation to religious, spiritual and cultural needs.

(6) In this section:

***minister of religion*** means—

(a) a person registered under the *Marriage Act 1961* (Cwlth), part 4.1 (Authorised celebrants); or

(b) a person prescribed by regulation.



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# Part 6.6 Management and security

## Division 6.6.1 Management and security—general

### 184 Compliance with director-general's directions

A young detainee must comply with any direction given under the criminal matters chapters to the young detainee by the director-general.

### 185 Register of young detainees

(1) The director-general must keep a register containing details of each young detainee at a detention place.

(2) The register must include the following details in relation to each young detainee:

(a) the young detainee's full name, including any assumed name;

(b) the young detainee's age and date of birth;

(c) the young detainee's sex;

*Note* For transgender and intersex young detainees, see s 189.

(d) the authority for the detention of the young detainee;

(e) the period of authorised detention;

(f) for a young detainee under a sentence of imprisonment—details of the sentence, including any combination sentence;

(g) the current place of detention;

(h) the security classification for the young detainee;

(i) the case management plan (if any) for the young detainee;

(j) details of any known condition of the young detainee that requires, or is likely to require, a health service;



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(k) details of anything taken from the young detainee under section 158 (Identification of young detainees);

(l) details of property the young detainee has at the detention place;

(m) for a young detainee who is under 18 years old—details of people who have daily care responsibility, or long-term care responsibility, for the young detainee and details of notifications under this Act of those people;

(n) for a young detainee who is 18 years old or older—details of a person nominated by the young detainee (the ***nominated person***) to whom the director-general can give any notifications required under—

(i) section 113 (Transfer—notifying people responsible for or nominated by young detainees); or

(ii) section 157 (Detention—notifying people responsible for or nominated by young detainees); or

(iii) section 182 (Injury etc—notifying people responsible for or nominated by young detainees); or

(iv) section 207 (2) (c) (Notice of segregation directions—safe room and other); or

(v) section 237 (5) (c) (Alcohol and drug testing of young detainees); or

(vi) section 251 (Notice of strip and body searches—person responsible for or nominated by young detainee);

(o) for a young detainee who is 18 years old or older—details of any notifications given to the young detainee's nominated person;



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(p) anything else the director-general considers necessary or appropriate for the proper management of the young detainee.

**Examples—other things director-general may consider necessary or appropriate**

1 young detainee's nutritional or health needs

2 young detainee's need for spectacles, contact lens, crutches, prosthesis or other artificial aids

3 young detainee's language or literacy difficulties

4 any cultural background or religious affiliation identified by the young detainee

## 186 Health reports

(1) For the criminal matters chapters, the director-general may ask a relevant director-general for a written report about a young detainee's health.

(2) The relevant director-general must comply with the request as soon as practicable.

(3) The relevant director-general's report must include personal health information about the young detainee that is in a health record—

(a) in the relevant director-general's custody; or

(b) to which the relevant director-general has access through any arrangement with another director-general.

(4) The director-general must ensure that a treating doctor assesses the report from a relevant director-general and includes a statement of the young detainee's condition (the ***health schedule***) in the young detainee's case management plan (if any).



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(5) The health schedule must include—

(a) a summary of—

(i) the young detainee's condition and health risks, including any likelihood of the condition resulting in a medical emergency or the onset of significant health problems and any associated symptoms; and

(ii) a treatment regime for the young detainee; and

(b) details of any medicine approved by the director-general under section 187 for use by the young detainee.

**Examples—s (5)**

1 Young detainee D has diabetes. The health schedule for D explains the type of diabetes, the treatment required, any likely medical emergency or significant health problem and the associated symptoms, such as hypoglycaemia.

2 Young detainee P has epilepsy. The health schedule for P explains the type of epilepsy, the treatment required, and the symptoms and consequences of any failure to maintain the treatment regime.

(6) A youth detention policy or operating procedure may include provision in relation to the health schedule, including provision in relation to any of the following:

(a) the content of the schedule and, in particular, any statement about the young detainee's health risks and treatment regime;

(b) the people who may access the health schedule and the circumstances for access.

(7) The director-general must ensure that the relevant director-general's report and the health schedule is available only to people authorised by the director-general.

(8) In this section:

***health record***—see the *Health Records (Privacy and Access) Act 1997*, dictionary.



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***personal health information***—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

***relevant director-general*** means a director-general whose administrative unit is responsible for any provision of the following Acts:

(a) the *Corrections Management Act 2007*;

(b) the *Crimes (Sentence Administration) Act 2005*;

(c) the *Disability Services Act 1991*;

(d) the *Health Act 1993*;

(e) the *Mental Health Act 2015*.

*Note* Compliance with a request under this section does not involve a contravention of a privacy principle under the *Health Records (Privacy and Access) Act 1997* (see that Act, s 5).

## 187 Use of medicines

(1) The director-general may approve the use of a medicine, other than a prescription only medicine, by a young detainee.

*Note* The taking of an unauthorised medicine by a young detainee is a behaviour breach (see s 287).

(2) The director-general may seek the advice of a treating doctor before approving the use of a medicine, other than a prescription only medicine, by a young detainee.

(3) If the director-general approves the use of a medicine by a young detainee, the director-general must ensure that the details of the approval, and the reasons for it, are recorded in relation to the young detainee in the register kept under section 185.

(4) In this section:

***prescription only medicine***—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 11.



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## 188 Case management plans—scope etc

(1) The director-general—

(a) must maintain an individual case management plan for each young detainee other than a young remandee; and

(b) may maintain an individual case management plan for a young detainee who is a young remandee.

(2) In deciding whether to maintain a case management plan for a young remandee, the director-general—

(a) must consider the following:

(i) the period of remand;

(ii) the young remandee's age and development;

(iii) the young remandee's educational needs;

(iv) any special needs of the young remandee; and

(b) may consider any other relevant matter.

(3) A case management plan for a young detainee must—

(a) outline education and training and activities for the young detainee; and

(b) be based on an assessment of the needs, capacities and disposition of the young detainee; and

(c) be consistent with the resources available to the director-general to manage the young detainee; and

(d) include provision to ensure that adequate plans are made for the young detainee's return to community life at the end of the detention, taking into account the young detainee's needs.



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## 189 Transgender and intersex young detainees—sexual identity

(1) This section applies to a transgender or intersex young detainee.

(2) On admission to a detention place—

(a) the young detainee may tell the director-general the sex the young detainee chooses to be identified with; or

(b) if the young detainee fails to make a choice under paragraph (a)—the director-general may choose the sex the young detainee is to be identified with having regard to the presentation of the young detainee on admission to the place.

*Note* ***Fail*** includes refuse, see the Legislation Act, dict, pt 1.

(3) The director-general may, on application by the young detainee, approve a change in the sex the young detainee chooses to be identified with, having regard to any report obtained under subsection (4) or (5).

(4) Before making a decision under subsection (2) (b) or (3), the director-general must obtain a report by a non-treating doctor or other non-treating health practitioner about the young detainee's sexual identity.

(5) The director-general may also obtain a report by a non-treating doctor or non-treating health practitioner about the young detainee's sexual identity chosen under subsection (2) (a) if the director-general believes on reasonable grounds that obtaining the report—

(a) is in the best interests of the young detainee; and

(b) is necessary to make a decision in relation to the young detainee's placement or case management.

(6) The director-general must—

(a) give the young detainee written notice of a decision by the director-general under subsection (2) or (3); and



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(b) ensure that the young detainee's sex chosen under this section is entered in the register of young detainees.

(7) For criminal matters chapters, the sex of the young detainee is taken to be the young detainee's sex entered in the register of young detainees under subsection (6) (b).

**Examples—effect of this section**

The conduct of searches of the young detainee, and the allocation of accommodation and hygiene facilities for the young detainee, would be on the basis that the young detainee was a person of the sex chosen and entered in the register of young detainees.

*Note* The young detainee may require that either a male or female conduct a search (see s 250 (2) (Searches—transgender and intersex young detainees)).

## 190 Security classification—basis etc

(1) The director-general—

(a) must give a young detainee a security classification; and

(b) may review the classification at any time.

(2) When deciding a young detainee's security classification, the director-general must consider the following:

(a) the reason for the detention, including the nature of any offence for which the young detainee is detained;

(b) the risks posed by the young detainee if the young detainee were to escape;

(c) the risk of the young detainee escaping;

(d) the risks posed by the young detainee while at a detention place;

(e) the risks to the young detainee of being accommodated with particular young detainees or in particular areas at a detention place;

(f) any other matter prescribed by regulation.



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(3) The director-general may also consider anything else the director-general considers relevant.

(4) The security measures to which a young detainee is subject under a security classification must be the minimum necessary to ensure secure detention of the young detainee.

## 191 Property of young detainees

(1) The director-general may allow a young detainee's property to be brought into a detention place.

(2) However, the director-general may give directions imposing conditions in relation to the property, including conditions in relation to—

(a) the nature, amount and location of property that may be held by a young detainee at the place; and

(b) the use of the property.

(3) The director-general must ensure that the register of young detainees includes details of the property each young detainee has at a detention place.

(4) A youth detention policy may make provision in relation to a young detainee's property, including provision in relation to the following:

(a) storage of the property;

(b) access to, and use of, the property;

(c) transfer of the property;

(d) compensation for loss of, or damage to, the property;

(e) return of the property to the young detainee.



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(5) In this section:

***young detainee's property*** does not include a prohibited thing.

*Note* Pt 7.9 (Seizing property) provides generally for the seizure, forfeiture and return of property.

## 192 Possession of prohibited things

(1) A young detainee commits an offence if the young detainee possesses a prohibited thing.

Maximum penalty: 5 penalty units.

(2) Subsection (1) does not apply if the director-general approves the young detainee's possession of the thing.

## 193 Mandatory reporting of threats to security etc at detention place

(1) This section applies if—

(a) an adult who works or provides services at a detention place (whether paid or unpaid) suspects on reasonable grounds that a young detainee or anyone else at the detention place—

(i) poses a significant threat to security or good order at the detention place; or

(ii) has something concealed on him or her that is a prohibited thing or that may be used by the young detainee in a way that may involve a risk to the personal safety of anyone at the detention place; and



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(b) the person's reasons for the suspicion arise from information obtained by the person during the course of, or because of, the person's work or providing of services at the detention place.

**Examples—people working or providing services at detention place**

1 a youth detention officer
2 a health practitioner
3 a community-based youth worker
4 a teacher

(2) The person must, as soon as practicable after forming the suspicion, report to the director-general—

(a) the name or description of the young detainee; and

(b) the reasons for the person's suspicion.

## 194 Trust accounts of young detainees

(1) The director-general must ensure that money belonging to a young detainee is held for the detainee in a trust account.

(2) The director-general may deduct amounts from a young detainee's trust account for payment of any fine or reparation that must be paid as a result of disciplinary action against the young detainee.

(3) A regulation may make provision in relation to the operation or maintenance of trust accounts.

(4) In this section:

***disciplinary action***—see section 317.

## 195 Register of searches and uses of force

(1) The director-general must keep a register of—

(a) searches under any of the following:

(i) section 254 (Strip searches on admission to detention place);



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(ii) section 258 (Strip searches directed by director-general);

(iii) section 264 (Body searches directed by director-general);

(iv) section 275 (Searches—premises and property generally);

(v) section 276 (Searches of young detainee cells—privileged material);

(vi) section 277 (Searches of young detainee cells—suspected privileged material); and

(b) incidents involving the use of force under division 6.6.4.

(2) For subsection (1) (a), the register must contain the following details in relation to each search:

(a) the name of the young detainee searched;

(b) the reason for the search;

(c) when and where the search was conducted;

(d) the name of each person present at any time during the search;

(e) if, under section 260 (4), section 266 (5) or section 270 (4), a requirement for a youth detention officer or assistant to be the same sex as the young detainee was not complied with—the director-general's reasons for believing the requirement did not apply;

(f) details of anything seized during the search;

(g) details of any force used for conducting the search, and why force was used;

(h) anything else prescribed by regulation.

(3) For subsection (1) (b), the register must include details of each incident, including the circumstances, the decision to use force and the force used.



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(4) The register may contain any other details the director-general considers relevant.

(5) The register must be available for inspection by any of the following:

(a) a judge;

(b) a magistrate;

(c) an official visitor;

(d) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(e) the ombudsman;

(f) a person prescribed by regulation.

(6) The public advocate must inspect the register at least once every 3 months.

## Division 6.6.2 Monitoring

### 196 Disapplication of Listening Devices Act

The *Listening Devices Act 1992* does not apply in relation to anything done at a detention place.

### 197 Monitoring—general considerations

In exercising a function under this division, the director-general must ensure, as far as practicable, that the following are balanced appropriately:

(a) the need to protect the safety of young detainees, authorised people, other people who work at or visit detention places, and the community;

(b) the need for security and good order at detention places;

(c) the benefits of young detainees maintaining contact with the community outside detention places;



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(d) the need to protect the privacy of young detainees;

(e) the need to detect prohibited things entering, at, or leaving detention places;

(f) the need to prevent intimidation and corruption at detention places, and the commission of offences;

(g) anything else the director-general believes on reasonable grounds to be relevant.

## 198 Notice of monitoring

The director-general must take reasonable steps to ensure that each person who enters a detention place is aware that the person may be monitored, by people and electronically, and that the person's actions and voice may be recorded.

## 199 Monitoring at detention places

The director-general may arrange for any part of a detention place to be monitored for any activity, including the movement of anyone at the place.

**Examples—monitoring**

direct viewing, closed-circuit television coverage and the use of other devices for detecting movement

## 200 Monitoring telephone calls etc

(1) This section applies in relation to an electronic communication with a young detainee, other than a protected electronic communication.

(2) The director-general may do either or both of the following in relation to the communication:

(a) monitor the communication;

(b) record the communication.



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(3) The director-general must tell the parties to the communication that the communication might be monitored and recorded.

(4) If the communication reveals information about the commission of an offence, the director-general must give the information to the chief police officer.

(5) In this section:

***electronic communication*** means communication by—

(a) telephone, email or fax; or

(b) any other electronic means.

***protected electronic communication*** means an electronic communication between a young detainee and any of the following:

(a) a lawyer representing the young detainee;

(b) an official visitor;

(c) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(d) the ombudsman;

(e) a person prescribed by regulation.

## 201 Monitoring ordinary mail

(1) The director-general may open and search a young detainee's mail, other than protected mail.

(2) The director-general may read a young detainee's ordinary mail only if the director-general suspects on reasonable grounds that the mail—

(a) may undermine security or good order at a detention place; or

(b) may revictimise a victim; or

(c) may circumvent any process for investigating complaints or reviewing decisions under this Act; or



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(d) may not be in the best interests of the young detainee.

(3) However, the director-general may make a youth detention policy or operating procedure in relation to reading a random selection of young detainees' ordinary mail.

(4) In this section:

***ordinary mail*** means mail other than protected mail.

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

(a) a lawyer representing the young detainee;

(b) an official visitor;

(c) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(d) the ombudsman;

(e) a person prescribed by regulation.

***search*** includes search—

(a) with any device using electronic or other technology; and

(b) by physical means; and

(c) with the assistance of a search dog.

## 202 Monitoring protected mail

(1) The director-general may open and search a young detainee's protected mail in the young detainee's presence if the director-general suspects on reasonable grounds that the mail contains—

(a) something that may physically harm the addressee; or

(b) a prohibited thing.

(2) However, the director-general must not read a young detainee's protected mail without the young detainee's written consent.



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(3) In this section:

***search***—see section 201.

### 203 Mail searches—consequences

(1) Subject to section 280 (Seizing mail etc), a young detainee's mail, once searched, must be delivered to the addressee as soon as practicable.

(2) If a search of a young detainee's mail reveals information about, or evidence of the commission of an offence, the director-general must give the information to the chief police officer.

## Division 6.6.3 Segregation

## Subdivision 6.6.3.1 General

### 204 Definitions—div 6.6.3

In this division:

***external reviewer*** means a person appointed as an external reviewer under section 309.

***health segregation direction*** means a segregation direction given under section 214.

***safe room segregation direction*** means a direction under section 209.

***segregation***, of a young detainee—

(a) means the restriction or denial of the young detainee's opportunity—

(i) to go into, or be in, a particular part of a detention place; or

(ii) to associate with other young detainees; and

(b) includes separate confinement.



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***segregation direction*** means—

(a) for division 6.6.3, a direction under any of the following:

(i) section 209 (Segregation—safe room);

(ii) section 212 (Segregation—safety and security);

(iii) section 213 (Segregation—protective custody);

(iv) section 214 (Segregation—health etc); and

(b) for subdivision 6.6.3.4, a direction under any of the following:

(i) section 212 (Segregation—safety and security);

(ii) section 213 (Segregation—protective custody);

(iii) section 214 (Segregation—health etc).

## 205 Purpose of segregation under div 6.6.3

To remove any doubt, segregation under this division must not be used for punishment or disciplinary purposes.

## 206 Segregation not to affect minimum living conditions

(1) The segregation of a young detainee under this division is not to affect the standards applying to the young detainee under section 141 (Detention places—minimum living conditions).

(2) However, subsection (1) does not prevent the application of the standards in a way that is necessary and reasonable for the purpose of the segregation.

## 207 Notice of segregation directions—safe room and other

(1) If the director-general gives a segregation direction, the director-general must prepare a notice—

(a) stating the direction; and

(b) explaining why the direction was given; and



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(c) stating when the direction takes effect; and

(d) stating how long the direction lasts; and

(e) explaining that the direction may be reviewed or revoked—

(i) for a safe room segregation direction—under section 211 (Review of safe room segregation directions); or

(ii) for another segregation direction—under subdivision 6.6.3.4 (Review of certain segregation directions).

(2) A notice under subsection (1) must be given as soon as practicable to—

(a) the young detainee; and

(b) if the young detainee is under 18 years old—a parent or someone who has daily care responsibility, or long-term care responsibility, for the young detainee; and

(c) if the young detainee is 18 years old or older—the young detainee's nominated person; and

(d) the public advocate.

## Subdivision 6.6.3.2 Safe room segregation

### 208 Designation of safe rooms

(1) The director-general may, in writing, declare a part of a detention place to be a safe room.

(2) The director-general may declare a part of a place under subsection (1) only if satisfied that—

(a) its design will minimise the harm that a young detainee can do to himself or herself while in the room; and



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(b) it allows monitoring of, and communication with, the young detainee by the director-general and health practitioners (other than non-treating health practitioners).

## 209 Segregation—safe room

(1) The director-general may direct that a young detainee be segregated from other young detainees by separate confinement in a safe room if—

(a) the director-general believes on reasonable grounds that the segregation is necessary to prevent an imminent risk of the young detainee harming himself or herself; and

(b) the director-general has—

(i) tried less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways have not been successful; or

(ii) considered less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways were not appropriate.

(2) When considering whether to make the direction, the director-general must have regard to the young detainee's age, sex, maturity, cultural identity physical and mental health and any history of abuse.

(3) The director-general may give the direction at any time, on the director-general's own initiative.

(4) The director-general must revoke the direction if the director-general believes on reasonable grounds that the grounds for making the direction no longer exist.



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## 210 Safe room segregation directions—privacy

(1) The confining of a young detainee under a safe room segregation direction, and any force used to compel compliance with the direction, must not be done in the presence or sight of another young detainee.

(2) However, subsection (1) does not apply if the director-general believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the young detainee or someone else; and

(b) compliance with subsection (1) would exacerbate the threat.

## 211 Review of safe room segregation directions

(1) The director-general must review a safe room segregation direction—

(a) after it has been in effect for 2 hours; and

(b) at the end of every subsequent 2 hour period for which it is in effect.

(2) When reviewing a direction under subsection (1) (b), the director-general must—

(a) seek the advice of a health practitioner (other than a non-treating health practitioner) about the action the director-general should take under subsection (4); and

(b) have regard to that advice in deciding what action to take.

(3) The director-general may also review a safe room segregation direction at any other time, on the director-general's own initiative or on request by the young detainee.

(4) After reviewing a safe room segregation direction under subsection (1) or (3), the director-general must do 1 of the following:

(a) confirm the direction;



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(b) make a further safe room segregation direction if the grounds for making the direction exist;

(c) revoke the direction under section 209 (4);

(d) make a direction under section 109 that the young detainee be transferred to a health facility.

(5) To remove any doubt, the director-general may make more than 1 further safe room segregation direction after a review.

## Subdivision 6.6.3.3 Other segregation

### 212 Segregation—safety and security

(1) The director-general may direct that a young detainee be segregated from other young detainees if the director-general believes on reasonable grounds that the segregation is necessary or prudent to ensure—

(a) the safety of anyone else at a detention place; or

(b) security or good order at a detention place.

(2) When making a direction under this section, the director-general must also have regard, as far as practicable, to any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young detainee.

(3) The director-general must revoke the direction if the director-general believes on reasonable grounds that the protection mentioned in subsection (1) is no longer necessary or prudent.

### 213 Segregation—protective custody

(1) The director-general may direct that a young detainee be segregated from other young detainees if the director-general believes on reasonable grounds that the segregation is necessary or prudent to protect the young detainee's safety.



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(2) The director-general may give the direction at any time, on the director-general's own initiative or on request by the young detainee.

(3) The director-general must revoke the direction if the director-general believes on reasonable grounds that the protection mentioned in subsection (1) is no longer necessary or prudent.

## 214 Segregation—health etc

(1) The director-general may direct that a young detainee be segregated from other young detainees if the director-general believes on reasonable grounds that the segregation is necessary or prudent—

(a) to assess the young detainee's physical or mental health; or

(b) to protect anyone (including the young detainee) from harm because of the young detainee's physical or mental health; or

(c) to prevent the spread of disease.

(2) The director-general must revoke the direction if the director-general believes on reasonable grounds that the purpose mentioned in subsection (1) for making the direction is no longer necessary or prudent.

(3) When acting under subsection (1) or (2), the director-general must have regard to any advice by a treating doctor given in relation to the segregation of the young detainee.

## 215 Interstate segregated detainees transferred to ACT

(1) This section applies if—

(a) an interstate segregation direction applies to a young detainee; and

(b) the young detainee is transferred (however described) into custody at a detention place in the ACT.



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(2) Despite the transfer, the interstate segregation direction—

(a) continues to apply in relation to the young detainee—

(i) as if it were a segregation direction under this division; and

(ii) with any necessary changes, and any change prescribed by regulation; and

(b) subject to this division, ends 3 days after the day the young detainee is taken into custody at the detention place.

(3) In this section:

***interstate segregation direction*** means a direction or order (however described) that—

(a) corresponds substantially to a segregation direction under this division; and

(b) is in force under a law of the Commonwealth, a State or another Territory that is declared by regulation to be a corresponding law for this section.

## Subdivision 6.6.3.4 Review of certain segregation directions

### 216 Meaning of *segregation direction*—subdiv 6.6.3.4

In this subdivision:

***segregation direction*** means a direction under any of the following:

(a) section 212 (Segregation—safety and security);

(b) section 213 (Segregation—protective custody);

(c) section 214 (Segregation—health etc).



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## 217 Internal review of segregation directions

(1) The director-general—

(a) may review a segregation direction (the ***original segregation direction***) at any time, on the director-general's own initiative or on request by the young detainee; and

(b) must review the direction before any transfer of the young detainee to a correctional centre or elsewhere; and

(c) must review the direction—

(i) before the end of 7 days after it has been in force (the ***initial review***); and

(ii) before the end of 7 days after the day of the initial review; and

(iii) before the end of each subsequent period of 14 days while it remains in force; and

(d) for a health segregation direction—must review the direction on request by a treating doctor.

(2) After reviewing the original segregation direction, the director-general may—

(a) confirm the direction; or

(b) make a further segregation direction under the same provision that the original segregation direction was made under if the grounds for making the direction exist; or

(c) revoke the original segregation direction under section 212 (3), section 213 (3) or section 214 (2).

(3) When acting under subsection (2) in relation to a health segregation direction, the director-general must have regard to any advice by a treating doctor given in relation to the segregation.



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(4) To remove any doubt, the director-general may make more than 1 further segregation direction after a review.

## 218 End of segregation directions

Unless revoked sooner, a segregation direction ends at the end of—

(a) 28 days after the day it is given; or

(b) if a further segregation direction has been given after review under section 217—90 days after the day the further segregation direction, or latest further segregation direction, is given.

## 219 Application for review of segregation directions

(1) A young detainee may apply to an external reviewer for a review of a segregation direction under section 220.

*Note* If a form is approved under s 886 for this provision, the form must be used.

(2) Subject to any decision by the external reviewer under that section, the application does not affect the segregation of the young detainee under the segregation direction under review.

## 220 External review of segregation directions

(1) On application under section 219, an external reviewer may—

(a) review the segregation direction; or

(b) refuse to review the direction.

(2) Chapter 9 (Criminal matters—conduct of disciplinary reviews) applies, with any necessary changes, in relation to the review as if it were a review under that chapter.

(3) After completing a review, the external reviewer may—

(a) confirm the direction under review; or



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(b) give any direction the director-general may give under the section authorising the direction under review, either by—

(i) amending the direction under review; or

(ii) setting aside the direction under review and making a direction in substitution for the direction set aside.

## 221 Notice of decision about segregation direction

(1) This section applies if an external reviewer has made a decision under section 220 in relation to an application by a young detainee to review a segregation direction.

(2) The external reviewer must give prompt written notice of the external reviewer's decision to—

(a) the young detainee; and

(b) if the young detainee is under 18 years old—a parent or someone who has daily care responsibility, or long-term care responsibility, for the young detainee; and

(c) if the young detainee is 18 years old or older—the young detainee's nominated person; and

(d) the director-general.

(3) If the external reviewer refuses to review the segregation direction, the notice must include the reasons for the refusal.

*Note* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the court, the making of the application does not affect the operation of the decision or prevent its implementation (see s 16).



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## Subdivision 6.6.3.5 Register of segregation directions

### 222 Register of segregation directions

(1) The director-general must keep a register containing the following details in relation to each segregation direction given:

(a) the name of the young detainee who is subject to the direction;

(b) the reason for the direction;

(c) the period for which the direction is in effect;

(d) details of people notified of the segregation direction under section 207 (Notice of segregation directions—safe room and other);

(e) details of any force used to compel compliance with the direction, and why force was used;

(f) details of any confirmation of a segregation direction, or of any other direction, made under subdivision 6.6.3.4 (Review of certain segregation directions);

(g) anything else prescribed by regulation.

(2) The register may contain any other details the director-general considers relevant.

(3) The register must be available for inspection by any of the following:

(a) a judge;

(b) a magistrate;

(c) an official visitor;

(d) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(e) the ombudsman;

(f) a person prescribed by regulation.



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## Division 6.6.4 Use of force

### 223 Managing use of force

(1) The director-general must make arrangements to ensure, as far as practicable, that the use of force in relation to the management of young detainees is always—

(a) a last resort; and

(b) in accordance with this division.

**Example**

adoption of a methodology or protocol for the graduated use of force

(2) The director-general must also ensure, as far as practicable, that—

(a) youth detention officers do not use force in relation to a young detainee without first considering the following:

(i) the young detainee's age, sex, physical and mental health and any history of abuse;

(ii) if the proposed force involves any restraint of the young detainee—the physical and developmental capacity of the young detainee; and

(b) the use of force in relation to a young detainee is not observed by any other young detainee.

(3) However, a youth detention officer need not comply with subsection (2) if, in urgent circumstances, the officer believes on reasonable grounds that doing so would create a risk of injury to the officer, the young detainee or anyone else.

(4) The director-general must give notice to a treating doctor or a nurse if force is used in relation to a young detainee, unless the force is a planned use of restraint when the detainee is—

(a) outside a detention place; and



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(b) being escorted somewhere else.

**Example—planned use of restraint**

using handcuffs on a young offender who has been assessed as being at risk of attempting to escape while being escorted to a dental appointment

(5) The director-general must ensure that a young detainee injured by the use of force under this division is examined as soon as practicable by a treating doctor and that appropriate health care is available to the young detainee.

(6) Without limiting subsection (5), the director-general must give a young detainee the opportunity to be examined by a treating doctor or a nurse after any use of force in relation to the young detainee.

(7) The director-general must make a youth detention policy or operating procedure in relation to the use of force, including provision in relation to the following:

(a) the circumstances, and by whom, force may be used;

(b) the kinds of force that may be used;

(c) the use of restraints.

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

## 224 Authority to use force

A youth detention officer may use force under this division if—

(a) the officer believes on reasonable grounds that the purpose for which force may be used cannot be achieved in another way; and



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(b) the force is necessary and reasonable for any of the following:

(i) to compel compliance with a direction given in relation to a young detainee by the director-general;

(ii) to prevent or stop the commission of an offence or behaviour breach;

(iii) to prevent unlawful damage, destruction or interference with property;

(iv) to defend the person or someone else;

(v) to prevent a young detainee from inflicting self-harm;

(vi) to prevent a young detainee from escaping.

## 225 Application of force

(1) A youth detention officer may use force under this division only if the officer—

(a) gives a clear warning of the intended use of force; and

(b) allows enough time for the warning to be observed; and

(c) uses no more force than is necessary and reasonable in the circumstances; and

(d) uses force, as far as practicable, in a way that reduces the risk of causing injury.

(2) However, the youth detention officer need not comply with subsection (1) (a) or (b) if, in urgent circumstances, the officer believes on reasonable grounds that doing so would create a risk of injury to the officer, the young detainee or anyone else.

**Example—urgent circumstances**

the young detainee is assaulting someone or engaging in self-harm



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## 226 Use of restraint

(1) The use of force under this division includes the use of restraint.

(2) The director-general must ensure, as far as practicable, that the use of force involving a restraint is proportionate to the circumstances, and in particular that—

(a) the circumstances are sufficiently serious to justify the use; and

(b) the kind of restraint is appropriate in the circumstances; and

(c) the restraint is used appropriately in the circumstances.

(3) The director-general must also ensure that restraints are only used under this division—

(a) by youth detention officers trained to use them; and

(b) in accordance with a youth detention policy or operating procedure that applies to their use.

(4) In applying force under this division, a youth detention officer may use a restraint, including any of the following:

(a) body contact;

(b) handcuffs, restraint jackets and other restraining devices;

(c) anything else prescribed by regulation.

## 227 Monthly reports about use of force

The director-general must ensure that, as soon as practicable after the end of each month, a youth detention officer gives the director-general a report summarising the incidents (if any) during the month that involved the use of force in relation to a young detainee.



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## Division 6.6.5 Access to detention places

### 228 Visiting conditions

(1) The director-general may declare conditions that apply in relation to visits to a detention place.

**Examples—conditions declared**

1 the times and duration of visits

2 the number of visitors allowed

3 the circumstances in which visitors may be monitored

(2) A declaration is a disallowable instrument.

*Note 1* The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

*Note 2* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 229 Notice of visiting conditions

(1) The director-general must take reasonable steps to bring the visiting conditions to the attention of visitors at a detention place.

(2) Without limiting subsection (1), the director-general must ensure that—

(a) a notice is prominently displayed at each entrance to the place open to visitors to the effect that visiting conditions apply at the place; and

(b) a copy of the visiting conditions is available for inspection on request by visitors at the place.



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## 230 Taking prohibited things etc into detention place

(1) A person commits an offence if the person—

(a) takes a prohibited thing into a detention place; or

(b) gives a prohibited thing to a young detainee; or

(c) removes a prohibited thing from a detention place.

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

(2) Subsection (1) does not apply to any action approved by the director-general.

(3) In this section:

***give*** includes send.

***prohibited thing*** includes something the person intends a detainee to use for making a prohibited thing or use otherwise in relation to a prohibited thing.

## 231 Directions to visitors

(1) The director-general may, orally or in writing, give a direction to a visitor at a detention place to do, or not do, something if the director-general believes on reasonable grounds that the direction is necessary and reasonable—

(a) to ensure compliance with the visiting conditions; or

(b) for security or good order at a detention place.

*Note* The director-general may also direct a youth detention officer to search a visitor (see s 274).



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(2) A person commits an offence if the person fails to comply with a direction given to the person under this section.

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

(3) An offence against this section is a strict liability offence.

(4) Subsection (2) does not apply if the person takes reasonable steps to comply with the direction.

## 232 Directions to leave detention place etc

(1) The director-general may direct a person at a detention place—

(a) not to enter the place; or

(b) if the person is already in the place—to leave the place.

(2) However, the director-general may give the direction only if—

(a) the director-general suspects on reasonable grounds that—

(i) the person is intoxicated; or

(ii) the person has possession of a prohibited thing; or

(iii) the direction is necessary and reasonable for security or good order at a detention place; or

(iv) the direction is necessary and reasonable to safeguard the best interests of a young detainee; or

**Example—subpar (iv)**

the person is intentionally causing a detainee distress

(b) the person contravenes a direction given to the person under—

(i) section 231 (Directions to visitors); or

(ii) section 256 (Strip searches on admission—directing person to leave); or

(iii) section 268 (Body searches—directing people to leave).



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(3) To remove any doubt, this section applies to a family member or significant person for a young detainee, even if the person has been visiting the young detainee for less than 1 hour.

(4) A person commits an offence if the person fails to comply with a direction given to the person under this section.

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

(5) An offence against this section is a strict liability offence.

(6) Subsection (4) does not apply if the person takes reasonable steps to comply with the direction.

### 233 Removing people from detention place

(1) The director-general may direct a youth detention officer to enforce a direction under section 232 if the person given the direction contravenes the direction.

(2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

## Division 6.6.6 Maintenance of family relationships

### 234 Director-general may allow young child to stay with young detainee

(1) This section applies to a young detainee if—

(a) the young detainee has a child who is under 6 years old and not enrolled in school; and

(b) before being detained, the young detainee was the primary caregiver for the child or was having contact with the child.

(2) The director-general may, by direction, allow the young detainee to have contact with, or care for, the child in a detention place.



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(3) However, the director-general must not give a direction under subsection (2) unless the director-general—

(a) has carried out a care and protection appraisal of the child; and

(b) is satisfied that it is in the best interests of the child for the young detainee to have contact with, or care for, the child in the detention place.

(4) The director-general may make a youth detention policy or operating procedure about the arrangements to apply in relation to a young detainee having contact with, or caring for, a child in a detention place.



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# Part 6.7 Alcohol and drug testing

## Division 6.7.1 General

### 235 Definitions—pt 6.7

In this part:

***drug***—

(a) means—

(i) a controlled drug under the Criminal Code, section 600; or

(ii) a substance prescribed by regulation; but

(b) does not include any of the following:

(i) a drug lawfully supplied, and taken as prescribed or directed, by a health practitioner;

(ii) a drug lawfully supplied and self-administered;

(iii) a drug exempted under section 236 (3).

***non-treating nurse*** means a nurse authorised under section 98.

***positive test sample***—see section 236.

***test sample*** means a sample of breath, saliva, urine, hair, blood, or anything else prescribed by regulation.

### 236 Positive test samples

(1) A person is taken to provide a ***positive test sample*** for alcohol or a drug if, when directed under this Act to provide a test sample—

(a) the person fails to provide a test sample in accordance with the direction; or

*Note* ***Fail*** includes refuse, see the Legislation Act, dict, pt 1.

(b) the person provides an invalid test sample; or



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(c) for a young detainee—the young detainee provides a test sample that shows that the young detainee has taken alcohol or a drug.

(2) However, subsection (1) (a) does not apply if the person has a reasonable excuse for failing to provide the test sample within a reasonable time of the direction being given.

**Examples—reasonable excuse**

1 a medical condition that prevents the person from providing a test sample as directed

2 prescribed medication that may affect test results

(3) The director-general may exempt a drug from the application of this part.

(4) An exemption is a notifiable instrument.

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

(5) In this section:

***invalid***—a test sample provided by a person is ***invalid*** if the person—

(a) tampers, or attempts to tamper, with the test sample; or

(b) otherwise changes, or attempts to change, the results of the test sample.

## Division 6.7.2 Alcohol and drug testing—detainees

### 237 Alcohol and drug testing of young detainees

(1) The director-general may direct a young detainee to provide a stated kind of test sample.

(2) The director-general, a non-treating doctor or a non-treating nurse may give a young detainee a direction about the way the young detainee must provide the test sample.



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(3) However—

(a) a direction under this section must be consistent with any requirement of an operating procedure made for this section; and

(b) only a non-treating doctor or a non-treating nurse may take a blood sample.

(4) A non-treating doctor or non-treating nurse who takes a test sample from a young detainee must give the sample to a youth detention officer.

(5) The director-general must, as soon as practicable after the director-general receives the results of any test conducted on the test sample, give notice of the results to—

(a) the young detainee; and

(b) if the young detainee is under 18 years old—a person who has daily care responsibility or long-term care responsibility for the young detainee; and

(c) if the young detainee is 18 years old or older—a person nominated by the young detainee.

## 238 Effect of positive test sample by young detainee

(1) This section applies if—

(a) a young detainee is directed under this Act to provide a test sample; and

(b) the test sample provided by the young detainee is positive.



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(2) The director-general may have regard to the positive test sample in making any decision in relation to the management of the young detainee under this Act.

**Examples—decisions—s (2)**

1 decisions under s 188 (Case management plans—scope etc) or s 190 (Security classification—basis etc)

2 decisions under ch 8 (Criminal matters—discipline at detention places)

*Note* The taking of alcohol or a drug (in any way) into the body is a behaviour breach (see s 287). The results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate (see s 882).

## Division 6.7.3 Alcohol and drug testing—youth detention officers

### 239 Alcohol and drug testing of youth detention officers

(1) A regulation may make provision in relation to alcohol and drug testing of youth detention officers whose duties bring them into contact with detainees.

(2) In particular, a regulation may make provision in relation to any of the following:

(a) the circumstances for testing, including when and where tests may be conducted;

(b) the conduct of the tests.



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# Part 6.8 Young detainees—leave

## Division 6.8.1 Local leave

### 240 Local leave directions

(1) The director-general may, in writing, direct that a young detainee be taken from a detention place to another place in the ACT for any purpose the director-general considers appropriate.

**Example**

a direction that a young detainee be taken to a place to assist the young detainee's education and training

*Note* Power given under an Act to make a statutory instrument (including a direction) includes power to amend or revoke the instrument (see Legislation Act, s 46 (1)).

(2) In making a decision under subsection (1), the director-general must consider the young detainee's best interests.

(3) A direction is subject to the following conditions:

(a) any condition prescribed by regulation;

(b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—

(i) the director-general believes on reasonable grounds is necessary and reasonable; and

(ii) is stated in the direction.

**Example—condition stated in direction**

a condition that an escort officer escorts the detainee

### 241 Local leave permits

(1) If the director-general gives a young detainee a local leave direction under section 240, the director-general must give the young detainee a written permit (a ***local leave permit***) to be absent from the detention place for the purpose for which the direction was given.



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(2) The director-general may give a young detainee a written permit (also a ***local leave permit***) to be absent from a detention place, and to be in another place in the ACT, for any other purpose the director-general considers appropriate.

**Examples—purposes**

1 to attend an education or training program

2 to attend a health or rehabilitation service

3 for compassionate reasons

4 to attend employment or an interview for employment

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* Power given under an Act to make a statutory instrument (including a direction) includes power to amend or revoke the instrument (see Legislation Act, s 46 (1)).

(3) In making a decision under subsection (2), the director-general must consider the young detainee's best interests.

(4) A local leave permit must state the following:

(a) the purpose for which the leave is granted;

(b) for a permit to attend an educational or training program—the place where the program is being undertaken, and the period for which the leave is granted;

(c) for a permit to attend employment—the place of the employment, and the period for which the leave is granted;

(d) for a permit (other than a permit mentioned in paragraph (b) or (c))—the period, not longer than 7 days, for which the leave is granted;

(e) any conditions to which the leave is subject.

(5) A local leave permit is subject to the following conditions:

(a) any condition prescribed by regulation;



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(b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—

(i) the director-general believes on reasonable grounds is necessary and reasonable; and

(ii) is stated in the permit.

**Example—condition stated in leave permit**

a condition prohibiting association with a particular person or being near a particular place

(6) A local leave permit authorises the young detainee to be absent from the detention place in accordance with the permit—

(a) unescorted; or

(b) if the permit is subject to a condition that an escort officer escort the young detainee—while under escort in accordance with the condition.

## Division 6.8.2 Interstate leave

### 242 Interstate leave permits

(1) The director-general may, by written notice (an ***interstate leave permit***) given to a young detainee, give the young detainee leave to travel to and from, and remain in, another State.

*Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) In making a decision under subsection (1), the director-general must consider the young detainee's best interests.

(3) An interstate leave permit must include the following details:

(a) the State to which the permit applies;

(b) the purpose for which the leave is granted;



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(c) for a permit to attend an educational or training program—the place where the program is being undertaken, and the period for which the leave is granted;

(d) for a permit to attend employment—the place of the employment, and the period for which the leave is granted;

(e) for a permit (other than a permit mentioned in paragraph (c) or (d))—the period, not longer than 7 days, for which the leave is granted.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* Power given under an Act to make a statutory instrument (including an interstate leave permit) includes power to amend or revoke the instrument (see Legislation Act, s 46 (1)).

(4) For subsection (3) (e), the director-general may, before the permit ends (a ***current permit***), decide to extend the current permit for an additional period (an ***extension period***) if—

(a) the date the extension period ends is within 7 days after the day the current permit ends; and

(b) the director-general is satisfied that—

(i) an extension of the current permit is for a purpose for which an interstate leave permit may be granted under this section; and

(ii) appropriate measures are in place to allow the detainee to remain at a particular place in the State to which the permit applies.

(5) The director-general may make a decision under subsection (4) more than once.

*Note* Pt 5.2 (Interstate transfers) deals with the transfer of a young offender from or to the ACT, or through the ACT from a State to another State.



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(6) If the director-general delegates the function mentioned in subsection (4), a delegate who extends a permit that has previously been extended at least 3 times must tell the director-general about the delegate's decision.

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

(7) An interstate leave permit may be issued—

(a) for a young detainee with a high security classification—only if the leave is to enable the young detainee to receive a health service or for a compassionate reason; or

(b) in any other case—for any purpose the director-general believes on reasonable grounds is appropriate.

(8) An interstate leave permit is subject to the following conditions:

(a) any condition prescribed by regulation;

(b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—

(i) the director-general believes on reasonable grounds is necessary and reasonable; and

(ii) is stated in the permit.

**Examples—conditions stated in interstate leave permits**

1 a condition that an escort officer stated in the permit escort the young detainee

2 a condition prohibiting association with a particular person or being near a particular place

## 243 Effect of interstate leave permit

(1) An interstate leave permit for a young detainee authorises the young detainee to be absent from a detention place in accordance with the permit—

(a) unescorted; or



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(b) if the permit is subject to a condition that an escort officer must escort the young detainee—while under escort by the escort officer.

(2) If an interstate leave permit is subject to a condition that the young detainee be escorted by an escort officer, the permit authorises the escort officer to escort the young detainee in accordance with the permit—

(a) to and within the State stated in the permit (whether or not through any other jurisdiction); and

(b) back to the detention place.

## 244 Powers of escort officers

(1) An escort officer escorting a young detainee under an interstate leave permit may, to keep custody of the young detainee under the permit or to arrest the young detainee if the young detainee has escaped—

(a) give the young detainee any direction that the officer believes on reasonable grounds is necessary and reasonable; and

(b) use force in accordance with division 6.6.4 (Use of force).

(2) An escort officer escorting a young detainee under an interstate leave permit may conduct a scanning search, frisk search or ordinary search of the young detainee if the officer suspects on reasonable grounds that the young detainee may be carrying a prohibited thing.

(3) The following provisions apply, with any necessary changes and any changes prescribed by regulation, in relation to a search under this section:

(a) part 7.2 (Searches generally);

(b) part 7.3 (Scanning, frisk and ordinary searches);

(c) part 7.9 (Seizing property).



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## Division 6.8.3 Leave—miscellaneous

### 245 Lawful temporary absence from detention place

(1) This section applies to a young detainee who is absent from a detention place under any of the following:

(a) a direction by the director-general, including a direction under section 109 (Transfers to health facilities) or section 111 (Transfers to correctional centres—under 21 years old);

(b) a local leave permit under section 241;

(c) an interstate leave permit under section 242;

(d) any other authority (however described) prescribed by regulation.

(2) To remove any doubt, the young detainee is—

(a) taken to be in the director-general's custody; and

(b) if under escort by an escort officer—also taken to be in the escort officer's custody.

(3) However—

(a) if a young detainee is transferred to a correctional centre under a direction under section 111 (Transfers to correctional centres—under 21 years old)—the young detainee is taken to be in the director-general's custody only until the young detainee is admitted to the correctional centre; and

*Note* See s 111 (6).

(b) if a young detainee is transferred to a secure mental health facility under a direction under section 109 (Transfers to health facilities)—the young detainee is taken to be in the director-general's custody only—

(i) until the young detainee is admitted to the facility; and



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(ii) if the young detainee is transferred from a secure mental health facility under the *Mental Health Act 2015*, section 144B (Taking person to appear before court)—from when the young detainee is transferred until when the young detainee is returned; and

(iii) if the young detainee is returned to a detention place—when the young detainee is discharged from the facility.

*Note* See the *Mental Health Act 2015*, s 144A (Transfer of custody if person admitted to secure mental health facility) for custody while at a secure mental health facility and s 144B (Taking person to appear before court) for custody when attending court.

(4) In this section:

***admitted*** to a secure mental health facility includes transferred to the facility.

**Example**

A person is transferred to a secure mental health facility at Canberra Hospital from another unit at the hospital.



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# Chapter 7 Criminal matters—search and seizure at detention places

## Part 7.1 Preliminary—ch 7

### 246 Definitions—ch 7

In this chapter:

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

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

(a) a search of the young detainee conducted by quickly running the hands over the young detainee's outer clothing; and

(b) an examination of anything worn or carried by the young detainee that is conveniently and voluntarily removed by the young detainee.

***non-treating doctor*** means a doctor authorised under section 98 (Health practitioners—non-treating functions).

***non-treating nurse*** means a nurse authorised under section 98.

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

(a) requiring the young detainee to remove only the young detainee's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear; and

(b) an examination of anything removed.



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***privileged***—material is ***privileged*** if—

(a) client legal privilege attaches to it; or

(b) it includes a protected confidence under the *Evidence (Miscellaneous Provisions) Act 1991*, division 4.4.3 (Sexual offence proceedings—protection of counselling communications).

***prohibited thing*** means a thing declared to be a prohibited thing under section 148.

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

**Examples—scanning searches**

1 passing a portable electronic or other device over or close to a young detainee

2 requiring a young detainee to pass by or through an electronic or other device

***strip search***, of a young detainee, means a search of the young detainee, or of anything in the young detainee's possession, under section 254 (Strip searches on admission to detention place) or section 258 (Strip searches directed by director-general) and may include—

(a) requiring the young detainee to remove all of the young detainee's clothing; and

(b) an examination of—

(i) the young detainee's body (but not the young detainee's body orifices or cavities); and

(ii) the young detainee's clothing.



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## 247 Relationship with other laws

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



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# Part 7.2 Searches generally

## 248 Searches—intrusiveness

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

(a) is the least intrusive kind of search that is necessary and reasonable in the circumstances; and

(b) is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

**Example**

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

## 249 Searches—use of search dog

(1) The director-general may direct a youth detention officer to use a search dog to assist a youth detention officer in conducting a search under this chapter.

(2) The director-general may give the direction only if the director-general believes on reasonable grounds that the assistance of the dog would minimise the intrusiveness of the search by the youth detention officer.

(3) The youth detention officer and search dog may enter, and remain at any place, to assist in the conduct of a search under this chapter.

(4) An operating procedure may make provision in relation to the use of search dogs under this chapter.

**Examples—provision made by operating procedure**

1 the training and approval of search dogs for use by youth detention officers

2 approvals for youth detention officers to use search dogs



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## 250 Searches—transgender and intersex young detainees

(1) This section applies if a transgender or intersex young detainee is to be searched under this chapter.

(2) For a young detainee who fails to make a choice under section 189 (2) (a) (Transgender and intersex young detainees—sexual identity)—

(a) if the young detainee requires that a male conduct the search, the young detainee is taken, for this chapter, to be male; and

(b) if the young detainee requires that a female conduct the search, the young detainee is taken, for this chapter, to be female.

*Note 1* For the criminal matters chapters, the sex of a young detainee is taken to be the young detainee's sex entered in the register under s 189 (7) (Transgender and intersex young detainees—sexual identity).

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

## 251 Notice of strip and body searches—person responsible for or nominated by young detainee

(1) If a strip search or body search is to be conducted on a young detainee who is younger than 18 years old, the director-general must ensure, as far as practicable, that a person who has daily care responsibility, or long-term care responsibility for the young detainee (other than the director-general) is told about the search—

(a) before the search is conducted; or

(b) if it is impracticable to tell the person before the search—as soon as practicable after the search.

*Note 1* In some circumstances the director-general is a person with daily care responsibility, or long-term care responsibilities, for a young detainee (see div 1.3.2).

*Note 2* A proposed strip or body search need not be conducted in the presence of the person notified (see s 254, s 256 and s 266).



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(2) If a strip search or body search is to be conducted on a young detainee who is 18 years old or older, the director-general must ensure, as far as practicable, that the young detainee's nominated person is told about the search—

(a) before the search is conducted; or

(b) if it is impracticable to tell the person before the search—as soon as practicable after the search.



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# Part 7.3 Scanning, frisk and ordinary searches

## 252 Directions for scanning, frisk and ordinary searches

(1) The director-general may, at any time, direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a young detainee if the director-general believes on reasonable grounds that the search is prudent to ensure security or good order at a detention place.

(2) Also, a youth detention officer may conduct a scanning search, frisk search or ordinary search of a young detainee if the officer suspects on reasonable grounds that the young detainee is carrying—

(a) a prohibited thing; or

(b) something that may be used by the young detainee in a way that may involve—

(i) an offence; or

(ii) a risk to the personal safety of the young detainee or someone else; or

(iii) a risk to security or good order at a detention place.

## 253 Requirements for scanning, frisk and ordinary searches

(1) The youth detention officer who conducts a scanning search, frisk search or ordinary search of a young detainee must—

(a) tell the young detainee about the search and the reasons for the search and ask for the young detainee's cooperation; and

(b) for a frisk search or ordinary search—conduct the search in a private area or an area that provides reasonable privacy for the young detainee; and



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(c) if clothing is seized because of the search—ensure the young detainee is left with, or given, reasonably appropriate clothing to wear.

(2) A frisk search or ordinary search of a young detainee must not be conducted in the presence or sight of—

(a) another young detainee; or

(b) someone else whose presence is not necessary for the search.

(3) A frisk search of a young detainee must be conducted by a youth detention officer of the same sex as the young detainee.

(4) Subsection (3) does not apply if the director-general believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the young detainee or someone else; and

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



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# Part 7.4 Strip searches—young detainees

## 254 Strip searches on admission to detention place

(1) The director-general may direct a youth detention officer to strip search a young detainee if the director-general believes on reasonable grounds that the strip search is necessary for an initial assessment under section 160 (Initial assessment).

(2) The strip search must be conducted in the presence of a person with daily care responsibility, or long-term care responsibility, for the young detainee if—

(a) the young detainee is under 18 years old; and

(b) the director-general believes on reasonable grounds that it is necessary, and in the best interests of the young detainee, for the person to be present; and

(c) the young detainee agrees to the person being present.

(3) The director-general may arrange for the search to be conducted in the presence of a support person for the young detainee if—

(a) the young detainee is 18 years old or older; and

(b) the director-general considers the presence of a support person necessary or desirable because of the young detainee's vulnerability; and

(c) the young detainee agrees to the person being present.

(4) In making a decision under subsection (1) or (2), the director-general must have regard to the young detainee's age, maturity, developmental capacity and any known history.



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## 255 Strip searches of young detainees under 18 years old—no-one with parental responsibility available

(1) This section applies to a strip search to which section 254 (2) applies if—

(a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee cannot be contacted before the search is conducted; or

*Note* For a requirement to contact a person with parental responsibility, see s 251.

(b) no-one who has daily care responsibility, or long-term care responsibility, for the young detainee is available to be present at the search; or

(c) the young detainee does not agree to a person who has daily care responsibility, or long-term care responsibility, for the young detainee being present at the search.

(2) The director-general must ensure that the strip search is conducted in the presence of someone (a ***support person***) who—

(a) the director-general believes on reasonable grounds can support and represent the interests of the young detainee; and

(b) the young detainee agrees should be present at the search.

*Note* In some circumstances the director-general is a person who has daily care responsibility, or long-term care responsibility, for a young detainee (see div 1.3.2).

(3) However, the strip search may continue in the absence of a support person if—

(a) the young detainee does not agree to a support person being present; or

(b) the director-general directs the support person to leave under section 256 (2).



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## 256 Strip searches on admission—directing person to leave

(1) This section applies if a strip search of a young detainee under section 254 (Strip searches on admission to detention place) is being conducted in the presence of—

(a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee; or

(b) a support person under section 254 (3) or section 255 (2).

(2) The director-general may direct the person to leave if the director-general believes on reasonable grounds that the person is preventing or hindering the conduct of the search.

## 257 Removing people from search area

(1) The director-general may direct a youth detention officer to enforce a direction under section 256 (2) if the person given the direction contravenes the direction.

(2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

## 258 Strip searches directed by director-general

(1) The director-general may direct a youth detention officer to strip search a young detainee only if—

(a) the director-general suspects on reasonable grounds that the young detainee has something concealed on the young detainee that—

(i) is a prohibited thing; or

(ii) may be used by the young detainee in a way that may involve an offence, a behaviour breach, a risk to the personal safety of the young detainee or someone else, or a risk to the security at a detention place; and



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(b) a scanning search, frisk search or ordinary search of the young detainee has failed to detect the thing.

(2) To remove any doubt, the strip search need not be conducted in the presence of a person who has daily care responsibility, or long-term care responsibility, for the young detainee.

(3) This section does not apply to a strip search under section 254 (Strip searches on admission to detention place).

## 259 Obligations on youth detention officers before strip searches

(1) This section applies if a youth detention officer proposes to strip search a young detainee.

(2) The youth detention officer must tell the young detainee—

(a) whether the young detainee will be required to remove clothing during the search; and

(b) if the young detainee will be required to remove clothing, why the removal is necessary.

(3) If the young detainee asks why the search is being conducted in a particular way, the youth detention officer must tell the young detainee the reasons.

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

## 260 Youth detention officers at strip searches

(1) A strip search of a young detainee must be conducted—

(a) by a youth detention officer of the same sex as the young detainee; and

(b) in the presence of 1 or more other youth detention officers, each of whom must be the same sex as the young detainee.



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(2) However, the number of youth detention officers present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.

(3) The youth detention officer conducting the search may direct another youth detention officer mentioned in subsection (1) (b) to provide assistance that the conducting officer believes on reasonable grounds is necessary and reasonable for the search.

(4) The requirement in subsection (1) (b) that a youth detention officer be the same sex as the young detainee does not apply if the director-general believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the young detainee; and

(b) compliance with the requirement would exacerbate the threat.

## 261 Strip searches—general rules

(1) The youth detention officer conducting a strip search of a young detainee must conduct the strip search—

(a) in a way that—

(i) provides reasonable privacy for the young detainee; and

(ii) is appropriate, having regard as far as practicable, to the young detainee's sexuality and any known impairment, condition or history; and

(b) as quickly as practicable.

(2) The strip search must be conducted in a private area or an area that provides reasonable privacy for the young detainee.



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(3) The strip search must not be conducted—

(a) in the presence of someone of the opposite sex to the young detainee, other than—

(i) a person present under section 254 (2) or (3) (Strip searches on admission to detention place) or section 255 (Strip searches of young detainees under 18 years old—no-one with parental responsibility available); or

(ii) another youth detention officer present under section 260 (4); or

(b) in the presence or sight of someone else whose presence is not necessary for the search or for the safety of anyone present.

(4) Subject to part 7.8 (Searches—use of force), the strip search must not involve any touching of the young detainee's body by a youth detention officer.

## 262 Strip searches—rules about visual inspection of young detainee's body

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

(2) A strip search of a young detainee must not involve more visual inspection of the young detainee's body than is necessary and reasonable for the search.

(3) Without limiting subsection (2), during the strip search of the young detainee, any visual inspection of the young detainee's genital area, anal area, buttocks and, for a female young detainee, breasts must be kept to a minimum.



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## 263 Strip searches—rules about young detainees' clothing

(1) A strip search of a young detainee must not involve—

(a) the removal from the young detainee of more clothes than is necessary and reasonable for the search; or

(b) the removal from the young detainee of more clothes at any time than is necessary and reasonable for the search; or

(c) without limiting paragraph (b), both the upper and lower parts of the young detainee's body being uncovered at the same time.

(2) A young detainee who has been strip-searched must be allowed to dress in private as soon as the search is finished.

(3) If clothing from a young detainee is seized during a strip search, the youth detention officer conducting the search must ensure that the young detainee is left with, or given, reasonably appropriate clothing to wear.



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# Part 7.5 Body searches—young detainees

## 264 Body searches directed by director-general

(1) The director-general may direct a non-treating doctor to conduct a body search of a young detainee if the director-general suspects on reasonable grounds that the young detainee—

(a) has ingested or inserted something in the young detainee's body that may jeopardise the young detainee's health or wellbeing; or

(b) has a prohibited thing concealed within the young detainee's body that may be used in a way that may pose a substantial risk to security at a detention place.

(2) In making a decision under subsection (1), the director-general must have regard to the young detainee's age, maturity, developmental capacity and any known history.

## 265 Obligations of director-general before body searches

(1) This section applies if the director-general proposes to direct a body search of a young detainee under section 264.

(2) The director-general must tell the young detainee—

(a) whether the young detainee will be required to remove clothing during the search; and

(b) if the young detainee will be required to remove clothing, why the removal is necessary.

(3) If the young detainee asks why the search is to be conducted in a particular way, the director-general must tell the young detainee the reasons.

(4) The director-general must ask for the young detainee's cooperation for the search.



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(5) The director-general must ensure that a body search is conducted—

(a) in a private area or an area that provides reasonable privacy for the young detainee; and

(b) in a way that provides reasonable privacy.

## 266 People present at body searches

(1) A non-treating nurse must be present during the body search of a young detainee.

(2) If the non-treating doctor conducting the body search is not the same sex as the young detainee, the non-treating nurse present must be the same sex as the young detainee.

*Note* If the doctor is not the same sex as the young detainee, the doctor cannot touch the young detainee or examine the young detainee's body orifices (see s 272).

(3) The director-general may direct 1 or more youth detention officers to be present during the search, each of whom must be the same sex as the young detainee.

(4) However, the number of youth detention officers present during the search must be no more than is necessary and reasonable to ensure the search is conducted as safely and effectively as possible.

(5) The requirement in subsection (3) that a youth detention officer be the same sex as the young detainee does not apply if the director-general believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the young detainee; and

(b) compliance with the requirement would exacerbate the threat.



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(6) If the young detainee is under 18 years old, the search must be conducted in the presence of a person who has daily care responsibility, or long-term care responsibility, for the young detainee if—

(a) the director-general believes that it is necessary, and in the best interests of the young detainee, for the person to be present; and

(b) the young detainee agrees to the person being present.

(7) In making a decision under subsection (6), the director-general must have regard to the young detainee's age, maturity, developmental capacity and any known history.

(8) If the young detainee is 18 years old or older, the director-general may arrange for the search to be conducted in the presence of a support person for the young detainee if—

(a) the director-general considers the presence of a support person necessary or desirable because of the young detainee's vulnerability; and

(b) the young detainee agrees to the person being present.

## 267 Body searches of young detainees under 18 years old—no-one with parental responsibility available

(1) This section applies in relation to a body search of a young detainee who is under 18 years old if—

(a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee cannot be contacted before the search is conducted; or

*Note* For a requirement to contact a person with parental responsibility, see s 251.

(b) no-one who has daily care responsibility, or long-term care responsibility, for the young detainee is available to be present at the search; or



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(c) the young detainee does not agree to a person who has daily care responsibility, or long-term care responsibility, for the young detainee being present at the search.

(2) The director-general must ensure that the body search is conducted in the presence of someone (a ***support person***) who—

(a) the director-general believes on reasonable grounds can support and represent the interests of the young detainee; and

(b) the young detainee agrees should be present at the search.

*Note* In some circumstances the director-general is a person who has daily care responsibility, or long-term care responsibility, for a young detainee (see div 1.3.2).

(3) However, the body search may continue in the absence of a support person if—

(a) the young detainee does not agree to a support person being present; or

(b) the director-general directs the support person to leave under section 268 (2).

## 268 Body searches—directing people to leave

(1) This section applies if a body search of a young detainee is being conducted in the presence of—

(a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee; or

(b) a support person under section 266 (8) or section 267.

(2) The director-general may direct the person to leave if the director-general believes on reasonable grounds that the person is preventing or hindering the conduct of the search.



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## 269 Removing people from search area

(1) The director-general may direct a youth detention officer to enforce a direction under section 268 (2) if the person given the direction contravenes the direction.

(2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

## 270 Help for body searches

(1) This section applies if the non-treating doctor conducting a body search of a young detainee asks the director-general for assistance that the doctor believes on reasonable grounds is necessary and reasonable for the search.

(2) The director-general may direct a youth detention officer, or authorise someone else present at the search (the ***assistant***), to assist in the conduct of the search.

(3) The assistant must be the same sex as the young detainee.

(4) However, subsection (3) does not apply if the director-general believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the young detainee; and

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

## 271 Body searches—rules about young detainees' clothing

(1) A body search of a young detainee must not involve—

(a) the removal from the young detainee of more clothes than is necessary and reasonable for the search; or

(b) the removal from the young detainee of more clothes at any time than is necessary and reasonable for the search; or



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(c) without limiting paragraph (b), both the upper and lower parts of the young detainee's body being uncovered at the same time.

(2) A young detainee who has been body-searched must be allowed to dress in private as soon as the search is finished.

(3) If clothing from a young detainee is seized during a body search, the director-general must ensure that the young detainee is left with, or given, appropriate clothing to wear.

## 272 Body searches—rules about touching young detainees

For the body search of a young detainee, the non-treating doctor or non-treating nurse may touch the young detainee and examine the young detainee's orifices, but only if the doctor or nurse is of the same sex as the young detainee.

## 273 Seizing things discovered during body searches

(1) A non-treating doctor conducting a body search of a young detainee may seize anything mentioned in section 264 (Body searches directed by director-general) that is discovered during the search if seizing the thing would not be likely to cause injury to the young detainee or someone else.

(2) The doctor must give the thing seized to a youth detention officer as soon as practicable.



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# Part 7.6 Searching people other than detainees

## 274 Searches of people other than detainees

(1) The director-general may direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a person at a detention place who is not a young detainee if the director-general—

(a) believes on reasonable grounds that the search is prudent to ensure—

(i) the safety of anyone; or

(ii) security or good order at the place; or

(b) suspects on reasonable grounds that the person is carrying—

(i) a prohibited thing; or

(ii) anything else that creates, or is likely to create, a risk to—

(A) the personal safety of anyone else; or

(B) security or good order at the place.

(2) The youth detention officer who conducts a frisk search or ordinary search of a person mentioned in subsection (1) must—

(a) tell the person about the search and the reasons for the search and ask for the person's cooperation; and

(b) conduct the search in a private area or an area that provides reasonable privacy for the person.



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(3) The youth detention officer may conduct a frisk search of the person only if—

(a) the person is of the same sex as the officer; or

(b) if that is not the case—another person of the same sex as the person to be searched is present while the search is being conducted.

(4) The other person mentioned in subsection (3) (b) must not be a young detainee.

(5) Part 7.8 (Searches—use of force) does not apply to a search under this section.



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# Part 7.7 Searches of premises and property

## 275 Searches—premises and property generally

(1) The director-general may, at any time, direct a youth detention officer to search—

(a) any part of a detention place; or

(b) anything at a detention place, including anything in the custody or possession of anyone at a detention place; or

(c) any vehicle used for transporting a young detainee.

**Examples—searches**

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

(a) any area or building or part of a building (including a cell) at a detention place;

(b) any storage area, including an area used by young detainees or authorised people, at a detention place;

(c) any vehicle, machinery or equipment at a detention place

(2) However, this section does not authorise a search of—

(a) anyone at a detention place; or

(b) any clothing being worn at the time of the search by someone at a detention place.

(3) In this section:

***search*** includes search—

(a) with a device using electronic or other technology; and

(b) by physical means; and

(c) with the assistance of a search dog.



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## 276 Searches of young detainee cells—privileged material

(1) This section applies if a young detainee has privileged material at a detention place.

(2) A youth detention officer may search the young detainee's cell under section 275 in the absence of the young detainee if—

(a) the young detainee removes the privileged material from the cell; or

(b) the privileged material is stored in accordance with arrangements under subsection (3).

(3) The director-general may make arrangements for the secure storage at a detention place of privileged material for young detainees.

## 277 Searches of young detainee cells—suspected privileged material

(1) If a youth detention officer suspects on reasonable grounds that a young detainee's cell contains privileged material, the youth detention officer may search the cell only if the young detainee is present.

(2) A search under subsection (1) may include an examination of any privileged material, and anything containing the material, found in the cell.

(3) However, the youth detention officer must not read any privileged material found in the cell.

(4) The youth detention officer need not comply with subsection (1) or (3) if the youth detention officer believes on reasonable grounds that urgent circumstances exist and that compliance with the subsection would create a risk of injury to the youth detention officer, the young detainee or someone else.



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# Part 7.8 Searches—use of force

## 278 Searches—use of force

(1) A youth detention officer may use force that is necessary and reasonable—

(a) to conduct a search under this chapter; or

(b) to assist at a body search under section 270 (Help for body searches); or

(c) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.

(2) However, the youth detention officer may use force only in accordance with division 6.6.4 (Use of force).



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# Part 7.9 Seizing property

## 279 Meaning of *owner*—pt 7.9

In this part:

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

## 280 Seizing mail etc

(1) The director-general may seize anything in a young detainee's protected mail if the director-general believes on reasonable grounds that the thing—

(a) may physically harm the addressee or anyone else; or

(b) is a prohibited thing.

(2) The director-general may seize other mail of a young detainee, or anything in the mail, if the director-general suspects on reasonable grounds that the seizure is necessary—

(a) to stop any of the following entering or leaving a detention place:

(i) a prohibited thing;

(ii) anything that may be used by the young detainee in a way that may involve an offence, a behaviour breach, a risk to the personal safety of someone else or a risk to security or good order at a detention place; or

(b) to stop correspondence that is threatening, or not in the best interests of the young detainee, from entering or leaving a detention place; or



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(c) to stop a young detainee obtaining or buying goods without the director-general's approval.

**Example—correspondence not in best interests of young detainee—par (b)**

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

(3) The director-general may seize a document under this section only if the director-general believes on reasonable grounds that the document is not privileged.

(4) If the director-general believes on reasonable grounds that a document seized under subsection (3) is privileged, the director-general must return the document to the detainee immediately.

(5) In this section:

***mail*** means postal mail.

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

(a) a lawyer representing the young detainee;

(b) an official visitor;

(c) the director of public prosecutions;

(d) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(e) the information privacy commissioner;

(f) the ombudsman;

(g) a person prescribed by regulation.



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## 281 Seizing property—general

(1) The director-general may seize—

(a) a prohibited thing found on a person or in a person's custody or possession, unless the person has the written approval of the director-general to possess the thing; or

(b) anything found at a detention place, whether or not in a person's custody or possession, that the director-general suspects on reasonable grounds—

(i) is being used, or is intended, for the commission of an offence or a behaviour breach; or

(ii) jeopardises, or is likely to jeopardise, security or good order at a detention place or the safety of anyone at a detention place or elsewhere.

(2) To remove any doubt, this section extends to anything found in a search under this chapter.

(3) The director-general may seize a document under this section only if the director-general believes on reasonable grounds that the document is not privileged.

## 282 Notice of seizure

(1) The director-general must prepare written notice of a seizure under section 280 or section 281.

(2) Not later than 7 days after the day of the seizure, the director-general must give written notice of the seizure to—

(a) the owner of the thing seized; or

(b) if the owner cannot be identified after reasonable inquiries (given the thing's apparent value)—the person from whom the thing was seized.



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(3) The notice must—

(a) identify the thing seized; and

(b) outline the grounds for the seizure; and

(c) include a statement about the effect of section 283; and

(d) include anything else prescribed by regulation.

## 283 Forfeiture of things seized

(1) A thing seized under section 280 (Seizing mail etc) or section 281 (Seizing property—general) is forfeited to the Territory if the director-general decides on reasonable grounds—

(a) that—

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

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

(b) that—

(i) the thing is a prohibited thing; or

(ii) possession of the thing by a young detainee is an offence or a behaviour breach; or

(iii) it is necessary to keep the thing to stop it being used for the commission of an offence or a behaviour breach; or

(iv) the thing is inherently unsafe; or

(v) the thing may be used by the person in a way that may involve a risk to the personal safety of someone else or a risk to security or good order at a detention place.



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

**Examples**

1 giving a forfeited weapon to a youth detention officer

2 dumping a forfeited thing of little value

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

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

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

## 284 Return of things seized but not forfeited

(1) If a thing seized under section 280 (Seizing mail etc) or section 281 (Seizing property—general) is not forfeited, the director-general must return it to its owner—

(a) at the end of the 6 months after the day it was seized; or

(b) if a proceeding for an offence or a behaviour breach involving the thing is started within the 6 months—at the end of the proceeding and any appeal from, or review of, the proceeding.

(2) However, if the thing was being kept as evidence of an offence or a behaviour breach and the director-general believes on reasonable grounds that its retention as evidence is no longer necessary, the director-general must return it immediately.



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# Chapter 8 Criminal matters—discipline at detention places

## Part 8.1 Discipline at detention places—general

### 285 Application—ch 8

This chapter applies in relation to a behaviour breach committed, or allegedly committed, by a young detainee.

### 286 Definitions—ch 8

In this chapter:

***accused detainee*** means a young detainee charged with a behaviour breach.

***administrator*** means an authorised person to whom the director-general has delegated functions of an administrator under this chapter.

***allegation report***—see section 293.

***behaviour breach***—see section 287.

***behaviour management consequence***—

(a) for part 8.3 (Dealing with minor behaviour breaches)—see section 298; and

(b) for part 8.4 (Disciplinary action—behaviour breach charged)—see section 318.

***behaviour management framework*** means the behaviour management framework established under section 297.

***charge*** means a charge under section 296.

***charge notice***—see section 296.



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***disciplinary action***—see section 317.

***hearing***, for a review, means a hearing under part 9.3.

***minor behaviour breach***—see section 288.

***privilege***, in relation to a young detainee—see section 289.

***reporting and investigation procedure***, for part 8.2 (Responding to behaviour breaches), means a reporting and investigation procedure under section 294.

***review*** means a review under—

(a) division 8.4.2 (Internal review); or

(b) division 8.4.3 (External review of internal review decisions).

***support person***—a person can be a ***support person*** for a young detainee if—

(a) the young detainee chooses the person to assist the young detainee or represent the young detainee's interests; and

(b) the director-general considers—

(i) the person is capable of assisting the young detainee or representing the young detainee's interests; and

(ii) it is in the young detainee's best interests for the person to be the young detainee's support person.

**Examples—support people**

1 the public advocate

2 a person with parental responsibility for the accused detainee

3 a close friend of the accused detainee who is capable of applying for the review

4 a lawyer



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## 287 Meaning of *behaviour breach*

(1) Each of the following is a ***behaviour breach***:

(a) contravening a direction by the director-general under this Act;

*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).

(b) being in a prohibited area without the director-general's approval;

*Note* An area may be prohibited under s 147.

(c) smoking;

(d) taking (in any way) alcohol, a prohibited substance or an unauthorised medicine into the young detainee's body;

(e) providing a positive test sample for alcohol or a drug when directed, under this Act, to provide a test sample;

(f) making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the director-general's approval;

(g) gambling;

(h) being disrespectful or abusive towards a youth detention officer in a way that undermines the officer's authority;

(i) being disrespectful or abusive towards another person;

(j) intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the young detainee or anyone else;

(k) fighting;

(l) assaulting someone else;

(m) theft;



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(n) possessing stolen property;

(o) possessing or dealing in things without the director-general's approval;

(p) intentionally or recklessly damaging or destroying property belonging to someone else;

(q) interfering with property belonging to someone else, without approval by the owner of the property;

(r) creating or participating in a disturbance, or other activity, likely to endanger security or good order at a detention place;

(s) contravening a condition of a leave permit under section 241 or an interstate leave permit under section 242;

(t) doing anything for the purpose of escaping, or assisting a young detainee to escape, from detention;

(u) offering, giving or taking a bribe;

(v) planning, conspiring or attempting, or assisting anyone else planning, conspiring or attempting, to commit a behaviour breach;

(w) threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (r);

(x) anything else prescribed by regulation.

**Example—director-general direction—par (a)**

contravening a direction by the director-general to submit to a search under this Act

(2) In this section:

***medicine***—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 11.

***prohibited substance***—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 13.



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***unauthorised medicine***—a medicine is an ***unauthorised medicine*** for a young detainee if—

(a) the medicine is not prescribed for the young detainee; or

(b) the director-general has not approved the use of the medicine by the young detainee under section 187.

## 288 Meaning of *minor behaviour breach*

A ***minor behaviour breach*** is a behaviour breach that—

(a) is not of a serious or persistent nature; and

(b) does not involve a serious risk to the health or safety of someone else at a detention place; and

(c) does not involve a serious risk, or serious or persistent disruption, to the security or good order at a detention place.

## 289 Meaning of *privilege*

A ***privilege***, in relation to a young detainee—

(a) is any amenity, facility or opportunity the young detainee may have the benefit of in detention; but

(b) does not include anything that is, for this chapter, an entitlement for the young detainee.

**Examples—privileges**

1 using phones, email or the internet other than for entitled usage

2 buying non-essential goods from money in a young detainee's trust account

3 using a radio, television, compact disc, MP3 player or DVD player or other electronic equipment for recreational purposes

4 pursuing hobbies and crafts

5 keeping personal property in a cell

6 accessing leave



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**Examples—entitlements**

1 an entitlement to health care under s 109

2 things expressed in pt 6.5 (Living conditions at detention places) to be entitlements for young detainees

## 290 Overlapping behaviour breaches and criminal offences

(1) This section applies if a young detainee engages, or is alleged to have engaged, in conduct that is both—

(a) a behaviour breach; and

(b) an offence (a ***criminal offence***) against this Act or another territory law.

(2) The young detainee must not be prosecuted for the criminal offence if a behaviour management consequence has been imposed on the young detainee under part 8.3 or part 8.4 because of the behaviour breach.

(3) The young detainee must not be charged with the behaviour breach under section 296, or the charge must not be continued with under this chapter, if a prosecution for the criminal offence has been started in a court.

(4) Disciplinary action for the behaviour breach must not be taken against the young detainee if a court has convicted the young detainee, or the young detainee has been found guilty, of the criminal offence.

*Note* For the kinds of disciplinary action that may be taken, see s 317.



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# Part 8.2 Responding to behaviour breaches

## 291 Who is an *investigator*?

In this part:

***investigator*** means—

(a) an authorised person to whom the director-general has delegated functions of an investigator under this part; or

(b) a person appointed to be an investigator under section 292.

*Note* A person is an authorised person for this Act if the director-general delegates a power under the Act to the person.

## 292 Appointment of investigators

The director-general may appoint a person to be an investigator for this part.

*Note 1* For the making of appointments (including acting appointments), see the 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 Legislation Act, s 207).

## 293 Report etc by youth detention officer

(1) This section applies if a youth detention officer believes on reasonable grounds that a young detainee has committed a behaviour breach.

(2) The youth detention officer may do 1 or more of the following if the person believes on reasonable grounds that it is appropriate in the circumstances:

(a) counsel the young detainee;



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(b) warn the young detainee about committing a behaviour breach;

(c) reprimand the young detainee;

(d) make a report (an ***allegation report***) about the alleged behaviour breach.

(3) An allegation report must be made in accordance with the reporting and investigation procedures.

## 294 Reporting and investigation procedures

(1) The director-general must make reporting and investigation procedures, consistent with this Act, about the making, recording and investigation of allegation reports.

(2) Each reporting and investigation procedure is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* The amendment or repeal of a reporting and investigation procedure is also a notifiable instrument. See the Legislation Act, s 46 (Power to make instrument includes power to amend or repeal).

(3) Without limiting subsection (1), the reporting and investigation procedures must—

(a) require allegation reports to be made in writing and given to an administrator; and

(b) require the administrator to whom an allegation report is given, and any investigator who investigates the alleged behaviour breach, to be a different person to the youth detention officer who makes the allegation report; and

(c) require a young detainee to be told about an alleged behaviour breach in language and a way he or she can understand; and

(d) allow a young detainee to contact 1 or 2 support people for assistance in responding to an alleged behaviour breach; and



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(e) require a young detainee to be told that he or she has the right to contact 1 or 2 support people for assistance in responding to an alleged behaviour breach.

## 295 Action by administrator

(1) This section applies if an administrator is given an allegation report about an alleged behaviour breach by a young detainee.

(2) The administrator—

(a) must consider the allegation report; and

(b) may arrange for an investigator to investigate the alleged behaviour breach in accordance with the reporting and investigation procedures if the administrator believes on reasonable grounds that it is appropriate in the circumstances.

(3) After considering the allegation report and the report of any investigation under subsection (2) (b), the administrator may take any further action the administrator believes on reasonable grounds is appropriate in the circumstances.

(4) Without limiting subsection (3), the administrator may do 1 or more of the following if the administrator believes on reasonable grounds that it is reasonable and proportionate in the circumstances:

(a) take no further action in relation to the report;

(b) counsel the young detainee;

(c) warn the young detainee about committing a behaviour breach;

(d) reprimand the young detainee;

(e) for a minor behaviour breach—deal with the young detainee in accordance with part 8.3;

(f) charge the young detainee under section 296;



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(g) refer the alleged behaviour breach to—

(i) the chief police officer; or

(ii) the director of public prosecutions.

(5) Before deciding what action (if any) to take in relation to a minor behaviour breach, the administrator must review any previous minor behaviour breaches and behaviour management consequences imposed on the young detainee.

(6) A referral under subsection (4) (g) must be in writing and accompanied by the allegation report and any reports the administrator has of investigations already made about the alleged behaviour breach.

## 296 Disciplinary charge

To charge a young detainee with a behaviour breach, an administrator must give the young detainee written notice (a ***charge notice***) of the charge, including details of the following:

(a) the behaviour breach charged;

(b) a brief statement of the conduct to which the charge applies and when, or the period during which, it happened;

(c) the election available under section 301 to accept the disciplinary action proposed by the administrator;

(d) the disciplinary action the administrator believes on reasonable grounds would be appropriate if the charge were dealt with by the administrator under section 302 (Disciplinary action by administrator);

(e) that application may be made under section 305 for review of the charge.

*Note* If a form is approved under s 886 for a charge, the form must be used.



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# Part 8.3 Dealing with minor behaviour breaches

## 297 Behaviour management framework

(1) The director-general must establish a behaviour management framework for dealing with minor behaviour breaches.

(2) The behaviour management framework is a notifiable instrument.

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

(3) Without limiting subsection (1), the behaviour management framework must provide for the following:

(a) any behaviour management consequences imposed on a young detainee to be a reasonable and proportionate response to the minor behaviour breach;

(b) how privileges can be withdrawn for minor behaviour breaches;

(c) review by the director-general (including on request by a young detainee) of decisions to impose behaviour management consequences for minor behaviour breaches.

## 298 Behaviour management framework—behaviour management consequences

(1) Each of the following is a ***behaviour management consequence*** that may be imposed under the behaviour management framework:

(a) a fine, not exceeding $25;

(b) a withdrawal of privileges, for not longer than 6 days;

(c) a requirement to make an apology to a person affected by the behaviour breach;

(d) a requirement to perform extra chores, for not longer than 2 hours;



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(e) anything prescribed by regulation to be a behaviour management consequence for the behaviour management framework and that is reasonable and proportionate to minor behaviour breaches.

(2) In deciding whether to impose a behaviour management consequence under the behaviour management framework, the administrator must consider the age, developmental capacity, rehabilitation needs and any known history of the young detainee.

(3) The administrator may impose a behaviour management consequence if satisfied that the consequence to be imposed is—

(a) reasonable in the circumstances; and

(b) proportionate to the circumstances and gravity of the behaviour breach.

## 299 Behaviour management framework—limits

(1) This section applies if a young detainee has been dealt with under the behaviour management framework and behaviour management consequences totalling any of the following have been imposed on the young detainee under the framework:

(a) for fines—$125;

(b) for withdrawals of privileges—30 days;

(c) for requirements to perform extra chores—10 hours.

(2) The young detainee must not be dealt with under the behaviour management framework for any subsequent minor behaviour breach.

(3) However, an administrator may take other action mentioned in section 295 (other than section 295 (4) (e)) for any subsequent minor behaviour breaches.



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# Part 8.4 Disciplinary action—behaviour breach charge

## Division 8.4.1 Disciplinary action by administrator

### 300 Right to contact support person—disciplinary action by administrator

(1) This section applies if a charge notice has been given to an accused detainee under section 296.

(2) The accused detainee has a right to contact 1 or 2 support people to assist the detainee with having the disciplinary charge dealt with under this division.

(3) The director-general must ensure that the accused detainee has access to facilities to contact a support person as soon as practicable.

### 301 Behaviour breach admitted by accused detainee

(1) An accused detainee may elect to have a disciplinary charge against the accused detainee dealt with under this division by giving the administrator a written notice in which the accused detainee—

(a) admits the behaviour breach charged; and

(b) accepts the proposed disciplinary action stated in the charge notice.

**Example—election**

a signed admission and acceptance on the charge notice

*Note* If a form is approved under s 886 for an election under this section, the form must be used.

(2) The election must be given to the administrator—

(a) not later 48 hours after the administrator gives the accused detainee the charge notice; or

(b) within any extended period allowed under subsection (3).



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(3) On written application by the accused detainee, the administrator may extend the period within which the election must be made if the administrator believes on reasonable grounds that it is appropriate to extend the period.

(4) The administrator must give the accused detainee written notice of a decision under subsection (3).

## 302 Disciplinary action by administrator

(1) This section applies if—

(a) a charge notice has been given to an accused detainee; and

(b) the accused detainee—

(i) makes an election under section 301; or

(ii) does not make an election under section 301, or apply for review of the charge, within the period allowed.

(2) The administrator may, without further investigation or inquiry, take the disciplinary action stated in the charge notice if the administrator believes on reasonable grounds that the accused detainee understands the proposed action.

(3) If the administrator decides to take the disciplinary action, the administrator must give the accused detainee written notice of the decision.

(4) The disciplinary action must be taken in accordance with division 8.4.4 (Disciplinary action generally).



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## Division 8.4.2 Internal review

### 303 Meaning of *review officer*—div 8.4.2

In this division:

***review officer*** means an authorised person to whom the director-general has delegated functions of a review officer under this division.

### 304 Right to contact support person—internal review

(1) This section applies if a charge notice has been given to an accused detainee under section 296.

(2) The accused detainee has a right to contact 1 or 2 support people to assist the detainee to apply for review of the charge under this division.

(3) The director-general must ensure that the accused detainee has access to facilities—

(a) to contact a support person as soon as practicable; and

(b) to consult with the support person.

### 305 Application for internal review

(1) An accused detainee may apply for review of the charge under this division.

(2) The application must be given to the administrator—

(a) not later than the day after the day the administrator gives the accused detainee the charge notice under section 296; or

(b) within any extended period allowed under subsection (3).



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(3) On written application by the accused detainee, the administrator may extend the period for making the application if the administrator believes on reasonable grounds that it is appropriate to extend the period.

*Note* The administrator may extend the period for making the application after the period given in the notice has expired (see Legislation Act, s 151C).

(4) The administrator must give the accused detainee written notice of a decision under subsection (3) to extend the period.

## 306 Internal review of charge

(1) If an application for review is given to the administrator under section 305, the administrator must arrange for a review officer to conduct a review into the behaviour breach charged in the charge notice.

(2) An authorised person must not exercise any function of a review officer under this division in relation to the charge if the authorised person—

(a) made an allegation report or carried out any investigation in relation to the alleged behaviour breach to which the charge relates; or

(b) charged the young detainee under section 296.

(3) Chapter 9 (Criminal matters—conduct of disciplinary reviews) applies, with any changes prescribed by regulation, in relation to a review under this division.



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## 307 Review officer's powers after internal review

(1) This section applies if a review officer has completed a review under section 306.

(2) If the review officer is satisfied on the balance of probabilities that a behaviour breach charged has been proven, the review officer may take disciplinary action against the accused detainee in accordance with division 8.4.4

(3) The review officer must dismiss the charge—

(a) if not satisfied on the balance of probabilities that the behaviour breach charged has been proven; or

(b) if satisfied on reasonable grounds that it would otherwise be appropriate to do so.

(4) If the review officer believes on reasonable grounds that it is necessary or appropriate to do so, the review officer may refer the charge to—

(a) the chief police officer; or

(b) the director of public prosecutions.

(5) The review officer must give the accused detainee prompt written notice of the review officer's decision under subsection (2), including—

(a) a statement of the reasons for the decision; and

(b) a statement that the accused detainee has a right to apply for review of the decision under division 8.4.3 (External review of internal review decisions); and

(c) a statement about the effect of section 310.

*Note 1* If a form is approved under s 886 for the notice, the form must be used.

*Note 2* For what must be included in a statement of reasons, see the Legislation Act, s 179.



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## Division 8.4.3 External review of internal review decisions

### 308 Meaning of *external reviewer*—div 8.4.3

In this division:

***external reviewer*** means a person appointed as an external reviewer under section 309.

### 309 Appointment of external reviewers

(1) The Minister must appoint at least 1 external reviewer.

(2) A person may be appointed as an external reviewer only if the person is a magistrate and consents, in writing, to the appointment.

(3) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do other work) does not apply to the appointment of a magistrate as an external reviewer.

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

(4) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of an external reviewer.

(5) An appointment is a notifiable instrument.

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

### 310 Right to contact support person—external review

(1) This section applies if a decision under section 307 (2) (Review officer's powers after internal review) has been made in relation to an accused detainee.

(2) The accused detainee has a right to contact 1 or 2 support people to assist the detainee to apply for review of the decision under this division.



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(3) The director-general must ensure that the accused detainee has access to facilities—

(a) to contact a support person as soon as practicable; and

(b) to consult with the support person.

## 311 Application for external review

(1) An accused detainee may apply to an external reviewer for review of a decision made under section 307 (2) (Review officer's powers after internal review) in relation to the accused detainee.

**Example—application for review**

a signed application on the review officer's notice under s 307

(2) The application must be made not later than 7 days after the day the accused detainee is given notice of the decision under section 307.

(3) Subject to any decision by the external reviewer under section 314, the making of the application does not affect the taking of disciplinary action under the decision under review.

## 312 External review of charge

(1) On application under section 311, an external reviewer must—

(a) review a decision of a review officer made under section 307; or

(b) refuse to review the decision.

(2) Chapter 9 (Criminal matters—conduct of disciplinary reviews) applies, with any changes prescribed by regulation, in relation to a review under this division.

## 313 Refusal to review

(1) This section applies if, under section 312, an external reviewer refuses to review a decision made under section 307 in relation to an accused detainee.



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(2) The external reviewer must give the accused detainee, and any support person of the accused detainee about whom the external reviewer has notice, prompt written notice of the refusal, including—

(a) a statement of the reasons for the refusal; and

(b) notice that a person aggrieved by the refusal may apply for review of the refusal under the *Administrative Decisions (Judicial Review) Act 1989*.

*Note 1* If a form is approved under s 886 for the notice, the form must be used.

*Note 2* For what must be included in a statement of reasons, see the Legislation Act, s 179.

*Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for review of the decision. Subject to any order of the Court, the making of the application does not affect the operation of the decision or prevent its implementation (see s 16).

## 314 External reviewer's powers after external review

(1) After completing a review under section 312, the external reviewer may—

(a) confirm the decision under review; or

(b) exercise any function of a review officer under section 307 (Review officer's powers after internal review) in relation to the accused detainee, either by—

(i) amending the decision under review; or

(ii) setting aside the decision under review and making a decision in substitution for the decision set aside.

(2) The external reviewer must give prompt written notice of the external reviewer's decision under this section to—

(a) the accused detainee; and



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(b) any support person of the accused detainee about whom the external reviewer has notice; and

(c) the director-general.

(3) The notice must include—

(a) a statement of the reasons for the decision; and

(b) notice that a person aggrieved by the decision may apply for review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.

*Note 1* If a form is approved under s 886 for the notice, the form must be used.

*Note 2* For what must be included in a statement of reasons, see the Legislation Act, s 179.

*Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for review of the decision. Subject to any order of the Court, the making of the application does not affect the operation of the decision or prevent its implementation (see s 16).

(4) If the external reviewer's decision reduces or sets aside a fine imposed for the behaviour breach, the director-general must credit to the accused detainee's trust account any amount deducted from the account for payment of the fine.

(5) If the external reviewer's decision reduces or sets aside any other behaviour management consequence imposed for the behaviour breach, the director-general must take steps, in consultation with the accused detainee, to provide a reasonable remedy to the accused detainee.



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## Division 8.4.4 Disciplinary action generally

### 315 Application—div 8.4.4

This division applies to a young detainee against whom disciplinary action may be taken under this part.

### 316 Meaning of *relevant presiding officer*—div 8.4.4

In this division:

***relevant presiding officer*** means—

(a) an administrator under division 8.4.1 (Disciplinary action by administrator); or

(b) a review officer under division 8.4.2 (Internal review); or

(c) an external reviewer under division 8.4.3 (External review of internal review decisions).

### 317 Disciplinary action by relevant presiding officer

(1) A relevant presiding officer may do 1 or more of the following (each of which is ***disciplinary action***) in relation to a young detainee:

(a) warn the young detainee about committing a behaviour breach;

(b) reprimand the young detainee;

(c) impose a behaviour management consequence, or a combination of behaviour management consequences, on the young detainee.

(2) In deciding whether to impose a behaviour management consequence, the relevant presiding officer must consider the age, developmental capacity, rehabilitation needs and any known history of the young detainee.

(3) The relevant presiding officer may impose a behaviour management consequence if satisfied that the consequence to be imposed is—

(a) reasonable in the circumstances; and



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(b) proportionate to the circumstances and gravity of the behaviour.

## 318 Disciplinary action—behaviour management consequences

Each of the following is a ***behaviour management consequence*** that may be imposed under this part:

(a) a fine, not exceeding $250;

(b) a withdrawal of privileges, for not longer than 60 days;

(c) a requirement to make an apology to a person affected by the behaviour breach;

(d) a requirement to perform extra chores, for not longer than 20 hours;

(e) anything prescribed by regulation to be a behaviour management consequence and that is reasonable and proportionate to behaviour breaches.

## 319 Maximum behaviour management consequences

(1) This section applies if—

(a) a young detainee is charged with 2 or more behaviour breaches; and

(b) the charges arise out of the same conduct.

(2) The total of the behaviour management consequences imposed for the breaches must not, for any particular kind of consequence, be more than the maximum penalty that may be imposed for any 1 of the breaches.



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## 320 Privileges and entitlements—impact of discipline

To remove any doubt—

(a) anything expressed in part 6.5 (Living conditions at detention places) to be an entitlement for this chapter is not affected by anything that happens under this chapter, including disciplinary action; and

(b) anything else mentioned in part 6.5 is, for this chapter, a privilege.

*Note* Records must be kept of disciplinary action taken against young detainees (see *Territory Records Act 2002*).



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# Chapter 9 Criminal matters—conduct of disciplinary reviews

## Part 9.1 Conduct of disciplinary review—general

### 321 Application—ch 9

This chapter applies to a review under—

(a) division 8.4.2 (Internal review); or

(b) division 8.4.3 (External review of internal review decisions).

*Note* This chapter also applies to a review under s 220 (External review of segregation directions) (see s s 220 (2)).

### 322 Definitions—ch 9

In this chapter:

***review officer***—

(a) for a review under division 8.4.2—means a review officer under that division; and

(b) for a review under division 8.4.3—means an external reviewer under that division.

***support person***—see section 286.



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# Part 9.2 Disciplinary review procedures

## 323 Nature of disciplinary reviews

(1) To remove any doubt, a review is an administrative process.

(2) At a review—

(a) the rules of natural justice apply; and

(b) the laws of evidence do not apply; and

(c) evidence must not be given on oath or by affidavit; and

(d) the question whether a young detainee has committed a behaviour breach must be decided on the balance of probabilities.

## 324 Notice of disciplinary review etc

(1) The review officer for a review in relation to an accused detainee must give written notice of the review to the accused detainee and the director-general.

(2) The notice must include the following:

(a) a statement about where and when the review is to start;

(b) details of the disciplinary charge or disciplinary action to which the review relates;

(c) a statement about the effect of section 323;

(d) a statement about the effect of subsections (3) to (5);

(e) a statement to the effect that the review officer may hold a hearing for the review in accordance with part 9.3 (Disciplinary hearing procedures);

(f) the closing date for submissions by the accused detainee.



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(3) The accused detainee may make submissions to the review officer for the review in any form acceptable to the review officer.

**Example—acceptable form**

an audio recording or a document written for an accused detainee

(4) The director-general must—

(a) offer to provide reasonable assistance to the accused detainee to put the submissions in a form acceptable to the review officer; and

(b) tell the accused detainee about the assistance he or she is entitled to under subsection (5).

(5) The accused detainee is entitled to reasonable assistance from 1 or 2 support people for the purpose of preparing submissions.

(6) The review officer must consider any submission given to the review officer by the accused detainee before the closing date for submissions stated in the notice of the review given to the accused detainee.

## 325 Conduct of disciplinary reviews

(1) A review must be conducted with as little formality and technicality, and as quickly as the requirements of this Act and a proper consideration of the charge allow.

(2) The review officer may hold a hearing for the review.

(3) A hearing for a review must be held in accordance with part 9.3.

(4) Proceedings at a review are not open to the public.

(5) A decision of the review officer at a review is not invalid only because of any informality or lack of form.

*Note* However, see s 331 (5) and s 332 (2) (b) for who may be present, be heard or make submissions at disciplinary hearings.



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## 326 Review officer may require official reports

(1) For a review, the review officer may, by written notice given to any of the following, require the person to promptly give the review officer a written report about the accused detainee:

(a) the director-general;

(b) the director of public prosecutions;

(c) a public servant.

(2) The person given the notice must comply with it.

## 327 Review officer may require information and documents

(1) For a review, the review officer may, by written notice given to a person, require the person—

(a) to provide stated information to the review officer relevant to the review; or

(b) to produce to the review officer a stated document or thing relevant to the review.

(2) This section does not require a person to give information, or produce a document or other thing, to the review officer if the Minister certifies in writing that giving the information, or producing the document or other thing—

(a) may endanger a young detainee or anyone else; or

(b) is contrary to the public interest.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.



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## 328 Possession of review documents etc

The review officer may have possession of a document or other thing produced to the review officer for a review for as long as the review officer considers necessary for the review.

## 329 Record of review

The review officer for a review must keep a written record of proceedings at the review.



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# Part 9.3 Disciplinary hearing procedures

## 330 Notice of disciplinary hearing

(1) The review officer for a review in relation to an accused detainee must give written notice of a hearing for the review to the accused detainee and the director-general.

(2) The notice must include—

(a) a statement about where and when the hearing is to be held; and

(b) a statement about the accused detainee's entitlements under section 331 and section 332.

(3) If practicable, the hearing must be held at the detention place where the accused detainee is detained.

## 331 Review officer's powers at review

(1) For a hearing for a review in relation to an accused detainee, the review officer may, by written notice given to the accused detainee or anyone else, require the person to appear before the review officer, at a stated time and place, to do either or both of the following:

(a) answer questions;

(b) produce a stated document or other thing relevant to the review.

(2) A person is taken to have complied with a notice under subsection (1) (b) if the person gives the document or other thing to the review officer before the time stated in the notice for its production.

(3) The review officer at a hearing for a review may require the accused detainee, or a witness, appearing before the review officer to do 1 or more of the following:

(a) answer a question relevant to the review;

(b) produce a document or other thing relevant to the review.



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(4) The review officer at the hearing may disallow a question put to a person if the presiding review officer considers the question—

(a) is unfair, unduly prejudicial or vexatious; or

(b) involves an abuse of the review process.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

(5) The review officer may allow a youth detention officer or anyone else to be present, and to be heard, at a disciplinary hearing.

**Examples—other people who may be allowed to be present**

1 a support person

2 another detainee

## 332 Rights of accused detainee at disciplinary hearing

(1) The accused detainee is entitled to be present at a hearing for a review in relation to the accused detainee.

*Note* However, the accused detainee may be excluded (see s 333) and the hearing may be conducted if the accused detainee fails to attend (see s 334).

(2) If the accused detainee appears at a hearing for a review in relation to the accused detainee, the accused detainee is entitled to—

(a) be heard, examine and cross-examine witnesses and make submissions for the review; and

(b) have a support person or lawyer present to make submissions on the accused detainee's behalf.



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## 333 Exclusion of accused detainee from hearing

The review officer may, by written order, exclude the accused detainee from a hearing for the review if the accused detainee, without reasonable excuse—

(a) unreasonably interrupts, interferes with or obstructs the hearing; or

(b) contravenes a reasonable direction by the review officer about the conduct of hearing.

## 334 Hearing in accused detainee's absence

If the accused detainee fails without reasonable excuse to attend a hearing for the review, the review officer may conduct the hearing, and make a decision on the charge, in the accused detainee's absence.

## 335 Appearance at disciplinary hearing by audiovisual or audio link

(1) This section applies if, in relation to a hearing for a review, or part of the hearing, the review officer has given a direction under the following sections of the *Evidence (Miscellaneous Provisions) Act 1991*:

(a) section 20 (1) (Territory courts may take evidence and submissions from participating States);

(b) section 32 (1) (Territory courts may take evidence and submissions from another place).



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(2) A person may appear and take part in the hearing in accordance with the direction, if the person—

(a) is required or entitled to appear personally, whether as the accused detainee or as a witness; or

(b) is entitled to appear for someone else.

(3) A person who appears at the hearing under this section is taken to be before the review officer.



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# Chapter 10 Care and protection—general

## Part 10.1 Application of care and protection chapters

*Note to pt 10.1*

Under s 6, the functions under this Act may be exercised for a child or young person—

(a) who ordinarily lives in the ACT; or

(b) who does not ordinarily live in the ACT, but who is in the ACT; or

(c) about whom a report is made under s 354 (Voluntary reporting of abuse and neglect) or s 356 (Offence—mandatory reporting of abuse) arising from something happening in the ACT.

### 336 What are the *care and protection chapters*?

In this Act:

***care and protection chapters*** means the following chapters:

(a) Chapter 10 (Care and protection—general);

(b) Chapter 11 (Care and protection—reporting, investigating and appraising abuse and neglect);

(c) Chapter 12 (Care and protection—voluntary agreements to transfer or share parental responsibility);

(d) Chapter 13 (Care and protection and therapeutic protection—emergency situations);

(e) Chapter 14 (Care and protection—care and protection orders);

(f) Chapter 15 (Care and Protection—director-general has aspect of parental responsibility);

(g) Chapter 16 (Care and protection—therapeutic protection of children and young people);



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(h) Chapter 17 (Care and protection—interstate transfer of orders and proceedings);

(i) Chapter 18 (Care and protection—police assistance);

(j) Chapter 19 (Care and protection—provisions applying to all proceedings under care and protection chapters).

## 337 Age—proof of age to be sought before action taken

If the Childrens Court, the director-general or a police officer intends to deal with a person under the care and protection chapters as a child or young person, the Childrens Court, director-general or police officer must make reasonable inquiries to find out the age of the person before dealing with the person as a child or young person.

## 338 Age—application of care and protection chapters if no proof of age

(1) This section applies if—

(a) the Childrens Court, director-general or police officer is unable after reasonable inquiry to find out a person's age; and

(b) the person appears, on reasonable grounds, to the Childrens Court, the director-general or a police officer to be a child or young person.

(2) The person may be dealt with under the care and protection chapters as if the person were a child or young person and the care and protection chapters applies to the person as if a reference to a child or young person included a reference to the person.



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## 339 Age—care and protection chapters stop applying if person discovered to be adult

(1) This section applies if the Childrens Court, the director-general or a police officer—

(a) has dealt with a person as a child or young person; and

(b) finds out that the person is not a child or young person.

(2) Any order or agreement under the care and protection chapters applying to the person stops applying to the person.

(3) No further proceeding may be taken under the care and protection chapters in relation to the person.

(4) If the person—

(a) is in a hospital or place of care under a provision of the care and protection chapters—the provision ceases to apply to the person and the person must be released; and

(b) is being confined in a therapeutic protection place under a therapeutic protection order—the person must be released.

*Note* An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under this Act or in the reasonable belief that the conduct was in the exercise of a function under this Act. Any liability that would attach to an official attaches instead to the Territory (see s 878).

(5) This section does not apply to part 15.5 (Transition to adulthood).



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## 340 Care and protection chapters stop applying when young person becomes adult

(1) The care and protection chapters stop applying to a child or young person when the child or young person becomes an adult.

(2) Any order or agreement under the care and protection chapters applying to the child or young person stops applying to the child or young person when the child or young person becomes an adult.

(3) A young person who is confined in a therapeutic protection place under a therapeutic protection order must be released immediately the young person becomes an adult.

(4) However, this section does not require the release of a person who has been—

(a) convicted of an offence and, for the conviction, is detained under an order or other decision of a court, including a court of a State; or

(b) charged with an offence and is detained in relation to the charge.

(5) This section does not apply to part 15.5 (Transition to adulthood).



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# Part 10.2 Important concepts—care and protection chapters

## 341 Definitions—care and protection chapters

(1) In this Act:

***abuse***, of a child or young person—see section 342.

***care and protection appraisal***—see section 366.

***care and protection assessment***—see section 367.

***care and protection principles***—see section 350.

***contact***, with a person—see section 348.

***family group conference***—see section 75.

***in need of care and protection***, for a child or young person—see section 345.

***neglect***, of a child or young person—see section 343.

(2) In the care and protection chapters:

***at risk of abuse or neglect***—see section 344.

***former caregiver***, for a child or young person—see section 347.

***party***, for an application—see section 700.

***significant harm*** includes a single instance of significant harm or multiple instances of harm that together make up significant harm.

## 342 What is *abuse*?

In this Act:

***abuse***, of a child or young person, means—

(a) physical abuse; or

(b) sexual abuse; or



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(c) emotional abuse (including psychological abuse) if the child or young person has experienced the abuse or is experiencing the abuse in a way that has caused or is causing significant harm to his or her wellbeing or development; or

(d) emotional abuse (including psychological abuse) if—

(i) the child or young person has seen or heard the physical, sexual or psychological abuse of a person with whom the child or young person has a domestic relationship, the exposure to which has caused or is causing significant harm to the wellbeing or development of the child or young person; or

(ii) if the child or young person has been put at risk of seeing or hearing abuse mentioned in subparagraph (i), the exposure to which would cause significant harm to the wellbeing or development of the child or young person.

## 343 What is *neglect*?

In this Act:

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

**Examples—necessities of life**

1 food

2 shelter

3 clothing

4 health care treatment



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## 344 When are children and young people *at risk of abuse or neglect*?

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

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

1 Jane is 3 months old and the director-general has already received 5 reports about her. Jane's parents are long-term drug users and Jane was born with neonatal withdrawal syndrome. Jane's parents have agreed to work with the director-general to address their drug use. However, they have not actually made the changes they agreed to make. Jane's parents do not have contact with extended family and Jane is not regularly seen by any health practitioners or other community support people.

2 Michael is 7 years old and in the full-time care of his mother. He has never had any contact with his father. Michael's mother has a mental illness characterised by episodes of psychosis. When Michael's mother has been unwell, she has locked Michael and herself in the home for weeks at a time. Michael's mother attempted suicide by driving off a bridge with Michael in the car.

3 Tom is 9 years old and is in the sole care of his father. Since Tom was 6 years old, the director-general has received reports that Tom's father calls him derogatory names and yells at him, often in the presence of other people. Tom's school counsellor reports that Tom appears anxious, is fearful of loud noises in the school environment and regularly cries. Tom is assessed as being at risk of childhood depression by the school counsellor.

4 Amy is 13 years old and regularly goes missing from home to avoid the constant fighting between her mother and stepfather. Amy is engaging in indiscriminate sexual activity and regularly consumes alcohol and illicit drugs which she pays for with money received in exchange for sexual services. Amy has intentionally overdosed on medication 3 times and each overdose has required medical treatment. Amy's parents consider that she is now making her own choices and there is nothing they can do to help her.



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## 345 When are children and young people *in need of care and protection*?

(1) For the care and protection chapters, a child or young person is ***in need of care and protection*** if—

(a) the child or young person—

(i) has been abused or neglected; or

(ii) is being abused or neglected; or

(iii) is at risk of abuse or neglect; and

(b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from the abuse or neglect or the risk of abuse or neglect.

(2) Without limiting subsection (1), a child or young person is in need of care and protection if—

(a) there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the director-general) to the extent that the care arrangements for the child or young person are, or are likely to be, seriously disrupted; or

(b) the people with parental responsibility for the child or young person are dead, have abandoned the child or young person or cannot be found after reasonable inquiry; or

(c) the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or not willing and able to keep him or her from being sexually or financially exploited.



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## 346 Incident need not have happened in ACT

(1) This section applies if a person believes that a child or young person is in need of care and protection under section 345 because the child or young person—

(a) has been abused or neglected; or

(b) is being abused or neglected; or

(c) is at risk of abuse or neglect.

(2) It does not matter whether conduct giving rise to the belief happened completely or partly outside the ACT.

## 347 Who is a *former caregiver*?

(1) In the care and protection chapters:

***former caregiver*** means—

(a) for a child or young person for whom it is proposed to make a voluntary care agreement—the person who is providing care for the child or young person when the agreement is proposed; or

(b) for any other child or young person—a person who was providing care for the child or young person immediately before parental responsibility for the child or young person was transferred to the director-general or someone else by order of the Childrens Court or operation of this Act, whether or not the person had that aspect of parental responsibility for the child or young person at that time.

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

(a) at a childcare centre, under a family day care scheme or otherwise for reward; or

(b) if the person provides care on a casual basis and is not a family member.



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## 348 What is *contact* with a person?

In this Act:

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

**Examples—direct contact**

physical or face to face contact with the person

**Examples—indirect contact**

contact by an agent, by telephone or letter or by giving the person something



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# Part 10.3 Principles and considerations—care and protection chapters

*Notes to pt 10.3*

In making a decision under the care and protection chapters for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under the care and protection chapters otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

## 349 What is in best interests of child or young person?

(1) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that are relevant to the child or young person:

(a) the need to ensure that the child or young person is not at risk of abuse or neglect;

(b) any views or wishes expressed by the child or young person;

(c) the nature of the child's or young person's relationship with each parent and anyone else;

(d) the likely effect on the child or young person of changes to the child's or young person's circumstances, including separation from a parent or anyone else with whom the child has been living;

(e) the practicalities of the child or young person maintaining contact with each parent and anyone else with whom the child or young person has been living or with whom the child or young person has been having substantial contact;



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(f) the capacity of the child's or young person's parents, or anyone else, to provide for the child's or young person's needs including emotional and intellectual needs;

(g) for an Aboriginal or Torres Strait Islander child or young person—that it is a high priority to protect and promote the child's or young person's cultural and spiritual identity and development by, wherever possible, maintaining and building the child's or young person's connections to family, community and culture;

(h) that it is important for the child or young person to have settled, stable and permanent living arrangements;

(i) for decisions about placement of a child or young person—the need to ensure that the earliest possible decisions are made about a safe, supportive and stable placement;

(j) the attitude to the child or young person, and to parental responsibilities, demonstrated by each of the child's or young person's parents or anyone else;

(k) any abuse or neglect of the child or young person, or a family member of the child or young person;

(l) any court order that applies to the child or young person, or a family member of the child or young person.

(2) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.



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## 350 Care and protection principles

(1) In making a decision under the care and protection chapters in relation to a child or young person, a decision-maker must apply the following principles (the ***care and protection principles***) except when it is, or 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 lies with the child's or young person's parents and other family members;

(b) priority must be given to supporting the child's or young person's parents and other family members to provide for the wellbeing, care and protection of the child or young person;

(c) if the child or young person does not live with his or her family because of the operation of this Act—contact with his or her family, and significant people, must be encouraged, if practicable and appropriate;

(d) if the child or young person is in need of care and protection and the child's or young person's parents and other 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 the government to share or take over their responsibility;

(e) if the child or young person does not live with the child's or young person's parents because of the operation of this Act—the safety and wellbeing of the child are more important than the interests of the parents;

(f) a court should make an order for 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.



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(2) The care and protection principles must be applied in addition to the principles under section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle).

*Note* The Maori children and young people principle may also apply if an order or proceeding is transferred to the ACT from New Zealand (see s 678).

## 351 Helping families understand care and protection procedures

(1) A decision-maker making a decision under the care and protection chapters in relation to a child or young person must endeavour to ensure that the relevant people for the decision—

(a) understand what the decision is going to be about; and

(b) understand the decision-making process; and

(c) know that the child or young person, and people with parental responsibility for the child or young person, may take part in the decision-making process and have their views and wishes heard; and

(d) are informed of, and understand, the decision.

*Note 1* If a child or young person is the subject of a proceeding under this Act, the director-general must give the child or young person sufficient information about the proceeding, in language and a way that the child or young person can understand, to allow the child or young person to take part fully in the proceeding (see *Court Procedures Act 2004*, s 74A (Participation of children and young people in proceedings)).

*Note 2* If the decision-maker is a court, the court must also endeavour to ensure that the child or young person, and any other party present at the hearing of the proceeding, understands the nature and purpose of the proceeding and any orders and knows of their appeal rights (see *Court Procedures Act 2004*, s 74B (Court must ensure children and young people etc understand proceedings)).



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(2) The decision-maker must give the relevant people for the decision sufficient information about the decision-making process, in language and a way that they can understand, to allow the child or young person, and people with parental responsibility for the child or young person to take part fully in the decision-making process.

(3) In this section:

***relevant people***, for a decision in relation to a child or young person, means—

(a) the child or young person or, if the child is represented, the representative of the child or young person; and

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

(b) each person with parental responsibility for the child or young person.

*Note 1* A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person (see *Court Procedures Act 2004*, s 74A (Participation of children and young people in proceedings)).

*Note 2* A court must also take steps to ensure that the child or young person and other people understand proceedings etc (see *Court Procedures Act 2004*, s 74B (Court must ensure children and young people etc understand proceedings)).

## 352 Views and wishes of children and young people

(1) A decision-maker making a decision in relation to a child or young person under the care and protection chapters must give the child or young person a reasonable opportunity to express his or her views and wishes personally to the decision-maker, unless the decision-maker is satisfied that the child or young person does not have sufficient developmental capacity to express his or her views or wishes.



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(2) A decision-maker may find out the views and wishes of a child or young person—

(a) by having regard to—

(i) anything said personally by the child or young person to the decision-maker; or

(ii) anything said by a representative of the child or young person about the child's or young person's views or wishes; or

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

(iii) anything about the child's or young person's views or wishes contained in a report given to the decision-maker; or

(b) in any other way the decision-maker considers appropriate.

(3) A decision-maker must not require a child or young person to express the child's or young person's views or wishes about anything.



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# Part 10.4 Approved care and protection organisations

## Division 10.4.1 Important concepts

### 352A Meaning of *organisation*

In this Act:

***organisation*** means—

(a) a corporation; or

(b) another body prescribed by regulation.

### 352B Meaning of *care and protection purpose*

In this Act:

***care and protection purpose***, for an organisation—

(a) means any of the following purposes:

(i) to provide kinship and foster care services;

(ii) to provide residential care services;

(iii) another purpose prescribed by regulation as a care and protection purpose; but

(b) does not include a purpose prescribed by regulation to not be a care and protection purpose.

*Note* Organisations approved as suitable entities for the purpose of providing kinship and foster care services or residential care services are dealt with in ch 15. See especially s 502, definitions of ***approved kinship and foster care organisation*** and ***approved residential care organisation*** and pt 15.4 (Out-of-home carers).



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### 352C Meaning of *approved care and protection organisation*

In this Act:

***approved care and protection organisation*** means an organisation approved by the director-general under section 63 as a suitable entity for a care and protection purpose.

*Note* The purpose for which an organisation is approved must be recorded in the suitable entities register (see s 72 (2) (b)).

### 352D Meaning of *responsible person* for an approved care and protection organisation

In this Act:

***responsible person***, for an approved care and protection organisation, means an individual approved by the director-general under section 63 as a suitable entity for the purpose of being responsible for the services provided by the organisation in the ACT.

## Division 10.4.2 Approved care and protection organisations—ongoing suitability

### 352E Approved care and protection organisations—responsible person

An approved care and protection organisation must ensure that the organisation has at least 1 responsible person for the organisation at all times during the term of the approval.



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### 352F Approved care and protection organisations—monitoring

(1) The director-general may monitor an approved care and protection organisation's ongoing suitability to be an approved care and protection organisation.

(2) In monitoring an organisation's ongoing suitability, the director-general may require the organisation to give a report to the director-general about the organisation's suitability.

(3) The director-general may make guidelines for monitoring approved care and protection organisations (the ***monitoring guidelines***).

(4) A monitoring guideline is a disallowable instrument.

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

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

## Division 10.4.3 Approved care and protection organisations—complaints

### 352G Meaning of *noncompliant*

An approved care and protection organisation is ***noncompliant*** if the organisation is acting in a way that is inconsistent with the organisation's approval as a suitable entity for the care and protection purpose for which it is approved.

### 352H Complaints—making a complaint

(1) If a person believes on reasonable grounds that an approved care and protection organisation is noncompliant, the person may make a complaint to the director-general about the noncompliance.



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(2) A complaint must—

(a) be in writing; and

(b) include the name and address of the person making the complaint (the ***complainant***).

(3) However, a complaint—

(a) may be made orally if the director-general is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint; and

**Example—exceptional circumstances**

Waiting until the complaint is put in writing would make action in response to the complaint impossible or impractical.

(b) need not include the complainant's name and address if the director-general is satisfied on reasonable grounds that exceptional circumstances justify action without the complainant's name and address.

(4) If a complaint is made orally under subsection (3) (a), the director-general must make a written record of the complaint as soon as practicable.

(5) If a complaint does not include the complainant's name and address under subsection (3) (b), the director-general need not report to the complainant under—

(a) section 352K (Complaints—investigation); or

(b) section 352M (Complaints—action after investigation).

(6) The director-general may make arrangements for people with particular communication needs to ensure they have adequate opportunity to make a complaint.



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## 352I Complaints—withdrawing a complaint

(1) A complainant may withdraw the complaint at any time by written notice to the director-general.

(2) If the complainant withdraws the complaint, the director-general—

(a) need not, but may, take further action on the complaint; and

(b) if the director-general takes further action—need not report to the complainant under section 352M (Complaints—action after investigation) on the results of taking the action.

## 352J Complaints—further information or verification

(1) The director-general may, at any time, require a complainant to give the director-general—

(a) further information about the complaint; or

(b) a written statement verifying all or part of the complaint.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(2) If the director-general makes a requirement, the director-general must give the complainant a reasonable period of time to satisfy the requirement and may extend that period, whether before or after it ends.

(3) If the complainant does not comply with a requirement, the director-general need not, but may, take further action on the complaint.



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## 352K Complaints—investigation

(1) The director-general must take reasonable steps to investigate each complaint the director-general accepts for consideration.

(2) Before investigating a complaint, the director-general must—

(a) tell the complainant, in writing, that the complaint is to be investigated; and

(b) tell the approved care and protection organisation the subject of the complaint, in writing—

(i) that the director-general has received a complaint about the organisation; and

(ii) the details of the complaint; and

(iii) that the director-general is going to investigate the complaint; and

(iv) that the organisation may make an oral or written submission to the director-general about the complaint.

(3) However, if the director-general considers that disclosure of a particular detail of the complaint (including the complainant's name or address) may have an adverse effect on the complainant, the director-general—

(a) must not disclose the detail; and

(b) may instead include a general statement about the detail.

## 352L Complaints—no further action

The director-general must not take further action on a complaint if satisfied that the complaint—

(a) lacks substance; or

(b) is frivolous, vexatious or was not made genuinely; or

(c) has been adequately dealt with.



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## 352M Complaints—action after investigation

(1) After investigating a complaint against an approved care and protection organisation, the director-general must—

(a) if satisfied on reasonable grounds that the organisation is noncompliant—give the organisation—

(i) a noncompliance notice; or

(ii) a noncompliance direction; or

(iii) an intention to cancel notice; and

*Note* ***Noncompliance notice***—see s 352N.
***Noncompliance direction***—see s 352O.
***Intention to cancel notice***—see s 352Q.

(b) if not satisfied that the organisation is noncompliant—

(i) tell the complainant, in writing, that the director-general will not take further action on the complaint; and

(ii) not take further action on the complaint.

(2) Subsection (1) (b) (ii) does not prevent the director-general from taking further action on a complaint if the director-general later becomes satisfied that the organisation is noncompliant.

*Note* The director-general need not notify the complainant under s (1) if—

- the complaint does not include the complainant's name and address (see s 352H); or
- the complainant has withdrawn the complaint (see s 352I).



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## Division 10.4.4 Approved care and protection organisations—intervention

### 352N Intervention—noncompliance notice

(1) This section applies if the director-general suspects on reasonable grounds that an approved care and protection organisation is noncompliant or likely to become noncompliant.

(2) The director-general may give the organisation a notice about the noncompliance (a ***noncompliance notice***).

(3) A noncompliance notice must—

(a) be in writing; and

(b) state the action that is noncompliant; and

(c) describe how the action is noncompliant; and

(d) invite the organisation to make an oral or written submission to the director-general about the noncompliance; and

**Example**

a submission describing how the organisation has changed a procedure to be consistent with the approval

(e) state a reasonable date (the ***due date***) for responding to an invitation in paragraph (d).

*Note* The power to make an instrument includes the power to amend or repeal the instrument (see Legislation Act, s 46).

### 352O Intervention—noncompliance direction

(1) This section applies if—

(a) the director-general—

(i) suspects on reasonable grounds that an approved care and protection organisation is noncompliant or likely to become noncompliant; and



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(ii) considers that the noncompliance would be better dealt with under this section than by giving the organisation a noncompliance notice; or

(b) the director-general has given an approved care and protection organisation a noncompliance notice about the noncompliance and the organisation—

(i) has not responded during the submission period; or

(ii) has responded by the due date but the director-general is satisfied that the organisation is still noncompliant or likely to become noncompliant.

(2) The director-general may give the organisation a direction to end the noncompliance (a ***noncompliance direction***).

(3) A noncompliance direction must—

(a) be in writing; and

(b) state the action that is noncompliant; and

(c) describe how the action is noncompliant; and

(d) state the action to be taken, or not taken, to end the noncompliance; and

(e) state a reasonable time for the organisation to comply with the direction; and

(f) state that the organisation may make an oral or written submission to the director-general about the noncompliance.

*Note* The power to make an instrument includes the power to amend or repeal the instrument (see Legislation Act, s 46).



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## 352P Intervention—suspension if child or young person unsafe

(1) This section applies if the director-general believes on reasonable grounds that—

(a) a child or young person is receiving a service from an approved care and protection organisation; and

(b) the child or young person is unsafe; and

(c) the exercise of the director-general's powers under this section is necessary to protect the child or young person.

*Note* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the director-general has placed the child or young person with an out-of-home carer under s 512 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

(2) The director-general may give the approved care and protection organisation a written notice (a ***safety suspension notice***) suspending 1 or more of the organisation's approvals under section 63 for care and protection purposes for a period not longer than 28 days.

*Note* ***Care and protection purpose***—see s 352B.

(3) If an organisation's approval is suspended by a safety suspension notice and the organisation holds an authorisation under section 520 (Residential care service—general parental authority), the organisation's authorisation under section 520 is also suspended for the period of the safety suspension notice.

(4) A safety suspension notice must include a statement advising the care and protection organisation that the organisation may make a written submission to the director-general about the suspension.

(5) If the director-general gives a safety suspension notice to an approved care and protection organisation, the director-general must also take reasonable steps to tell a person with daily care responsibility for each child or young person likely to be affected about the suspension.

*Note* ***Daily care responsibility***—see s 19.



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## 352Q Intervention—intention to cancel notice

(1) This section applies if—

(a) the director-general—

(i) suspects on reasonable grounds that an approved care and protection organisation is noncompliant or likely to become noncompliant; and

(ii) considers that the noncompliance would be better dealt with under this section than by giving the organisation a noncompliance notice or noncompliance direction; or

(b) the director-general has given an approved care and protection organisation a noncompliance direction about the noncompliance and the organisation has not complied with the direction.

(2) The director-general may give the organisation notice that the director-general intends to cancel the organisation's approval (an ***intention to cancel notice***).

(3) An intention to cancel notice must—

(a) be in writing; and

(b) state that the director-general intends to cancel the organisation's approval because of the organisation's failure to comply with the noncompliance direction; and

(c) state that the organisation may give a written submission to the director-general showing cause why the organisation's approval should not be cancelled; and

(d) state that submissions may be given to the director-general only during the 28 working days after the day the intention to cancel notice is given to the organisation.



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(4) If the director-general gives an intention to cancel notice to an organisation, the director-general must also take reasonable steps to tell a person with daily care responsibility for each child or young person likely to be affected about the notice.

*Note* ***Daily care responsibility***—see s 19.

## 352R Intervention—cancellation

(1) This section applies if the director-general gives an approved care and protection organisation an intention to cancel notice under section 352Q.

(2) If the organisation makes a submission in accordance with the intention to cancel notice, the director-general—

(a) must consider the submission; and

(b) may consider any other relevant matter; and

(c) must decide to either—

(i) cancel the organisation's approval; or

(ii) revoke the intention to cancel notice.

(3) If the organisation does not make a submission in accordance with the intention to cancel notice, the director-general must cancel the organisation's approval.

(4) If the director-general decides to revoke the intention to cancel notice, the director-general must tell the following people about the decision:

(a) the organisation;

(b) anyone else who was told under section 352Q (4) about the intention to cancel notice.



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## 352S Intervention—cancellation notice

(1) This section applies if the director-general decides to cancel an approved care and protection organisation's approval under section 352R.

(2) The director-general must give a written notice (a ***cancellation notice***) to the organisation, cancelling the approval starting on the date stated in the notice (the ***cancellation date***).

(3) If the director-general gives a cancellation notice to the organisation, the director-general must also take reasonable steps to tell a person with daily care responsibility for each child or young person likely to be affected about the cancellation.

*Note* ***Daily care responsibility***—see s 19.

(4) The cancellation notice must be given to the organisation at least—

(a) 20 working days before the cancellation date; or

(b) if the director-general decides another day that is a day before the cancellation date—the other day.

## 352T Intervention—guidelines

(1) The director-general may make guidelines for this division (the ***intervention guidelines***).

(2) An intervention guideline is a disallowable instrument.

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



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## Division 10.4.5 Approved care and protection organisations—surrendering approval

### 352U Surrendering approval

(1) An approved care and protection organisation may surrender the approval by giving written notice of the surrender to the director-general.

*Note* If a form is approved under s 886 for this provision, the form must be used.

(2) The surrender takes effect only after the director-general notifies the organisation that the surrender has been accepted.

## Division 10.4.6 Approved care and protection organisations register

### 352V Approved care and protection organisations register

(1) The director-general must keep a record of organisations that are approved care and protection organisations (the ***organisations register***).

(2) The organisations register must include the following details for each approved care and protection organisation:

(a) the name of the organisation;

(b) the organisation's ABN (if any);

(c) if the organisation is a corporation—the corporation's ACN;

(d) a unique approval number;

(e) the name of the responsible person for the organisation;

(f) the care and protection purpose for which the organisation is approved;



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(g) any of the following given to the organisation:

(i) a noncompliance notice;

(ii) a noncompliance direction;

(iii) a safety suspension notice;

(iv) an intention to cancel notice;

(v) a cancellation notice;

(h) if the organisation's approval has been cancelled at any time—details of the cancellation;

(i) anything else prescribed by regulation.

(3) The organisations register may include anything else the director-general considers is in the public interest.

(4) The organisations register may be kept in any form, including electronically, that the director-general decides.

(5) The director-general must make the organisations register publicly accessible.

**Example—publicly accessible**

published on the directorate website



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# Chapter 11 Care and protection—reporting, investigating and appraising abuse and neglect

## Part 11.1 Care and protection—reporting abuse and neglect

### Division 11.1.1 Definitions

#### 353 Definitions—Act

In this Act:

***child concern report*** means a voluntary report or a mandatory report.

***mandatory report***—see section 356.

***prenatal report***—see section 362 (2).

***voluntary report***—see section 354 (2).

### Division 11.1.2 Reporting abuse and neglect of children and young people

#### 354 Voluntary reporting of abuse and neglect

(1) This section applies if a person believes or suspects that a child or young person—

(a) is being abused; or

(b) is being neglected; or

(c) is at risk of abuse or neglect.



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(2) The person may report (a ***voluntary report***) the belief or suspicion, and the reasons for the belief or suspicion, to the director-general.

*Note 1* A person who gives information honestly and without recklessness under this section does not breach professional ethics and is protected from civil liability (see s 874).

*Note 2* Giving false or misleading information to the director-general is an offence (see Criminal Code, s 338).

## 355 Offence—false or misleading voluntary report

A person commits an offence if—

(a) the person makes a voluntary report; and

(b) the report contains information or allegations that are false or misleading in a material particular; and

(c) the person knows that the information or allegations—

(i) are false or misleading in a material particular; or

(ii) omit anything without which the information or allegations are false or misleading in a material particular.

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

## 356 Offence—mandatory reporting of abuse

(1) A person commits an offence if—

(a) the person is a mandated reporter; and

(b) the person is an adult; and

(c) the person believes on reasonable grounds that a child or young person has experienced, or is experiencing—

(i) sexual abuse; or

(ii) non-accidental physical injury; and



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(d) the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid); and

(e) the person does not, as soon as practicable after forming the belief, report (a ***mandatory report***) to the director-general—

(i) the child's or young person's name or description; and

(ii) the reasons for the person's belief.

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

*Note 1* A person who gives information honestly and without recklessness under this section does not breach professional ethics and is protected from civil liability (see s 874).

*Note 2* Giving false or misleading information to the director-general is an offence (see Criminal Code, s 338).

(2) A person who is or was a member of the clergy of a church or religious denomination is not entitled to refuse to make a mandatory report because it contains information communicated to the member during a religious confession.

(3) In this section:

***mandated reporter***—each of the following people is a ***mandated reporter***:

(a) a doctor;

(b) a dentist;

(c) a nurse;

(d) an enrolled nurse;

(e) a midwife;

*Note* ***Doctor***, ***dentist***, ***nurse, enrolled nurse*** and ***midwife*** are defined in the Legislation Act, dict, pt 1.



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(f) a psychologist;

(g) a teacher at a school;

(h) a person authorised to inspect education programs, materials or other records used for home education of a child or young person under the *Education Act 2004*;

(i) a police officer;

(j) a person employed to counsel children or young people at a school;

(k) a person caring for a child at a childcare centre;

(l) a person coordinating or monitoring home-based care for a family day care scheme proprietor;

(m) a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families;

(n) the public advocate;

(o) an official visitor;

(p) a minister of religion, religious leader or member of the clergy of a church or religious denomination;

(q) a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation.

***person caring for a child at a childcare centre*** includes a childcare assistant or aide caring for a child at the childcare centre if the assistant or aide is in paid employment at the childcare centre, but does not include anyone caring for a child as an unpaid volunteer.

***psychologist*** means a person registered under the *Health Practitioner Regulation National Law (ACT)* to practise in the psychology profession (other than as a student).



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***religious confession*** means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

***teacher***, at a school, includes a teacher's assistant or aide if the assistant or aide is in paid employment at the school.

## 357 Mandatory reporting—exceptions

(1) Section 356 does not apply to a person if the person believes on reasonable grounds that—

(a) someone else has made a report to the director-general about the same child or young person in relation to the same abuse or non-accidental physical injury; and

(b) the other person has reported the same reasons for their belief as the person has for their belief.

(2) Section 356 (1) (c) (ii) does not apply to a person if the person believes on reasonable grounds that—

(a) the child or young person (the ***injured person***) has experienced, or is experiencing, non-accidental physical injury caused by another child or young person; and

(b) a person with parental responsibility for the injured person is willing and able to protect the injured person from further injury.

**Example—par (b)**

A child is injured during a fight at school. The child's teacher believes that a person with parental responsibility for the child is willing and able to protect the child from further injury because the person comes to the school to discuss strategies for preventing further fights.



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## 358 Offence—false or misleading mandatory report

A person commits an offence if—

(a) the person makes a mandatory report; and

(b) the report contains information or allegations that are false or misleading in a material particular; and

(c) the person knows that the information or allegations—

(i) are false or misleading in a material particular; or

(ii) omit anything without which the information or allegations are false or misleading in a material particular.

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

## 359 Reports made to public advocate

(1) This section applies if—

(a) a person believes or suspects that a child or young person—

(i) is being abused; or

(ii) is being neglected; or

(iii) is at risk of abuse or neglect; and

(b) the person reports the belief or suspicion, and the reasons for the belief or suspicion, to the public advocate.

(2) The public advocate must give the director-general a copy of the report.

(3) The report is taken to be a voluntary report.



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(4) The person who made the report to the public advocate is taken to have made a voluntary report.

*Note 1* There are limits on how the report may be used in evidence (see pt 25.5).

*Note 2* Giving false or misleading information to the public advocate is an offence (see Criminal Code, s 338).

## 360 Director-general to act on child concern report

(1) This section applies if the director-general receives a child concern report about a child or young person.

(2) The director-general must—

(a) consider the report; and

(b) carry out an initial assessment of the matters raised in the report to decide if the child or young person may be in need of care and protection; and

(c) take the action that the director-general considers appropriate in relation to the initial assessment.

(3) To carry out an initial assessment of the matters raised in the report, the director-general may take reasonable steps to obtain further information about the matters.

**Example—reasonable steps**

a home visit to interview family members

(4) Without limiting subsection (2) (c), the director-general may do any of the following:

(a) give advice to the person who made the child concern report about appropriate assistance that the person may consider to protect the child or young person;

**Example**

contact details for support services

(b) seek information from an information sharing entity to decide the most appropriate response to the child concern report;



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(c) refer a matter raised in the report to the chief police officer if the director-general suspects on reasonable grounds that it relates to a criminal offence;

(d) refer the matters raised in the report to a government or community-based service for advice and support services for the child or young person and, if appropriate, the child's or young person's family members;

(e) provide or arrange support services for the child or young person and, if appropriate, the child's or young person's family members;

(f) arrange a family group conference in relation to the child or young person;

*Note* Family group conferences are dealt with in ch 3 and ch 12.

(g) assist a family member or a significant person to care for the child or young person;

*Note* Care and protection orders are dealt with in ch 14.

(h) take no action.

(5) However, if the director-general suspects on reasonable grounds that the child or young person may be in need of care and protection the director-general must decide that the child concern report is a child protection report.

(6) In this section:

***information sharing entity***—see section 859.

## 361 Director-general action on child protection report

(1) This section applies if the director-general decides that a child concern report is a child protection report.

(2) The director-general must take the action that the director-general considers appropriate in relation to the report.



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(3) Without limiting subsection (2), the director-general may do any of the following:

(a) seek information from anyone to decide the most appropriate response to the report;

(b) give advice to the person who made the report about appropriate assistance that the person may consider to protect the child or young person;

**Example—par (b)**

contact details for support services

(c) refer a matter raised in the report to the chief police officer if the director-general suspects on reasonable grounds that it relates to a criminal offence;

(d) refer the matters raised in the report to a government or community-based service for advice and support services for the child or young person and, if appropriate, the child's or young person's family members;

(e) provide or arrange support services for the child or young person and, if appropriate, the child's or young person's family members;

(f) arrange a family group conference in relation to the child or young person;

*Note* Family group conferences are dealt with in ch 3 and ch 12.

(g) assist a family member or a significant person to care for the child or young person;

(h) enter into a voluntary care agreement for the child or young person;

(i) take no action.



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(4) This section does not affect the director-general's capacity to—

(a) carry out a care and protection appraisal of the child or young person under section 368 (Care and protection appraisal—power to carry out); or

(b) take action under section 371 (Care and protection appraisal—visual examination and interview); or

(c) take emergency action in relation to the child or young person under section 406 (Emergency action—criteria for taking emergency action); or

(d) apply to the Childrens Court for a care and protection order under section 424 (Care and protection order—application by director-general).

## Division 11.1.3 Prenatal reporting of anticipated abuse and neglect

### 362 Prenatal reporting—anticipated abuse and neglect

(1) This section applies if, during a pregnancy, a person believes or suspects that a child who may be born as a result of the pregnancy may be in need of care and protection.

(2) The person may report (a ***prenatal report***) the belief or suspicion, and the reasons for the belief or suspicion, to the director-general.

(3) The director-general may, with the consent of the pregnant woman, take the action the director-general considers appropriate in relation to the report.

(4) Without limiting subsection (3), the director-general may do any of the following with the consent of the pregnant woman:

(a) provide a voluntary assessment of whether the child is likely to be in need of care and protection after the child is born;



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(b) provide or arrange voluntary support services for the pregnant woman, and any family member who may be involved in caring for the child;

(c) refer the matters raised in the report to a government or community-based service for advice and support services for the pregnant woman and any family member who may be involved in caring for the child.

(5) The director-general may also, without the consent of the pregnant woman, give advice to the person who made the report about appropriate assistance for the pregnant woman that the person may consider.

**Example**

contact details for support services

(6) The director-general may also ask the pregnant woman to consent to the director-general doing either or both of the following:

(a) giving prenatal information to a prenatal information sharing entity;

(b) asking a prenatal information sharing entity for prenatal information.

(7) If the pregnant woman does not consent under subsection (6), the director-general may give the prenatal information to the prenatal information sharing entity, or ask the prenatal information sharing entity for the prenatal information, only if the director-general suspects on reasonable grounds that the child may be in need of care and protection after the child is born.

(8) The director-general is not required to act in relation to a report under this section.



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(9) The director-general must ensure, as far as practicable, that any action taken because of this section is appropriate and consistent with the pregnant woman's human rights.

*Note 1* A person who gives information honestly and without recklessness under this section does not breach professional ethics etc and is protected from civil liability (see s 874).

*Note 2* Giving false or misleading information to the director-general is an offence (see Criminal Code, s 338).

(10) In this section:

***prenatal information*** means information that is relevant to the safety, wellbeing and development of a child after the child is born.

**Examples—information relevant to safety, wellbeing and development of child**

1 information needed to assess any likely risks to the child after birth

2 information needed to develop voluntary strategies to engage the pregnant woman before the birth

3 information needed to develop intervention plans to be implemented at birth that are proportionate and appropriate to the level of risk

4 information needed to decide whether a care and protection application should be made for the child at birth

5 information needed to assess the father's parenting capacity, including the father's ability and willingness to protect the child after birth

6 information needed to engage other family members to be voluntarily involved in protecting the child after birth

***prenatal information sharing entity*** means any of the following:

(a) a person who would be involved in the care of the child after the child's birth;

(b) a Minister;

(c) a health facility;

(d) a police officer or a member of a police service or force of a State;



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(e) an entity established under a law of a State or the Commonwealth;

(f) the holder of a position established under a law of a State or the Commonwealth;

(g) any of the following entities that would, after the child's birth, provide a service to, or have contact with, the child or a person who would be involved in the care of the child:

(i) an administrative unit;

(ii) a territory authority (other than the legal aid commission);

(iii) a territory instrumentality;

(iv) a public employee (other than a judge or magistrate);

(v) a community-based service.

## 363 Offence—false or misleading prenatal report

A person commits an offence if—

(a) the person makes a prenatal report; and

(b) the report contains information or allegations that are false or misleading in a material particular; and

(c) the person knows that the information or allegations—

(i) are false or misleading in a material particular; or

(ii) omit anything without which the information or allegations are false or misleading in a material particular.

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



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## 364 How prenatal reports may be used in evidence

(1) This section applies if a person honestly and without recklessness makes a prenatal report.

(2) The report, or evidence of the contents of the report, is admissible in evidence in a proceeding in a court only if—

(a) the report or evidence is given to the court by the person who made the report; or

(b) the proceeding is before the Childrens Court, under chapter 11 (Care and protection—reporting, investigating and appraising abuse and neglect) or chapter 14 (Care and protection—care and protection orders), in relation to the child born as a result of the pregnancy that is the subject of the report; or

(c) the proceeding is before a court hearing an appeal from a decision of the Childrens Court in a proceeding mentioned in paragraph (b); or

(d) the proceeding is about a charge or allegation made in a proceeding against a person in relation to the person's exercising a function under this Act.

## 365 Prenatal report information is sensitive information

(1) For the definition of ***sensitive information*** in section 845, prenatal report information is also sensitive information.

(2) In this section:

***prenatal report information*** means information—

(a) in a prenatal report; or

(b) received by the director-general under section 362; or

(c) that would allow the information mentioned in paragraph (a) or (b) to be worked out; or



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(d) that identifies a person as a person who gave the information mentioned in paragraph (a) or (b); or

(e) that would allow a person's identity as a person who gave the information mentioned in paragraph (a) or (b) to be worked out.



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# Part 11.2 Care and protection—appraisals

## Division 11.2.1 Definitions

### 366 What is a *care and protection appraisal*?

In the care and protection chapters:

***care and protection appraisal***, of a child or young person—

(a) means an appraisal of the child's or young person's circumstances; and

(b) may, but need not, include the director-general carrying out 1 or more of the following activities:

(i) a visual examination of the child or young person or someone else;

(ii) an interview of the child or young person or someone else;

(iii) giving information to someone;

(iv) asking someone to give information to the director-general;

(v) making inquiries about the child or young person or someone else;

(vi) arranging for a care and protection assessment of the child or young person or someone else;

(vii) asking the child or young person or someone else to attend a stated place at a stated time for the appraisal or a care and protection assessment;

(viii) asking the child or young person or someone else to comply with any arrangement made by the director-general for the appraisal or a care and protection assessment.



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## 367 What is a *care and protection assessment*?

In the care and protection chapters:

***care and protection assessment*** of a person—

(a) means any of the following carried out by an authorised assessor for section 438 (Care and protection assessment—authorisation of assessors):

(i) a medical examination or test of the person;

(ii) a dental examination or test of the person;

(iii) a social assessment of the person;

(iv) a paediatric or developmental assessment of the person;

(v) a psychological examination or test of the person;

(vi) a psychiatric examination or test of the person;

(vii) if the person is a parent or other person with parental responsibility—an assessment of the person's parenting capacity; but

(b) does not include an assessment, examination or test that—

(i) involves surgery; or

(ii) is prescribed by regulation.

*Note* A person authorised under s 438 (Care and protection assessment—authorisation of assessors) must be suitably qualified for the assessment (see s 438 (2)).



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## Division 11.2.2 Appraisal by director-general

### 368 Care and protection appraisal—power to carry out

(1) The director-general may carry out a care and protection appraisal of a child or young person if the director-general decides that a child concern report about the child or young person is a child protection report under section 360 (5) (Director-general to act on child concern report).

*Note* The director-general must decide that a child concern report is a child protection report if the director-general suspects on reasonable grounds that the child or young person may be in need of care and protection (see s 360 (5)).

(2) However, the director-general may carry out a care and protection appraisal of the child or young person only if—

(a) the director-general—

(i) has the agreement, under section 369 (1), of at least 1 parent or other person who has daily care responsibility for the child or young person; and

(ii) has notified, under section 369 (4), any other parent or person who has daily care responsibility for the child or young person (unless, under section 369 (5), notice is not required); or

(b) an appraisal order in force for the child or young person authorises the carrying out of the appraisal; or

*Note* Appraisal orders are dealt with in s 372.

(c) section 370 (Care and protection appraisal—obtaining agreement not in best interests of child or young person etc) applies and the appraisal is carried out under section 371 (Care and protection appraisal—visual examination and interview); or

(d) the director-general has daily care responsibility for the child or young person, or shares it with another person.



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## 369 Care and protection appraisal—obtaining agreement etc

(1) When seeking the agreement of a person for section 368 (2) (a) (i), the director-general must tell the person the following:

(a) the purpose of the appraisal;

(b) if the appraisal is to include a care and protection assessment of the child or young person—the kind of assessment;

(c) that agreement may be refused;

(d) if agreement is refused, the kind of appraisal the director-general may carry out under section 371 (Care and protection appraisal—visual examination and interview).

(2) Agreement to the appraisal may be given orally.

(3) The director-general must keep a written record of the agreement to the appraisal.

(4) When notifying a person for section 368 (2) (a) (ii), the director-general must tell the person—

(a) the purpose of the appraisal; and

(b) if the appraisal is to include a care and protection assessment of the child or young person—the kind of assessment.

(5) The director-general is not required to notify a person under section 368 (2) (a) (ii) if satisfied that—

(a) it would not be in the best interests of the child or young person to notify the person; or

(b) it is not possible or reasonably practicable in the circumstances to do so.

**Example—par (b)**

despite reasonable efforts, contact details for a parent cannot be found



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## 370 Care and protection appraisal—obtaining agreement not in best interests of child or young person etc

(1) This section applies if the director-general suspects on reasonable grounds that obtaining agreement to carry out an appraisal from a parent or other person with daily care responsibility for a child or young person—

(a) is not in the best interests of the child or young person; or

(b) would be likely to jeopardise a criminal investigation.

**Examples par (a)—not in the best interests of child or young person**

1 the parent or other person with daily care responsibility is the subject of an allegation of abuse or neglect of the child or young person

2 the parent's contact with the child or young person is not allowed, or is limited, under a court order (under this Act or another law in force in the Territory)

(2) The director-general may carry out a care and protection appraisal under section 371.

## 371 Care and protection appraisal—visual examination and interview

(1) If section 370 applies in relation to a child or young person, the director-general may carry out an appraisal that consists only of—

(a) a visual examination of the child or young person; and

(b) an interview of the child or young person.

(2) If the child or young person is a student at a school, a patient at a health facility or being cared for by a childcare service, the director-general—

(a) may enter the school, health facility or childcare service to visually examine or interview the child or young person; and

(b) if entering the school, health facility or childcare service, must—

(i) produce the director-general's identity card; and



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(ii) tell the person in charge of the school, health facility or childcare service the purpose of the entry.

(3) After the director-general visually examines or interviews the child or young person, the director-general must take reasonable steps to tell at least 1 parent or other person who has daily care responsibility for the child or young person that the examination or interview has been carried out.

(4) Subsection (3) does not apply in relation to a person if the director-general suspects on reasonable grounds that telling the person—

(a) is not in the best interests of the child or young person; or

(b) would be likely to jeopardise a criminal investigation.

(5) This section does not affect the director-general's capacity to—

(a) do anything mentioned in section 360 (4) (Director-general to act on child concern report) or section 361 (3) (Director-general action on child protection report); or

(b) take emergency action in relation to the child or young person under section 406 (Emergency action—criteria for taking emergency action); or

(c) apply to the Childrens Court for a care and protection order under section 424 (Care and protection order—application by director-general); or

(d) give information under part 25.3 (Sharing protected information).



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## Division 11.2.3 Appraisal orders

*Note to div 11.2.3*

The director-general may ask the chief police officer for assistance in taking action under an appraisal order. The chief police officer must, if asked, give assistance to the director-general by assigning police officers to assist the director-general in carrying out the action (see s 679).

### 372 What is an *appraisal order*?

In the care and protection chapters:

***appraisal order***—

(a) means an order authorising the director-general to carry out a care and protection appraisal of a child or young person; and

*Note* A care and protection appraisal may include a care and protection assessment (see s 366).

(b) may, but need not, include 1 or more of the following requirements:

(i) that a person attend, alone or with someone else, at a stated place at a stated time for the appraisal;

(ii) that a person or entity comply with arrangements made by the director-general for the appraisal;

(iii) that a person or entity allow entry to a stated place for the appraisal;

(iv) that a person or entity give the director-general information about the care, wellbeing or development of a child or young person;

(v) that something be produced to the court or given to the director-general or someone else;



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(vi) that a person not have contact with the child or young person, or not have contact with the child or young person except if a stated person or a person of a stated class is present; and

*Note* ***Contact*** includes indirect contact (see s 348).

(c) may, but need not, include a temporary parental responsibility provision.

## 373 What is a *temporary parental responsibility provision*?

In the care and protection chapters:

***temporary parental responsibility provision***—

(a) means a provision in an appraisal order for a child or young person that transfers daily care responsibility for the child or young person to the director-general; and

(b) may provide for the director-general to enter and search any place the director-general believes on reasonable grounds the child or young person is, to find the child or young person.

*Note 1* A temporary parental responsibility provision must not be longer than 4 weeks (see s 384).

*Note 2* The director-general may ask the chief police officer for assistance in carrying out a temporary parental responsibility provision in an appraisal order. The chief police officer must, if asked, give assistance to the director-general by assigning police officers to assist the director-general in carrying out the action (see s 679).

## 374 Offence—contravene appraisal order

A person commits an offence if—

(a) an appraisal order is in force for a child or young person; and

(b) the person has been given a copy of the order; and



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(c) the person—

(i) engages in conduct that contravenes a provision of the order; or

(ii) fails to comply with a requirement made of the person under the order.

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

## 375 Appraisal orders—prevails over care and protection orders

If an appraisal order is made for a child or young person for whom a care and protection order is already in force, the appraisal order prevails to the extent of any inconsistency between the orders.

*Note* Care and protection orders are made under pt 14.4.

## 376 Appraisal orders—application by director-general

The director-general may apply for an appraisal order for a child or young person if—

(a) the director-general is satisfied that a care and protection appraisal is necessary to assess whether the child or young person is in need of care and protection; and

(b) either—

(i) the director-general sought agreement under section 369 (Care and protection appraisal—obtaining agreement etc) but no parent or other person with daily care responsibility agreed to the appraisal; or



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(ii) section 370 (Care and protection appraisal—obtaining agreement not in best interests of child or young person etc) applies.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

## 377 Appraisal orders—urgent applications

(1) An application for an appraisal order may be made by phone, fax or another way if necessary because of urgent circumstances.

(2) An application made under subsection (1) must be given to the following people before the application is heard by the court:

(a) the child or young person;

(b) each parent of the child or young person;

(c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) the public advocate.

(3) The Childrens Court must if practicable hear and decide the application on the day it is filed.

## 378 Appraisal orders—application to state grounds

An application for an appraisal order must state—

(a) the grounds on which the order is sought; and

(b) if the application includes an application for a temporary parental responsibility provision—the proposed arrangements for the child's or young person's care during the period of temporary parental responsibility.

**Example—ground on which order sought**

a person with parental responsibility does not agree to the appraisal



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## 379 Appraisal orders—who must be given application

(1) The director-general must give a copy of an application for an appraisal order for a child or young person to the following people at least 1 working day before the application is to be heard by the court:

(a) the child or young person;

(b) each parent of the child or young person;

(c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) the public advocate.

(2) This section does not apply—

(a) to an application under section 377 (Appraisal orders—urgent applications); or

(b) if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* In those cases, the director-general need only give a copy of the application to people before the application is heard by the court (see s 377 and s 413).

## 380 Appraisal orders—court to consider application promptly

(1) The Childrens Court must hear and decide the application not later than 5 working days after the day the application is filed.

(2) This section does not apply to an application under section 377 (Appraisal orders—urgent applications).

*Note* The court must if practicable hear and decide the application on the day it is filed (see s 377).

## 381 Appraisal orders—no interim orders

The Childrens Court must not make an interim appraisal order.



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## 382 Appraisal orders—criteria for making

The Childrens Court may make an appraisal order for a child or young person only if satisfied that—

(a) either—

(i) no parent or other person with daily care responsibility agreed to the appraisal when the director-general sought agreement under section 369 (Care and protection appraisal—obtaining agreement etc); or

(ii) section 370 (Care and protection appraisal—obtaining agreement not in best interests of child or young person etc) applies; and

(b) a care and protection appraisal is necessary to assess whether the child or young person is in need of care and protection.

*Note 1* In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## 383 Appraisal orders—different provisions and requirements

In making an appraisal order for a child or young person, the Childrens Court may include any of the following whether or not it was applied for:

(a) a requirement that—

(i) a person attend, alone or with someone else, at a stated place at a stated time for the appraisal; or

(ii) a person or entity comply with arrangements made by the director-general for the appraisal; or

(iii) that a person or entity allow entry to a stated place for the appraisal;



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(iv) a person or entity give the director-general information about the care, wellbeing or development of a child or young person; or

(v) something be produced to the court or given to the director-general or someone else; or

(vi) that a person not have contact with the child or young person, or not have contact with the child or young person except if a stated person or a person of a stated class is present;

*Note* ***Contact*** includes indirect contact (see s 348).

(b) a temporary parental responsibility provision.

## 384 Appraisal orders—length

(1) The length of an appraisal order—

(a) must be stated in the order; and

(b) must not be longer than 4 weeks.

(2) The length of a temporary parental responsibility provision in an appraisal order—

(a) must be stated in the order; and

(b) must not be longer than 4 weeks.

*Note 1* Temporary parental responsibility provisions are dealt with in s 373.

*Note 2* The length of an appraisal order may be extended to a maximum of 8 weeks (see s 388).



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## 385 Appraisal orders—extension application

(1) The director-general may apply to the Childrens Court for an extension of an appraisal order for a child or young person.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

(2) An application for extension of an appraisal order must state—

(a) the grounds for the proposed extension; and

(b) if the application includes an application for extension of a temporary parental responsibility provision—the proposed arrangements for the child's or young person's care during the period of temporary parental responsibility.

## 386 Appraisal orders—who must be given extension application?

The director-general must give a copy of an application for extension of an appraisal order to the following people at least 1 working day before the application is to be heard by the court:

(a) each party to the proceeding in which the order was made;

(b) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.

## 387 Appraisal orders—court to consider extension application promptly

(1) After initially considering an application for extension of an appraisal order, the Childrens Court may adjourn further consideration of the application only if the Childrens Court is satisfied that the adjournment is appropriate considering the urgency of the application.



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(2) The Childrens Court must hear and decide the application not later than 5 working days after the day the application is filed.

(3) If an appraisal order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is decided within the period required under this section).

## 388 Appraisal orders—criteria for extension

The Childrens Court may, by order, extend an appraisal order only if—

(a) the Childrens Court is satisfied that the appraisal cannot be properly carried out unless the order is extended; and

(b) the total length of the order and the proposed extension will not be longer than 8 weeks.

*Note 1* In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).



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# Chapter 12 Care and protection—voluntary agreements to transfer or share parental responsibility

## Part 12.1 Definitions

### 389 Definitions—Act and ch 12

(1) In this Act:

***voluntary care agreement***—see section 394 (1).

(2) In this chapter:

***party***—see section 396 (1).

***registered***, for a family group conference agreement—means registered under section 391.



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# Part 12.2 Registration of family group conference agreements that transfer or share parental responsibility

*Note to pt 12.2*

Family group conferences and family group conference agreements are dealt with in ch 3.

## 390 Registered family group conference agreement—application

(1) This section applies if, in a family group conference agreement reached at a family group conference arranged under section 80 (2) (Family group conferences—criteria), the parties agree that daily care responsibility or long-term care responsibility for a child or young person should be—

(a) transferred from a person to someone else (other than the director-general); or

(b) shared with a person (other than the director-general) who would not otherwise have that aspect of parental responsibility for the child or young person.

*Note 1* A family group conference may be arranged under s 80 (2) if the director-general believes on reasonable grounds that—

(a) the child or young person is in need of care and protection; and

(b) arrangements should be made to secure the child's or young person's care and protection.

*Note 2* Daily care responsibility is dealt with in s 19.
Long-term care responsibility is dealt with in s 20.

*Note 3* A family group conference agreement must not transfer to, or share with, the director-general parental responsibility for the child or young person (see s 76).



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(2) The director-general may apply to the Childrens Court to register the family group conference agreement.

*Note* If a form is approved under s 886 for an agreement, the form must be used.

(3) An application to register a family group conference agreement must be accompanied by—

(a) a copy of the family group conference agreement; and

(b) a statement signed by each party to the agreement (other than the director-general) to the effect that the party has had an opportunity to get legal advice about the meaning and effect of the agreement.

(4) The director-general must give the public advocate a copy of the application.

## 391 Registered family group conference agreement—registration

(1) This section applies if the director-general applies to the Childrens Court under section 390 (2) to register a family group conference agreement.

(2) If the Childrens Court is satisfied that it could make a care and protection order under this Act with the same effect as the family group conference agreement, the Childrens Court must register the agreement.

*Note* A family group conference agreement must not transfer to, or share with, the director-general parental responsibility for the child or young person (see s 76).

(3) If the Childrens Court is not satisfied that it could make a care and protection order under this Act with the same effect as the family group conference agreement, the Childrens Court must refuse to register the agreement.



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(4) If the Childrens Court refuses to register a family group conference agreement, the court must tell the director-general about the refusal.

## 392 Registered family group conference agreement—notice

(1) If the Childrens Court registers a family group conference agreement about a child or young person under section 391 (2), the court must tell the director-general and the public advocate, by written notice (a ***registration notice***) about the registration.

(2) If the director-general is given a registration notice, the director-general must give a copy of the registration notice to each person who was invited to attend the family group conference.

## 393 Registered family group conference agreement—effect and enforcement

A registered family group conference agreement has effect as if it were a care and protection order of the Childrens Court and may be enforced accordingly.

*Note* Care and protection orders are dealt with in ch 14. It is an offence to contravene a care and protection order (see s 423). See also provisions about police assistance in ch 18 and enforcement generally in ch 23.



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# Part 12.3 Voluntary agreement to share parental responsibility with director-general

## 394 What is a *voluntary care agreement*?

(1) In this Act:

***voluntary care agreement***, for a child or young person, means a written agreement—

(a) between the director-general and—

(i) a parent of the child or young person; or

(ii) someone else who has daily care responsibility or long-term care responsibility for the child or young person; and

(b) for either or both of the following aspects of parental responsibility for the child or young person to be shared between the director-general and the parent or other person:

(i) daily care responsibility;

(ii) long-term care responsibility.

*Note* If 2 or more people have parental responsibility for a child or young person, either of them may discharge the responsibility. However, if the director-general is 1 of the people, no-one else may discharge the responsibility in a way that would be incompatible with the director-general's discharge of the responsibility (see s 18).

(2) A voluntary care agreement may include an arrangement for the person mentioned in subsection (1) (a) (i) or (ii) to pay an amount (the ***contribution***) to the director-general by way of contribution to the cost of the care of the child or young person.



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(3) The contribution must not be more than the amount paid by the Territory for the care of the child or young person.

(4) The contribution is a debt payable to the Territory.

## 395 Voluntary care agreements—who may initiate?

Negotiations for making or ending a voluntary care agreement may be started by any of the following people:

(a) the director-general;

(b) the child or young person (or a person acting for the child or young person);

(c) a parent of the child or young person;

(d) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.

## 396 Voluntary care agreements—who are *parties*?

(1) In this chapter:

***party***, for a voluntary care agreement, means the following people:

(a) the director-general;

(b) a parent of the child or young person who entered the agreement;

(c) someone else who entered the agreement and who has daily care responsibility, or long-term care responsibility, for the child or young person.

(2) A voluntary care agreement is not void or voidable because a party to the agreement is not an adult.



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## 397 Voluntary care agreements—director-general's criteria

The director-general may enter into a voluntary care agreement only if—

(a) the director-general has considered whether another form of assistance would be preferable; and

**Examples—another form of assistance**

1 organising for the child or young person to be cared for by someone else with daily care responsibility, or long-term care responsibility, for the child or young person

2 organising for the child or young person to be cared for by a family member

(b) the director-general is satisfied that a voluntary sharing of daily care responsibility or long-term care responsibility for the child or young person is necessary to ensure the child or young person's wellbeing; and

(c) if the director-general is satisfied that the child or young person has sufficient developmental capacity to understand that it is proposed that the child or young person will be temporarily cared for by a person who is not the child's or young person's former caregiver—the director-general finds out and considers the child's or young person's views and wishes; and

(d) for a voluntary care agreement in relation to a young person who is 15 years old or older, the director-general—

(i) obtains the young person's agreement to the voluntary care agreement; or

(ii) is satisfied that the young person does not have sufficient maturity or developmental capacity to understand and agree to the proposed voluntary care agreement.



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## 398 Voluntary care agreements—start day

If the director-general has entered into a voluntary care agreement, the director-general starts sharing responsibility for the child or young person under the voluntary care agreement—

(a) when the agreement is entered into; or

(b) if the agreement states a later day—on the later day.

## 399 Voluntary care agreements—length

(1) The length of a voluntary care agreement must be stated in the agreement.

(2) A voluntary care agreement—

(a) for a voluntary care agreement in relation to a young person who is 15 years old or older—may be longer than 6 months if the young person agrees; and

(b) in any other case—must be not longer than 6 months.

## 400 Voluntary care agreements—extension

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

(a) the total length of the voluntary care agreement and the proposed extension will be not longer than—

(i) 6 months; or

(ii) if the voluntary care agreement is in relation to a young person who is 15 years old or older and the young person agrees to a period longer than 6 months—the longer period; or



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(b) at the end of the proposed extension, the child or young person will not have been cared for under a voluntary care agreement for more than—

(i) 6 months in the previous 12 months; or

(ii) if the voluntary care agreement is in relation to a young person who is 15 years old or older and the young person agrees to a period longer than 6 months—the longer period.

(2) However, the director-general may agree to extend the voluntary care agreement only if—

(a) the director-general—

(i) has considered whether another form of assistance would be preferable; and

(ii) is satisfied that the voluntary sharing of responsibility for the child or young person under the voluntary care agreement is appropriate; and

(iii) if satisfied that the child or young person has sufficient developmental capacity to understand that it is proposed that the child or young person will continue to be temporarily cared for under a voluntary care agreement—finds out and considers the child's or young person's views and wishes; and

(b) for voluntary care agreement about a young person who is 15 years old or older—

(i) the young person agrees to the extension; or

(ii) the young person does not have sufficient maturity or developmental capacity to understand and agree to the proposed voluntary care agreement.

(3) A voluntary care agreement may be extended more than once.



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## 401 Voluntary care agreements—early ending

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

## 402 Voluntary care agreements—return of children and young people

(1) If a voluntary care agreement ends, the director-general must return the child or young person as soon as practicable after the day the voluntary care agreement ends, to a former caregiver of the child or young person or other person as agreed between the parties to the agreement.

(2) The director-general shares responsibility for the child or young person under the voluntary care agreement until the child or young person is returned.

(3) The director-general's responsibility for the child or young person under the voluntary care agreement ends when the child or young person is returned.

(4) However, the director-general is not required to return a child or young person if—

(a) emergency action is being taken in relation to the child or young person; or

*Note* Emergency action may be taken under ch 13.

(b) the director-general has applied to the Childrens Court for a care and protection order including a parental responsibility provision that would give the director-general daily care responsibility or long-term care responsibility, or both, for the child or young person.

*Note* Parental responsibility provisions are dealt with in div 1.3.2.
Care and protection orders are dealt with in ch 14.



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(5) Subsection (4) does not allow the director-general to keep responsibility for the child or young person under the voluntary care agreement if the Childrens Court refuses the director-general's application.



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# Chapter 13 Care and protection and therapeutic protection—emergency situations

## Part 13.1 Emergency action

### 403 When are children and young people *in need of emergency care and protection*?

For the care and protection chapters, a child or young person is ***in need of emergency care and protection*** if the child or young person—

(a) is in immediate need of care and protection; or

(b) is likely to be in immediate need of care and protection if emergency action is not taken.

*Note* ***In need of care and protection*** is defined in s 345.

### 404 When are children and young people *in need of emergency therapeutic protection*?

For the care and protection chapters, a child or young person is ***in need of emergency therapeutic protection*** if—

(a) the child or young person meets the criteria for a therapeutic protection order; and

(b) the immediate placement of the child or young person in a therapeutic protection place is necessary to ensure the child or young person's safety.



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## 405 What is *emergency action*?

In this Act:

***emergency action***, taken by the director-general or a police officer, for a child or young person—

(a) means transferring daily care responsibility for the child or young person to the director-general or police officer; and

(b) includes arranging for the child's or young person's care and protection by keeping the child or young person at a place or by moving the child or young person from a place to another place.

*Note* An authorised person or police officer may at any time enter premises if the authorised person or police officer believes on reasonable grounds that a child or young person at the premises is in need of emergency care and protection and the purpose of the entry is to take emergency action for the child or young person (including using force that is reasonable and necessary to obtain entry to safeguard the wellbeing of the child or young person) (see s 814).

## 406 Emergency action—criteria for taking emergency action

(1) The director-general or a police officer may take emergency action for a child or young person if the director-general or police officer believes on reasonable grounds that the child or young person is in need of emergency care and protection or emergency therapeutic protection.

(2) To remove any doubt, the director-general or police officer may take emergency action for a child or young person if the child or young person is in the care of—

(a) a parent of the child or young person; or

(b) someone else who has daily care responsibility for the child or young person.

*Note* Daily care responsibility for a child or young person is dealt with in s 19.



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## 407 Emergency action—assistance

The director-general or police officer may use whatever assistance is necessary and reasonable to take emergency action.

*Note* The director-general may ask the chief police officer for assistance in carrying out emergency action and the chief police officer must assign police officers to assist the director-general (see pt 18.1).

## 408 Emergency action—certain people must be told

(1) If a police officer takes emergency action for a child or young person, the police officer must—

(a) immediately tell the director-general, in writing—

(i) the name of the child or young person; and

(ii) why the emergency action was taken; and

(b) if practicable—tell the following people about the emergency action as soon as practicable:

(i) the parents of the child or young person;

(ii) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person; and

(c) deliver the child or young person to the place or person advised by the director-general.

(2) However, if it is not practicable for the police officer to tell the director-general in writing immediately, the police officer may tell the director-general orally immediately and then in writing as soon as practicable.



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(3) If the director-general takes emergency action for a child or young person, or is told that a police officer has taken emergency action for a child or young person, the director-general must, as soon as practicable, tell the following people that emergency action has been taken for the child or young person:

(a) if not already told about the emergency action—

(i) the parents of the child or young person; and

(ii) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;

(b) the public advocate;

(c) the Childrens Court.

## 409 Emergency action—daily care responsibility after action

(1) If the director-general takes emergency action for a child or young person, the director-general has daily care responsibility for the child or young person.

(2) If a police officer takes emergency action for a child or young person, the police officer has daily care responsibility for the child or young person until the police officer tells the director-general about the emergency action under section 408.

*Note* The police officer must tell the director-general immediately in writing, or, if that is not practicable, immediately orally and as soon as practicable in writing (see s 408 (1) and (2)).

(3) After the police officer tells the director-general about the emergency action, the director-general has daily care responsibility for the child or young person.



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(4) The director-general may authorise a police officer to exercise daily care responsibility for a child or young person on behalf of the director-general.

*Note* If 2 or more people have parental responsibility for a child or young person, either of them may discharge the responsibility. However, if the director-general is 1 of the people, no-one else may discharge the responsibility in a way that would be incompatible with the director-general's discharge of the responsibility (see s 18 and s 475 (2)).

## 410 Emergency action—length of daily care responsibility

If the director-general or a police officer takes emergency action for a child or young person, the director-general or police officer may keep daily care responsibility for the child or young person without an order of the Childrens Court—

(a) for not longer than 2 working days after the day the emergency action was taken; or

(b) if the 2 working days are interrupted by a Saturday, a Sunday and a public holiday—until the matter can be brought before the court on the next sitting day of the court.

## 411 Care and protection appraisal and placement

If the director-general has daily care responsibility for a child or young person under this division, the director-general may make arrangements for the care and protection of the child or young person including—

(a) arranging a care and protection appraisal that includes an examination of the circumstance that led to the taking of the emergency action; and

*Note* Care and protection appraisals are dealt with in pt 11.2.

(b) placing the child or young person with a person including—

(i) a parent of the child or young person; or



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(ii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person; or

(iii) a former caregiver of the child or young person.

## 412 Emergency action—contact with family

(1) If the director-general or a police officer has daily care responsibility for a child or young person under this division, the director-general or police officer must, as far as practicable, allow reasonable contact between the child or young person and his or her family members and significant people.

(2) However, the director-general or police officer is not required to allow contact if the contact would create a risk of harm to the child or young person.

## 413 Emergency action—application for orders

(1) This section applies if—

(a) the director-general or a police officer has daily care responsibility for a child or young person under this division; and

(b) the director-general applies for any of the following orders for the child or young person:

(i) an appraisal order;

(ii) a care and protection order;

(iii) an assessment order;

(iv) a therapeutic protection order.



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(2) The director-general need only give a copy of the application to people under the following sections before the application is heard by the Childrens Court:

(a) section 379 (Appraisal orders—who must be given application);

(b) section 427 (Care and protection orders—who must be given application);

(c) section 445 (Assessment orders—who must be given application);

(d) section 541 (Therapeutic protection orders—who must be given application).

(3) The Childrens Court must give initial consideration to the application on the day it is filed.

## 414 Emergency action—end of daily care responsibility

(1) This section applies if the director-general or a police officer has daily care responsibility for a child or young person under this division.

(2) The director-general or police officer stops having daily care responsibility for the child or young person if—

(a) the child or young person is returned to someone mentioned in section 415 (2); or

(b) the Childrens Court makes an order giving daily care responsibility for the child or young person to someone else.

## 415 Emergency action—return of child or young person

(1) This section applies if the director-general or a police officer has daily care responsibility for a child or young person under this division and, at the end of the period for which the director-general or police officer may keep responsibility—

(a) none of the following orders have been made for the child or young person:



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(i) an appraisal order with a temporary parental responsibility provision;

(ii) an interim care and protection order with a parental responsibility provision;

(iii) a care and protection order with a parental responsibility provision;

(iv) an interim therapeutic protection order;

(v) a therapeutic protection order; and

(b) the director-general or police officer still has daily care responsibility for the child or young person.

(2) The director-general or police officer must deliver the child or young person into the care of 1 of the following people:

(a) a parent of the child or young person who has parental responsibility for the child or young person;

(b) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

(c) a former caregiver of the child or young person.



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# Part 13.2 Emergency action release orders

## 416 What is an *emergency action release order*?

In this Act:

***emergency action release order***, for a child or young person for whom the director-general or a police officer has daily care responsibility under part 13.1, means an order for the release of the child or young person into the care of a stated person.

## 417 Emergency action release order—application

(1) This section applies if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1.

(2) Any of the following people (the ***applicant***) may apply to the Childrens Court for an emergency action release order:

(a) the child or young person;

(b) a parent of the child or young person who has parental responsibility for the child or young person;

(c) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) a former caregiver of the child or young person;

(e) the public advocate.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

## 418 Emergency action release order—application to state grounds

An application for an emergency action release order must state the grounds on which the order is sought.



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## 419 Emergency action release order—who must be given application

The applicant must give a copy of the application for the emergency action release order to the following people before the application is heard by the court:

(a) the child or young person;

(b) each parent of the child or young person;

(c) each other person (if any) who had daily care responsibility, or long-term care responsibility, for the child or young person immediately before the emergency action was taken;

(d) the director-general;

(e) the public advocate.

*Note* If the director-general applies for an appraisal order, a care and protection order, an assessment order or a therapeutic protection order for the child or young person, the director-general need only give a copy of the application to people before the application is heard by the court (see s 413).

## 420 Emergency action release order—criteria for making

The Childrens Court may make an emergency action release order for a child or young person only if satisfied that the child or young person is no longer in need of emergency care and protection or emergency therapeutic protection.

*Note 1* In a proceeding for an emergency action release order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).



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# Chapter 14 Care and protection—care and protection orders

## Part 14.1 Preliminary

### 421 Definitions—ch 14

In this chapter:

***ACAT mental health provision***, in a care and protection order—see section 491.

***authorised assessor***—see section 438.

***care and protection order***—see section 422.

***contact provision***, in a care and protection order—see section 485.

***drug use provision***, in a care and protection order—see section 488.

***enduring parental responsibility provision***, in a care and protection order—see section 481.

***interim care and protection order***—see section 433.

***parental responsibility provision***, in a care and protection order—see section 474.

***provision***, in a care and protection order, means any of the following provisions in the care and protection order:

(a) a contact provision;

(b) a drug use provision;

(c) an enduring parental responsibility provision;

(d) an ACAT mental health provision;

(e) a residence provision;

(f) a short-term parental responsibility provision;



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(g) a long-term parental responsibility provision;

(h) a specific issues provision;

(i) a supervision provision.

***short-term parental responsibility provision***, in a care and protection order—see section 476.

***specific issues provision***, in a care and protection order—see section 492.

***supervision provision***, in a care and protection order—see section 489.

## 422 What is a *care and protection order*?

In this Act:

***care and protection order***—

(a) means an order about the care and protection of a child or young person; and

(b) may contain any of the following provisions:

(i) a contact provision;

(ii) a drug use provision;

(iii) an enduring parental responsibility provision;

(iv) an ACAT mental health provision;

(v) a residence provision;

(vi) a short-term parental responsibility provision;

(vii) a long-term parental responsibility provision;

(viii) a specific issues provision;

(ix) a supervision provision.



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## 423 Offence—contravene care and protection order

A person commits an offence if—

(a) a care and protection order is in force for someone else who is a child or young person; and

(b) the person has been given a copy of the order; and

(c) the person engages in conduct that contravenes a provision of the order.

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

*Note 1* A registered family group conference agreement has effect as if it were an order of the Childrens Court and may be enforced accordingly (see s 393).

*Note 2* If a care and protection order is in force for a child or young person and there are reasonable grounds for suspecting that someone has contravened the order and because of the contravention, the child or young person is in danger, the director-general or police officer may apply to the Childrens Court for a warrant to have the child or young person taken into safe custody (see s 685).



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# Part 14.2 Applications for care and protection orders

## 424 Care and protection order—application by director-general

The director-general may apply to the Childrens Court for a care and protection order for a child or young person if the director-general believes on reasonable grounds that the child or young person is in need of care and protection.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

## 425 Care and protection order—application by others

(1) Someone (the ***other applicant***) other than the director-general may apply to the Childrens Court for a care and protection order for a child or young person if—

(a) the other applicant believes on reasonable grounds that the child or young person is in need of care and protection; and

(b) if the director-general has not applied for a care and protection order for the child or young person—the other applicant has consulted the director-general about the application; and

(c) the other applicant has the leave of the Childrens Court to make the application.

(2) If the other applicant seeks the leave of the Childrens Court to make the application, the Childrens Court—

(a) must hear the other applicant and the director-general; and

(b) may give the other applicant leave to make the application.



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(3) If the other applicant applies for a care and protection order for a child or young person, the director-general and the public advocate may each appear and be heard in the proceeding.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

## 426 Care and protection order—application must state provisions sought and grounds

(1) An application for a care and protection order must state—

(a) the provisions proposed to be included in the order; and

(b) the grounds on which the care and protection order is sought.

(2) An application for a care and protection order with a parental responsibility provision must also state—

(a) whether parental responsibility is proposed to be shared or transferred; and

(b) each person who is to share parental responsibility; and

(c) each person to whom parental responsibility is to be transferred.

*Note* The Childrens Court may also include a provision in a care and protection order whether or not anyone applied, or cross-applied, for it (see s 383).

## 427 Care and protection orders—who must be given application

(1) The applicant for a care and protection order for a child or young person must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:

(a) the child or young person;

(b) each parent of the child or young person;



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(c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) if the applicant is not the director-general—the director-general;

(e) the public advocate.

(2) This section does not apply if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (2), the director-general need only give a copy of the application to people before the application is heard by the court (see s 413).

## 428 Care and protection order—cross-application for different provisions

(1) A party to a proceeding for a care and protection order for a child or young person may cross-apply for a different provision to be included in the order, different terms in a provision in the order or a different order, if the party—

(a) believes on reasonable grounds that the different provision, terms or order is in the best interests of the child or young person; and

(b) has leave of the Childrens Court to cross-apply.

**Example—different term in provision in order**

An order includes a residence provision about with whom the child must live. A party may cross-apply for the residence provision to provide for the child to live with a different person.

(2) If a party seeks the leave of the Childrens Court to cross-apply, the court may give leave only if satisfied that there are reasonable grounds for believing that the different provision, terms or order is in the best interests of the child or young person.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).



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## 429 Care and protection order—cross-application must state provisions sought and grounds

(1) A cross-application for a care and protection order must state—

(a) the provisions that the applicant proposes to have included in the order, the proposed different terms in the provisions in the order or the proposed different order; and

(b) for a cross-application for a different provision, terms or order in a care and protection order—

(i) the draft different provision, terms or order; and

(ii) why the different provision, terms or order would be in the best interests of the child or young person.

*Note* The Childrens Court may also include a provision in a care and protection order whether or not anyone applied, or cross-applied, for it (see s 383).

(2) A cross-application for a care and protection order with a parental responsibility provision must also state—

(a) whether parental responsibility is proposed to be shared or transferred; and

(b) each person who is to share parental responsibility; and

(c) each person to whom parental responsibility is to be transferred.

## 430 Care and protection order—court to consider application and cross-application promptly

(1) The Childrens Court must give initial consideration to an application, or cross-application, for a care and protection order not later than 5 working days after the day the application, or cross-application, is filed.

(2) The application or cross-application must be initially listed before a magistrate.



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(3) The magistrate must give directions about the conduct of the proceeding (including the hearing of the application or cross-application) at the time the application or cross-application is initially considered.

(4) If a care and protection order in relation to the child or young person who is the subject of the application or cross-application is in force on the day the application or cross-application is filed, but the care and protection order would end before the application or cross-application is heard, the care and protection order continues in force until the application or cross-application is heard and decided (whether or not the application or cross-application is considered within the period required under this section).

(5) This section does not apply if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (5), the court must give initial consideration to the application on the day it is filed (see s 413).



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# Part 14.3 Interim care and protection matters

## Division 14.3.1 General

### 431 Interim matters—Court action before adjournment

(1) Before adjourning an application or cross-application under part 14.2 (Applications for care and protection orders), the Childrens Court must—

(a) identify the matters in dispute and consider the length of hearing required; and

(b) give whatever directions are necessary to facilitate the hearing.

**Examples—directions to facilitate hearing**

1 a direction about when evidence must be filed

2 a direction about when further directions may be made

(2) Also, before adjourning an application or cross-application under this part, the Childrens Court may do any of the following:

(a) order that a meeting (a ***court-ordered meeting***) be held to identify or resolve matters in dispute;

*Note* Court-ordered meetings are dealt with in s 432.

(b) make an interim care and protection order for the child or young person;

*Note* Interim care and protection orders are dealt with in s 433.

(c) make an assessment order;

*Note* Assessment orders are dealt with in s 436.

(d) make an interim protection order under section 459;



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(e) if an interim care and protection order is in force for the child or young person—

(i) extend the length of the order and any provision so that they remain in force until the end of the adjournment; or

(ii) revoke any provision or both the order and the provision.

## 432 Interim matters—court-ordered meeting

(1) A court-ordered meeting for a care and protection order for a child or young person—

(a) must be attended by—

(i) the director-general; and

(ii) someone who has daily care responsibility for the child or young person; and

(iii) someone who has long-term care responsibility for the child or young person; and

(b) may be attended by—

(i) any party to the proceeding; and

(ii) the representative of any party to the proceeding; and

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

(iii) anyone else who was given a copy of the application under section 427 (Care and protection orders—who must be given application); and

(iv) with the leave of the court—anyone who has an interest in the proceeding.



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(2) The Childrens Court must appoint a suitable person to preside at the court-ordered meeting.

**Examples—suitable people**

1 a mediator providing community-based mediation services

2 a registrar of the court

(3) However, the Childrens Court must not appoint anyone mentioned in subsection (1) who is attending the court-ordered meeting to preside at the meeting.

(4) The person presiding at a court-ordered meeting must report the outcome of the court-ordered meeting to the Childrens Court.

## Division 14.3.2 Interim care and protection orders

### 433 Interim matters—interim care and protection orders

(1) The Childrens Court may, on application or on its own initiative, make an order (an ***interim care and protection order***) for a child or young person if—

(a) an application for a care and protection order for the child or young person has been made to the court but not finally decided; and

(b) the court believes on reasonable grounds that the child or young person is in need of care and protection or would be in need of care and protection if the interim care and protection order was not made.

(2) The Childrens Court must include in an interim care and protection order any of the following provisions that the Childrens Court is satisfied is in the best interests of the child or young person:

(a) a contact provision;

(b) a drug use provision;

(c) an ACAT mental health provision;



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(d) a residence provision;

(e) a supervision provision;

(f) a parental responsibility provision;

(g) a specific issues provision.

(3) The length of an interim care and protection order must be stated in the order and the order must end on, or before, the day the application or cross application is decided.

(4) Before making an interim care and protection order for a child or young person, the Childrens Court may require the director-general to give the court a care plan for the child or young person for the period of the interim order.

*Note* Care plans are dealt with in s 455.

## 434 Offence—contravene interim care and protection order

A person commits an offence if—

(a) an interim care and protection order is in force for someone else who is a child or young person; and

(b) the person has been given a copy of the order; and

(c) the person engages in conduct that contravenes a provision of the order.

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

## 435 Interim care and protection orders—revocation or amendment

(1) This section applies if, during the hearing of an application for a care and protection order, the Childrens Court makes an interim care and protection order for a child or young person.



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(2) A party (the ***applicant***) to the proceeding for the care and protection order may apply to the Childrens Court for revocation or amendment of the interim care and protection order.

(3) The applicant must give a copy of the application to the following people at least 3 working days before the application is heard by the court:

(a) each party to the proceeding;

(b) anyone else who was required to be given a copy of the application for the care and protection order;

(c) the public advocate.

(4) The Childrens Court must give initial consideration to the application not later than 5 working days after the day the application is filed.

(5) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.

(6) After hearing the application, the Childrens Court must—

(a) revoke the interim care and protection order; or

(b) amend the interim care and protection order; or

(c) substitute a provision in the interim care and protection order for a different provision; or

(d) dismiss the application.

(7) If the interim care and protection order is in force on the day the application for revocation or amendment is filed, but would end before the application is heard, the interim care and protection order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).



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# Division 14.3.3 Assessment orders

*Note to div 14.3.3*

The director-general may ask the chief police officer for assistance in taking action under an assessment order. The chief police officer must, if asked, give assistance to the director-general by assigning police officers to assist the director-general in carrying out the action (see s 679).

## 436 What is an *assessment order*?

In the care and protection chapters:

***assessment order—***

(a) means an order authorising the director-general to arrange for the care and protection assessment of a person in relation to a child or young person; and

*Note* ***Care and protection assessment*** is defined in s 367.

(b) may, but need not, include 1 or more of the following requirements:

(i) that a person attend, alone or with someone else, at a stated place at a stated time for the care and protection assessment;

(ii) that a person or entity comply with arrangements made by the director-general for the care and protection assessment;

(iii) that a person or entity give the court information relevant to the care, wellbeing or development of a child or young person;

(iv) that something be produced to the court.



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## 437 Care and protection assessment—terms of reference for care and protection assessment

(1) For a care and protection assessment of a child or young person, unless the assessment order states otherwise, the director-general must—

(a) decide the matters to be assessed in the care and protection assessment (the ***terms of reference***); and

(b) choose an authorised assessor to make the assessment.

(2) The terms of reference—

(a) may relate to the child or young person who is the subject of the assessment or another person; and

**Example—another person**

a person with parental responsibility for the child or young person

(b) may include any matter that the director-general considers relevant.

(3) The director-general must consult with the parties before deciding the terms of reference or choosing the assessor for a care and protection assessment.

*Note* For the parties under the care and protection chapters, see s 700.

(4) For subsection (5), the director-general must—

(a) tell the parties about the proposed terms of reference or assessor; and

(b) give the parties at least 7 days to make submissions to the director-general about the proposed terms of reference or assessor; and

(c) take into account any submissions made by a party.



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## 438 Care and protection assessment—authorisation of assessors

(1) The director-general may authorise a person to carry out care and protection assessments (an ***authorised assessor***).

*Note* Power to make a statutory instrument includes power to make different provision for different categories (see Legislation Act, s 48).

(2) The director-general may authorise a person only if the director-general considers the person is suitably qualified to carry out care and protection assessments.

**Examples—suitably qualified people**

1 a doctor or nurse to carry out medical examinations

2 a social worker or psychologist to carry out social assessments

3 an occupational therapist or other health practitioner to carry out developmental assessments

4 another person with qualifications or expertise to carry out assessments

*Note* Certain people conducting an activity, or providing a service, under this Act are required to be registered under the Working with Vulnerable People Act (see that Act, s 11 and sch 1).

(3) An authorisation is a notifiable instrument.

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

## 439 Care and protection assessment—report after making

(1) An authorised assessor who carries out a care and protection assessment must, as soon as practicable after the assessment is completed, give the director-general—

(a) a written report of the assessment; and

(b) any records made by the assessor in the course of carrying out the assessment.

(2) The director-general must file the report with the Childrens Court.



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(3) A report filed under this section is taken to be a report to the Childrens Court rather than evidence tendered by a party.

## 440 Offence—contravene assessment order

A person commits an offence if—

(a) an assessment order is in force for a child or young person; and

(b) the person has been given a copy of the order; and

(c) the person is not a child or young person who is to be assessed under the order (other than in the capacity of a parent); and

(d) the person engages in conduct that contravenes a provision of the order.

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

## 441 Assessment orders—prevails over care and protection order

If an assessment order is made in relation to a child or young person for whom a care and protection order is already in force, the assessment order prevails to the extent of any inconsistency between the orders.

*Note* Care and protection orders are made under pt 14.4.

## 442 Assessment orders—on application or court's own initiative

In a proceeding for a care and protection order for a child or young person, the Childrens Court may make an assessment order for a person on application by a party to the proceeding or on its own initiative.



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## 443 Assessment orders—application by party

(1) A party to a proceeding for a care and protection order for a child or young person may apply for an assessment order if the party believes on reasonable grounds that—

(a) a care and protection assessment is necessary to assess whether the child or young person is in need of care and protection; and

(b) the care and protection assessment cannot be properly carried out unless the order is made; and

(c) if the application is for an assessment order for the child or young person and a care and protection assessment of the child or young person has been carried out previously—the further care and protection assessment of the child or young person is not detrimental to the child or young person.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

*Note 3* Parties to proceedings are dealt with in pt 19.2.

(2) A party who applies for an assessment order must meet the costs of the care and protection assessment.

## 444 Assessment orders—application to state grounds

An application for an assessment order must state the grounds on which the order is sought.

## 445 Assessment orders—who must be given application

(1) The applicant for an assessment order in relation to a child or young person must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:

(a) the child or young person;

(b) each parent of the child or young person;



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(c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) the public advocate.

(2) This section does not apply if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (2), the director-general need only give a copy of the application to people before the application is heard by the court (see s 413).

## 446 Assessment orders—court to consider application promptly

The Childrens Court must give initial consideration to an application for an assessment order not later than 5 working days after the day the application is filed.

## 447 Assessment orders—no interim order

The Childrens Court must not make an interim assessment order.

## 448 Assessment orders—criteria for making

The Childrens Court may make an assessment order in relation to a child or young person only if satisfied that—

(a) a care and protection assessment is necessary to assess whether the child or young person is in need of care and protection; and

(b) the care and protection assessment cannot be properly carried out unless the order is made; and



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(c) if the application is for an assessment order for the child or young person and a care and protection assessment of the child or young person has been carried out previously—the further care and protection assessment of the child or young person is not detrimental to the child or young person.

*Note 1* In a proceeding for an assessment order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## 449 Assessment orders—length

The length of an assessment order—

(a) must be stated in the order; and

(b) must not be longer than 10 weeks.

*Note* The length of an assessment order may be extended (see s 454).

## 450 Assessment orders—extension application

A party to a proceeding for a care and protection order for a child or young person may apply to the Childrens Court for extension of an assessment order for a child or young person if the party believes on reasonable grounds that the care and protection assessment cannot be properly carried out unless the order is extended.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

## 451 Assessment orders—extension application must state grounds

An application for extension of an assessment order must state the grounds for the proposed extension.



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## 452 Assessment orders—who must be given extension application?

The applicant for extension of an assessment order must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:

(a) each party to the proceeding in which the order was made;

(b) anyone else who was required to be given a copy of the application for the assessment order;

(c) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.

## 453 Assessment orders—court to consider extension application promptly

(1) The Childrens Court must give initial consideration to an application for extension of an assessment order not later than 5 working days after the day the application is filed.

(2) After initially considering the application, the Childrens Court may adjourn further consideration of the application only if satisfied that the adjournment is appropriate considering the urgency of the application.

(3) If the assessment order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).

## 454 Assessment orders—criteria for extension

(1) The Childrens Court may, by order, extend an assessment order—

(a) only if satisfied that the care and protection assessment cannot be properly carried out unless the order is extended; and



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(b) only if the total length of the order and the proposed extension will not be longer than 18 weeks.

(2) However the Childrens Court may extend the assessment order so that the total length of the order and the proposed extension is longer than 18 weeks if—

(a) the total length of the order and the proposed extension will not be longer than 26 weeks; and

(b) the court is satisfied that because of special and exceptional circumstances the extension is necessary for the assessment to be properly completed.

*Note 1* In a proceeding for an assessment order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## Division 14.3.4 Care plans

### 455 What is a *care plan*?

In this Act:

***care plan***, for a child or young person who is, or is proposed to be, subject to a care and protection order or interim care and protection order—

(a) means a written plan for meeting the child's or young person's protection or care needs; and

(b) may include proposals for the purposes of case planning about the following:

(i) who the director-general considers would be the best person to have a stated aspect of parental responsibility for the child or young person;



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(ii) for an Aboriginal or Torres Strait Islander child or young person—the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person;

(iii) if the director-general proposes to place the child or young person in kinship care or foster care—the kind of placement that will be sought or provided for the child or young person including any interim placement arrangements;

*Note* Placement of children and young people in kinship care and foster care is dealt with in div 15.4.1.

(iv) how the director-general proposes to ensure the living arrangements for the child or young person are as stable as possible;

(v) contact arrangements for the child or young person with family members and significant people as appropriate;

(vi) services to be provided for the child or young person.

## 456 Care plans—stability proposals

(1) This section applies if a care plan includes a proposal mentioned in section 455 (b) (iii) in relation to a child or young person's living arrangements.

(2) The director-general must prepare a proposal (a ***stability proposal***) that outlines how the director-general proposes to ensure long-term placement in a safe, nurturing and secure environment.

(3) A stability proposal may include—

(a) for a child or young person who lives with his or her parents—strategies to ensure stable and long-term living arrangements; and



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(b) for a child or young person who does not live with his or her parents—

(i) an assessment of whether restoration of the child or young person to his or her parents is a realistic possibility; or

(ii) a proposal for restoration that includes changes at the home or by the parents that the director-general believes would need to occur before the director-general would consider it safe for the child or young person to return to his or her parents; or

(iii) a proposal for long-term placement that the director-general considers to be in the best interests of the child or young person.

(c) anything else the director-general considers necessary to ensure a long-term placement in a safe, nurturing and secure environment.

(4) A proposal for long-term placement may include—

(a) placement under a care and protection order with a long-term parental responsibility provision; or

(b) placement under a care and protection order with an enduring parental responsibility provision; or

(c) placement under a parenting order under the *Family Law Act 1975* (Cwlth); or

(d) adoption under the *Adoption Act 1993*.

(5) The director-general must not include adoption in a proposal for long-term placement for an Aboriginal or Torres Strait Islander child or young person under subsection (4) unless the director-general has considered the *Adoption Act 1993*, section 39G.



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## 457 Care plans—who must be consulted

(1) If the director-general is preparing a care plan for a child or young person, the director-general must—

(a) tell the following people about the proposals the director-general intends to include in the care plan:

(i) the child or young person;

(ii) each person who has daily care responsibility for the child or young person;

(iii) anyone else who would be involved in implementing a proposal;

**Examples—people who would be involved**

1 an out-of-home carer for the child or young person

2 a community-based service that is providing services to the child or young person

(iv) for a proposal prepared under section 455 (b) (ii)—

(A) Aboriginal or Torres Strait Islander people who have an interest in the wellbeing of the child or young person through family, kinship and cultural ties; and

(B) any Aboriginal or Torres Strait Islander people or organisation identified by the director-general as providing ongoing support services to the child or young person or the child's or young person's family; and

(b) give the people opportunity to make submissions to the director-general about the proposals.

(2) If a person makes a submission to the director-general about a proposal, the director-general must consider the submission.



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## Division 14.3.5 Protection orders

### 458 Definitions—div 14.3.5

(1) In this division:

***protection order*** means an FVO or a PVO.

***relevant Act*** means—

(a) for an FVO—the *Family Violence Act 2016*; or

(b) for a PVO—the *Personal Violence Act 2016*.

(2) In this section:

***FVO*** means a protection order under the *Family Violence Act 2016*.

*Note* A protection order means an interim or final order and includes an order about the seizure of a firearms licence, firearm or ammunition and an order amending a protection order (see *Family Violence Act 2016*, dict, def ***protection order***).

***PVO*** means a protection order under the *Personal Violence Act 2016*.

*Note* A protection order means an interim or final personal or workplace order and includes an order about the seizure of a firearms licence, firearm or ammunition and an order amending a protection order (see *Personal Violence Act 2016*, dict, def ***protection order***).

### 459 Childrens Court may make or amend protection orders

(1) This section applies if an application for a care and protection order for a child or young person (the ***protected child or young person***) has been made but not yet finally decided.

(2) The Childrens Court may—

(a) make a protection order for an affected person against a person if satisfied that if an application for a protection order were made under the relevant Act, the order could have been validly made; or



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(b) exercise the jurisdiction of the Magistrates Court under the relevant Act to vary an existing protection order protecting an affected person.

*Note 1* A child younger than 10 years old cannot be a respondent to an application for a protection order (see *Family Violence Act 2016*, s 75 and *Personal Violence Act 2016*, s 14).

*Note 2* The Childrens Court may make an interim protection order before adjourning an application or cross-application under s 431 (Interim matters—Court action before adjournment).

(3) The Childrens Court may make a protection order or amend an existing protection order—

(a) on its own initiative; or

(b) on application by a party to the proceeding for the care and protection order; or

(c) on application by the public advocate.

*Note* The procedural requirements set out in ch 19 apply to a proceeding involving a protection order under this division including the following:

- statements, documents and reports must be included in the application (see s 696)
- oral applications may also be made (see s 698)
- in the proceeding, a fact is proved if it is proved on the balance of probabilities (see s 711)
- the court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).



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(4) In this section:

***affected person*** means—

(a) a protected child or young person against whom family violence has been, or is likely to be, committed; or

(b) a family member of the protected child or young person if family violence has been, or is likely to be, committed—

(i) against the family member by the protected child or young person; or

(ii) by another person against a protected child or young person and that family violence affects the family member.

***family member***, of a protected child or young person, means—

(a) a child or young person who is a brother, sister, half-brother, half-sister, stepbrother or stepsister of the protected child or young person; or

(b) a child or young person who lives in the same household as the protected child or young person; or

(c) a parent of, or another person that has parental responsibility for, the protected child or young person.

***family violence***—see the *Family Violence Act 2016*, section 8.

## 460 Effect of making protection order under this Act

If the Childrens Court makes a protection order under this division—

(a) the order is taken to have been made under the relevant Act; and

(b) the Childrens Court is taken to have exercised jurisdiction under the relevant Act as the Magistrates Court when making the order; and

(c) the order may be amended, revoked or appealed from under the relevant Act.



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# Part 14.4 Making care and protection orders

*Notes to pt 14.4*

An appraisal order prevails over a care and protection order (see s 375).

An assessment order prevails over a care and protection order (see s 441).

## 464 Care and protection order—criteria for making

(1) The Childrens Court may make a care and protection order for a child or young person if the court—

(a) is satisfied that the child or young person is in need of care and protection; and

(b) has considered the care plan prepared by the director-general for the child or young person; and

(c) is satisfied that—

(i) the provisions included in the order are necessary to ensure the care and protection of the child or young person; and

(ii) making the order is in the best interests of the child or young person.

(2) The Childrens Court must include in a care and protection order, on application or its own initiative, any of the following provisions that the Childrens Court is satisfied is in the best interests of the child or young person:

(a) a contact provision;

(b) a drug use provision;

(c) an enduring parental responsibility provision;

(d) an ACAT mental health provision;

(e) a residence provision;



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(f) a short-term parental responsibility provision;

(g) a long-term parental responsibility provision;

(h) a specific issues provision;

(i) a supervision provision.

(3) However, the Childrens Court must not include in a care and protection order an enduring parental responsibility provision unless satisfied that the criteria mentioned in section 482 (Enduring parental responsibility provision—criteria for making) are met.

(4) Unless the Childrens Court orders otherwise, the director-general must give a copy of a care plan provided for a proceeding to each other party to the proceeding.

(5) The Childrens Court—

(a) must not merely accept the admission of the parties to the proceeding that the child or young person is in need of care and protection; but

(b) must satisfy itself that the child or young person is in need of care and protection.

*Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

(6) The Childrens Court may include a provision in a care and protection order on application by a party to the proceeding or on its own initiative.

(7) If the Childrens Court intends someone to make decisions about where the child or young person lives, the court must include a residence provision in the care and protection order.



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## 465 Care and protection order—length

(1) The Childrens Court must state the length of each provision included in a care and protection order.

(2) The length of a care and protection order is the length of the longest provision in the order.

*Note 1* The length of parental responsibility provisions is dealt with in—

(a) for short-term parental responsibility provision—s 476; and

(b) for enduring parental responsibility provision—s 481 (until the child or young person is 18 years old).

*Note 2* The length of a care and protection order may be extended (see s 471).



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# Part 14.5 Extending, amending and revoking care and protection orders

## 466 Care and protection order—extension and amendment applications

(1) A person may apply to the Childrens Court for extension or amendment of a care and protection order, or a provision in a care and protection order, if the person—

(a) believes on reasonable grounds that the extension or amendment is in the best interests of the child or young person; and

(b) has the leave of the Childrens Court to make the application.

(2) The Childrens Court must give leave to someone who was a party to the proceeding in which the care and protection order was made.

(3) However, the Childrens Court may give leave to someone to apply more than once in a 12-month period only if satisfied that there has been a significant change in any relevant circumstances since the care and protection order was made or last extended or amended.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).



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## 467 Care and protection order—revocation applications

(1) A person may apply to the Childrens Court for revocation of a care and protection order, or a provision in a care and protection order if the person—

(a) believes on reasonable grounds that—

(i) the child or young person would not be in need of care and protection if the order or provision were revoked; or

(ii) the order cannot be administered effectively because of the child or young person's persistent refusal to comply with the residence provision of the order; or

(iii) it is otherwise in the best interests of the child or young person to revoke the order or provision; and

(b) has the leave of the Childrens Court to make the application.

(2) The Childrens Court must give leave to someone who was a party to the proceeding in which the care and protection order was made.

(3) However, the Childrens Court may give leave to someone to apply more than once in a 12 month period only if satisfied that there has been a significant change in any relevant circumstances since the care and protection order was made or last extended or amended.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

## 468 Care and protection order—application to state what sought and grounds

An application for extension, amendment or revocation of a care and protection order, or a provision in a care and protection order, must state—

(a) the order or provision proposed to be extended, amended or revoked; and



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(b) how the order or provision is proposed to be extended or amended; and

(c) the grounds on which the extension, amendment or revocation is proposed.

## 469 Care and protection order—who must be given extension, amendment or revocation

The applicant for extension, amendment or revocation of a care and protection order, or a provision in a care and protection order, must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:

(a) each party to the proceeding in which the order was made;

(b) anyone else who was required to be given a copy of the application for the care and protection order;

(c) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.

## 470 Care and protection order—court to consider extension, amendment and revocation applications promptly

(1) The Childrens Court must give initial consideration to an application for extension, amendment or revocation of a care and protection order, or a provision in a care and protection order not later than 5 working days after the day the application is filed.

(2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.

(3) If the care and protection order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).



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## 471 Care and protection order—criteria for extensions and amendments

(1) The Childrens Court may, by order, extend or amend a provision in a care and protection order if satisfied that extending or amending the order as proposed is in the best interests of the child or young person.

(2) The court may extend a provision in a care and protection order for as long as the court considers appropriate.

(3) The court may amend a provision in a care and protection order in any way the court considers appropriate, including—

(a) substituting a provision with a different provision; or

(b) including an additional provision.

*Note 1* The length of a care and protection order may be extended if the Childrens Court makes an annual review report order about an annual review report for a child or young person who is subject to a care and protection order (see pt 14.3).

*Note 2* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 3* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

(4) This section is subject to section 477 (Short-term parental responsibility provision—extension).

## 472 Care and protection order—criteria for revocation

(1) The Childrens Court may, by order, revoke a care and protection order, or a provision in a care and protection order, if satisfied that—

(a) the child or young person would not be in need of care and protection if the order, or the provision in the order, was revoked; or



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(b) the order cannot be administered effectively because of the child or young person's persistent refusal to comply with the residence provision of the order; or

(c) it is otherwise in the best interests of the child or young person to revoke the order or the provision in the order.

*Note* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

(2) Before revoking a care and protection order, or a provision in a care and protection order, the Childrens Court must consider the following matters:

(a) the age and maturity of the child or young person;

(b) the views and wishes of the child or young person;

(c) the living arrangements of the child or young person;

(d) the risk to the child or young person of harm if the order, or the provision of the order, is revoked.

## 473 Care and protection orders—financial burdens

Unless the Childrens Court orders otherwise, if the court makes a care and protection order involving a financial cost to a person, the person is responsible for the cost.



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# Part 14.6 Parental responsibility provisions

## Division 14.6.1 General

### 474 What is a *parental responsibility provision*?

In the care and protection chapters:

***parental responsibility provision***, in a care and protection order, or interim care and protection order, for a child or young person—

(a) means a provision about who has a stated aspect of parental responsibility for the child or young person; and

(b) may, but need not, include 1 or more of the following directions:

(i) that a stated person has daily care responsibility for the child or young person;

*Note* Daily care responsibility is dealt with in s 19.

(ii) that a stated person has long-term care responsibility for the child or young person;

*Note* Long-term care responsibility is dealt with in s 20.

(iii) that parental responsibility for the child or young person is shared between stated people;

(iv) that a stated person (including the director-general) who has long-term care responsibility for the child or young person must consult with each other person who shares long-term care responsibility for the child or young person in making a decision about a long-term matter for the child or young person;

*Note* Long-term care responsibility is dealt with in s 20.



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(v) that a stated person who has parental responsibility for the child or young person must exercise the responsibility in a stated way.

*Note* If a care and protection order is in force for a child or young person and the director-general or a police officer believes on reasonable grounds that someone has contravened the order and because of the contravention, the child or young person is in danger, the director-general or police officer may apply to the Childrens Court for a warrant to have the child or young person taken into safe custody (see s 685).

### 475 Director-general sharing daily care responsibility

(1) This section applies if the director-general shares with another person daily care responsibility for a child or young person.

(2) No other person with daily care responsibility for the child or young person may discharge the responsibility in a way that would be incompatible with the director-general's discharge of the responsibility.

*Note* Usually, if parental responsibility is shared between 2 or more people, either of them may discharge the responsibility (see s 18).

## Division 14.6.2 Short-term parental responsibility provisions

### 476 What is a *short-term parental responsibility provision*?

In the care and protection chapters:

***short-term parental responsibility provision*** means a parental responsibility provision in a care and protection order that is not longer than—

(a) for a child who is younger than 2 years old when the order is made—1 year; and

(b) in any other case—2 years.

*Note* The length of a care and protection order is dealt with in s 465.



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## 477 Short-term parental responsibility provision—extension

(1) The Childrens Court may extend a short-term parental responsibility provision in a care and protection order (the ***extension decision***) if satisfied that extending the provision is in the best interests of the child or young person.

(2) However, for subsection (1) it is a rebuttable presumption that it is in the best interests of the child or young person for the child or young person to be subject to a long-term parental responsibility provision if—

(a) for a child who is younger than 2 years old when the extension decision is made—

(i) the director-general has had an aspect of daily care responsibility or long-term care responsibility for a total of at least 1 year before the extension decision is made; and

(ii) the child or young person has been living with a stated person under a care and protection order for a total of at least 1 year before the extension decision is made; or

(b) in any other case—

(i) the director-general has had an aspect of daily care responsibility or long-term care responsibility for—

(A) the 2 years immediately before the extension decision is made; or

(B) a total of at least 2 years in the 3 years immediately before the extension decision is made; and

(ii) the child or young person has been living with a stated person under a care and protection order for—

(A) the 2 years immediately before the extension decision is made; or



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(B) a total of at least 2 years in the 3 years immediately before the extension decision is made.

(3) To rebut the presumption, a person who is a parent of the child or young person, or someone else who has had parental responsibility for the child or young person during the term of the order, must satisfy the Childrens Court that—

(a) the person is likely to be able to resume care of the child or young person during the period of extension; and

(b) it is in the best interests of the child or young person for the person to resume care of the child or young person during the period of extension.

(4) In subsection (2):

***stated person*** means—

(a) the carer under the care and protection order; or

(b) one parent to the exclusion of another parent; or

(c) a family member who is not a parent.

*Note 1* A short-term parental responsibility provision may be extended, amended or revoked under pt 14.5.

*Note 2* If an application has been made to the Childrens Court for a care and protection order and the application is adjourned, any parental responsibility provision that is in force at the time of the adjournment may be extended until the end of the adjournment or revoked (see s 431).

## 478 Short-term parental responsibility provision—financial contribution

(1) This section applies if the Childrens Court includes a short-term parental responsibility provision in a care and protection order for a child or young person and the provision—

(a) transfers parental responsibility for the child or young person to the director-general; or



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(b) shares parental responsibility for the child or young person with the director-general.

(2) The court may order a parent of the child or young person to pay an amount (the ***contribution***) to the director-general as a contribution to the cost of the care of the child or young person.

(3) In deciding the amount of the contribution, the court must have regard to the financial circumstances of the parent.

(4) The contribution is a debt payable to the Territory.

## Division 14.6.3 Long-term parental responsibility provisions

### 479 What is a *long-term parental responsibility provision*?

In the care and protection chapters:

***long-term parental responsibility provision*** means a parental responsibility provision in a care and protection order that—

(a) is in force until the child or young person is 18 years old; and

(b) transfers daily care responsibility and long-term care responsibility for the child or young person to the director-general or another stated person, unless the order states that a particular aspect of responsibility is transferred.

**Example**

A parental responsibility provision that transfers daily care responsibility for a child or young person to the director-general until the child or young person is 18 years old but does not transfer long-term care responsibility to the director-general.

*Note* The length of a care and protection order is dealt with in s 465.



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### 480 Long-term parental responsibility provision—financial contribution by parents

(1) This section applies if the Childrens Court includes a long-term parental responsibility provision in a care and protection order for a child or young person and the provision—

(a) transfers parental responsibility for the child or young person to the director-general; or

(b) shares parental responsibility for the child or young person with the director-general.

(2) The Childrens Court may order a parent of the child or young person to pay an amount (the ***contribution***) to the director-general as a contribution to the cost of the care of the child or young person.

(3) In deciding the amount of the contribution, the Childrens Court must have regard to the financial circumstances of the parent.

(4) The contribution is a debt payable to the Territory.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

## Division 14.6.4 Enduring parental responsibility provisions

### 481 What is an *enduring parental responsibility provision*?

(1) In the care and protection chapters:

***enduring parental responsibility provision*** means a parental responsibility provision in a care and protection order that—

(a) transfers daily care responsibility and long-term care responsibility for the child or young person to a stated person; and

(b) does not transfer parental responsibility to the director-general; and



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(c) is in force until the child or young person is 18 years old.

*Note* The length of a care and protection order is dealt with in s 465.

(2) To remove any doubt, an enduring parental responsibility provision is taken to include a residence provision that authorises the stated person to decide where and with whom a child or young person must live.

## 482 Enduring parental responsibility provision—criteria for making

(1) The Childrens Court may, on application or on its own initiative, include an enduring parental responsibility provision in a care and protection order for a child or young person if—

(a) no-one with parental responsibility for the child or young person (other than under a care and protection order) has had care of the child or young person for—

(i) the year immediately before the order is made; or

(ii) a total of at least 1 year in the 2 years immediately before the order is made; and

(b) the child or young person has been living with a stated person under a care and protection order for—

(i) the year immediately before the order is made; or

(ii) a total of at least 1 year in the 2 years immediately before the order is made; and

(c) the court is satisfied that—

(i) no-one with parental responsibility for the child or young person (other than under a care and protection order) (a ***previous carer***) is willing or able to exercise daily care responsibility or long-term care responsibility for the child or young person; or



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(ii) it is not in the best interests of the child or young person for a previous carer to exercise those responsibilities for the child or young person; and

(d) the court is satisfied that—

(i) it is unlikely that a previous carer of the child or young person will be willing or able to exercise daily care responsibility or long-term care responsibility for the child or young person before the child or young person is 18 years old; or

(ii) it is unlikely that it would be in the best interests of the child or young person for a previous carer to exercise those responsibilities for the child or young person before the child or young person is 18 years old; and

(e) the court is satisfied that the stated person is willing and able to exercise daily care responsibility or long-term care responsibility for the child or young person; and

(f) the court is satisfied that including the provision is the best way to meet the child's or young person's need for emotional security in the long-term; and

(g) for an Aboriginal or Torres Strait Islander child or young person—the court has given any Aboriginal or Torres Strait Islander person or organisation that has provided ongoing support services to the child or young person and his or her family a reasonable opportunity to provide a written report about the making of the proposed provision.



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(2) In this section:

***stated person*** means the person to whom the court proposes to transfer daily care responsibility and long-term care responsibility for the child or young person under the proposed enduring parental responsibility provision.

*Note 1* An enduring parental responsibility provision may be amended or revoked under pt 14.5.

*Note 2* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 3* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## 483 Enduring parental responsibility provision—financial contribution

(1) This section applies if—

(a) the Childrens Court includes an enduring parental responsibility provision in a care and protection order for a child or young person; and

(b) immediately before the order was made, the director-general had daily care responsibility for the child or young person.

(2) The director-general may provide financial or other assistance to the person to whom the provision transfers parental responsibility for the child or young person.



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# Part 14.7 Residence provisions

## 484 What is a *residence provision*?

In the care and protection chapters:

***residence provision***, in a care and protection order, or an interim care and protection order, for a child or young person—

(a) means a provision—

(i) about where or with whom a child or young person must live; or

(ii) authorising a person to decide where or with whom a child or young person must live; and

(b) may include 1 or more of the following directions:

(i) that a stated person must not live at the same premises as the child or young person (including that the stated person must stop living at those premises);

(ii) that a stated person may live with the child or young person only subject to stated conditions.

**Example—stated condition**

that the stated person must undertake an anger management program



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# Part 14.8 Contact provisions

## 485 What is a *contact provision*?

In the care and protection chapters:

***contact provision***, in a care and protection order, or an interim care and protection order, for a child or young person means a provision—

(a) about who may, or must not, have contact with the child or young person; or

(b) authorising the director-general or another person to decide with whom the child or young person may have contact and to decide any conditions for the contact.

**Examples—decisions and conditions**

1 that a child may have contact with a stated person for at least 4 hours each week if the person complies with the drug use provision in the order

2 that a young person may have supervised contact with a stated person twice each week as arranged by the director-general

3 that a child may have contact with a stated person in accordance with a care plan

*Note* ***Contact***, with a person, is defined in s 348.

## 486 Contact provision—presumption about contact with family

(1) This section applies if someone applies for a contact provision to be included in a care and protection order for a child or young person.

(2) There is a rebuttable presumption that it is in the best interests of the child or young person for the child or young person to have contact with a person with parental responsibility for the child or young person or his or her siblings.



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## 487 Contact provision—sibling may join proceeding without leave

If someone applies for a contact provision to be included in a care and protection order for a child or young person, a sibling of the child or young person does not need the leave of the Childrens Court to be joined as a party to the proceeding on the application.



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# Part 14.9 Drug use provisions

## 488 What is a *drug use provision*?

In the care and protection chapters:

***drug use provision***, for a stated person, in a care and protection order, or an interim care and protection order, for a child or young person means a provision about usage of drugs by the stated person that includes 1 or more of the following directions:

(a) that the stated person must not use a stated drug;

(b) that the stated person may use a stated drug only in accordance with the conditions in the provision;

(c) that the stated person undergo drug testing as directed by the director-general in accordance with the drug testing standards.

*Note* The Minister may make drug testing standards under s 887.



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# Part 14.10 Supervision provisions

## 489 What is a *supervision provision*?

(1) In the care and protection chapters:

***supervision provision***, in a care and protection order, or an interim care and protection order, for a child or young person, means a provision placing the child or young person, for the period stated in the order, under the supervision of the director-general.

*Note* If a care and protection order including a supervision provision is in force for the child or young person for longer than 6 months, the director-general must prepare an annual review report for the child or young person (see pt 14.13).

(2) A supervision provision may, but need not, include 1 or more of the following requirements:

(a) that 1 or more of the following people must report to the director-general at the reasonable times and places stated by the director-general:

(i) the child or young person;

(ii) a parent of the child or young person;

(iii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

(b) that 1 or more of the following people must take part in discussions with the director-general about the child's or young person's care, wellbeing or development:

(i) the child or young person;

(ii) a parent of the child or young person;



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(iii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

**Example—discussion about care, wellbeing or development**

a discussion about whether the child or young person should undertake some form of education, vocational or recreational activity

(c) that a person with parental responsibility for the child or young person allow the director-general entry to stated premises for the purpose of supervising the care and protection of the child or young person.

(3) Subsection (2) does not limit the matters for which the Childrens Court may make a supervision provision.

## 490 Supervision provision—meetings with director-general

If a care and protection order including a supervision provision is in force for a child or young person, the director-general may meet and talk with the child or young person alone or otherwise.



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# Part 14.11 ACAT mental health provisions

## 491 What is an *ACAT mental health provision*?

In this Act:

***ACAT mental health provision***, in a care and protection order, or an interim care and protection order, for a child or young person means a provision directing the child or young person to submit to the jurisdiction of the ACAT to allow the ACAT—

(a) to decide whether the child or young person has a mental disorder or mental illness; and

(b) if the ACAT decides that the child or young person has a mental disorder or mental illness—to make recommendations to the Childrens Court about how the child or young person should be dealt with.



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# Part 14.12 Specific issues provisions

## 492 What is a *specific issues provision*?

In this Act:

***specific issues provision***, in a care and protection order, or an interim care and protection order, for a child or young person means a provision about the care and protection of the child or young person that includes 1 or more of the following directions:

(a) that a stated entity must do a stated thing;

(b) that a stated entity must not do a stated thing;

(c) that a stated entity must comply with a stated condition.

**Examples—directions to do a stated thing**

1 that a parent of the child or young person attend a stated parenting course

2 that a stated individual or body give to the director-general stated oral or written information about the care, wellbeing or development of a child or young person



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# Part 14.13 Annual review reports—parental responsibility provisions and supervision provisions

## 492A Definitions—pt 14.13

In this part:

***annual review report order***—see section 500 (2).

***waiver order***—see section 498 (1).

## 493 What is a *reviewable care and protection order*?

In this chapter:

***reviewable care and protection order*** means a care and protection order that is in force, if the order—

(a) has been in force for longer than 6 months; and

(b) includes—

(i) a parental responsibility provision giving parental responsibility for the child or young person to the director-general; or

*Note* Parental responsibility provisions are dealt with in pt 14.6.

(ii) a supervision provision.

*Note* Supervision provisions are dealt with in pt 14.10.



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## 494 What is an *annual review report*?

In this chapter:

***annual review report***, for a reviewable care and protection order, means a report about—

(a) the circumstances and living arrangements of the child or young person who is the subject of the care and protection order; and

(b) whether the director-general considers the existing arrangements for the care and protection of the child or young person are in the best interests of the child or young person.

## 495 Annual review report—prepared at least annually

The director-general must prepare an annual review report for a reviewable care and protection order—

(a) at least once every 12 months while the order is in force; or

(b) if the order is in force for less than 12 months—when the order expires.

## 496 Annual review report—consultation

(1) This section applies if the director-general is preparing an annual review report for a child or young person.

(2) Before the director-general finalises the report, the director-general must, as far as is practicable and if the director-general considers it is in the child's or young person's best interests, arrange a meeting with the following people to discuss the matters that the director-general proposes to include in the report:

(a) if the director-general is satisfied that the child or young person can understand and take part in the meeting—the child or young person;

(b) each person who has daily care responsibility or long-term care responsibility for the child or young person;



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(c) if the child or young person is placed with an out-of-home carer who is—

(i) a kinship carer—the kinship carer and the kinship carer's approved kinship and foster care organisation; or

(ii) for a foster carer—the foster carer and the foster carer's approved kinship and foster care organisation; or

(iii) for a residential care service—the residential care service;

(d) anyone else the director-general considers appropriate.

**Example—par (d)**
the public advocate

(3) The matters discussed at the meeting may include sensitive information.

*Note* ***Sensitive information*** is defined in s 845.

## 497 Annual review report—must be given to certain people

(1) The director-general must give an annual review report for a care and protection order for a child or young person to each of the following people:

(a) the child or young person;

(b) each person who has daily care responsibility, or long-term care responsibility, for the child or young person;

(c) each kinship carer or foster carer caring for the child or young person;

(d) the public advocate.

*Note* If a provision requires a person to act in relation to a parent of a child or young person, the person is not required to act in relation to the parent if the person cannot after reasonable inquiry find the parent (see s 21).



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(2) If requested by the Childrens Court, the director-general must also give an annual review report for a care and protection order for a child or young person to the Childrens Court.

(3) The director-general may also give the annual review report to someone else so that the other person can give the report to a person mentioned in subsection (1).

(4) Before giving an annual review report to someone mentioned in subsection (1) (a), (b) or (c) or subsection (3), the director-general may make minor alterations to the report to protect the privacy and confidentiality of a person named in the report.

## 498 Annual review report—application for waiver of obligation to give report to someone

(1) The director-general may apply to the Childrens Court for an order waiving the need to give an annual review report about a child or young person to someone mentioned in section 497 (1) (a), (b) or (c) (a ***waiver order***) if the director-general considers that giving the report to the person would not be in the best interests of the child or young person.

(2) The director-general must give a copy of the application to each person mentioned in section 497 (1).

## 499 Annual review report—waiver of obligation to give annual review report to someone

(1) This section applies if the Childrens Court has received an application for a waiver order.

(2) The application may be heard in the absence of a party.

(3) The Childrens Court must make the waiver order if satisfied that giving the annual review report to the person mentioned in the application would not be in the best interests of the child or young person.



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(4) If the court is not satisfied under subsection (3), the court—

(a) must order the director-general to give the person mentioned in the application with a copy of the annual review report, either in full or in part; and

(b) may make any other order about the provision of the annual review report that the court considers appropriate.

## 500 Annual review report—public advocate may require director-general to give annual review report to someone

(1) This section applies if the director-general—

(a) must give an annual review report to someone under section 497 (1) (Annual review report—must be given to certain people); and

(b) has not given the report to the person; and

(c) has not obtained a waiver order for the person.

(2) The public advocate may apply to the Childrens Court for an order requiring the director-general to give the annual review report to the person (an ***annual review report order***).

(3) The public advocate must give the director-general a copy of the application promptly after the application is filed.

(4) The Childrens Court may make an annual review report order.

(5) If the court makes an annual review report order, the director-general must give the annual review report to the person not later than 14 days after the day the court makes the order.



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## 501 Annual review report—extension of care and protection order

(1) This section applies if the Childrens Court makes an annual review report order about an annual review report for a child or young person who is subject to a care and protection order.

(2) If the care and protection order ends less than 1 month after the day the annual review report order is made, the court may extend the length of the care and protection order so that it ends not more than 1 month after the day the annual review report order is made.



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# Chapter 15 Care and protection—director-general has aspect of parental responsibility

*Note to ch 15*

Parental responsibility for a child or young person may be transferred to, or shared with, the director-general under any of the following (see s 17 and s 18):

- an appraisal order including a temporary parental responsibility provision (see s 373)
- a voluntary care agreement (see pt 12.3)
- emergency action (see pt 13.1)
- a care and protection order including a parental responsibility provision (see pt 14.6)
- a safe custody warrant (see s 683)
- a court order (under this Act or another law in force in the Territory)
- a provision of another law in force in the Territory.

## Part 15.1 General

### 502 Definitions—Act

In this Act:

***approved kinship and foster care organisation*** means an approved care and protection organisation approved as a suitable entity for the purpose of providing kinship and foster care services.

*Note* ***Approved care and protection organisation***—see s 352C.

***approved residential care organisation*** means an approved care and protection organisation approved as a suitable entity for the purpose of providing residential care services.

***foster carer***—see section 518 (2).



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***general parental authority***, for a residential care service—see section 520 (2).

***in therapeutic protection***—see section 572.

***kinship carer***—see section 516 (2).

***out-of-home carer***, for a child or young person—see section 508.

***residential care service***—see section 520 (2).

***specific parental authority***—

(a) for a kinship carer—see section 516 (2); or

(b) for a foster carer—see section 518 (2).

## 503 Director-general may provide assistance

(1) If the director-general has parental responsibility for a child or young person, the director-general may provide any of the following for the child or young person:

(a) placement with an out-of-home carer;

(b) financial support;

(c) counselling;

(d) appropriate education, training and employment opportunities;

(e) health care treatment;

(f) recreational opportunities;

(g) a care plan;

(h) an explanation, in a way the child or young person can understand, of the aim of care plans.



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(2) If the director-general stops having parental responsibility for a child or young person (for any reason), the director-general may arrange for financial or other assistance to be provided to, or for, the child or young person on the conditions the director-general considers appropriate.

*Note* If a young person was previously in out-of-home care, the director-general may provide further assistance (see pt 15.5).



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# Part 15.2 Director-general has long-term care responsibility

## 504 Director-general sharing long-term care responsibility

(1) This section applies if the director-general—

(a) shares with another person long-term care responsibility for a child or young person; and

(b) under a parental responsibility provision is required to consult with each other person who shares long-term care responsibility for the child or young person in making a decision about a long-term matter for the child or young person.

(2) If another person who has long-term care responsibility for the child or young person disagrees with the director-general's proposed decision about a long-term matter for the child or young person—

(a) the person or the director-general may apply to the Childrens Court for an order about the matter; and

(b) the director-general must not make the decision without the person's agreement.

*Note* Usually, if parental responsibility is shared between 2 or more people, either of them may discharge the responsibility (see s 18).

## 505 Director-general must consult about long-term care

If the director-general has long-term care responsibility for a child or young person, the director-general must, as far as practicable, have regard to the views and wishes of any person who previously had long-term care responsibility for the child or young person.

*Note* Long-term care responsibility is dealt with in s 20.



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# Part 15.3 Director-general has daily care responsibility

## 506 Pt 15.3 applies to care and protection chapters

(1) This part applies if the director-general has daily care responsibility for a child or young person under the care and protection chapters.

*Note* Parental responsibility for a child or young person may be transferred to, or shared with, the director-general under the following provisions (see s 17 and s 18):

- an appraisal order including a temporary parental responsibility provision (see s 373)
- a voluntary care agreement (see pt 12.3)
- emergency action (see pt 13.1)
- a care and protection order including a parental responsibility provision (see pt 14.6)
- a safe custody warrant (see s 683)
- a court order (under this Act or another law in force in the Territory)
- a provision of another law in force in the Territory.

(2) However, this part does not apply if daily care responsibility for a child or young person is transferred to the director-general—

(a) under a therapeutic protection order or an interim therapeutic protection order; or

(b) because the child has been confined at a therapeutic protection place under section 531 (b) (Therapeutic protection only under therapeutic protection order or for emergency protection).

*Note* Therapeutic protection orders are dealt with in pt 16.2. Interim therapeutic protection orders are dealt with in div 16.2.3.



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## 507 Public advocate to be told about action following appraisals

(1) This section applies if—

(a) the director-general decides that a child concern report about a child or young person is a child protection report; and

(b) because of the report, the director-general carries out a child protection appraisal for the child or young person; and

(c) at the time of the incident that gave rise to the report, the director-general had daily care responsibility for the child or young person and had placed the child or young person with an out-of-home carer under part 15.4; and

*Note* The director-general may have daily care responsibility for a child or young person under any of the following provisions:

(a) an appraisal order including a temporary parental responsibility provision (see s 373);

(b) a voluntary care agreement (see pt 12.3);

(c) emergency action (see pt 13.1);

(d) a care and protection order including a parental responsibility provision (see pt 14.6).

(d) the incident that gave rise to the report either—

(i) involved the out-of-home carer; or

(ii) happened while the child or young person was taking part in a contact visit with someone and the contact was—

(A) allowed under a contact provision in a care and protection order; or

*Note* Contact provisions are dealt with in pt 14.8.

(B) approved by the director-general.



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(2) The director-general must give the public advocate a report about—

(a) the incident; and

(b) what action (if any) the director-general has taken because of the appraisal.



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# Part 15.4 Out-of-home carers

## Division 15.4.1 Placement with out-of-home carer

### 508 Who is an *out-of-home carer*?

In this Act:

***out-of-home carer***, for a child or young person, means—

(a) a kinship carer for the child or young person; or

(b) a foster carer for the child or young person; or

(c) a residential care service for the child or young person.

*Note* ***Kinship carer***—see s 516 (2).
***Foster carer***—see s 518 (2).
***Residential care service***—see s 520 (2).

### 512 Director-general must place child or young person with out-of-home carer

(1) If the director-general has daily care responsibility for a child or young person, the director-general must place the child or young person with an out-of-home carer.

(2) However, the director-general may place—

(a) a child or young person in a health facility if—

(i) a doctor states in writing that, in his or her opinion, it is necessary for the wellbeing of the child or young person for daily care to be provided to the child or young person in the health facility; and



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(ii) the director-general is satisfied that—

(A) appropriate support is available to meet the needs of the child or young person while the child or young person is in the health facility; and

(B) those aspects of the care plan for the child or young person that can be followed while the child or young person is in the health facility will be followed; or

(b) a young person who is 16 years old or older in an independent living arrangement if the director-general is satisfied that—

(i) the arrangement is appropriate for the young person; and

(ii) the proposed accommodation and the support available to the young person best meets the young person's needs; and

(iii) the arrangement is consistent with the young person's care plan; or

(c) a child or young person with the parent or guardian of the child or young person if the director-general is satisfied it is appropriate.

(3) Subsections (1) and (2) are subject to any court order (under this Act or another law in force in the Territory) to the contrary.

(4) If the director-general is placing an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer, the placement must be in accordance with section 513.

*Note* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the director-general has placed the child or young person with an out-of-home carer under this section and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).



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## 513 Priorities for placement with out-of-home carer—Aboriginal or Torres Strait Islander child or young person

(1) If the director-general is placing an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer under section 512, the director-general must place the child or young person with the first of the options mentioned in subsection (2) that—

(a) is available; and

(b) to which the child or young person does not object; and

(c) is consistent with any Aboriginal or Torres Strait Islander cultural plan in force for the child or young person.

(2) The director-general may place an Aboriginal or Torres Strait Islander child or young person with any of the following out-of-home carers:

(a) a kinship carer;

(b) a foster carer who is a member of the child's or young person's Aboriginal or Torres Strait Islander community in a relationship of responsibility for the child or young person according to local custom and practice;

(c) a foster carer who is a member of the child's or young person's community;

(d) an Aboriginal or Torres Strait Islander foster carer;

(e) a non-Aboriginal or Torres Strait Islander foster carer who—

(i) the director-general believes on reasonable grounds is sensitive to the child's or young person's needs; and

(ii) the director-general believes on reasonable grounds is capable of promoting the child's or young person's ongoing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community and culture; and



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(iii) if family reunion or continuing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community or culture is a consideration in the placement—lives near the child's or young person's Aboriginal or Torres Strait Islander family or community.

(3) In this section:

***Aboriginal or Torres Strait Islander cultural plan***, for an Aboriginal or Torres Strait Islander child or young person, means a care plan developed for the child or young person by the director-general under section 455 (What is a *care plan*?) that includes proposals for the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person.

## 514 Residential care service may accommodate child or young person at place of care

A residential care service may, but need not, accommodate a child or young person at a place of care.

*Note 1* The Minister may approve a place as a place of care for this Act under s 525.

*Note 2* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the director-general has placed the child or young person with an out-of-home carer under s 512 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

*Note 3* An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see pt 2.3 and *Official Visitor Act 2012*).



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## Division 15.4.1A Approval of carers

### 514A Approved carers—individual may apply

An individual may apply to the director-general for approval as an approved carer.

*Note* If a form is approved under s 886 for this provision, the form must be used.

### 514B Approved carers—director-general may approve

(1) The director-general may, in writing, approve a person as a carer (an ***approved carer***) if satisfied that the person is an appropriate person to care for children or young people.

(2) However, if the director-general orally authorises a person under section 516 (Kinship carer—specific parental authority) or section 518 (Foster carer—specific parental authority) in relation to a child or young person, the director-general—

(a) may, at the same time, orally approve the person as an approved carer; and

(b) if the director-general approves the person under paragraph (a)—must, as soon as practicable, approve the person in writing.

(3) The director-general may approve a person as an approved carer only if—

(a) the person is registered under the Working with Vulnerable People Act; or



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(b) the person—

(i) is to be authorised as a kinship carer under section 516; and

(ii) may engage in a regulated activity as a kinship carer under the Working with Vulnerable People Act, section 16 (When unregistered person may be engaged in regulated activity—kinship carer).

*Note* A decision under this section is a reviewable decision (see s 839).

## 514C Approved carers—criteria for approval

In deciding whether a person is an appropriate person to care for children or young people, the director-general must consider each of the following:

(a) the matters listed in section 65 (1), definition of ***suitability information***, except paragraph (d), about—

(i) the person; and

(ii) each other adult member of the person's household;

*Note* There is an ongoing duty to update this information if it changes (see s 514F).

(b) if the director-general requires the person to provide a reference or report under section 514D (2) (b)—the reference or report;

(c) if the director-general requires the person to undergo a test or medical examination under section 514D (2) (c)—the result of the test or medical examination.



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## 514D Approved carers—further information, references etc

(1) This section applies if the director-general is deciding whether a person is an appropriate person to care for children or young people.

(2) The director-general may, by written notice given to the person, require the person to—

(a) provide stated information about the person not later than a stated reasonable time; or

(b) provide a stated reference or report not later than a stated reasonable time; or

(c) undergo a stated test or medical examination not later than a stated reasonable time.

**Example**

a psychiatric examination

(3) A notice must also tell the person that giving false or misleading information is an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents).

(4) If the director-general has given a person a notice under this section and the person does not comply with the notice, the director-general need not decide whether the person is an appropriate person to care for children or young people.

## 514E Approved carers—expiry and renewal of approvals

(1) The director-general must not issue an approved carer approval for longer than 3 years.

(2) A person may apply to the director-general to renew the approval for a period not longer than 3 years.

(3) The application must be—

(a) in writing; and



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(b) received by the director-general at least 30 days before the approval expires.

(4) However, the director-general may extend the time for making an application.

*Note 1* A person may apply for the time to be extended, and the time may be extended, even though the time has ended (see Legislation Act, s 151C).

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

(5) If a person applies to renew an approval under this section, the approval remains in force until the application is decided.

(6) If a person's approval expires, any of the following authorisations held by the person also end:

(a) authorisation as a kinship carer under section 516 (Kinship carer—specific parental authority);

(b) authorisation as a foster carer under section 518 (Foster carer—specific parental authority).

## 514EA Approved carers—revocation of approval

(1) The director-general may revoke a person's approval as an approved carer if satisfied that the person—

(a) is no longer an appropriate person to care for children or young people; or

(b) has not adequately cared for or protected a child or young person; or

(c) has failed to comply with a direction of the director-general in exercising daily care or long-term care responsibility for any child or young person.

*Note* ***Fail*** includes refuse, see the Legislation Act, dict, pt 1.

(2) The director-general may also revoke a person's approval if the person asks the director-general to revoke the approval.



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(3) Before revoking a person's approval under subsection (1), the director-general must—

(a) give the person written notice of the director-general's intention to revoke the approval, including the director-general's reasons; and

(b) tell the person that the person may make a submission, in writing, to the director-general about the notice not later than 14 days after the day the notice is given to the person; and

(c) if the person makes a submission—consider the submission.

(4) After considering any submission, the director-general may consider any other relevant matter and must decide to either—

(a) revoke the approval; or

*Note* A decision under this paragraph is a reviewable decision (see s 839).

(b) revoke the notice of intention to revoke.

(5) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

*Note* Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

## 514F Offence—ongoing duty to update information

(1) This section applies to a person if—

(a) either—

(i) the director-general is deciding whether the person is an appropriate person to care for children or young people; or

(ii) the person is an approved carer; and



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(b) the person has given the director-general information about a matter mentioned in section 514C (a) about the person.

(2) The person commits an offence if—

(a) the person's information under section 65 (1), definition of ***suitability information***, paragraph (a), (b) or (c) changes; and

(b) the person does not tell the director-general about the change as soon as practicable, but not later than 7 days after the change happens.

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

(3) The person commits an offence if—

(a) either of the following occurs:

(i) a court convicts the person, or finds the person guilty, of an offence involving fraud or dishonesty;

**Example**

a conviction, or finding of guilt, against the person under the Criminal Code, ch 3 (Theft, fraud, bribery and related offences)

(ii) a tribunal, or an authority or person with the power to require the production of documents or the answering of questions, makes a finding against the person about the person's honesty or integrity; and

(b) the person does not tell the director-general about the finding as soon as practicable, but not later than 7 days after the finding is made.

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



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## Division 15.4.2 Authorisation of out-of-home carers and approval of places of care

### 516 Kinship carer—specific parental authority

(1) This section applies if the director-general has daily care responsibility or long-term care responsibility for a child or young person.

(2) The director-general may authorise (a ***specific parental authority***), orally or in writing, a family member, or significant person, of the child or young person to exercise the daily care or long-term care responsibility for the director-general (a ***kinship carer***).

(3) However, the director-general may authorise a family member, or significant person, only if satisfied that the family member or significant person—

(a) is an approved carer; and

(b) agrees to exercise the responsibility for the director-general.

*Note 1* ***Approved carer***—see s 514B.

*Note 2* If a person's approval as an approved carer expires, the authorisation as a kinship carer under this section also ends (see s 514E (6)).

(4) The family member or significant person must exercise the responsibility subject to any directions of the director-general.

(5) An authorisation under this section has effect only during a placement of the child or young person with the family member or significant person under section 512 (Director-general must place child or young person with out-of-home carer).

*Note 1* Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

*Note 2* A decision under this section is a reviewable decision (see s 839).



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## 518 Foster carer—specific parental authority

(1) This section applies if the director-general has daily care responsibility or long-term care responsibility for a child or young person.

(2) The director-general may authorise (a ***specific parental authority***), orally or in writing, a person to exercise the daily care or long-term care responsibility for the director-general (a ***foster carer***).

(3) However, the director-general may authorise a person only if satisfied that the person—

(a) is an approved carer; and

(b) agrees to exercise the responsibility for the director-general.

*Note 1* ***Approved carer***—see s 514B.

*Note 2* If a person's approval as an approved carer expires, the authorisation as a foster carer under this section also ends (see s 514E (6)).

(4) The person must exercise the responsibility subject to any directions of the director-general.

(5) An authorisation under this section has effect only during a placement of the child or young person with the foster carer under section 512 (Director-general must place child or young person with out-of-home carer).

*Note 1* Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

*Note 2* A decision under this section is a reviewable decision (see s 839).



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## 520 Residential care service—general parental authority

(1) This section applies if the director-general has daily care responsibility or long-term care responsibility for a child or young person.

(2) The director-general may authorise (a ***general parental authority***), in writing, an approved residential care organisation to exercise the daily care or long-term care responsibility for the director-general (a ***residential care service***).

(3) However, the director-general may authorise an organisation only if the organisation agrees to exercise the responsibility for the director-general for any child or young person.

(4) The organisation must exercise the responsibility subject to any directions of the director-general.

*Note* An authorisation under this section is suspended if the organisation's approval is suspended under s 352P.

## 521 Out-of-home carer must be given copy of authorisation and any relevant court orders

(1) If the director-general orally authorises a person or entity as an out-of-home carer, the director-general must also, as soon as practicable, authorise the person or entity in writing.

(2) If the director-general authorises, in writing, a person or entity as an out-of-home carer, the director-general must give the person or entity a copy of—

(a) the authorisation; and

(b) any relevant court order about the child or young person.



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## 524 Revocation of residential care service's authorisation

(1) The director-general may revoke an approved residential care organisation's authorisation under section 520 as a residential care service if satisfied that the organisation—

(a) is not an approved residential care organisation; or

(b) has not acted as a residential care service in the previous 12 months; or

(c) is no longer available to act as a residential care service.

**Example—par (c)**

an entity closes its places of care in the ACT

*Note* The authorisation is suspended if the organisation's approval is suspended under s 352P.

(2) The director-general may also revoke an approved residential care organisation's authorisation if the organisation asks the director-general to revoke the authorisation.

(3) Before revoking an organisation's authorisation under subsection (1), the director-general must—

(a) give the organisation written notice of the director-general's intention to revoke the authorisation, including the director-general's reasons; and

(b) tell the organisation that the organisation may make a submission, in writing, to the director-general about the notice not later than 14 days after the day the notice is given to the organisation; and

(c) if the organisation makes a submission—consider the submission.



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(4) After considering any submission, the director-general may consider any other relevant matter and must decide to either—

(a) revoke the authorisation; or

*Note* A decision under this paragraph is a reviewable decision (see s 839).

(b) revoke the notice of intention to revoke.

(5) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

*Note 1* Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

*Note 2* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the director-general has placed the child or young person with an out-of-home carer under s 512 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

*Note 3* An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see pt 2.3 and *Official Visitor Act 2012*).

## 525 Approval of places of care

(1) The Minister may approve, in writing, a place operated by an approved residential care organisation as a place of care if satisfied that the place complies with, and is likely to continue to comply with, the care and protection organisation standards.

*Note* ***Care and protection organisation standards***—see s 887.



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(2) The Minister may ask the residential care service to allow the director-general to inspect the place where the residential care service proposes to operate the place of care.

*Note* An authorised person may, at any reasonable time, enter a place operated by a residential care service if the Minister is deciding whether to approve the place as a place of care under this section and has asked the residential care service to allow the director-general to inspect the place and the residential care service has agreed to allow the director-general to inspect the place (see s 817).

(3) If the Minister asks the residential care service to allow the director-general to inspect the place but the residential care service does not allow the director-general to inspect the place, the Minister need not decide whether to approve the place as a place of care.

(4) An approval remains in force until revoked by the Minister.

(5) If the Minister approves a place operated by a residential care service as a place of care, the residential care service may care for and accommodate children and young people at the place.

*Note 1* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the director-general has placed the child or young person with an out-of-home carer under s 512 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

*Note 2* An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see pt 2.3 and *Official Visitor Act 2012*).



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# Division 15.4.3 Information and items to be kept by foster carers and residential care services

## 526 Definitions—div 15.4.3

In this division:

***care entities***, for a child or young person for a placement, means the following entities:

(a) for a child or young person placed with a foster carer—

(i) the foster carer; and

(ii) the foster carer's approved kinship and foster care organisation;

(b) for a child or young person placed with a residential care service—the residential care service.

***placement***, for a child or young person, means placement of the child or young person by the director-general with a foster carer or a residential care service under section 512 (Director-general must place child or young person with out-of-home carer).

## 527 Information and items must be kept during placement

(1) This section applies if the director-general places a child or young person with a foster carer or a residential care service under section 512 (Director-general must place child or young person with out-of-home carer).



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(2) Each care entity for the child or young person for the placement must keep the following things during the placement:

(a) protected information about the child or young person that the care entity possesses because of the placement;

**Example**

records made by the care entity about the child or young person because of the placement

*Note* ***Protected information***—see s 844.

(b) personal items of the child or young person that the care entity possesses because of the placement.

*Note* *Personal items*, for a child, young person or young adult—see the dictionary.

## 528 Information and items must be kept after placement ends

(1) This section applies if a care entity for a child or young person for a placement keeps protected information or personal items under section 527.

(2) The care entity must keep the protected information or personal items until the care entity gives the protected information or personal items to the director-general under subsection (3).

(3) The care entity must give the protected information or personal items to the director-general if—

(a) the director-general asks the care entity to give the protected information or personal items to the director-general; or

(b) the care entity stops being a care entity for this Act; or

(c) 2 years have elapsed since the placement ended; or

(d) the person to whom the protected information or personal items relate becomes an adult.



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(4) If protected information is given to the director-general under subsection (3), the protected information is a record of an agency under the *Territory Records Act 2002*, section 9 (Meaning of *record* of an agency etc).

(5) This section is subject to division 15.5.4 (Entitlement to personal items and access to personal information).

*Note* Div 15.5.4 applies to young people who have left out-of-home care.

## 529 Child or young person may have access to information and items

(1) This section applies if—

(a) a care entity for a child or young person for a placement keeps protected information or personal items under section 527; and

(b) the care entity has not given the protected information or personal items to the director-general under section 528.

(2) The director-general may, if satisfied on reasonable grounds that it is in the child's or young person's best interests, direct the care entity to give the child or young person—

(a) the protected information or personal items; or

(b) access to the protected information or personal items.

(3) A direction may be conditional.

(4) If the director-general gives a care entity a direction, the care entity must comply with the direction.

(5) If the direction is subject to a condition about the access to be given, the care entity must comply with the condition.

(6) This section is subject to division 15.5.4 (Entitlement to personal items and access to personal information).

*Note* Div 15.5.4 applies to young people who have left out-of-home care.



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# Part 15.5 Transition to adulthood

## Division 15.5.1 Preliminary

### 529A Object—pt 15.5

The object of this part is to promote, strengthen and foster the wellbeing of—

(a) young people preparing to begin the transition from out-of-home care; and

(b) young people and young adults who were previously in out-of-home care.

### 529B Who is a *young adult*?—pt 15.5

In this part:

***young adult*** means an adult who is younger than 25 years old.

*Note* ***Adult*** means an individual who is at least 18 years old (see Legislation Act, dict, pt 1).

### 529BA Who is a *previous out-of-home carer* for a young person or young adult?—pt 15.5

In this part:

***previous out-of-home carer***, for a young person or young adult, means an out-of-home carer with whom the director-general had placed the young person or young adult when they were a child or young person.



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## Division 15.5.2 Transition plans

### 529C What is a *transition plan*?

(1) In this Act:

***transition plan***, for a young person or young adult, means a written plan for meeting the young person's or young adult's needs—

(a) in preparing to begin the transition from out-of-home care; and

(b) after leaving out-of-home care; and

(c) into young adulthood.

(2) A transition plan may include proposals about the following for the young person or young adult:

(a) accommodation;

(b) education and training;

(c) employment;

(d) financial security;

(e) social support;

(f) life skills support;

(g) health care.

**Examples—par (g)**

1 physical health
2 mental health
3 emotional health
4 sexual health



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## 529D Transition plans—when prepared

(1) The director-general must prepare a transition plan for a young person who is—

(a) in out-of-home care; and

(b) at least 15 years old.

(2) The director-general must take reasonable steps to ensure that the transition plan is implemented.

## 529E Transition plans—consultation

(1) This section applies if the director-general is preparing a transition plan for a young person.

(2) The director-general must develop the plan in consultation with the young person.

(3) The director-general may also consult 1 or more of the following people about the proposals the director-general intends to include in the transition plan:

(a) for a young person in out-of-home care—the out-of-home carer;

(b) anyone else who would be involved in implementing a proposal in the plan;

**Example—people who would be involved**

a community-based service that is providing services to the young person

(c) anyone else the director-general considers would be able to provide information or guidance about the plan.

(4) The director-general must give the following people an opportunity to make submissions to the director-general about the proposals:

(a) the young person;

(b) each person consulted about the proposals under subsection (3).



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(5) If a person makes a submission to the director-general about a proposal, the director-general must consider the submission.

## 529F Transition plans—review—young person for whom director-general has parental responsibility

(1) This section applies if—

(a) a transition plan is in force for a young person; and

(b) the director-general has an aspect of parental responsibility for the young person.

(2) The director-general must review the plan—

(a) at least once each year; and

(b) in consultation with the young person.

(3) The director-general may also consult 1 or more of the following people about the review:

(a) for a young person in out-of-home care—the out-of-home carer;

(b) anyone else who would be involved in implementing a proposal in the plan;

(c) anyone else the director-general considers would be able to provide information or guidance about the plan.

## 529G Transition plans—review—young person for whom director-general does not have parental responsibility

(1) This section applies if—

(a) a transition plan is in force for a young person; but

(b) the director-general does not have any aspect of parental responsibility for the young person.



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(2) The director-general must take reasonable steps to ask the young person, at least once each year, whether the young person agrees to the director-general reviewing the plan.

(3) If the young person agrees to the director-general reviewing the plan, the director-general must review the plan in consultation with—

(a) the young person; and

(b) if the young person agrees—

(i) anyone who would be involved in implementing a proposal in the plan; and

(ii) anyone else the director-general considers would be able to provide information or guidance about the plan.

## 529H Transition plans—review—young adult

(1) This section applies if a transition plan is in force for a young adult.

(2) The director-general must take reasonable steps to ask the young adult, at least once each year, whether the young adult agrees to the director-general reviewing the plan.

(3) If the young adult agrees to the director-general reviewing the plan, the director-general must review the plan in consultation with—

(a) the young adult; and

(b) if the young adult agrees—

(i) anyone who would be involved in implementing a proposal in the plan; and

(ii) anyone else the director-general considers would be able to provide information or guidance about the plan.



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## Division 15.5.3 Assistance after leaving out-of-home care

### 529I Assistance generally

(1) The director-general may provide the services that the director-general considers appropriate to a young person, or young adult, who was previously in out-of-home care.

(2) Without limiting subsection (1), the director-general may provide the young person, or young adult, with services to assist the young person, or young adult, with obtaining—

(a) information about relevant resources and services; and

(b) accommodation; and

(c) education and training; and

(d) employment; and

(e) financial security; and

(f) legal advice; and

(g) social support; and

(h) life skills support; and

(i) personal, family and relationship counselling; and

(j) access to information and records held during the young person's out-of-home care; and

(k) health care.

**Examples—par (k)**

1 physical health
2 mental health
3 emotional health
4 sexual health



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(3) This section does not require the director-general to pay for any service.

*Note* Financial assistance may be available under s 529J.

## 529J Financial assistance—young person or young adult

(1) The director-general may provide financial assistance to a young person, or young adult, who was previously in out-of-home care.

(2) The director-general may provide financial assistance only if satisfied on reasonable grounds that the assistance is—

(a) for an appropriate purpose; and

(b) reasonably necessary considering the young person's, or young adult's, circumstances.

**Examples—appropriate purposes**

1 for furnishing accommodation

2 for education or training

3 for seeking employment

(3) The director-general may provide financial assistance on the conditions that the director-general considers appropriate.

(4) However, if the director-general provides financial assistance in the form of a loan to a young person or young adult, no interest is to be payable on the loan.

(5) The Minister may make guidelines about appropriate purposes for financial assistance.

(6) A guideline is a notifiable instrument.

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

## 529JA Financial assistance—previous out-of-home carer

(1) This section applies if—

(a) a young adult is younger than 21 years old; and



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(b) a transition plan is in force for the young adult which provides for the young adult to live with a previous out-of-home carer; and

(c) the young adult is in fact living with the previous out-of-home carer.

*Note* ***Previous out-of-home carer***, for a young adult—see s 529BA.

(2) The director-general may provide financial assistance to the previous out-of-home carer.

(3) The director-general may provide financial assistance only if satisfied on reasonable grounds that the assistance is reasonably necessary considering the previous out-of-home carer's circumstances.

(4) The director-general may provide financial assistance on the conditions that the director-general considers appropriate.

(5) The director-general may provide financial assistance—

(a) to the previous out-of-home carer directly; or

(b) if the previous out-of-home carer was a foster carer—to the foster carer's approved kinship and foster care organisation, for the organisation to provide to the carer.

## Division 15.5.4 Entitlement to personal items and access to protected information

### 529K Entitlement to personal items

A young person, or young adult, who has left out-of-home care is entitled to have and keep, free of charge, all of the young person's or young adult's personal items that are held by—

(a) the director-general; or

(b) an approved kinship and foster care organisation; or



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(c) a previous out-of-home carer for the young person or young adult.

*Note 1* ***Previous out-of-home carer***, for a young person or young adult—see s 529BA.

*Note 2* Some out-of-home carers are required to keep personal items during placements (see div 15.4.3).

## 529L Access to protected information—young person

(1) This section applies if a young person who has left out-of-home care asks for access to protected information about the young person that is held by—

(a) the director-general; or

(b) an approved kinship and foster care organisation; or

(c) a previous out-of-home carer for the young person.

*Note 1* ***Previous out-of-home carer***, for a young person—see s 529BA.
***Protected information***—see s 844.

*Note 2* Some out-of-home carers are required to keep protected information (see div 15.4.3).

(2) The director-general may, if satisfied on reasonable grounds that it is in the young person's best interests—

(a) give the young person access, free of charge, to the protected information held by the director-general; and

(b) direct the organisation or carer to give the young person access, free of charge, to the protected information held by the organisation or carer.

(3) A direction under subsection (2) (b) may be conditional.

(4) If the director-general gives an organisation or carer a direction, the organisation or carer must comply with the direction.

(5) If the direction is subject to a condition about the access, the organisation or carer must comply with the condition.



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## 529M Access to protected information—young adult

A young adult who has left out-of-home care is entitled to have access, free of charge, to protected information about the young adult that is held by—

(a) the director-general; or

(b) an approved kinship and foster care organisation; or

(c) a previous out-of-home carer for the young adult.

*Note 1* ***Previous out-of-home carer***, for a young adult—see s 529BA.
***Protected information***—see s 844.

*Note 2* Some out-of-home carers are required to keep protected information (see div 15.4.3).

## 529N Access to protected information—support and assistance

(1) If a young person or young adult seeks access to protected information under this division, the director-general must provide an appropriate person to support and assist the young person, or young adult, accessing the information.

(2) The Minister may make guidelines about appropriate people and the support and assistance they may provide to a young person, or young adult, accessing protected information under this division.

(3) A guideline is a notifiable instrument.

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



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# Chapter 16 Care and protection—therapeutic protection of children and young people

## Part 16.1 Preliminary

### 530 Definitions—Act and ch 16

(1) In this Act:

***harmful conduct***—see section 533.

***interim therapeutic protection order***—see section 543.

***mental disorder***—see the *Mental Health Act 2015*, section 9.

*Note* The *Mental Health Act 2015*, s 9 defines ***mental disorder*** as a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion, other than a mental illness.

***mental illness***—see the *Mental Health Act 2015*, section 10.

*Note* The *Mental Health Act 2015*, s 10 defines ***mental illness*** as a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person in 1 or more areas of thought, mood, volition, perception, orientation or memory, and is characterised by—

(a) the presence of at least 1 of the following symptoms:

(i) delusions;

(ii) hallucinations;

(iii) serious disorders of streams of thought;

(iv) serious disorders of thought form;

(v) serious disturbance of mood; or

(b) sustained or repeated irrational behaviour that may be taken to indicate the presence of at least 1 of the symptoms mentioned in par (a).

***therapeutic protection history***—see section 537.



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***therapeutic protection order***—see section 532.

***therapeutic protection place***—see section 535.

***therapeutic protection plan***—see section 536.

(2) In this chapter:

***non-treating doctor*** means a doctor authorised under section 632 (Health practitioners—non-treating functions).

***non-treating health practitioner*** means a health practitioner authorised under section 632 (Health practitioners—non-treating functions).

***non-treating nurse*** means a nurse authorised under section 632 (Health practitioners—non-treating functions).

***risk assessment***—see section 534.

***therapeutic protection person*** means—

(a) for a therapeutic protection place for which the director-general is the operating entity—an authorised person to whom the director-general has delegated functions of a therapeutic protection person under this chapter; and

(b) for any other therapeutic protection place—a person that the operating entity has authorised to exercise the functions of a therapeutic protection person under this chapter for the therapeutic protection place.

***therapeutic protection register***—see section 633 (1).

***therapeutic protection transition plan***—see section 538 (What is a *therapeutic protection transition plan*?).



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## 531 Therapeutic protection only under therapeutic protection order or for emergency protection

The director-general may confine a child or young person at a therapeutic protection place only—

(a) under a therapeutic protection order; or

(b) under an interim therapeutic protection order; or

(c) if the director-general believes on reasonable grounds the child or young person is in need of emergency therapeutic protection.

*Note* For when a child or young person is in need of emergency therapeutic protection, see s 404.



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# Part 16.2 Therapeutic protection orders

*Note to pt 16.2*

Legal representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

## Division 16.2.1 Definitions—Act and pt 16.2

### 532 What is a *therapeutic protection order*?

In this Act:

***therapeutic protection order***, for a child or young person, means an order that—

(a) directs that the child or young person be confined—

(i) for a period of time (the ***period of confinement***) starting on a stated day (the ***start day***); and

(ii) at a therapeutic protection place; and

(iii) for implementation of a stated therapeutic protection plan; and

(b) transfers daily care responsibility for the child or young person to the director-general for the period of confinement; and

*Note* Pt 15.3 (Director-general has daily care responsibility) does not apply if daily care responsibility for a child or young person is transferred to the director-general under a therapeutic protection order (see s 506).



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(c) includes any conditions the Childrens Court considers necessary to prevent the child or young person from engaging in harmful conduct.

*Note* The director-general or a police officer may apply to a magistrate for a safe custody warrant if a therapeutic protection order or interim therapeutic protection order is in force for a child or young person and the director-general or police officer believes on reasonable grounds that—

(a) someone has contravened the order and, because of the contravention, the child or young person is in danger; or

(b) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order (see s 685).

## 533 What is *harmful conduct*?

In this Act:

***harmful conduct***, engaged in by a child or young person, means conduct which leads to a significant risk of significant harm to the child or young person or someone else.

## 534 What is a *risk assessment*?

(1) For this chapter:

***risk assessment***, for a child or young person, means an assessment by the director-general about whether—

(a) there will be a significant risk of significant harm to—

(i) the child or young person; or

(ii) someone else; and

(b) the risk of harm arises from the child's or young person's conduct; and

(c) the risk of harm will be imminent.



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(2) The director-general may make risk assessment guidelines.

(3) A risk assessment guideline is a notifiable instrument.

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

(4) A risk assessment must be carried out in accordance with the risk assessment guidelines.

## 535 What is a *therapeutic protection place*?

In this Act:

***therapeutic protection place***, means a place declared by the Minister under section 625 to be a therapeutic protection place.

*Note* Therapeutic protection places are further dealt with in div 16.4.1.

## 536 What is a *therapeutic protection plan*?

In this Act:

***therapeutic protection plan***, for a child or young person for whom the director-general has applied for a therapeutic protection order—

(a) means a plan to reduce the likelihood of the child or young person engaging in harmful conduct in the future arranged by the director-general in consultation, as far as is practicable, with—

(i) the child or young person; and

(ii) the parents of the child or young person; and

(iii) each other person (if any) who has daily care responsibility for the child or young person; and

(iv) anyone else who is proposed to be involved in implementing the plan; and



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(b) includes written details of the following for the proposed period of confinement:

(i) when the period of confinement is to start and end;

(ii) the therapy, counselling or other service that is proposed for the child or young person;

(iii) the expected results of the therapy, counselling or other service;

(iv) the education that is proposed for the child or young person;

(v) the supervision that is proposed for the child or young person;

(vi) the proposed arrangements for the child's or young person's contact with—

(A) family members; and

(B) significant people for the child or young person; and

(C) other people;

(vii) for an Aboriginal or Torres Strait Islander child or young person—the proposed arrangements for the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person.

*Note* If the public advocate or an official visitor asks the director-general for a therapeutic protection plan for a child or young person, the director-general must provide a copy promptly (see s 631).



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## 537 What is *therapeutic protection history*?

In this Act:

***therapeutic protection history***, for a child or young person who has been confined under a therapeutic protection order, means written details of the following for each period of confinement:

(a) when the period of confinement started and ended;

(b) where the child or young person was confined;

(c) the therapy, counselling or other service that was provided to the child or young person;

(d) the review of the progress of the therapy, counselling or other service;

(e) the education that was provided to the child or young person;

(f) the supervision that was provided to the child or young person;

(g) the arrangements for the child's or young person's contact with, and the child's or young person's contact with—

(i) family members; and

(ii) significant people for the child or young person; and

(iii) other people.



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### 538 What is a *therapeutic protection transition plan*?

In this chapter:

***therapeutic protection transition plan***, for a child or young person—

(a) means a plan developed by the director-general for when the child or young person is no longer subject to a therapeutic protection order; and

(b) may include proposals for ongoing therapy, counselling or other services to assist the child's or young person's transition from therapeutic protection.

## Division 16.2.2 Applications for therapeutic protection orders

### 539 Therapeutic protection order—application by director-general

(1) Only the director-general may apply for a therapeutic protection order.

(2) The director-general may apply to the Childrens Court for a therapeutic protection order for a child or young person if satisfied that the criteria for making the order are met.

*Note 1* Criteria for making a therapeutic protection order are in s 549.

*Note 2* Oral applications may also be made (see s 698).

### 540 Therapeutic protection order—application to state grounds etc

An application for a therapeutic protection order for a child or young person must—

(a) state the grounds on which the order is sought; and



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(b) include—

(i) a risk assessment for the child or young person; and

(ii) a copy of previous therapeutic protection orders for the child or young person (if any); and

(iii) the therapeutic protection history for the child or young person (if any); and

(c) state the less restrictive ways that the director-general has—

(i) tried to prevent the child or young person from engaging in harmful conduct and how the less restrictive ways were not successful (if any); and

(ii) considered to prevent the child or young person from engaging in harmful conduct and how the less restrictive ways were not appropriate (if any); and

(d) include—

(i) a therapeutic protection plan for the child or young person; and

(ii) a therapeutic protection transition plan for the child or young person; and

(iii) information about how the therapeutic protection order is part of the overall care plan for the child or young person.

*Note* Statements, documents and reports must be included in the application (see s 696).



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## 541 Therapeutic protection orders—who must be given application

(1) The director-general must give a copy of the application for the therapeutic protection order for the child or young person to the following people at least 1 working day before the application is to be heard by the Childrens Court:

(a) the child or young person;

(b) each parent of the child or young person;

(c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) the public advocate.

(2) This section does not apply if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency care and protection).

*Note* For s (2), the director-general need only give a copy of the application to people before the application is heard by the Childrens Court (see s 413).

## 542 Therapeutic protection order—Childrens Court to consider application promptly

(1) The Childrens Court must give initial consideration to an application for a therapeutic protection order not later than 2 working days after the day the application is filed.

(2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.

(3) This section does not apply if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (3), the Childrens Court must give initial consideration to the application on the day it is filed (see s 413).



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## Division 16.2.3 Interim therapeutic protection orders

### 543 What is an *interim therapeutic protection order*?

In this Act:

***interim therapeutic protection order***, for a child or young person, means a therapeutic protection order if the period of confinement is not longer than 2 weeks.

*Note* The director-general or a police officer may apply to a magistrate for a safe custody warrant if a therapeutic protection order or interim therapeutic protection order is in force for a child or young person and the director-general or police officer believes on reasonable grounds that—

(a) someone has contravened the order and, because of the contravention, the child or young person is in danger; or

(b) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order (see s 685).

### 544 Interim therapeutic protection order—criteria for making

The Childrens Court may, on application by the director-general, make an interim therapeutic protection order for a child or young person if—

(a) an application for a therapeutic protection order for the child or young person has been made but not finally decided; and

(b) the Childrens Court believes on reasonable grounds that the criteria for making a therapeutic protection order for the child or young person are met.

*Note* Criteria for making a therapeutic protection order are in s 549.



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## 545 Interim therapeutic protection order—mental health referral

(1) The Childrens Court must make an interim therapeutic protection order for a child or young person if—

(a) an application for a therapeutic protection order for the child or young person has been made but not finally decided; and

(b) the Childrens Court suspects on reasonable grounds that the child or young person has a mental disorder or mental illness.

(2) The order must contain a provision directing the child or young person to submit to the jurisdiction of the ACAT to allow the ACAT—

(a) to decide whether the child or young person has a mental disorder or mental illness; and

(b) if the ACAT decides that the child or young person has a mental disorder or mental illness—to make recommendations to the Childrens Court about how the child or young person should be dealt with.

*Note* The Childrens Court may make a therapeutic protection order for a child or young person only if satisfied that the child or young person does not have a mental disorder or mental illness (see s 549).

## 546 Interim therapeutic protection order—length

(1) The length of an interim therapeutic protection order—

(a) must be stated in the order; and

(b) must not be longer than 2 weeks.

(2) However, if the interim therapeutic protection order would end before the application for the therapeutic protection order is decided, the interim order continues in force until the application is decided.

(3) An interim therapeutic protection order must end on, or before, the day the application for the therapeutic protection order is decided.



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### 547 Interim therapeutic protection order—no extension, amendment, revocation

An interim therapeutic protection order must not be extended, amended or revoked.

### 548 Offence—interim therapeutic protection order

A person commits an offence if—

(a) an interim therapeutic protection order is in force for a child or young person; and

(b) the person has been given a copy of the order; and

(c) the person is not the child or young person who is the subject of the interim therapeutic protection order; and

(d) the person engages in conduct that contravenes a provision of the order.

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

## Division 16.2.4 Making a therapeutic protection order

### 549 Therapeutic protection order—criteria for making

The Childrens Court may, on the application of the director-general, make a therapeutic protection order for a child or young person only if satisfied that—

(a) if the order is not made—

(i) there will be a significant risk of significant harm to—

(A) the child or young person; or

(B) someone else; and

(ii) the risk of harm arises from the child's or young person's conduct; and



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(iii) the risk of harm will be imminent; and

(b) the director-general has—

(i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or

(ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and

(c) there are no less restrictive ways for the director-general to prevent the child or young person from engaging in harmful conduct; and

(d) the child or young person is at least 10 years old; or

(e) the child or young person—

(i) does not have a mental disorder or mental illness; or

(ii) in addition to any other behaviours or dysfunction giving rise to the risk of harm has a mental disorder or mental illness but the Childrens Court is satisfied that making a therapeutic protection order for the child or young person is the best way to support the child or young person; and

*Note* The Childrens Court must make an interim therapeutic protection order for a child or young person if an application for a therapeutic protection order for the child or young person has been made but not finally decided and the court suspects on reasonable grounds that the child or young person has a mental disorder or mental illness. The order must direct the child or young person to submit to the jurisdiction of the ACAT (see s 545).

(f) no-one who has parental responsibility for the child or young person (other than the director-general) is willing and able to prevent the child or young person from engaging in harmful conduct; and

*Note* Parental responsibility is dealt with in div 1.3.2.



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(g) confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and

(h) the director-general has developed a therapeutic protection plan for the child or young person; and

(i) the therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and

(j) making the order is in the best interests of the child or young person.

**Examples—other ways to prevent child or young person from engaging in harmful conduct—par (b) and (c)**

1 The director-general provided Alex's family with intensive family support services.

2 The director-general sought a care and protection order including a parental responsibility provision for Bonny. Under the order, Bonny was placed with a foster carer and provided with intensive support services.

3 The director-general provided Colin with the same services that are provided under a therapeutic protection plan but Colin was not confined at a therapeutic protection place.

*Note 1* In a proceeding for a therapeutic protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## 550 Therapeutic protection order—length

The length of a therapeutic protection order—

(a) must be stated in the order; and

(b) must not be longer than 8 weeks.

*Note* A therapeutic protection order may be extended (see div 16.2.6).



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### 551 Therapeutic protection order—statement of reasons

If the Childrens Court hears and decides an application for a therapeutic protection order, the court must record a written statement of reasons for the decision.

*Note 1* A party may ask for the statement of reasons (see s 722 (2)).

*Note 2* For what must be included in a statement of reasons, see the Legislation Act, s 179.

### 552 Offence—therapeutic protection order

A person commits an offence if—

(a) a therapeutic protection order is in force for a child or young person; and

(b) the person has been given a copy of the order; and

(c) the person is not the child or young person who is the subject of the therapeutic protection order; and

(d) the person engages in conduct that contravenes a provision of the order.

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

## Division 16.2.5 Review of therapeutic protection orders

### 552A Definitions—div 16.2.5

In this division:

***initial review***—see section 553 (2).

***ongoing review***—see section 554 (2).



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## 553 Initial review within 4 weeks

(1) This section applies if a therapeutic protection order is in force for a child or young person.

(2) The director-general must review the operation of the order (the ***initial review***) not later than 4 weeks after the order is made.

## 554 Ongoing review at least each 4 weeks

(1) This section applies if a therapeutic protection order is in force for a child or young person.

(2) The director-general must review the operation of the order (an ***ongoing review***) not later than 4 weeks after—

(a) the initial review; and

(b) each ongoing review.

## 555 Review—views to be considered

(1) This section applies if the director-general is carrying out an initial review, or ongoing review, of the operation of a therapeutic protection order.

(2) In carrying out the review, the director-general must consider the views of the following people:

(a) the child or young person;

(b) each person who has parental responsibility for the child or young person (other than the director-general);

*Note* Parental responsibility is dealt with in div 1.3.2.

(c) each person who had daily care responsibility for the child or young person immediately before the order was made;

*Note* Daily care responsibility is dealt with in s 19 (b).

(d) each official visitor who has visited the child or young person;



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(e) the public advocate;

(f) any other person the director-general considers appropriate.

## 556 Review report

(1) This section applies if the director-general has carried out an initial review, or ongoing review, of the operation of a therapeutic protection order.

(2) The director-general must prepare a report (a ***review report***) about the operation of the therapeutic protection order.

(3) The director-general must give a copy of the review report to the following people:

(a) the child or young person;

(b) each person who has parental responsibility for the child or young person (other than the director-general);

(c) each person who had daily care responsibility for the child or young person immediately before the order was made;

(d) each official visitor who has visited the child or young person;

(e) the public advocate.

## 557 Director-general's action after review

(1) This section applies if the director-general has carried out an initial review, or ongoing review, of the operation of a therapeutic protection order.

(2) If the director-general decides that the order should be extended, the director-general must apply to the Childrens Court for the order to be extended.

*Note* The Childrens Court may extend the order under div 16.2.6.



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(3) If the director-general decides that the order should be amended, the director-general must apply to the Childrens Court for the order to be amended.

*Note* Amending a therapeutic protection order is dealt with in div 16.2.7.

(4) If the director-general decides that the order should be revoked, the director-general must apply to the Childrens Court for the order to be revoked.

*Note* Revoking a therapeutic protection order is dealt with in div 16.2.7.

## Division 16.2.6 Extending a therapeutic protection order

### 558 Therapeutic protection order—extension application

The director-general may apply to the Childrens Court for extension of a therapeutic protection order only if the director-general believes on reasonable grounds that the criteria for extending the order are met.

*Note 1* Criteria for extending the order is in s 562.

*Note 2* Statements, documents and reports must be included in the application (see s 696).

*Note 3* Oral applications may also be made (see s 698).

### 559 Therapeutic protection order—extension application must state grounds etc

An application for extension of a therapeutic protection order must—

(a) state the grounds for the proposed extension; and

(b) include—

(i) the therapeutic protection history for the child or young person; and

(ii) a further therapeutic protection plan for the child or young person for the period of the proposed extension; and



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(iii) a further risk assessment for the child or young person.

## 560 Therapeutic protection order—who must be given extension application

The director-general must give a copy of an application for extension of a therapeutic protection order to the following people at least 1 working day before the application is to be heard by the Childrens Court:

(a) each party to the proceeding in which the order was made;

(b) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.

## 561 Therapeutic protection order—Childrens Court to consider extension application promptly

(1) The Childrens Court must give initial consideration to an application for extension of a therapeutic protection order not later than 2 working days after the day the application is filed.

(2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.

(3) If the therapeutic protection order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).



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## 562 Therapeutic protection order—criteria for extension up to 6 months

(1) The Childrens Court may, by order, extend a therapeutic protection order only if satisfied that—

(a) if the order is not extended—

(i) there will be a significant risk of significant harm to—

(A) the child or young person; or

(B) someone else; and

(ii) the risk of harm arises from the child's or young person's conduct; and

(iii) the risk of harm will be imminent; and

(b) the director-general has—

(i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or

(ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and

(c) there are no less restrictive ways for the director-general to prevent the child or young person from engaging in harmful conduct; and

(d) if, in addition to any other behaviours or dysfunction giving rise to the risk of harm, the child or young person has a mental disorder or mental illness—extending the order is the best way to support the child or young person; and



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(e) no-one who has parental responsibility for the child or young person (other than the director-general) is willing and able to prevent the child or young person from engaging in harmful conduct; and

*Note* Parental responsibility is dealt with in div 1.3.2.

(f) further confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and

(g) the director-general has developed a further therapeutic protection plan for the child or young person; and

(h) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and

(i) extending the order is in the best interests of the child or young person.

*Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

(2) The Childrens Court may extend a therapeutic protection order for as long as a further 8 weeks.

(3) However, the Childrens Court must not extend a therapeutic protection order if the total length of the order and the proposed extension will be longer than 6 months.



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### 563 Therapeutic protection order extension—statement of reasons

If the Childrens Court hears and decides an application for extension of a therapeutic protection order, the court must record a written statement of reasons for the decision.

*Note 1* A party may ask for the statement of reasons (see s 722 (2)).

*Note 2* For what must be included in a statement of reasons, see the Legislation Act, s 179.

## Division 16.2.7 Amending or revoking a therapeutic protection order

### 564 Therapeutic protection order—application for amendment or revocation

The following people may apply for amendment or revocation of a therapeutic protection order for a child or young person if the person believes on reasonable grounds that the criteria for amending or revoking the order are met:

(a) the director-general;

(b) the child or young person;

(c) someone who has parental responsibility for the child or young person;

(d) a former caregiver of the child or young person;

(e) the public advocate.

*Note* Criteria for amending the order are in s 569.
Criteria for revoking the order are in s 570.



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## 565 Therapeutic protection order—application for amendment must state grounds etc

(1) An application for amendment of a therapeutic protection order must—

(a) state—

(i) how the provision is proposed to be amended; and

(ii) the grounds for the proposed amendment; and

(b) if the applicant is the director-general, include—

(i) the therapeutic protection history for the child or young person; and

(ii) a revised therapeutic protection plan for the child or young person that takes into account the proposed amendment; and

(iii) a further risk assessment for the child or young person.

(2) If the applicant is not the director-general, after the director-general receives a copy of the application, the director-general must file with the Childrens Court—

(a) the therapeutic protection history for the child or young person; and

(b) a revised therapeutic protection plan for the child or young person that takes into account the proposed amendment; and

(c) a risk assessment for the child or young person.



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## 566 Therapeutic protection order—application for revocation must state grounds etc

(1) An application for revocation of a therapeutic protection order must—

(a) state the grounds for the proposed revocation; and

(b) if the applicant is the director-general, include—

(i) the therapeutic protection history for the child or young person; and

(ii) a further risk assessment for the child or young person.

(2) If the applicant is not the director-general, after the director-general receives a copy of the application, the director-general must file with the Childrens Court—

(a) the therapeutic protection history for the child or young person; and

(b) a further risk assessment for the child or young person.

## 567 Therapeutic protection order—who must be given application for amendment or revocation

The applicant for amendment or revocation of a therapeutic protection order must give a copy of the application to the following people at least 1 working day before the application is to be heard by the Childrens Court:

(a) each party to the proceeding in which the order was made;

(b) anyone else who was required to be given a copy of the application for the therapeutic protection order;

(c) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.



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## 568 Therapeutic protection order—Childrens Court to consider application for amendment or revocation promptly

(1) The Childrens Court must give initial consideration to an application for amendment or revocation of a therapeutic protection order not later than 5 working days after the day the application is filed.

(2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.

(3) If the therapeutic protection order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).

## 569 Therapeutic protection order—criteria for amendment

The Childrens Court may, by order, amend a therapeutic protection order only if satisfied that—

(a) if the order is not amended—

(i) there will be a significant risk of significant harm to—

(A) the child or young person; or

(B) someone else; and

(ii) the risk of harm arises from the child's or young person's conduct; and

(iii) the risk of harm will be imminent; and

(b) the director-general has developed a further therapeutic protection plan for the child or young person; and



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(c) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and

(d) amending the order is in the best interests of the child or young person.

*Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## 570 Therapeutic protection order—criteria for revocation

The Childrens Court may, by order, revoke a therapeutic protection order only if satisfied that—

(a) if the order is revoked, there will be no imminent, significant risk of significant harm to the child or young person or someone else arising from the child's or young person's conduct; and

(b) revoking the order is in the best interests of the child or young person.

*Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).



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## 571 Therapeutic protection order amendment or revocation—statement of reasons

If the Childrens Court hears and decides an application for amendment or revocation of a therapeutic protection order, the court must record a written statement of reasons for the decision.

*Note 1* A party may ask for the statement of reasons (see s 722 (2)).

*Note 2* For what must be included in a statement of reasons, see the Legislation Act, s 179.



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# Part 16.3 Children and young people in therapeutic protection

## Division 16.3.1 Preliminary

### 572 When is a child or young person *in therapeutic protection*?

In this Act:

***in therapeutic protection***—a child or young person is ***in therapeutic protection*** if the child or young person is confined at a therapeutic protection place under a therapeutic protection order or under section 531 (b) (Therapeutic protection only under therapeutic protection order or for emergency protection).

### 573 Transgender and intersex children and young people—sexual identity

(1) This section applies to a transgender or intersex child or young person in therapeutic protection at a therapeutic protection place.

(2) On admission to a therapeutic protection place—

(a) the child or young person may tell the operating entity for the therapeutic protection place the sex the child or young person chooses to be identified with; or

(b) if the child or young person fails to make a choice under paragraph (a)—the operating entity may choose the sex the child or young person is to be identified with having regard to the presentation of the child or young person on admission to the place.

*Note* ***Fail*** includes refuse, see the Legislation Act, dict, pt 1.



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(3) The operating entity for the therapeutic protection place may, on application by the child or young person, approve a change in the sex the child or young person chooses to be identified with, having regard to any report obtained under subsection (4) or (5).

(4) Before making a decision under subsection (2) (b) or (3), the operating entity for the therapeutic protection place must obtain a report by a non-treating doctor or other non-treating health practitioner about the child's or young person's sexual identity.

(5) The operating entity for the therapeutic protection place may also obtain a report by a non-treating doctor or other non-treating health practitioner about the child's or young person's sexual identity chosen under subsection (2) (a) if the operating entity believes on reasonable grounds that obtaining the report—

(a) is in the best interests of the child or young person; and

(b) is necessary to make a decision in relation to the child's or young person's placement, supervision or management at the therapeutic protection place.

(6) The operating entity for the therapeutic protection place must—

(a) give the child or young person written notice of a decision under subsection (2) or (3); and

(b) ensure that the child's or young person's sex chosen under this section is entered in the therapeutic protection register kept by the operating entity.



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(7) For this Act, the sex of the child or young person is taken to be the child's or young person's sex entered in the therapeutic protection register under subsection (6) (b).

**Examples—effect of section**

The conduct of searches of the child or young person would be on the basis that the child or young person was a person of the sex chosen and entered in the therapeutic protection register.

*Note* The child or young person may require that either a male or a female conduct a search (see s 592 (2) (Searches—transgender or intersex child or young person)).

## Division 16.3.2 Supervision

### 574 Therapeutic protection—supervision

The operating entity for a therapeutic protection place may closely or constantly supervise a child or young person in therapeutic protection if the supervision is reasonably necessary to safeguard the child's or young person's wellbeing.

*Note* An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 816).

### 575 Therapeutic protection—escort outside therapeutic protection place

(1) A child or young person in therapeutic protection may leave a therapeutic protection place only if escorted by the operating entity for the therapeutic protection place.

(2) A child or young person who leaves a therapeutic protection place, under escort by the operating entity for the therapeutic protection place, is taken to be in therapeutic protection.



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## Division 16.3.3 Visits by accredited people

### 576 Who is an *accredited person*?

In this division:

***accredited person***, for a child or young person in therapeutic protection, means each of the following:

(a) the director-general;

(b) a representative of an entity providing a service or program to the child or young person at a therapeutic protection place;

(c) a lawyer representing the child or young person;

(d) an official visitor;

(e) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(f) the ombudsman;

(g) a person prescribed by regulation.

### 577 Therapeutic protection—visits by accredited people must be allowed

To protect the human rights of children and young people in therapeutic protection at therapeutic protection places, the operating entity for the therapeutic protection place must ensure, as far as practicable, that children and young people in therapeutic protection have reasonable opportunities to receive visits from accredited people.

### 578 Therapeutic protection—visits by accredited people

An accredited person may visit a child or young person in therapeutic protection.



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## Division 16.3.4 Use of force

### 579 Therapeutic protection—managing use of force

(1) The operating entity for a therapeutic protection place must make arrangements to ensure, as far as practicable, that the use of force in relation to the management of a child or young person in therapeutic protection is always—

(a) a last resort; and

(b) for a purpose that cannot be achieved in any other way; and

(c) in accordance with this division; and

(d) in accordance with the therapeutic protection standards.

*Note* The Minister may make therapeutic protection standards under s 887.

(2) The operating entity must also ensure, as far as practicable, that—

(a) a therapeutic protection person does not use force in relation to a child or young person in therapeutic protection without first considering the following in relation to the use of force:

(i) the child's or young person's age, sex, physical and mental health and any history of abuse;

(ii) if the proposed force involves any restraint of the child or young person—the physical and developmental capacity of the child or young person; and

(b) the use of force in relation to a child or young person is not observed by any other child or young person.

(3) However, an operating entity need not comply with subsection (2) if, in urgent circumstances, the person believes on reasonable grounds that doing so would create a risk of injury to the therapeutic protection person, the child or young person in therapeutic protection, or anyone else.



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## 580 Therapeutic protection—authorised use of force

A therapeutic protection person may use force that is necessary and reasonable—

(a) to prevent a child or young person in therapeutic protection from inflicting self-harm or harming someone else; or

(b) to prevent unlawful damage, destruction or interference with property.

## 581 Therapeutic protection—application of force

(1) A therapeutic protection person may use force under this division only if the operating entity—

(a) gives a clear warning of the intended use of force; and

(b) allows enough time for the warning to be observed; and

(c) uses force, as far as practicable, in a way that reduces the risk of causing injury.

(2) However, the therapeutic protection person need not comply with subsection (1) (b) or (c) if, in urgent circumstances, the person believes on reasonable grounds that doing so would create a risk of injury to the child or young person in therapeutic protection or anyone else.

**Example—urgent circumstances**

the child or young person is assaulting someone or engaging in self-harm

(3) In applying force under section 580, the therapeutic protection person may use body contact.



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### 582 Therapeutic protection—medical examination after use of force

(1) The operating entity for a therapeutic protection place must ensure that any child or young person in therapeutic protection injured by the use of force under this division is examined as soon as practicable by a doctor (other than a non-treating doctor) and that appropriate health care is available to the child or young person.

(2) Without limiting subsection (1), the operating entity for a therapeutic protection place must give a child or young person in therapeutic protection the opportunity to be examined by a doctor or nurse (other than a non-treating doctor or non-treating nurse) after the use of force in relation to the child or young person.

### 583 Therapeutic protection—monthly reports about use of force

The operating entity for a therapeutic protection place must, as soon as practicable after the end of each month, give the director-general a report summarising the incidents (if any) during the month that involved the use of force in relation to a child or young person in therapeutic protection.

## Division 16.3.5 Searches

## Subdivision 16.3.5.1 Application and definitions—div 16.3.5

### 584 Application—div 16.3.5

This division applies to a child or young person who is in therapeutic protection.



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## 585 What is a *scanning search*?

In this part:

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

**Examples—scanning searches**

1 passing a portable electronic or other device over or close to a child or young person

2 requiring a child or young person to pass by or through an electronic or other device

## 586 What is a *frisk search*?

In this part:

***frisk search***, of a child or young person, means—

(a) a search of the child or young person conducted by quickly running the hands over the child's or young person's outer clothing; and

(b) an examination of anything worn or carried by the child or young person that is conveniently and voluntarily removed by the child or young person.

## 587 What is an *ordinary search*?

In this part:

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

(a) requiring the child or young person to remove only the child's or young person's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear; and



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(b) an examination of anything removed.

## 588 What is a *body search*?

In this part:

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

*Note* Body searches are dealt with in subdiv 16.3.5.5.

## 589 What is a *strip search*?

In this part:

***strip search***, of a child or young person, means a search of the child or young person, or of articles in the child's or young person's possession, under section 598 (Strip searches—authorisation) that may include—

(a) requiring the child or young person to remove all of the child's or young person's clothing; and

(b) an examination of—

(i) the child's or young person's body (but not the child's or young person's body orifices or cavities); and

(ii) the child's or young person's clothing.

*Note* Strip searches are dealt with in subdiv 16.3.5.4.

## 590 What is a *dangerous thing*?

In this part:

***dangerous thing*** means a thing that, if used by, or allowed to remain with, a child or young person, may—

(a) cause serious damage to the health of the child or young person or someone else; or



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(b) threaten the life of the child or young person or someone else.

## Subdivision 16.3.5.2 Searches generally

### 591 Searches—intrusiveness

A person conducting a search of a child or young person under this division must ensure, as far as practicable, that the search—

(a) is the least intrusive kind of search that is necessary and reasonable in the circumstances; and

(b) is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

**Example**

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

### 592 Searches—transgender or intersex child or young person

(1) This section applies if a transgender or intersex child or young person is to be searched under this division.

(2) For a child or young person who fails to make a choice under section 573 (2) (a) (Transgender and intersex children and young people—sexual identity)—

(a) if the child or young person requires that a male conduct the search, the child or young person is taken, for this part, to be male; and

(b) if the child or young person requires that a female conduct the search, the child or young person is taken, for this part, to be female.

*Note 1* For the Act generally, the sex of a child or young person is taken to be the child's or young person's sex entered in the therapeutic protection register under s 573 (7).

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



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## 593 Searches—use of force

(1) A therapeutic protection person may use force that is necessary and reasonable—

(a) to conduct or assist at a search under this division; or

(b) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.

(2) However, the therapeutic protection person may use force only in accordance with division 16.3.4.

## Subdivision 16.3.5.3 Scanning, frisk and ordinary searches

## 594 Directions for scanning, frisk and ordinary searches

(1) The operating entity for a therapeutic protection place may, at any time, direct a therapeutic protection person to conduct a scanning search, frisk search or ordinary search of a child or young person if the operating entity believes on reasonable grounds the search is prudent to ensure security or good order at a therapeutic protection place.

(2) Also, a therapeutic protection person may conduct a scanning search, frisk search or ordinary search of a child or young person if the person suspects on reasonable grounds that the child or young person is carrying—

(a) a dangerous thing; or

(b) something that may be used by the child or young person in a way that may involve—

(i) an offence; or

(ii) a risk to the personal safety of the child or young person or someone else; or

(iii) a risk to security or good order at a therapeutic protection place.



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## 595 Scanning, frisk and ordinary searches—requirements before search

(1) This section applies if a therapeutic protection person proposes to conduct a scanning, frisk or ordinary search of a child or young person.

(2) Before the search is conducted, the therapeutic protection person must tell the child or young person—

(a) about the search; and

(b) the reasons for the search.

(3) If the child or young person asks why the search is to be conducted in a particular way, the therapeutic protection person must tell the child or young person the reasons.

(4) The therapeutic protection person must ask for the child's or young person's cooperation for the search.

## 596 Frisk and ordinary searches—privacy

(1) A frisk search or ordinary search of a child or young person may only be conducted in—

(a) a private area; or

(b) an area that provides reasonable privacy for the child or young person.

(2) A frisk search or ordinary search of a child or young person must not be conducted in the presence or sight of—

(a) another child or young person; or

(b) someone whose presence is not necessary for the search or for the safety of anyone present.

(3) A frisk search of a child or young person must be conducted by a therapeutic protection person of the same sex as the child or young person.



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(4) Subsection (3) does not apply if the operating entity for the therapeutic protection place believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the child or young person or someone else; and

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

### 597 Scanning, frisk and ordinary searches—clothing

If clothing from a child or young person is seized during a scan search, frisk search or ordinary search, the therapeutic protection person conducting the search must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.

## Subdivision 16.3.5.4 Strip searches

### 598 Strip searches—authorisation

(1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to strip search a child or young person only if—

(a) the operating entity suspects on reasonable grounds that the child or young person has a dangerous thing concealed on the child or young person; and

(b) a scanning search, frisk search or ordinary search of the child or young person has failed to detect the thing.

(2) In making a decision under subsection (1), the operating entity must have regard to the child's or young person's age, maturity, developmental capacity and any known history.



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## 599 Strip searches—requirements before search

(1) This section applies if a therapeutic protection person proposes to strip search a child or young person.

(2) Before the search is conducted, the therapeutic protection person must tell the child or young person—

(a) about the search; and

(b) the reasons for the search; and

(c) whether the child or young person will be required to remove clothing during the search; and

(d) if the child or young person will be required to remove clothing—why the removal is necessary.

(3) If the child or young person asks why the search is being conducted in a particular way, the therapeutic protection person must tell the child or young person the reasons.

(4) The therapeutic protection person must ask for the child's or young person's cooperation for the search.

## 600 Strip searches—second therapeutic protection person must be present

(1) A strip search of a child or young person must be conducted—

(a) by a therapeutic protection person of the same sex as the child or young person; and

(b) in the presence of 1 or more other therapeutic protection people, each of whom must be the same sex as the child or young person.

(2) However, the number of therapeutic protection people present during the search must be no more than is necessary and reasonable to ensure the search is conducted as safely and effectively as possible.



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(3) The person conducting the search may direct someone else mentioned in subsection (1) (b) to provide the assistance that the person believes on reasonable grounds is necessary and reasonable for the search.

(4) The requirement in subsection (1) (b) that a person be the same sex as the child or young person does not apply if the operating entity for the therapeutic protection place believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the child or young person; and

(b) compliance with the requirement would exacerbate the threat.

## 601 Strip searches—support person must be present

(1) The operating entity for a therapeutic protection place must ensure that the strip search is conducted in the presence of someone (a ***support person***) who—

(a) the operating entity believes on reasonable grounds can support and represent the interests of the child or young person; and

(b) the child or young person agrees should be present at the search.

(2) However, the search may continue in the absence of a support person if—

(a) the child or young person does not agree to a support person being present; or

(b) the operating entity directs the support person to leave under section 602.



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## 602 Strip searches—directing support person to leave

(1) This section applies if a child or young person is being strip searched in the presence of a support person under section 601.

(2) The operating entity for the therapeutic protection place may direct the support person to leave if the operating entity believes on reasonable grounds that the support person is preventing or hindering the search.

(3) If the support person leaves, the search may continue in the absence of the support person.

## 603 Strip searches—enforcing direction to leave

(1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to enforce a direction under section 602 (2) if the person given the direction contravenes the direction.

(2) The therapeutic protection person may use force that is necessary and reasonable to enforce the direction.

## 604 Strip searches—general rules

If a therapeutic protection person is strip searching a child or young person, the person must conduct the search—

(a) in a way that is appropriate, having regard as far as practicable, to the child's or young person's sexuality and any known impairment, condition or history; and

(b) as quickly as practicable.



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## 605 Strip searches—privacy

(1) A strip search of a child or young person may only be conducted in—

(a) a private area; or

(b) an area that provides reasonable privacy for the child or young person.

(2) If a therapeutic protection person is strip searching a child or young person, the person must conduct the search in a way that provides reasonable privacy for the child or young person.

(3) A strip search of a child or young person must not be conducted—

(a) in the presence of anyone of the opposite sex to the child or young person, other than—

(i) a person present under section 600 (Strip searches—second therapeutic protection person must be present); or

(ii) a support person present under section 601 (Strip searches—support person must be present); or

(b) in the presence or sight of someone whose presence is not necessary for the search or for the safety of anyone present.

## 606 Strip searches—no touching body

Subject to division 16.3.4 (Use of force), a strip search must not involve touching the child's or young person's body.

## 607 Strip searches—visual inspection of body

(1) If a therapeutic protection person is strip searching a child or young person, the person must not visually inspect the following areas of the child or young person unless the officer suspects on reasonable grounds that it is necessary to do so for the search:

(a) the genital area;

(b) for a female child or young person—the breasts.



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(2) A strip search of a child or young person must not involve more visual inspection of the child's or young person's body than is necessary and reasonable for the search.

(3) Without limiting subsection (2), during the strip search of the child or young person, any visual inspection of the following areas of the child or young person must be kept to a minimum:

(a) the genital area;

(b) the anal area;

(c) the buttocks;

(d) for a female child or young person—the breasts.

## 608 Strip searches—clothing

(1) A strip search of a child or young person must not involve—

(a) the removal from the child or young person of more clothes than is necessary and reasonable for the search; or

(b) the removal from the child or young person of more clothes at any time than is necessary and reasonable for the search; or

(c) without limiting paragraph (b), both the upper and lower parts of the child's or young person's body being uncovered at the same time.

(2) After a strip search of a child or young person is finished, the child or young person must be allowed to dress in private.

(3) If clothing from a child or young person is seized during a strip search, the therapeutic protection person conducting the search must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.



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## Subdivision 16.3.5.5 Body searches

### 609 Body searches—directions

(1) The operating entity for a therapeutic protection place may direct a non-treating doctor to conduct a body search of a child or young person only if the operating entity suspects on reasonable grounds that the child or young person has ingested or inserted something that may jeopardise the child's or young person's health or wellbeing.

(2) In making a decision under subsection (1), the operating entity must have regard to the child's or young person's age, maturity, developmental capacity and any known history.

### 610 Body searches—requirements before search

(1) This section applies if the operating entity for a therapeutic protection place has directed a non-treating doctor to conduct a body search of a child or young person.

(2) Before the search is conducted, the operating entity must tell the child or young person—

(a) about the search; and

(b) the reasons for the search; and

(c) whether the child or young person will be required to remove clothing during the search; and

(d) if the child or young person will be required to remove clothing—why the removal is necessary.

(3) If the child or young person asks why the search is to be conducted in a particular way, the operating entity must tell the child or young person the reasons.

(4) The operating entity must ask for the child's or young person's cooperation for the search.



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## 611 Body searches—non-treating nurse must be present

(1) A non-treating nurse must be present during the body search of a child or young person.

(2) If the non-treating doctor conducting the body search is not the same sex as the child or young person, the non-treating nurse present must be the same sex as the child or young person.

## 612 Body searches—another person may be present

(1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to be present during the body search of a child or young person.

(2) However, the number of people present during the search must be no more than is necessary and reasonable to ensure the search is conducted as safely and effectively as possible.

(3) The operating entity may direct more than 1 therapeutic protection person to be present during the search, each of whom must be the same sex as the child or young person.

(4) However, the requirement in subsection (3) does not apply if the operating entity believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the child or young person; and

(b) compliance with the requirement would exacerbate the threat.

## 613 Body searches—support person must be present

(1) The operating entity for the therapeutic protection place must ensure that the body search is conducted in the presence of someone (a ***support person***) who—

(a) the operating entity believes on reasonable grounds can support and represent the interests of the child or young person; and

(b) the child or young person agrees should be present at the search.



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(2) However, the body search may continue in the absence of a support person if the child or young person does not agree to a support person being present.

## 614 Body searches—directing support person to leave

(1) This section applies if a child or young person is being body searched in the presence of a support person under section 613.

(2) The operating entity for the therapeutic protection place may direct the support person to leave if the operating entity believes on reasonable grounds that the support person is preventing or hindering the search.

(3) If the support person leaves, the search may continue in the absence of the support person.

## 615 Body searches—touching body

(1) This section applies to—

(a) a non-treating doctor who is—

(i) conducting a body search of a child or young person; and

(ii) the same sex as the child or young person; and

(b) a non-treating nurse who is—

(i) present at a body search of a child or young person; and

(ii) the same sex as the child or young person.

(2) The non-treating doctor or non-treating nurse may touch the child or young person and examine the child's or young person's body orifices and cavities for the search.



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## 616 Body searches—clothing

(1) A body search of a child or young person must not involve—

(a) the removal from the child or young person of more clothes than is necessary and reasonable for the search; or

(b) the removal from the child or young person of more clothes at any time than is necessary and reasonable for the search; or

(c) without limiting paragraph (b), both the upper and lower parts of the child's or young person's body being uncovered at the same time.

(2) Immediately after a body search of a child or young person is finished, the child or young person must be allowed to dress in private.

(3) If clothing from a child or young person is seized during a body search, the operating entity for the therapeutic protection place must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.

## 617 Body searches—assistance

(1) This section applies if a non-treating doctor who is conducting a body search of a child or young person asks the operating entity for the assistance that the doctor believes on reasonable grounds is necessary and reasonable for the search.

(2) The operating entity may direct or authorise someone else present at the search (the ***assistant***) to assist in the search.

(3) The assistant must be the same sex as the child or young person.



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(4) However, subsection (3) does not apply if the operating entity believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the child or young person, or someone else; and

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

### 618 Body searches—non-treating doctor may seize things

(1) A non-treating doctor who is conducting a body search of a child or young person may seize anything that the child or young person has ingested or inserted that may jeopardise the child's or young person's health or wellbeing that is discovered during the search.

(2) However, the non-treating doctor may seize the thing only if seizing the thing would not be likely to cause injury to the child or young person or someone else.

(3) The non-treating doctor must give the thing seized to the operating entity as soon as practicable.

*Note* Seizure of things found during the search is further dealt with in div 16.3.6.

## Division 16.3.6 Seizing dangerous things

### 619 Application—div 16.3.6

This division applies to a child or young person who is in therapeutic protection.

### 620 Seizing property—who is the *owner*?

In this division:

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



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## 621 Seizing property—dangerous things may be seized

(1) The operating entity for a therapeutic protection place may seize a dangerous thing found on a child or young person or in a child's or young person's custody or possession, unless the child or young person has the written approval of the operating entity to possess the thing.

(2) To remove any doubt, this section applies to any dangerous thing found in a search under this part.

## 622 Seized property—must tell owner

(1) As soon as practicable, but not later than 7 days, after the day a thing is seized under section 621, the operating entity for the therapeutic protection place must tell the following people, in writing (a ***seizure notice***), about the seizure:

(a) the owner of the thing seized; or

(b) if the owner cannot be identified after reasonable efforts (given the thing's apparent value)—the person from whom the thing was seized.

(2) The seizure notice must—

(a) identify the thing seized; and

(b) outline the grounds for the seizure; and

(c) include a statement about the effect of section 623; and

(d) include anything else prescribed by regulation.



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## 623 Seized property—forfeiture

(1) A thing seized under section 621 (Seizing property—dangerous things may be seized) is forfeited to the Territory if—

(a) after making reasonable efforts (given the thing's apparent value), the operating entity for the therapeutic protection place is satisfied that—

(i) the owner of the thing cannot be found; or

(ii) the thing cannot be returned to the owner; or

(b) the operating entity for the therapeutic protection place is satisfied that—

(i) possession of the thing by the child or young person is an offence; or

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

(iii) the thing is inherently unsafe.

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

**Examples**

1 giving a forfeited weapon to the director-general

2 dumping a forfeited thing of little value

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

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

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



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## 624 Seized property—return

(1) If a thing seized under section 621 (Seizing property—dangerous things may be seized) is not forfeited to the Territory, the operating entity for the therapeutic protection place must return the thing to its owner—

(a) at the end of the 6 months after the day the thing was seized; or

(b) if a proceeding for an offence involving the thing is started not later than the 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) However, if the thing was being kept as evidence of an offence and the operating entity believes on reasonable grounds that keeping the thing as evidence is no longer necessary, the operating entity must return the thing immediately to its owner.



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# Part 16.4 Therapeutic protection—administration

## Division 16.4.1 Therapeutic protection places

### 625 Therapeutic protection place—declaration

(1) The Minister may declare a place to be a therapeutic protection place for this Act.

(2) However, the Minister may declare a place to be a therapeutic protection place only if the place—

(a) is not used to accommodate young detainees; and

(b) complies with the therapeutic protection standards.

*Note* The Minister may make therapeutic protection standards under s 887.

(3) A declaration is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* An authorised person may, at any reasonable time, enter a place if the director-general is deciding whether to declare the place as a therapeutic protection place under this section (see s 816).

### 626 Therapeutic protection place—exclusion of matters from declaration etc

(1) The director-general may exclude from a therapeutic protection place declaration any matter that the director-general believes on reasonable grounds would be likely to disclose the location of a therapeutic protection place.

(2) However, the director-general must disclose the location of a therapeutic protection place to the people entitled under section 634 (1) to have access to the therapeutic protection register.



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## 627 Therapeutic protection place—policies and procedures

(1) The director-general may make therapeutic protection place policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of therapeutic protection places.

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

(2) Each therapeutic protection place policy or operating procedure is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the Legislation Act.

*Note 2* The amendment or repeal of a therapeutic protection place policy or operating procedure is also a notifiable instrument (see Legislation Act, s 46 (Power to make instrument includes power to amend or repeal)).

*Note 3* The director-general must make a therapeutic protection place policy or operating procedure in relation to the use of force, including provision in relation to the circumstances, and by whom, force may be used and the kinds of force that may be used (see s 579).

*Note 4* An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 816).

## 628 Authorisation of operating entity for therapeutic protection place

The director-general may authorise an entity to be an operating entity for a therapeutic protection place if satisfied that the entity—

(a) is a suitable entity to operate a therapeutic protection service; and

*Note* Suitable entities are dealt with in s 61.

(b) complies with, and is likely to continue to comply with, the therapeutic protection standards.

*Note* The Minister may make therapeutic protection standards under s 887.



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## 629 Suspension of operating entity's authorisation

(1) The director-general may suspend an entity's authorisation under section 628 as an operating entity for a therapeutic protection place if the director-general suspects on reasonable grounds that the entity—

(a) is not a suitable entity to operate a therapeutic protection place; or

(b) has not complied with, or continued to comply with, the therapeutic protection standards.

(2) The director-general may suspend the authorisation by—

(a) giving the entity written notice of the suspension, including the director-general's reasons for suspending the authorisation; and

(b) telling the entity that the entity may make a submission, in writing, to the director-general about the suspension not later than 14 days after the day the notice is given to the entity.

(3) A suspension takes effect immediately.

(4) After the end of 28 days after the director-general gives notice of the suspension of an entity's authorisation under subsection (2) (b), the director-general must—

(a) consider any submission made by the entity; and

(b) either—

(i) revoke the suspension; or

(ii) give the entity notice of the director-general's intention to revoke the authorisation under section 630.



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## 630 Revocation of operating entity's authorisation

(1) The director-general may revoke an entity's authorisation under section 628 as an operating entity for a therapeutic protection place if the director-general is satisfied that the entity—

(a) is not a suitable entity to operate a therapeutic protection place; or

(b) has not complied with, or continued to comply with, the therapeutic protection standards.

(2) The director-general may also revoke an entity's authorisation if the entity asks the director-general to revoke the authorisation.

(3) Before revoking an entity's authorisation under subsection (1), the director-general must—

(a) give the entity written notice of the director-general's intention to revoke the authorisation, including the director-general's reasons; and

(b) tell the entity that the person may make a submission, in writing, to the director-general about the notice not later than 14 days after the day the notice is given to the person; and

(c) if the entity makes a submission—consider the submission.

(4) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

*Note 1* Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

*Note 2* A decision under this section is a reviewable decision (see s 839).



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## Division 16.4.2 Therapeutic protection plan

### 631 Public advocate and official visitor may be given therapeutic protection plan

If the public advocate or an official visitor asks the director-general for a therapeutic protection plan for a child or young person, the director-general must promptly give the public advocate or official visitor a copy of the plan.

*Note* The therapeutic protection plan is protected information (see ch 25).

## Division 16.4.3 Non-treating health practitioners

### 632 Health practitioners—non-treating functions

(1) An operating entity for a therapeutic protection place may, orally or in writing, authorise a health practitioner (a ***non-treating health practitioner***) to exercise non-treating functions under this chapter for children and young people at the therapeutic protection place.

*Note* ***Health practitioner*** includes a doctor and nurse registered under the *Health Practitioner Regulation National Law (ACT)*.

(2) An operating entity must ensure, as far as practicable, that a child's or young person's treating health practitioner is not asked to exercise a function as a non-treating health practitioner under this chapter in relation to the child or young person.

(3) Subsection (2) does not apply if the operating entity believes on reasonable grounds that—

(a) there is an imminent and serious threat to the personal safety of the child or young person or someone else; and

(b) compliance with subsection (2) would exacerbate the threat.



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(4) In this section:

***treating health practitioner***, in relation to a child or young person, means a health practitioner who has a professional relationship with the child or young person for the provision of health services.

## Division 16.4.4 Therapeutic protection register

### 633 Therapeutic protection register

(1) The operating entity for a therapeutic protection place must keep a register (a ***therapeutic protection register***) of children and young people for whom the Childrens Court makes an interim therapeutic protection order or a therapeutic protection order and who are confined at the therapeutic protection place.

(2) The therapeutic protection register must include the following details for each child or young person for whom the Childrens Court makes an interim therapeutic protection order or a therapeutic protection order:

(a) name, sex and date of birth;

(b) details of the therapeutic protection order;

(c) the therapeutic protection plan for each proposed period of confinement;

(d) the therapeutic protection history for each period of confinement;

(e) if the child or young person is strip searched or body searched during a period of confinement—

(i) the reason for the search; and

(ii) when and where the search was conducted; and

(iii) the name of each person present at any time during the search; and



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(iv) if, under section 600 (4), section 612 (4) or section 617 (4), a requirement for a person present at the search to be the same sex as the child or young person was not complied with—the operating entity's reasons for believing the requirement did not apply; and

(v) details of anything seized during the search; and

(vi) details of any force used for conducting the search, and why force was used;

*Note* Strip searches are authorised under s 598. Body searches are authorised under s 609.

(f) if force was used on the child or young person during the period of confinement—the reason why force was used;

(g) where and with whom the child or young person lived before the period of confinement;

(h) anything else prescribed by regulation.

*Note* Information in the therapeutic protection register is protected information (see ch 25).

(3) The register may contain anything else the operating entity for the therapeutic protection place considers relevant.

## 634 Therapeutic protection register—who may have access?

(1) The following people may have access to a therapeutic protection register:

(a) the director-general or a person authorised by the director-general;

(b) a magistrate;

(c) a judge;

(d) the ombudsman;

(e) an official visitor;



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(f) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

(g) a person prescribed by regulation.

(2) The operating entity for a therapeutic protection place must ensure that the therapeutic protection register kept by the operating entity is only accessed by the people mentioned in subsection (1).

*Note* An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 816).

## 635 Therapeutic protection register—public advocate to inspect

The public advocate must inspect the therapeutic protection register at least once every 3 months.



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# Chapter 17 Care and protection—interstate transfer of orders and proceedings

## Part 17.1 Preliminary

### 636 Object of ch 17

The object of this chapter is to provide for the transfer of care and protection orders and proceedings between the ACT and a State or between the ACT and New Zealand—

(a) so that children and young people who are in need of protection may be protected despite moving from one jurisdiction to another; and

(b) to facilitate the timely and expeditious finalisation of court proceedings for the protection of a child or young person; and

(c) to recognise the desirability of orders relating to the care and protection of a child or young person having effect, and being enforced, in the jurisdiction where the child or young person lives.

### 637 Definitions—ch 17

In this chapter:

***child welfare law***—see section 640.

***child welfare order***, for a child or young person—see section 638.

***child welfare proceeding***—see section 639.

***government agency*** means a government department (however described) or statutory authority of the State.

***interim child welfare order***—see section 661.



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***interstate law***—see section 641.

***interstate officer***—see section 642.

***participating State*** means a State where an interstate law is in force.

***sending State***, for a child welfare order or child welfare proceeding, means the State from which the order or proceeding is transferred under this chapter or an interstate law.

***State*** includes New Zealand.

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

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

(a) a Minister of the State; or

(b) a government agency of the State; or

(c) the chief executive (however described) of a government agency of the State; or

(d) a person who holds another position in, or is employed by, a government agency of the State; or

(e) a statutory office-holder; or

(f) an organisation, or the chief executive officer (however described) of an organisation, in the State.

## 638 What is a *child welfare order*?

In this chapter:

***child welfare order*** means an order under a child welfare law (other than an interim child welfare order) made in favour of, or giving responsibility to, a welfare body, that—

(a) provides for the parental responsibility, guardianship or custody of a child or young person; or



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(b) provides for supervision of a child or young person; or

(c) provides for contact with a child or young person; or

(d) relates to specific things that a person must do or not do that are directly related to a child or young person's care or protection.

## 639 What is a *child welfare proceeding*?

In this chapter:

***child welfare proceeding*** means a proceeding brought in a court under a child welfare law for—

(a) the making of a child welfare order or an interim child welfare order; or

(b) the amendment, extension or revocation of a child welfare order or an interim child welfare order.

## 640 What is a *child welfare law*?

(1) In this Act:

***child welfare law*** means—

(a) the care and protection chapters; or

(b) a law of a State that corresponds to the care and protection chapters; or

(c) a law of a State declared by the Minister under subsection (2) to be a child welfare law for this chapter.

(2) The Minister may declare a law of a State to be a child welfare law for this chapter if satisfied that the law corresponds, or substantially corresponds, to the care and protection chapters.

(3) A declaration is a notifiable instrument.

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



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## 641 What is an *interstate law*?

(1) In this chapter:

***interstate law*** means—

(a) a law of a State that corresponds to this chapter; or

(b) a law declared by the Minister under subsection (2) to be an interstate law for this chapter.

(2) The Minister may declare a law of a State to be an interstate law for this chapter if satisfied that the law corresponds or substantially corresponds to this chapter.

(3) A declaration is a notifiable instrument.

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

## 642 Who is an *interstate officer*?

(1) In this chapter:

***interstate officer***, for a State, means—

(a) the person holding the position that has the main responsibility, under the child welfare law of the State, for the protection of children and young people in the State; or

(b) the holder of a position in the State that is declared by the Minister under subsection (2) to be an interstate officer position for the State for this chapter.

(2) The Minister may declare a position in a State to be an interstate officer position for the State for this chapter.

(3) A declaration is a notifiable instrument.

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



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# Part 17.2 Interstate transfer of ACT child welfare orders

## Division 17.2.1 Transfers of orders by director-general

### 643 Director-general may transfer child welfare order

(1) The director-general may transfer a child welfare order (the ***home order***) for a child or young person to a participating State if—

(a) in the director-general's opinion, a child welfare order to the same or a similar effect as the home order could be made under the child welfare law of the State; and

(b) the home order is not subject to an appeal to the Supreme Court or affected by a proceeding for judicial review; and

(c) the relevant interstate officer has agreed to the transfer and to the proposed terms of the child welfare order to be transferred (the ***interstate order***); and

(d) if the director-general is satisfied that the child or young person is able to understand the proposal to transfer the order—the director-general has sought and considered the child's or young person's views and wishes; and

(e) anyone whose agreement to the transfer is required under section 645 has agreed.

(2) The director-general may include in the interstate order any condition that could be included in a child welfare order of that kind made in the relevant participating State.

(3) In making a decision under subsection (1) (a), the director-general must not take into account the period for which it is possible to make a child welfare order of that kind in the State.



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(4) The period for which an interstate order is to remain in force must be decided by the director-general and stated in the interstate order.

(5) The period must be—

(a) if the remaining period of the home order at the date of registration of the interstate order in the participating State is a period for which an order may be made under the child welfare law of the State—the remaining period; or

(b) in any other case—as similar a period as may be made under that law but not longer than the period of the home order.

## 644 Director-general transfer—considerations

In deciding whether to transfer a child welfare order for a child or young person to a participating State, the director-general must have regard to—

(a) the matters mentioned in section 8 (Best interests of children and young people paramount consideration); and

(b) the principles set out in section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle); and

(c) the care and protection principles; and

(d) whether the director-general or an interstate officer is in the better position to exercise powers and responsibilities under a child welfare order for the child or young person; and

(e) the desirability of a child welfare order being an order under the child welfare law of the State where the child or young person lives; and

(f) the desirability of orders relating to the care and protection of a child or young person having effect, and being enforced, in the jurisdiction where the child or young person lives; and



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(g) any sentencing order (other than a fine) in force in relation to the child or young person or any criminal proceedings pending against the child or young person in any court.

## 645 Director-general transfer—certain people must agree

(1) For section 643 (1) (e), agreement to the transfer of the order for the child or young person is required from—

(a) for a young person who is 15 years old or older—the young person; and

(b) each person who has daily care responsibility or long-term care responsibility for the child or young person; and

*Note* Parental responsibility provisions are dealt with in pt 14.6.

(c) each person who is authorised to decide where or with whom the child or young person must live under a residence provision in a care and protection order; and

(d) each person who is allowed contact with the child or young person under a contact provision in a care and protection order for the child or young person.

*Note* Contact provisions are dealt with in pt 14.8.

(2) If the child or young person lives in a State with a person who has daily care responsibility for the child or young person under a parental responsibility provision in a care and protection order in force for the child or young person—

(a) it is sufficient if each person required to agree agrees to the child or young person living in the State; and

(b) their agreement to the transfer is not required.



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(3) If a relevant person lives in or is intending to live in the relevant participating State—

(a) it is sufficient if each other relevant person agrees to the child or young person living in the State; and

(b) the agreement of the person to the transfer is not required.

(4) Also, a person's agreement is not required if—

(a) the person cannot be found after reasonable inquiry; or

(b) the person does not have the capacity to agree to the transfer; or

(c) for agreement required from the young person—the young person does not have sufficient maturity or developmental capacity to agree to the transfer.

(5) In this section:

***relevant person***, for a child or young person, means—

(a) a parent of the child or young person; and

(b) a person who is authorised to decide where or with whom the child or young person must live under a residence provision in a care and protection order; and

(c) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person (under a parental responsibility provision in a care and protection order or otherwise).



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## 646 Director-general transfer—certain people must be told

(1) This section applies if the director-general decides to transfer a child welfare order for a child or young person to a participating State under this division.

(2) As soon as practicable, but not later than 3 working days, after the day the director-general makes the decision, the director-general must give written notice to the following people about the decision:

(a) for a decision about a young person—the young person;

(b) the parents of the child or young person;

(c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) the public advocate.

## 647 Director-general transfer—limited time for review

(1) A proceeding for judicial review of a decision of the director-general to transfer a child welfare order to a participating State must be started, and originating process given to the director-general, not later than 10 working days after the day the director-general decided to transfer the order.

(2) A proceeding for judicial review must comply with the relevant rules of court.

(3) However, the Supreme Court must not extend the 10 working days mentioned in subsection (1).

(4) The lodging (or filing) and service on the director-general of an originating process mentioned in subsection (1) stays the operation of the decision until the proceeding is determined.



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## Division 17.2.2 Transfer of orders by Childrens Court

### 648 Childrens Court transfer—application

(1) The director-general may apply to the Childrens Court for an order transferring a child welfare order to a participating State.

(2) The director-general must give a copy of the application to—

(a) each person who was a party to the proceeding in which the original order was made; and

(b) the public advocate.

### 649 Childrens Court transfer—criteria

The Childrens Court may, on application by the director-general, make an order transferring a child welfare order to a participating State if—

(a) the child welfare order is not subject to an appeal to the Supreme Court; and

(b) the relevant interstate officer has agreed to—

(i) the transfer; and

(ii) the proposed terms of the child welfare order.

### 650 Childrens Court transfer—interstate orders

(1) If the Childrens Court decides to transfer a child welfare order (the ***home order***), the kind of child welfare order to be transferred (the ***interstate order***) must be a child welfare order that—

(a) could be made under the child welfare law of the participating State; and



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(b) the court believes to be—

(i) to the same or a similar effect as the home order; or

(ii) otherwise in the best interests of the child or young person.

(2) The Childrens Court may include in the interstate order any condition that could be included in a child welfare order of that kind made in the relevant participating State.

(3) In deciding under subsection (1) whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Childrens Court must not take into account the period for which it is possible to make a child welfare order of that kind in the State.

(4) The period for which an interstate order is to remain in force must be decided by the Childrens Court and stated in the interstate order.

(5) The period must be a period—

(a) for which a child welfare order of the kind of the interstate order may be made under the child welfare law of the participating State; and

(b) that the Childrens Court considers appropriate.

## 651 Childrens Court transfer—considerations

(1) In deciding what order to make on an application under this division, the Childrens Court must have regard to—

(a) the matters mentioned in section 8 (Best interests of children and young people paramount consideration); and

(b) the principles set out in section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle); and

(c) the care and protection principles; and



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(d) whether the director-general or an interstate officer is in the better position to exercise powers and responsibilities under a child welfare order for the child or young person; and

(e) the desirability of a child welfare order being an order under the child welfare law of the State where the child or young person lives; and

(f) the desirability of orders relating to the care and protection of a child or young person having effect, and being enforced, in the jurisdiction where the child or young person lives; and

(g) any information given to the Childrens Court by the director-general or anyone else about any sentencing order (other than a fine) in force in relation to the child or young person or any criminal proceedings pending against the child or young person in any court.

(2) The Childrens Court may also consider any report prepared by the director-general relevant to the proposed transfer.

## 652 Childrens Court transfer—care plans

(1) The Childrens Court may make an order transferring a child welfare order to a participating State only if it has received and considered a care plan prepared by the director-general for the child or young person.

(2) Unless the Childrens Court orders otherwise, the director-general must provide a copy of the care plan to each person who was a party to the proceeding in which the original order was made.

## 653 Childrens Court transfer—appeal applications

(1) This section applies if the Childrens Court has made a final order transferring a child welfare order to a participating State (the ***final order***).



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(2) A party to the application for the order may appeal on a question of law to the Supreme Court.

(3) The appeal must be started, and originating process must be given to the director-general, not later than 10 working days after the day the final order was made.

(4) The appeal operates as stay of the final order.

(5) The appeal must comply with the relevant rules of court.

(6) However, the Supreme Court must not extend the 10 working days mentioned in subsection (3).

### 654 Childrens Court transfer—appeals

(1) The Supreme Court must hear and decide the appeal as quickly as possible.

(2) After deciding the appeal, the Supreme Court may make any order it considers appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.

(3) An order, other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.

(4) The Supreme Court may make any interim care and protection order pending the hearing of the appeal that the Childrens Court has jurisdiction to make.

*Note* Interim care and protection orders are dealt with in div 14.3.2.

## Division 17.2.3 Interstate registration of ACT orders

### 655 Interstate registration of ACT orders—effect

(1) A child welfare order made by the Childrens Court under the care and protection chapters for a child or young person ceases to have effect when an order for the child or young person is registered in a participating State under an interstate law.



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(2) However, if the registration is revoked in the participating State under the interstate law, the order that ceased to have effect is revived and has effect in accordance with its terms.

## 656 Interstate registration of ACT orders—revocation

(1) This section applies if the registrar of the Childrens Court is told under a provision of an interstate law equivalent to section 671 that the registration of an order transferring a child welfare order to a participating State has been revoked.

(2) The registrar must tell the director-general about the revocation.

(3) The director-general must tell the following people about the revocation:

(a) the child or young person who is the subject of the transferred order or proceeding;

(b) the parents of the child or young person;

(c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) the parties to the proceeding in which the decision to transfer the order or proceeding was made.

## 657 Interstate registration of ACT orders—Childrens Court file

(1) This section applies if, under this division—

(a) a child welfare order is transferred to a State Childrens Court—

(i) by the director-general under division 17.2.1; or

(ii) by the Childrens Court under division 17.2.2; and

(b) the transfer decision or an order transferring a child welfare order to a participating State is not subject to appeal or review or a stay; and

(c) the time for starting an appeal or seeking a review has ended.



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(2) The registrar of the Childrens Court must give the following things to the State Childrens Court of the participating State:

(a) all documents filed in the Childrens Court for the child welfare proceeding for the child welfare order;

(b) an extract from any part of the register that relates to the child welfare proceeding for the child welfare order.



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# Part 17.3 Interstate transfer of ACT child welfare proceedings

## 658 Transfer of ACT proceedings—applications

(1) The director-general may apply to the Childrens Court for an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State.

(2) The director-general must give a copy of the application to—

(a) if the order relates to a young person—the young person; and

(b) the parents of the child or young person; and

(c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person; and

(d) the public advocate.

## 659 Transfer of ACT proceedings—criteria

(1) The Childrens Court may, on application by the director-general, make an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State if the relevant interstate officer has agreed to the transfer.

(2) The proceeding is discontinued in the Childrens Court when the order mentioned in subsection (1) is registered in the State Childrens Court of the participating State under the interstate law.



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## 660 Transfer of ACT proceedings—considerations

In deciding whether to make an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State, the Childrens Court must have regard to—

(a) whether another proceeding for the child or young person is pending, or has previously been heard and decided, under the child welfare law in the participating State; and

(b) where any matter giving rise to the proceeding in the court happened; and

(c) where any of the following people lives or is likely to live:

(i) the child or young person;

(ii) the parents of the child or young person;

(iii) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;

(iv) any other significant people for the child or young person.

## 661 Transfer of ACT proceedings—interim orders

(1) If the Childrens Court makes an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State, the court must also make an interim order (an ***interim child welfare order***) for the care, welfare or development of the child or young person.

(2) An interim child welfare order may do any of the following:

(a) give parental responsibility for the child or young person to someone;

(b) allow contact between the child or young person and someone else;



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(c) give responsibility for the supervision of the child or young person to—

(i) the interstate officer in the participating State; or

(ii) someone else in that State to whom responsibility for the supervision of a child or young person could be given under the child welfare law of that State.

(3) The length of an interim child welfare order—

(a) must be stated in the order; and

(b) must not be longer than 30 days.

(4) The State Childrens Court of the participating State may amend, extend or revoke the interim child welfare order.

## 662 Transfer of ACT proceedings—appeal applications

(1) This section applies if the Childrens Court has made a final order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State (the ***final order***).

(2) A party to the application for the order may appeal on a question of law to the Supreme Court.

(3) The appeal must be started, and originating process must be given to the director-general, not later than 10 working days after the day the final order was made.

(4) The appeal operates as stay of the final order but not of any interim child welfare order made at the same time as the final order.

(5) The appeal must comply with the relevant rules of court.

(6) However, the Supreme Court must not extend the 10 working days mentioned in subsection (3).



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## 663 Transfer of ACT proceedings—appeals

(1) The Supreme Court must hear and decide the appeal as quickly as possible.

(2) After deciding the appeal, the Supreme Court may make any order it considers appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.

(3) An order, other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.

(4) The Supreme Court may—

(a) make an order staying the operation of an interim child welfare order made at the same time as the appealed order; or

(b) amend, extend or revoke an interim child welfare order made at the same time as the appealed order; or

(c) make any interim care and protection order pending the hearing of the appeal that the Childrens Court has jurisdiction to make.

*Note* Interim care and protection orders are dealt with in div 14.3.2.

## 664 Transfer of ACT proceedings—revocation of registration

(1) This section applies if the registrar of the Childrens Court is told under a provision of an interstate law equivalent to section 673 that the registration of an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State has been revoked.

(2) The registrar must tell the director-general about the revocation.

(3) The director-general must tell the following people about the revocation:

(a) the child or young person who is the subject of the transferred order or proceeding;

(b) the parents of the child or young person;



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(c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;

(d) the parties to the proceeding in which the decision to transfer the order or proceeding was made.

## 665 Transfer of ACT proceedings—Childrens Court file

(1) This section applies if, under this division—

(a) a child welfare proceeding is transferred to a State Childrens Court by the Childrens Court under part 17.3 (Interstate transfer of ACT child welfare proceedings); and

(b) the order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State is not subject to appeal or review or a stay; and

(c) the time for starting an appeal or seeking a review has ended.

(2) The registrar of the Childrens Court must give the following things to the State Childrens Court of the participating State:

(a) all documents filed in the Childrens Court for the child welfare proceeding;

(b) an extract from any part of the register that relates to the child welfare proceeding.



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# Part 17.4 ACT registration of interstate child welfare orders

## 666 ACT registration—interstate child welfare orders

(1) If a child welfare order (an ***interstate child welfare order***) is transferred to the ACT under an interstate law, the director-general must file a copy of the interstate child welfare order in the Childrens Court for registration.

(2) The director-general must not file an interstate child welfare order if, under the interstate law—

(a) the decision or order to transfer the interstate child welfare order is subject to appeal or review or a stay; or

(b) the time for instituting an appeal or seeking a review has not expired.

(3) If the director-general files an interstate child welfare order for registration in the court, the court must register the interstate child welfare order.

## 667 ACT registration of interstate orders—interstate registrar

If an interstate child welfare order is registered in the Childrens Court under section 666, the registrar of the court must tell the following people about the registration:

(a) the appropriate officer of the State Childrens Court of the sending State;

(b) the interstate officer in that State.



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## 668 ACT registration of interstate orders—effect

(1) If an interstate child welfare order is registered in the Childrens Court under section 666—

(a) the order is for all purposes (except for appeal) a care and protection order of the relevant kind made by the court on the day it is registered; and

*Note* Care and protection orders are dealt with in ch 14.

(b) the order may be amended, extended or revoked under this Act; and

(c) a contravention of the order may be dealt with under this Act.

(2) If an interstate interim child welfare order is registered in the Childrens Court under section 666—

(a) the order is for all purposes (except for appeal) an interim care and protection order made by the court on the day it is registered; and

*Note* Interim care and protection orders are dealt with in div 14.3.2.

(b) the order may be amended, extended or revoked under this Act; and

(c) a contravention of the order may be dealt with under this Act.

## 669 ACT registration of interstate orders—application for revocation

(1) This section applies if an interstate child welfare order for a child is registered in the Childrens Court under section 666.

(2) Any of the following people may apply to the court for revocation of the registration of the order:

(a) the director-general;

(b) the child or young person;



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(c) a parent of the child or young person;

(d) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

(e) a party to the proceeding in the State Childrens Court in the sending State in which the decision to transfer the child welfare order was made.

(3) If a person applies for revocation of registration of the order, the registrar of the court must give a copy of the application to—

(a) the relevant interstate officer; and

(b) each person, other than the applicant, who could have made an application.

## 670 ACT registration of interstate orders—revocation

(1) The Childrens Court may revoke the registration of an interstate child welfare order registered under section 666 only if satisfied that it was inappropriately registered because, under the interstate law—

(a) the decision of the interstate officer or the order of the State Childrens Court of the sending State to transfer the order was subject to appeal or review, or a stay, at the time of registration; or

(b) the time for starting an appeal or seeking a review had not ended.

(2) If the registration of an interstate child welfare order is revoked, the registrar of the Childrens Court must give the interstate child welfare order to the State Childrens Court of the sending State.

(3) The revocation of the registration of an interstate child welfare order does not prevent the later re-registration of the order.



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## 671 ACT revocation of interstate orders—interstate registrar

If the registration of an interstate child welfare order is revoked under section 670, the registrar of the court must tell the following people about the revocation:

(a) the appropriate officer of the State Childrens Court of the sending State;

(b) the interstate officer in that State.



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# Part 17.5 ACT registration of interstate child welfare proceedings

## 672 ACT registration—interstate child welfare proceedings

(1) If a child welfare proceeding is transferred to the ACT under an order (an ***interstate proceedings transfer order***) under an interstate law, the director-general must file a copy of the following documents in the Childrens Court for registration:

(a) the interstate proceedings transfer order;

(b) any interim child welfare order made at the same time as the interstate proceedings transfer order (the ***interim order***).

(2) The director-general must not file an interstate proceedings transfer order if, under the interstate law—

(a) the interstate proceedings transfer order or interim order is subject to appeal or review or a stay; or

(b) the time for instituting an appeal or seeking a review has not expired.

(3) If the director-general files an interstate proceedings transfer order or interim order for registration in the court, the court must register the interstate proceedings transfer order or interim order.

## 673 ACT registration of interstate proceedings—interstate registrar

If an interstate proceedings transfer order or interim order is registered in the Childrens Court under section 672, the registrar of the court must tell the following people about the registration:

(a) the appropriate officer of the State Childrens Court of the sending State;

(b) the interstate officer in that State.



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## 674 ACT registration of interstate proceedings—effect

(1) If an interstate proceedings transfer order for a proceeding is registered in the Childrens Court under section 672, the proceeding is taken to have been started in the Childrens Court on the day the order is registered.

(2) However, in deciding the proceeding, the court—

(a) is not bound by a finding of fact made in the proceeding in the State Childrens Court of the sending State before its transfer; and

(b) may have regard to the transcript of, or evidence presented in, the proceeding in the State Childrens Court of the sending State before its transfer.

## 675 ACT registration of interstate proceedings—application for revocation

(1) This section applies if an interstate proceedings transfer order or interim order for a child is registered in the Childrens Court under section 672.

(2) Any of the following people may apply to the court for revocation of the registration of the order:

(a) the director-general;

(b) the child or young person;

(c) a parent of the child or young person;

(d) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

(e) a party to the proceeding in the State Childrens Court in the sending State in which the decision to transfer the interstate proceedings transfer order or interim order was made.



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(3) If a person applies for revocation of registration of the order, the registrar of the court must give a copy of the application to—

(a) the relevant interstate officer; and

(b) each person, other than the applicant, who could have made an application.

## 676 ACT registration of interstate proceedings—revocation

(1) This section applies if an interstate proceedings transfer order or interim order is registered in the Childrens Court under section 672.

(2) The Childrens Court may revoke the registration of the interstate proceedings transfer order or interim order only if satisfied that the order was inappropriately registered because, under the interstate law—

(a) the order of the State Childrens Court of the sending State to transfer the order was subject to appeal or review, or a stay, at the time of registration; or

(b) the time for starting an appeal or seeking a review had not ended.

(3) If the registration of an interstate proceedings transfer order or interim order is revoked, the registrar of the Childrens Court must give the interstate proceedings transfer order or interim order to the State Childrens Court of the sending State.

(4) The revocation of the registration of an interstate proceedings transfer order or interim order does not prevent the later re-registration of the order.



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## 677 ACT registration of interstate proceedings—interstate registrar

If the registration of an interstate proceedings transfer order or interim order is revoked under section 676, the registrar of the court must tell the following people about the revocation:

(a) the appropriate officer of the State Childrens Court of the sending State;

(b) the interstate officer in that State.



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# Part 17.6 Interstate transfer of child welfare orders and proceedings—miscellaneous

## 678 ACT registration of interstate orders and proceedings—Maori children and young people

(1) This section applies if—

(a) a child welfare order or child welfare proceeding for a child or young person is transferred under an interstate law to the ACT from New Zealand; and

(b) the child or young person is a Maori child or young person.

(2) In deciding what finding or order to make in a proceeding for the child or young person under this Act, the Childrens Court must have regard to the principle that, if practicable, the relationship between the child or young person and his or her family, whanau, hapu, iwi, family groups and community group must be maintained and strengthened.



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# Chapter 18 Care and protection—police assistance

*Note to ch 18*

A registered family group conference agreement has effect as if it were an order of the Childrens Court and may be enforced accordingly (see s 393).

## Part 18.1 Assistance in carrying out orders etc

### 679 Police assistance

(1) The director-general may ask the chief police officer for assistance in carrying out any of the following actions (the ***action***):

(a) an appraisal order;

*Note* Appraisal orders are dealt with in s 372.

(b) a care and protection appraisal;

*Note* Care and protection appraisals are dealt with in s 366.

(c) emergency action;

*Note* Emergency action is dealt with in pt 13.1.

(d) a care and protection assessment;

*Note* Care and protection assessments are dealt with in s 367.

(e) an assessment order;

*Note* Assessment orders are dealt with in div 14.3.3.

(f) an interim care and protection order;

(g) a care and protection order;

*Note* Care and protection orders are dealt with in s 422.



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(h) a protection order;

*Note* A protection order is an order under the *Family Violence Act 2016* or the *Personal Violence Act 2016* made by the Childrens Court under s 459.

(i) an interim therapeutic protection order;

*Note* Interim therapeutic protection orders are dealt with in div 16.2.3.

(j) a therapeutic protection order.

*Note* Therapeutic protection orders are dealt with in s 532.

(2) The chief police officer must, if asked, give assistance to the director-general by assigning police officers to assist the director-general in carrying out the action.

## 680 Police powers

(1) A police officer assisting the director-general in carrying out an action may do any of the following if authorised by a warrant:

(a) enter or break into, remain in and search any premises or place;

(b) seize and remove anything that the police officer believes on reasonable grounds may provide evidence relevant to the action;

(c) take photographs or audio or video recordings, or make sketches, of anything relevant to the action;

(d) require a person who may be able to give information relevant to the action to answer a question.

*Note* The Legislation Act, s 170 and s 171 deals with the application of the privilege against self-incrimination and client legal privilege.

(2) However, a police officer may do something mentioned in subsection (1) without a warrant if the police officer believes on reasonable grounds that the delay involved in getting a warrant would prejudice the action or the safety of a child or young person.



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(3) A police officer assisting the director-general in carrying out an action may be accompanied by other police officers or authorised people if it is reasonable and necessary.

## 681 Seized things may be kept until matter completed

If something is seized under section 680 (1) (b), the chief police officer or the director-general may keep the thing until the action is completed and any proceeding arising out of the action is finalised.

## 682 Offence—failure to answer police questions

A person commits an offence if—

(a) the person is required by a police officer under section 680 (1) (d) to answer a question; and

(b) the person does not take reasonable steps to answer the question.

Maximum penalty: 50 penalty units.

*Note 1* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

*Note 2* A person who gives information honestly and without recklessness does not breach professional ethics etc and is protected from civil liability (see s 874).

*Note 3* Giving false or misleading information to the police officer is an offence (see Criminal Code, s 338).



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# Part 18.2 Safe custody

## 683 Safe custody—parental responsibility to director-general

If a child or young person is taken into safe custody under a safe custody warrant, the director-general has daily care responsibility for the child or young person.

*Note* If a child or young person is taken into safe custody under a safe custody warrant, the director-general must ensure that the matter is brought before the Childrens Court as soon as practicable, but not later than 1 working day, after the day the child or young person is taken into safe custody (see s 694).

## 684 What is a *safe custody warrant*?

In this Act:

***safe custody warrant*** means a warrant to enter stated premises to take a child or young person into safe custody.

## 685 Safe custody warrant—application

(1) The director-general or a police officer may apply to a magistrate for a safe custody warrant if the director-general or police officer believes on reasonable grounds that the criteria for issuing the safe custody warrant are satisfied.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the director-general or police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).



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## 686 Safe custody warrant—criteria

(1) The magistrate may issue a safe custody warrant for a child or young person, for stated premises, if satisfied that—

(a) any of the following orders are in force for the child or young person:

(i) an appraisal order;

*Note* Appraisal orders are dealt with in s 372.

(ii) an interim care and protection order;

*Note* Interim care and protection orders are dealt with in s 433.

(iii) an assessment order;

*Note* Assessment orders are dealt with in s 436.

(iv) a care and protection order;

*Note* Care and protection orders are dealt with in s 422.

(v) a protection order;

*Note* A protection order is an order under the *Family Violence Act 2016* or the *Personal Violence Act 2016* made by the Childrens Court under s 459.

(vi) a therapeutic protection order;

*Note* Therapeutic protection orders are dealt with in s 532.

(vii) an interim therapeutic protection order; and

*Note* Interim therapeutic protection orders are dealt with in div 16.2.3.



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(b) there are reasonable grounds for suspecting that—

(i) someone has contravened the order; and

(ii) because of the contravention, the child or young person is in danger; and

(iii) the child or young person is at the premises or may be at the premises within the next 14 days.

(2) The magistrate may also issue a safe custody warrant for a child or young person, for stated premises, if satisfied that—

(a) a therapeutic protection order, or an interim therapeutic protection order, is in force for the child or young person; and

*Note* Therapeutic protection orders are dealt with in pt 16.2. Interim therapeutic protection orders are dealt with in div 16.2.3.

(b) there are reasonable grounds for suspecting that—

(i) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order; and

(ii) the child or young person is at the premises or may be at the premises within the next 14 days.

## 687 Safe custody warrant—content

(1) A safe custody warrant must state—

(a) the name of the child or young person who may be taken into safe custody under the warrant; and

(b) the order for which the safe custody warrant is issued; and

(c) that the director-general or police officer may, with any necessary and reasonable assistance and force, enter stated premises and exercise the director-general's or police officer's powers under this part; and



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(d) the hours when the premises may be entered; and

(e) the date, not later than 14 days after the day the warrant is issued, that the warrant ends; and

(f) the date that the transfer of daily care responsibility for the child or young person to the director-general ends.

(2) A safe custody warrant may also state the place where the child or young person is to be placed by the person who executes the warrant.

## 688 Safe custody warrant—application made other than in person

(1) The director-general or a police officer may apply for a warrant by phone, fax, radio or other form of communication if the director-general or police officer considers it necessary because of urgent circumstances.

(2) Before applying for the warrant, the director-general or police officer must prepare an application stating the grounds on which the warrant is sought.

(3) The director-general or police officer may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately provide a written copy to the director-general or police officer if it is practicable to do so.

(5) If it is not practicable to provide a written copy to the director-general or police officer—

(a) the magistrate must tell the director-general or police officer—

(i) the terms of the warrant; and

(ii) the date and time the warrant was issued; and



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(b) the director-general or police officer must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The written copy of the warrant, or the warrant form properly completed by the director-general or police officer, authorises the entry and the exercise of the director-general or police officer's powers under this part.

(7) The director-general or police officer must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the director-general or police officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find that a power exercised by the director-general or police officer was not authorised by a warrant under this section if—

(a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a warrant under this section.



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## 689 Safe custody warrant—announcement before entry

(1) The director-general or a police officer must, before anyone enters premises under a safe custody warrant—

(a) announce that the director-general or police officer is authorised to enter the premises; and

(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

(2) The director-general or police officer is not required to comply with subsection (1) if the director-general or police officer believes on reasonable grounds that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including the director-general or police officer or a person assisting); or

(b) that the effective execution of the warrant is not frustrated.

## 690 Safe custody warrant—details of warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a safe custody warrant is being executed, the director-general or police officer or a person assisting must make available to the person—

(a) a copy of the warrant; and

(b) a document setting out the rights and obligations of the person.



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## 691 Safe custody warrant—occupier entitled to be present etc

(1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a safe custody warrant is being executed, the person is entitled to observe the warrant being executed.

(2) However, the person is not entitled to observe the warrant being executed if—

(a) to do so would impede the execution of the warrant; or

(b) the person is under arrest, and allowing the person to observe the warrant being executed would interfere with the objectives of the warrant.

(3) This section does not prevent the warrant being executed at 2 or more areas of the premises at the same time.

## 692 Safe custody warrant—placement of child or young person

A child or young person taken into safe custody under a safe custody warrant must be placed by the person who executed the warrant—

(a) in the place stated in the warrant; or

(b) if no place is stated—in a place decided by the director-general.

## 693 Offence—remove child or young person

(1) A person commits an offence if—

(a) a child or young person has been taken into safe custody and is subject to a safe custody placement; and

(b) the person removes the child or young person from a place; and

(c) the removal is in contravention of the safe custody placement; and



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(d) the person knows the removal is in contravention of the safe custody placement.

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

(2) Strict liability applies to subsection (1) (a).

(3) In this section:

***safe custody placement***, for a child or young person, means the placement of the child under section 692 (Safe custody warrant—placement of child or young person).

## 694 Safe custody—matter must be brought to court promptly

(1) If a child or young person is taken into safe custody under a safe custody warrant, the director-general must ensure that the matter is brought before the Childrens Court as soon as practicable, but not later than 1 working day, after the day the child or young person is taken into safe custody.

*Note* A child or young person has a right to take part in a proceeding in a court in relation to the child or young person (see *Court Procedures Act 2004*, s 74A).

(2) When a matter is brought before the Childrens Court under this section, the court may exercise any of its powers in relation to the child or young person including the following:

(a) making or extending an appraisal order under division 11.2.3;

(b) making, extending, amending or revoking an interim care and protection order under division 14.3.2;



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(c) making, extending, amending or revoking an assessment order under division 14.3.3;

(d) making, extending, amending or revoking a care and protection order under part 14.5;

(e) making, extending, amending or revoking a therapeutic protection order under part 16.2.



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# Chapter 19 Care and protection—provisions applying to all proceedings under care and protection chapters

## Part 19.1 Applications

### 695 Application—includes cross-application

In this chapter:

***application*** includes a cross-application.

### 696 Application—must include statements, documents and reports

An application to a court under the care and protection chapters must be accompanied by the following:

(a) a written statement of the substance of the oral evidence that the applicant intends to present at the hearing of the application;

(b) a written copy of any document or expert report that the applicant intends to rely on at the hearing of the application.

### 697 Application—statements and reports to be signed etc

Unless otherwise directed by a court, a statement or report prepared for use in a proceeding under the care and protection chapters—

(a) must be in the form of an affidavit; or



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(b) must—

(i) be signed and dated by the person making the statement or report; and

(ii) contain a declaration to the effect that the maker of the statement or report believes it to be true and understands that it may be used in court.

## 698 Application—oral applications

(1) A person may, with the leave of the court, make an oral application under this Act for a proceeding before, during or after the hearing of the proceeding.

(2) Subsection (1) applies despite any requirement about service in this Act.

(3) If an oral application is made, the court must direct the applicant about—

(a) which (if any) of the requirements for service or notice of the making of an application are to apply to the oral application and how they are to apply; and

(b) whether a written application is required; and

(c) whether service of a written application is required.

(4) If the court does not give directions under subsection (3) for an oral application, no service is required under this Act.



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## 699 Application—withdrawal or discontinuance

(1) A person who has applied to a court for an order under the care and protection chapters may withdraw or discontinue the application before the end of the proceeding by—

(a) telling, in writing, each person who was given the application; and

(b) filing a notice of withdrawal or discontinuance with the court.

(2) If another party to the proceeding agrees with the withdrawal or discontinuance, the notice of withdrawal or discontinuance must have the agreement endorsed on it.



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# Part 19.2 Parties

## 700 Parties—who are *parties* to an application?

(1) The following people are ***parties*** to an application under the care and protection chapters:

(a) the applicant;

(b) the child or young person;

(c) someone given a copy of the application who takes part in the proceeding (other than as a witness or representative);

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

(d) someone who is a participant in the proceeding (other than as a witness or representative) who has been—

(i) asked to attend by the Childrens Court and been joined as a party to the proceeding; or

(ii) joined as a party to the proceeding on the person's own application.

(2) However, the public advocate is a party to a proceeding under the care and protection chapters only if the public advocate applies to be joined as a party.



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## 701 Parties—hearing in party's or other person's absence

(1) If someone makes an application under the care and protection chapters, the person may, at the same time, seek the leave of the court to have the application heard in the absence of any other party or person who must be given a copy of the application.

*Note* For people who must be given copies of applications under the care and protection chapters, see:

(a) s 379 (Appraisal orders—who must be given application);

(b) s 427 (Care and protection orders—who must be given application);

(c) s 445 (Assessment orders—who must be given application);

(d) s 541 (Therapeutic protection orders—who must be given application).

(2) The court may give leave only if satisfied that notice of the application to the other party or person would place a child or young person at significant risk of significant harm.

## 702 Parties—failure to attend proceeding

(1) This section applies if someone has been given a copy of an application under the care and protection chapters.

(2) If the person does not attend the proceeding, the court must—

(a) adjourn the proceeding and make any order about further service of the person that the court considers appropriate; or

(b) make any other order or give any other direction that it considers appropriate, including an order or direction that is binding on the person.



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## 703 Parties—court may join affected party

(1) This section applies to a proceeding under the care and protection chapters.

(2) If the court is satisfied that it should make an order binding on or affecting someone who is not a party to the proceeding, the court may join the person as a party to the proceeding.

(3) However, the court must give the person a reasonable opportunity to make representations to the court about why the order should not be made—

(a) before making the order; or

(b) if, because of the urgency of the case it is not possible to do so before making the order—not later than a reasonable time after making the order.

## 704 Parties—application to join party

(1) This section applies to a proceeding for a child or young person under the care and protection chapters.

(2) If someone (the ***applicant***) applies to the court to be joined as a party to the proceeding, the court may order the person be joined as a party to the proceeding if it considers it appropriate to do so.

(3) If the applicant is the public advocate, the court must join the public advocate as a party to the proceeding.

(4) If the applicant has been caring for the child or young person continuously for 2 years or more, there is a rebuttable presumption that it is appropriate to join the applicant as a party to the proceeding.

(5) An application may be made orally without notice to the parties to the proceeding, but the court must give each party an opportunity to be heard on the application before deciding whether to join the applicant as a party.



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## 705 Parties—filed material to be given to joined parties

If the court joins a person as a party to a proceeding under section 703 or section 704—

(a) the person is entitled to material already filed in the proceeding only if the court directs; and

(b) the court must direct what material already filed in the proceeding must be given to the person, and by whom; and

(c) the court may make any further orders or give any further directions about the conduct of the proceeding that the court considers appropriate.

## 706 Parties—application for removal of party

(1) A party to a proceeding under the care and protection chapters (the ***applicant***) may apply to the court for an order that another party to the proceeding be removed as a party.

(2) The applicant must give a copy of the application to the following people before the application is heard by the court:

(a) each party to the proceeding;

(b) the public advocate.

## 707 Parties—court may remove party

(1) This section applies if the court is satisfied that a party to a proceeding under the care and protection chapters—

(a) has been improperly or unnecessarily joined; or

(b) is no longer a proper or necessary party.

(2) The court may, on application by a party to a proceeding or on its own initiative—

(a) order that the party is no longer a party; and



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(b) make any other orders or give any other directions for the conduct of the proceeding that the court considers appropriate.

(3) Before making an order under this section, the court must provide each party to the proceeding with an opportunity to be heard on the application or motion.

## 708 Parties—notice of address for service

A party to a proceeding under the care and protection chapters must file with the court, and give to each other party to the proceeding, a written statement of the party's name and address for service of documents.

## 709 Parties—representation

(1) A party to a proceeding under the care and protection chapters may appear before the court—

(a) in person; or

(b) represented by a lawyer; or

(c) with the leave of the court, represented by someone else.

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

(2) Also, the director-general may appear before the court by the director-general's delegate or someone authorised to appear on the director-general's behalf.

(3) If a party to a proceeding under the care and protection chapters (the ***represented party***) is represented by a lawyer in the proceeding, the lawyer must file with the court, and give to each other party to the proceeding, a written statement that the lawyer acts for the represented party and an address in the ACT for service of documents.



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(4) A lawyer may stop representing a party to a proceeding under the care and protection chapters only if the lawyer files with the court, and gives to each other party to the proceeding, a written statement to that effect.

## 710 Exclusion of people from hearings

(1) This section applies to a proceeding for a child or young person under the care and protection chapters.

(2) The court may order that someone must not be present in the courtroom during all or part of the hearing of the proceeding if the court considers it appropriate.

(3) This section applies to everybody including—

(a) the child or young person; and

(b) the parents of the child or young person; and

(c) anyone else who has daily care responsibility, or long-term care responsibility, for the child or young person.



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# Part 19.3 Standard of proof

## 711 Standard of proof

In a proceeding under the care and protection chapters, a fact is proved if it is proved on the balance of probabilities.



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# Part 19.4 Witnesses and evidence

## 712 Procedures at hearings to be informal

(1) A proceeding under the care and protection chapters must be carried out as informally and quickly as—

(a) the requirements of this or any other Act allows; and

(b) a proper consideration of the matter allows.

(2) This section does not apply if another provision of this Act provides otherwise.

## 713 Court may call witnesses

(1) This section applies to a proceeding under the care and protection chapters.

(2) The court may, on its own initiative, call a person as a witness whose evidence may, in the court's opinion, be of assistance to the court.

## 714 Court may summons people to attend

(1) This section applies if, in a proceeding under the care and protection chapters—

(a) someone must be given an application; and

(b) the person has been given the application; and

(c) the person has not attended a hearing for the application.

(2) If the court considers that the attendance of the person is necessary to allow the court to hear and decide the application, the court may do any of the following that it considers appropriate to bring about the attendance of the person:

(a) give a direction;



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(b) issue a summons;

(c) issue a warrant.

(3) A summons must include a statement to the effect that—

(a) if the person does not attend the court, a warrant may be issued to bring the person before the court; and

(b) there is a penalty for not taking all reasonable steps to attend court in answer to the summons.

(4) The court may issue a warrant to bring a person before the court if—

(a) a summons has been given to the person under this section; and

(b) the person does not attend the court to answer to the summons.

## 715 Child or young person as witness

(1) A child or young person may be called as a witness in a proceeding under the care and protection chapters only with the leave of the court.

(2) If the court gives leave for a child or young person to be called as a witness, the court may prohibit cross-examination of the child or young person if satisfied that it is in the best interests of the child or young person to do so.

## 716 Court not bound by rules of evidence

(1) In a proceeding under the care and protection chapters, the court—

(a) is not bound by the rules of evidence; and

(b) may inform itself of a matter in any way that it considers appropriate.

(2) Also, if the court is making, extending, amending or revoking an order under the care and protection chapters, the court may—

(a) admit and act on hearsay evidence; and

(b) take submissions from someone who is not a party.



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## 717 Restriction on taking evidence

If it appears to the court to be necessary or convenient for the proper determination of the matters at issues in a proceeding, the court may restrict the way or the extent to which someone, including a child or young person, is to be examined or cross-examined for the proceeding.



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# Part 19.5 Orders

## 718 Orders—obligations on people

(1) A court making an order under the care and protection chapters may make an order imposing an obligation on a person only if the person—

(a) agrees to the order being made; or

(b) has been given an opportunity to be heard about the proposed order; or

(c) cannot after reasonable inquiry be found.

(2) The court gives a person an opportunity to be heard about a proposed order if the court has directed the person, in writing, to attend the proceeding to be heard about the proposed making of an order (whether or not the person attends the proceeding).

## 719 Orders—by agreement

(1) The parties to an application under the care and protection chapters may file with the court draft order (the ***draft consent order***) that, if made, would have the agreement of the parties.

(2) The draft consent order must be signed by—

(a) each party to the application; and

(b) each person who will be—

(i) required to comply with the order; or

(ii) directly affected by the order.



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## 720 Orders—must be given to people

As soon as practicable after making an order under the care and protection chapters in a proceeding, the court must give a copy of the order to—

(a) the director-general; and

(b) the public advocate; and

(c) each lawyer representing a party to the proceeding who has, before the date of the order, filed a notice of address for service; and

(d) if a party to the proceeding is not represented by a lawyer and has, before the date of the order, filed a notice of address for service—the party.

## 721 Residence, contact and specific issues provisions—giving, amending or extending directions

(1) This section applies to a care and protection order that includes 1 or more of the following:

(a) a specific issues provision that includes a direction that a stated person—

(i) do a stated thing; or

(ii) not do a stated thing; or

(iii) comply with a stated condition;

(b) a contact provision that includes a direction that a stated person must not have contact with the child or young person;



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(c) a residence provision that includes a direction—

(i) that a stated person must not live at the same premises as the child or young person (including that the stated person must stop living at those premises); or

(ii) that a stated person may live with the child or young person only subject to stated conditions.

(2) If a court makes, amends or extends the care and protection order, the court must give a copy of the order or revised order to the following people:

(a) the stated person, by personal service on the person;

(b) the director-general;

(c) the public advocate;

(d) the chief police officer;

(e) each other person who was a party to the proceeding;

(f) any other person the court considers appropriate.

(3) However, if the court considers personal service on the stated person is impracticable, the court may give the copy of the order or revised order to the stated person in another way.

*Note* Under the Legislation Act, s 247, a document may also be served on an individual—

(a) by sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or

(b) by faxing it to a fax number of the individual; or

(c) by emailing it to an email address of the individual; or

(d) by leaving it, addressed to the individual, at a home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.

(4) If the court considers it appropriate, the court may direct that a police officer give the copy of the order or revised order to someone.



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(5) If the court directs that a police officer give the copy of the order or revised order to someone, the chief police officer must, if asked by the registrar, arrange for the copy of the order or revised order to be given by a police officer.

(6) In this section:

***revised order*** means—

(a) if the order is amended—the order as amended; or

(b) if the order is extended—the order as extended.

*Note 1* A specific issues provision, a contact provision or a residence provision may be extended, amended or revoked under pt 19.5.

*Note 2* In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 3* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## 722 Orders—statement of reasons

(1) This section applies if a court—

(a) makes an order under the care and protection chapters in a proceeding; or

(b) hears and decides an application for—

(i) extension of a therapeutic protection order under section 562; or

(ii) amendment of a therapeutic protection order under section 569; or

(iii) revocation of a therapeutic protection order under section 570.

*Note* The court must record a written statement of reasons for these decisions (see s 563 and s 571).



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(2) Not later than 28 days after the day the order is made, a party to the proceeding may ask the court, in writing, to give the party a statement of reasons for making, extending, amending or revoking the order.

(3) The court must give a written statement of reasons as soon as practicable, but not later than 28 days, after the day the court receives the request.

*Note* For what must be included in a statement of reasons, see the Legislation Act, s 179.

## 723 Orders about service

A court may make the following orders in relation to a proceeding under the care and protection chapters:

(a) an order dispensing with service of a notice, order or other instrument under the care and protection chapters;

(b) an order shortening the time for serving a notice, order or other instrument under the care and protection chapters



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# Part 19.6 Costs

## 724 Costs—parties bear own unless court orders otherwise

(1) This section applies to a proceeding under the care and protection chapters including—

(a) an interlocutory proceeding; and

(b) an appeal from a decision made under the care and protection chapters.

(2) The parties to a proceeding must bear their own costs unless a court exercising jurisdiction under this Act orders otherwise.

## 725 Costs—frivolous, vexatious, dishonest application

(1) This section applies to a proceeding under the care and protection chapters including—

(a) an interlocutory proceeding; and

(b) an appeal from a decision made under the care and protection chapters.

(2) A court exercising jurisdiction under this Act may, on application or on its own initiative, order the payment of costs in a proceeding if satisfied that—

(a) an application in the proceeding is frivolous, vexatious or dishonest; or

(b) there are exceptional circumstances that justify the order.

(3) A person who applies for an order for costs under this section must give a copy of the application to the party from whom the costs are sought.



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## 726 Costs—parties bear own costs unless order otherwise

(1) This section applies to a proceeding under the care and protection chapters including—

(a) an interlocutory proceeding; and

(b) an appeal from a decision made under the care and protection chapters.

(2) A court exercising jurisdiction under this Act may, on application or on its own initiative, order someone's costs be paid if the hearing of a proceeding is adjourned because—

(a) someone else required to attend the hearing did not attend; or

(b) someone else contravened a direction or order of the court.

(3) A person who applies for an order for costs under this section must give a copy of the application to the party from whom the costs are sought.

## 727 Costs—how court may share costs

(1) This section applies if a court exercising jurisdiction under this Act has made an order about costs under section 725 or section 726.

(2) The court may order costs be paid by or shared between the parties in the way the court orders.

(3) However, if the Childrens Court makes an order for the payment of costs in a proceeding, the costs allowed are up to 50% of the costs that would be allowed if the proceeding had been heard in the Supreme Court.



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# Chapter 19A Children and Young People Death Review Committee

## Part 19A.1 Establishment and functions of committee

### 727A Establishment of committee

The Children and Young People Death Review Committee (the ***CYP death review committee***) is established.

### 727B Functions of committee

(1) The CYP death review committee has the following functions:

(a) to keep a register of deaths of children and young people under part 19A.3;

(b) to identify patterns and trends in relation to the deaths of children and young people;

(c) to undertake research that aims to help prevent or reduce the likelihood of the death of children and young people;

(d) to identify areas requiring further research, by the committee or another entity, that arise from the identified patterns and trends in relation to the deaths of children and young people;

(e) to make recommendations about legislation, policies, practices and services for implementation by the Territory and non-government bodies to help prevent or reduce the likelihood of the death of children and young people;

(f) to monitor the implementation of the committee's recommendations;

(g) to report to the Minister under part 19A.4;

(h) any other function given to the committee under this chapter.



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(2) The CYP death review committee has no function in relation to reviewing the cause of death of a particular child or young person.

## 727C Committee members

The CYP death review committee is made up of—

(a) the director-general; and

(b) the children and young people commissioner; and

(c) the members appointed by the Minister under section 727D; and

(d) the chair appointed under section 727E.

## 727D Appointment of committee members

(1) The Minister must appoint at least 8, but not more than 10, members to the CYP death review committee.

*Note 1* For the making of appointments (including acting appointments), see the 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 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 may appoint a person as a member of the committee only if satisfied that the person—

(a) has qualifications, experience or expertise in 1 or more of the following:

(i) psychology;

(ii) paediatrics;

(iii) epidemiology;

(iv) child forensic medicine;



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(v) public health administration;

(vi) education;

(vii) engineering and child safety products or systems;

(viii) working with Aboriginal and Torres Strait Islander children and young people;

(ix) social work;

(x) investigations;

(xi) mental health;

(xii) child protection; or

(b) has other qualifications, experience or expertise, or membership of an organisation, relevant to exercising the functions of a committee member; or

(c) is a police officer with experience in working with children and young people and families.

(3) The Minister must ensure that the committee membership represents a diversity of experience and expertise from the different areas mentioned in subsection (2).

(4) The Minister must not appoint someone to the committee under this section unless satisfied that the person is suitable to be a member of the committee.

(5) In considering whether someone is suitable to be a member of the committee, the Minister—

(a) must consider relevant information mentioned in section 65 (1), definition of ***suitability information***, paragraphs (a), (b) and (c) about the person; and

(b) may consider other suitability information about the person.

(6) The appointment of a member under this section is for not longer than 3 years.



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(7) The conditions of appointment of a member under this section are the conditions stated in the appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.

## 727E Appointment of chair of committee

(1) The Minister must appoint someone as the chair of the CYP death review committee.

(2) However, the chair must not be someone who is otherwise a member of the CYP death review committee.

(3) Also, the Minister must not appoint someone unless satisfied that the person—

(a) has the expertise or experience to be the chair of the CYP death review committee; and

(b) is otherwise suitable to be the chair.

(4) In considering whether someone is suitable to be a chair of the CYP death review committee, the Minister—

(a) must consider relevant information mentioned in section 65 (1), definition of ***suitability information***, paragraphs (a), (b) and (c) about the person; and

(b) may consider other suitability information about the person.

(5) The appointment of the chair is for not longer than 3 years.

(6) The conditions of appointment of the chair are the conditions stated in the appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.

## 727EA Appointment of deputy chair of committee

The Minister must appoint a deputy chair of the CYP death review committee from the members appointed under section 727D.



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## 727F Conflict of interest

A member of the CYP death review committee must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the committee's functions.

## 727G Appointment of advisers

(1) The Minister may, on the request of the CYP death review committee, appoint a person as an adviser to the committee.

*Note 1* For the making of appointments (including acting appointments), see the 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 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) However, the Minister must not appoint someone unless satisfied that the person has the experience or expertise to exercise the functions of an adviser.

(3) An appointment may be subject to conditions stated in the appointment.

(4) An adviser must, on request of the CYP death review committee, provide advice to the committee in relation to the committee's functions and otherwise in accordance with any conditions of appointment.

(5) The Minister may end the appointment of an adviser if the adviser breaches a condition of appointment.



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## 727H Ending member appointments

The Minister may end the appointment of a member of the CYP death review committee appointed under section 727D or the chair—

(a) for misbehaviour; or

(b) if the member is convicted, or found guilty, in Australia of an indictable offence; or

(c) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be an indictable offence; or

(d) if the member is absent from 3 consecutive meetings of the committee, otherwise than on approved leave; or

(e) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

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

## 727I Arrangements for staff

The head of service must, on request of the CYP death review committee, arrange with the committee for the committee to use the services of a public servant.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).



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# Part 19A.2 Meetings of committee

## 727J Meetings

The CYP death review committee must meet at least once each year.

## 727K Presiding member at meetings

(1) The chair presides at all meetings at which the chair is present.

(2) If the chair is absent, the deputy chair presides.

## 727L Quorum at meetings

(1) Business may be carried on at a meeting of the CYP death review committee only if at least 1/2 of the members (other than the presiding member) are present.

(2) A member must not be represented at a meeting by anyone else.

## 727M Voting at meetings

(1) At a meeting of the CYP death review committee, each member, other than the presiding member, has a vote on each question to be decided.

(2) A question is decided by a majority of the votes of the members present and voting.

(3) Despite subsection (1), if the votes are equal, the presiding member has a deciding vote.



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# Part 19A.3 Register of deaths of children and young people

## 727N Children and young people deaths register

(1) The CYP death review committee must keep a register (the ***children and young people deaths register***) of—

(a) the deaths of children and young people that occur in the ACT; and

(b) the deaths that occur outside the ACT of children and young people who normally live in the ACT.

*Note* Information in the register is protected information (see ch 25).

(2) The register must include the following information in relation to the death of a child or young person that is available to the CYP death review committee:

(a) the cause of the death of the child or young person;

(b) the age and sex of the child or young person;

(c) whether the child or young person is an Aboriginal or Torres Strait Islander person;

(d) whether, within 3 years before his or her death, the child or young person, or a sibling of the child or young person, was the subject of a report the director-general decided, under section 360 (5), was a child protection report;

(e) anything else prescribed by regulation.

(3) The register may contain—

(a) any other demographic data available to the CYP death review committee; and



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(b) any information about a child or young person, or the circumstances of the child or young person's death, that the committee considers relevant to exercise its reporting functions under part 19A.4; and

(c) anything else the committee considers relevant.

(4) The CYP death review committee must not include any information on the register about the cause or circumstances of the death of a child or young person until any coronial inquest or review by the Territory has ended.

**Examples—review by Territory**

- an internal review by the Office for Children, Youth and Family Support
- a joint review by ACT Health and the Office for Children, Youth and Family Support

(5) The CYP death review committee—

(a) must index the deaths on the register according to cause of death and age and sex of the children and young people; and

(b) may also index the deaths in any other way the committee considers relevant.

## 727O Obtaining information from certain entities

(1) A relevant entity must give the CYP death review committee the following information in relation to the death of a child or young person:

(a) information required under section 727N (2) to be included on the register;

(b) other information requested in writing by the committee that the committee considers is necessary to exercise its functions.

(2) Information mentioned in subsection (1) (a) must be given within 3 months after the death of the child or young person.



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(3) Information mentioned in subsection (1) (b) must be given as soon as practicable after the request is made.

(4) However, information mentioned in section 727N (4) must be given as soon as practicable after the end of the inquest or review.

(5) A relevant entity is only required to give information under this section that is within the knowledge of the entity because of the exercise of its functions.

(6) In this section:

***relevant entity*** means each of the following:

(a) the chief police officer;

(b) the registrar-general;

(c) the Coroner's Court;

(d) the director-general responsible for administering this Act, chapter 10;

(e) the director-general responsible for administering the *Education Act 2004*, chapter 2;

(f) the director-general responsible for administering the *Health Act 1993*, part 3;

(g) a licensed proprietor of a childcare service;

(h) an entity prescribed by regulation.

## 727P Exchanging information with corresponding interstate entities

The CYP death review committee may enter into an agreement with an entity who exercises a function under a law of a State, that corresponds or substantially corresponds to a function of the committee, to exchange information relevant to the function.



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## 727Q Power to ask for information, documents and other things

(1) This section applies if the CYP death review committee believes on reasonable grounds that a person can give information or produce a document or something else that the committee considers necessary to allow it to exercise its functions.

(2) The CYP death review committee may, by written notice given to the person, require the person to give the information in writing or produce the document or other thing.

*Note* Information given or contained in a document or something else produced is protected information (see ch 25).

(3) However, the CYP death review committee must not require a family member of a child or young person who has died to give information or produce a document or something else in relation to the child or young person.

(4) The notice must state how, and the time within which, the person must comply with the requirement.

(5) A person commits an offence if—

(a) the person is required by a notice under this section to give information in writing or produce a document or other thing to the CYP death review committee; and

(b) the person fails to give the information or produce a document or other thing to the committee as required.

Maximum penalty: 50 penalty units.

*Note 1* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

*Note 2* Giving false information is an offence against the Criminal Code, s 338.

(6) Subsection (5) does not apply if the person has a reasonable excuse for failing to give the information or produce the document or other thing to the CYP death review committee as required.



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## 727R Children and young people deaths register—who may have access?

(1) The CYP death review committee must ensure that the register is accessed only by the following:

(a) committee members;

(b) staff mentioned in section 727I;

(c) advisers appointed under section 727G;

(d) someone authorised by the committee to have access to the register.

(2) An authorisation is a notifiable instrument.

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

(3) The committee must notify a person who can access the register of the person's obligations to deal with information on the register in accordance with the requirements under chapter 25 (Information secrecy and sharing).

*Note* Information on the register is protected information (see ch 25).



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# Part 19A.4 Annual reports about deaths of children and young people

## 727S Annual report

(1) For each calendar year, the CYP death review committee must report to the Minister about the following in relation to the deaths of children and young people included on the children and young people deaths register during the year:

(a) the number of deaths of children and young people;

(b) the age and sex of each child or young person who died and whether, within 3 years before his or her death, the child or young person, or a sibling of the child or young person, was the subject of a report the director-general decided, under section 360 (5), was a child protection report;

(c) the patterns or trends (if any) identified in relation to the deaths of children and young people—

(i) generally; and

(ii) who, within 3 years before their death were, or had a sibling who was, the subject of a report the director-general decided, under section 360 (5), was a child protection report.

*Note* There are restrictions on recording and divulging protected and sensitive information (see ch 25).

(2) The CYP death review committee may include in the report—

(a) its recommendations (if any) about legislation, policies, practices and services for implementation by the Territory and non-government bodies to help prevent or reduce the likelihood of the death of children and young people; and



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(b) information about the implementation of any previous recommendations of the committee; and

(c) any other matter it considers relevant.

(3) However, the CYP death review committee must not include in the report any information that would—

(a) disclose the identity of a child or young person who has died; or

(b) allow the identity of a child or young person who has died to be worked out.

(4) The CYP death review committee must give the Minister the report within 4 months after the end of the calendar year.

(5) The Minister must present the report in the Legislative Assembly within 6 sitting days after the day the report is given to the Minister.

## 727T Other reports

(1) The CYP death review committee may at any time prepare a report for the Minister on any matter arising in connection with the exercise of the committee's functions.

(2) The CYP death review committee must not include in the report any information that would—

(a) disclose the identity of a child or young person who has died; or

(b) allow the identity of a child or young person who has died to be worked out.

(3) The Minister must present the report to the Legislative Assembly within 6 sitting days after the report is given to the Minister.

(4) Within 3 months after receiving a report under subsection (1), the Minister must give information to the CYP death review committee about any action the Minister has taken, or will take, in relation to the matters raised in the report.



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# Chapter 20 Childcare services

## Part 20.1 Childcare services—preliminary

### 728 Definitions—Act and ch 20

(1) In this Act:

***childcare centre***—see section 733.

***childcare service***—see section 732.

***family day care scheme***—see section 734.

(2) In this chapter:

***cancellation notice***—see section 766.

***childcare service licence***, for a childcare service, means a licence under section 747 (Childcare service licence—decision on application) to operate the childcare service.

***childcare worker***, for a childcare service, means a person who cares for a child for the childcare service.

***compliance notice***—see section 760 (2).

***compliance suspension notice***—see section 761 (2).

***controlling person***, for a childcare service—see section 736.

***intention to cancel notice***—see section 764 (2).

***licensed childcare service*** means a childcare service operated by a licensed proprietor for the childcare service.

***licensed proprietor***, of a childcare service, means a proprietor of the childcare service who holds a childcare service licence to operate the childcare service.



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***proposed controlling person***, for a childcare service, means a person who intends to be a controlling person for the childcare service.

***proposed proprietor***, for a childcare service, means a person who intends to own or operate the childcare service.

***proprietor***, for a childcare service—see section 735.

***responsible person***, for a childcare service—see section 738.

## 729 Objects—ch 20

The objects of this chapter include—

(a) providing an effective licensing system for childcare services; and

(b) imposing standards for childcare services.

*Note* The Minister may make childcare services standards under s 887.

## 730 Principles—ch 20

In making a decision or taking action under this chapter for a childcare service, the following childcare services principles should be applied:

(a) childcare services must provide care that is safe, positive and nurturing;

(b) childcare services must promote the educational, social and developmental wellbeing of children.

*Note* In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).



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## 731 Application—ch 20

(1) This chapter does not apply to care provided for a child—

(a) at a playgroup; or

(b) by an education and care service within the meaning of the *Education and Care Services National Law (ACT)*; or

(c) in conjunction with a meeting, function or similar activity that involves a person who has daily care responsibility for the child, at the same or adjacent premises (unless provided in conjunction with the person's usual employment); or

(d) by a family member (unless provided as part of a family day care scheme); or

(e) by an out-of-home carer with whom the director-general has placed the child or young person under section 512; or

(f) by a government school or non-government school under the *Education Act 2004*, whether provided during or outside school hours; or

(g) by a person providing home education to the child if the child is registered, or provisionally registered, for home education under the *Education Act 2004*; or

(h) that is incidental to the child's participation in religious instruction, sporting, educational, recreational or cultural events or activities; or



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(i) 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

(j) while the child is a patient in a hospital, including a day hospital.

(2) In this section:

***day hospital***—see the *Health Act 1993*, dictionary.



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# Part 20.2 Childcare services—important concepts

## 732 What is a *childcare service*?

In this Act:

***childcare service*** means—

(a) a childcare centre; or

(b) a family day care scheme.

## 733 What is a *childcare centre*?

(1) In this Act:

***childcare centre*** means a service, operated from premises, that provides care—

(a) for at least the minimum number of children; and

(b) for payment or other material benefit.

(2) For this section, when working out how many children care is being provided for by a service operated from premises—

(a) a child for whom care is provided on an emergency basis, or in unexpected or exceptional circumstances, must not be counted unless the child is cared for at the premises for 2 or more consecutive days; and

(b) if a child of a childcare worker is being cared for at the premises, the child must be counted.

(3) In this section:

***minimum number***, of children, means—

(a) 5 young children; or

(b) 8 children, if no more than 4 children are young children.



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***young child*** means a child who is not yet either—

(a) attending school as required under the *Education Act 2004*; or

(b) registered, or provisionally registered, for home education under the *Education Act 2004*.

## 734 What is a *family day care scheme*?

(1) In this Act:

***family day care scheme*** means a scheme that organises, coordinates and monitors home-based care for children.

(2) In this section:

***home-based care***, for a child, means care provided by a person for the child if—

(a) the care is provided at a home that is not the child's home; and

(b) the care is provided for payment or other material benefit; and

(c) the person does not have—

(i) daily care responsibility for the child; or

(ii) long-term care responsibility for the child.

**Examples—schemes that are not family day care schemes**

1 a scheme that organises, coordinates and monitors nannies

2 a scheme that organises, coordinates and monitors babysitters

*Note* Daily care responsibility is dealt with in s 19.
Long-term care responsibility is dealt with in s 20.

## 735 Who is the *proprietor* of a childcare service?

In this chapter:

***proprietor***, of a childcare service, means—

(a) for a licensed childcare service—the licensed proprietor of the childcare service; or



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(b) in any other case—the person who owns or operates the childcare service.

## 736 Who is a *controlling person* for a childcare service?

In this chapter:

***controlling person***, for a childcare service, means a person (other than the proprietor if the proprietor is not an individual) who exercises control or may exercise control over the childcare service.

## 737 Offence—fail to notify change of controlling person

(1) A licensed proprietor of a childcare service commits an offence if—

(a) someone stops being a controlling person for the childcare service; and

(b) the licensed proprietor does not tell the director-general, in writing, that the person has stopped being a controlling person not later than 30 days after the day the person stops being a controlling person.

Maximum penalty: 5 penalty units.

(2) A licensed proprietor of a childcare service commits an offence if—

(a) someone becomes a controlling person for the childcare service; and

(b) the licensed proprietor does not tell the director-general, in writing, that the person has become a controlling person not later than 30 days after the day the person becomes a controlling person.

Maximum penalty: 5 penalty units.

(3) An offence against this section is a strict liability offence.



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# Part 20.3 Childcare services—offences

*Note to pt 20.3*

An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

## 738 Who is a *responsible person* for a childcare service?

In this chapter:

***responsible person***, for a childcare service—each of the following is a ***responsible person***:

(a) a proprietor of the childcare service;

(b) a controlling person for the childcare service;

(c) a person caring for a child for the childcare service.

*Note* A person may be a proprietor or controlling person for a childcare service whether or not the childcare service is a licensed childcare service (see s 735 and s 736).

## 739 Offence—fail to protect child from injury

(1) A person commits an offence if the person—

(a) is a responsible person for a childcare service; and

(b) does not ensure that 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.

(2) This section does not apply to a person caring for a child for a childcare service if the person is—

(a) unable to take the precaution; and

(b) unable to ensure that the precaution is taken by someone else.



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## 740 Offence—fail to supervise child

A person commits an offence if the person—

(a) is a responsible person for a childcare service; and

(b) does not take reasonable steps to ensure that a child being cared for by the service is adequately supervised.

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

## 741 Offence—unreasonably discipline child

(1) A person commits an offence if the person—

(a) is a responsible person for a childcare service; and

(b) subjects a child being cared for by the service to unreasonable discipline.

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

(2) In this section:

***unreasonable discipline*** includes—

(a) physical punishment; or

(b) any behaviour management strategy likely to cause emotional or physical harm to a child.

**Examples**

1 smacking

2 yelling

3 using threatening or humiliating language



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## 742 Offence—fail to maintain buildings, equipment etc

A person commits an offence if the person—

(a) is a responsible person for a childcare service; and

(b) does not take reasonable steps to ensure that the buildings, grounds, 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.



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# Part 20.4 Childcare services—childcare service licences

## Division 20.4.1 Childcare service licences—application, eligibility, etc

### 743 Childcare service licence—proposed proprietor may apply

(1) A proposed proprietor of a childcare service may apply for a childcare service licence to operate the childcare service.

(2) The application must—

(a) be made in writing to the director-general; and

(b) include complete details of suitability information about—

(i) the proposed proprietor; and

(ii) each proposed controlling person for the childcare service.

*Note 1* ***Suitability information*** is defined in s 65.

*Note 2* Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 3* If a form is approved under s 886 for this provision, the form must be used.

*Note 4* A fee may be determined under s 885 for this provision.

(3) However, subsection (2) (b) (ii) does not apply in relation to a proposed controlling person for the childcare service if the person is not known to the proposed proprietor of the childcare service at the time the application is made.



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(4) If subsection (3) applies, the proposed proprietor must give the director-general complete details of suitability information about the proposed controlling person for the childcare service by the later of the following:

(a) 30 days after the controlling person for the childcare service becomes known to the proposed proprietor;

(b) 30 days after the application is approved.

## 744 Childcare service licence—further information

(1) This section applies if the director-general has received an application for a childcare service licence under section 743.

(2) The director-general may ask the proposed proprietor to give the director-general more information about—

(a) the application, including information about the proposed proprietor and any proposed controlling person; and

(b) the premises proposed to be used for operating the childcare service.

(3) The director-general may ask the proposed proprietor to allow the director-general to inspect the premises where the proposed proprietor proposes to operate the childcare service.

*Note* An authorised person may, at any reasonable time, enter premises if the director-general has received an application under s 743 and asked the proposed proprietor to allow the director-general to inspect the premises under s (3) and the proposed proprietor has agreed to allow the director-general to inspect the premises (see s 817).



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## 745 Childcare service licence—director-general need not decide if no information or inspection

(1) This section applies if, under section 744, the director-general asks the proposed proprietor—

(a) to give the director-general more information but the proposed proprietor does not give the director-general the information; or

(b) to allow the director-general to inspect premises but the proposed proprietor does not allow the director-general to inspect the premises.

(2) The director-general need not decide whether the proposed proprietor is eligible for a childcare service licence.

## 746 Childcare service licence—eligibility

A proposed proprietor of a childcare service is eligible for a childcare service licence to operate the childcare service only if the director-general is satisfied that—

(a) the proposed proprietor is a suitable entity to provide the childcare service; and

(b) each proposed controlling person for the childcare service is a suitable entity to provide the childcare service; and

(c) the proposed proprietor complies, and is likely to continue to comply, with the childcare services standards; and

(d) the premises where the childcare service is to be operated comply with the childcare services standards.

*Note 1* Suitable entities to provide services are dealt with in pt 2.4.

*Note 2* The Minister may make childcare services standards under s 887.



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## 747 Childcare service licence—decision on application

(1) This section applies if the director-general has received an application for a childcare service licence under section 743.

(2) If the proposed proprietor is eligible under section 746 for a childcare service licence to operate the childcare service, the director-general must give the proposed proprietor a licence to operate the childcare service.

(3) If the proposed proprietor is not eligible under section 746 for a childcare service licence to operate the childcare service, the director-general must refuse to give the proposed proprietor a licence to operate the childcare service.

*Note* A decision under this subsection is a reviewable decision (see s 839).

(4) The director-general must, not later than the required time—

(a) decide the application; and

(b) tell the proposed proprietor about the decision on the application.

(5) For subsection (4), the ***required time*** is the latest of the following:

(a) if the director-general requires a proposed proprietor or proposed controlling person to provide a reference or report under section 68 (2) (a)—30 days after the day the director-general receives the reference or report;

(b) if the director-general requires a proposed proprietor or proposed controlling person to undergo a test or medical examination under section 68 (2) (b)—30 days after the day the director-general receives the results of the test or examination;

(c) if the director-general asks the proposed proprietor to give the director-general more information under section 744 (2)—30 days after the day the director-general receives the information;



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(d) if the director-general asks the proposed proprietor to allow the director-general to inspect premises under section 744 (3)—30 days after the day the director-general is allowed to inspect the premises;

(e) in any other case—30 days after the day the director-general receives the application.

*Note* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

## 748 Childcare service licence—content

A childcare service licence must state—

(a) the name of the proprietor of the childcare service; and

(b) the kind of childcare service for which the licence is given; and

(c) the length of the licence; and

(d) for a licence to operate a childcare centre—

(i) the premises where the childcare centre may operate; and

(ii) the maximum number of children that may be cared for at the childcare centre; and

(iii) the age of the children who may be cared for at the childcare centre.



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## 749 Childcare service licence—childcare service standards

(1) A childcare service licence is subject to the condition that the service must be operated in a way that complies with the childcare services standards.

**Example**

The Minister makes a childcare service standard for family day care schemes. A licence for a childcare service of that kind is subject to the condition that it is operated in a way that complies with the standard.

*Note 1* The Minister may make childcare services standards under s 887.

*Note 2* The Minister may make different standards in relation to different childcare services or different classes of service, and standards that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

*Note 3* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

(2) The director-general may exempt a childcare service from 1 or more childcare service standards (a ***temporary standards exemption***) for a reasonable period if the director-general believes on reasonable grounds that—

(a) the exemption is not likely to prejudice the safety and educational, social and developmental wellbeing of a child or children being cared for by the service; and

(b) the exemption is not likely to impact on the childcare service's promotion of the educational, social and developmental wellbeing of children; and

(c) the childcare service has taken, or is taking, steps to comply with any childcare service standard included in the exemption; and



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(d) the exemption will not result in the proprietor of the childcare centre failing to take all reasonably practicable steps to protect the health, safety and welfare of employees of the childcare service.

(3) The director-general may give a childcare service more than 1 temporary standards exemption from a childcare service standard.

(4) A temporary standards exemption must not include information that identifies a childcare worker or would allow the identity of a childcare worker to be worked out.

(5) The director-general may extend a temporary standards exemption for a reasonable period if satisfied of the matters mentioned in subsection (2) (a) to (d).

(6) A temporary standards exemption may be conditional.

(7) The director-general may revoke a temporary standards exemption at any time on reasonable grounds.

(8) A temporary standards exemption is a notifiable instrument.

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

## 750 Childcare service licence—length

(1) The director-general must not give a childcare service licence for longer than 3 years.

(2) However, if a licensed proprietor of a childcare service has applied for renewal of the licence under section 754, the director-general may extend the licence until the application is decided.



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## 751 Childcare service licence—extensions

(1) If a childcare service licence is shorter than 3 years, the licensed proprietor may apply for an extension of the licence.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* A fee may be determined under s 885 for this provision.

(2) If the licensed proprietor would be eligible under section 746 (Childcare service licence—eligibility) for the licence as extended, the director-general must—

(a) extend the licence to a total period of not longer than 3 years; and

(b) tell the licensed proprietor, in writing, about the extension.

(3) If the licensed proprietor would not be eligible under section 746 for the licence as extended, the director-general must—

(a) refuse to extend the licence; and

(b) tell the licensed proprietor, in writing, about the refusal.

*Note* A decision under this subsection is a reviewable decision (see s 839).

(4) The director-general must decide the application, and tell the proprietor about the decision, not later than 30 days after the day the director-general receives the application.

## 752 Childcare service licence—amendment

(1) A licensed proprietor of a childcare service may apply to the director-general to amend the licence in relation to—

(a) the premises where the childcare centre may operate; and

(b) the maximum number of children that may be cared for at the childcare centre; and



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(c) the age of the children who may be cared for at the childcare centre.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* A fee may be determined under s 885 for this provision.

(2) The director-general may amend the licence if satisfied that the childcare service can be operated under the amended licence in a way that complies with the childcare service standards.

*Note 1* A childcare service licence is subject to the condition that the service must be operated in a way that complies with the childcare services standards.

*Note 2* The Minister may make childcare services standards under s 887.

(3) The director-general must decide the application, and tell the proprietor about the decision, not later than 30 days after the day the director-general receives the application.

## 753 Childcare service licence—transfer

(1) The licensed proprietor of a childcare service may apply to the director-general to transfer the childcare service licence to someone else.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* A fee may be determined under s 885 for this provision.

(2) The director-general may transfer the licence if the person to whom the license is proposed to be transferred would be eligible under this chapter for the licence.

(3) The director-general must, not later than 30 days after the day the director-general receives the application—

(a) decide the application; and



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(b) if the decision is to transfer the licence, decide the date that the transfer takes effect; and

(c) tell the licensed proprietor about the decision on the application.

*Note* A decision under this subsection is a reviewable decision (see s 839).

(4) A transfer takes effect on the date decided by the director-general.

## Division 20.4.2 Childcare service licences—renewal

### 754 Childcare service licence renewal—licensed proprietor may apply

(1) A licensed proprietor of a childcare service may apply for renewal of the licence.

(2) The application must be—

(a) made in writing to the director-general; and

(b) received by the director-general at least 30 days, but not more than 60 days, before the childcare service licence ends.

(3) However, the director-general may extend the time for making an application.

*Note 1* A licensed proprietor may apply to the director-general for the time to be extended, and the director-general may extend the time, even though the time has ended (see Legislation Act, s 151C).

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

*Note 3* A fee may be determined under s 885 for this provision.



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## 755 Childcare service licence renewal—further information

(1) This section applies if the director-general has received an application for renewal of a childcare service licence under section 754.

(2) The director-general may ask the licensed proprietor to give the director-general more information about—

(a) the application, including information about the licensed proprietor and any controlling person; and

(b) the premises used for operating the childcare service.

(3) The director-general may ask the licensed proprietor to allow the director-general to inspect the premises where the licensed proprietor operates the childcare service.

*Note* An authorised person may, at any reasonable time, enter premises if the director-general has received an application for renewal of a childcare service licence under s 754 and asked the proposed proprietor to allow the director-general to inspect the premises under this section and the proposed proprietor has agreed to allow the director-general to inspect the premises (see s 817).

## 756 Childcare service licence renewal—director-general need not decide if no information or inspection

(1) This section applies if, under section 755, the director-general asks the licensed proprietor—

(a) to give the director-general more information but the licensed proprietor does not give the director-general the information; or

(b) to allow the director-general to inspect premises but the licensed proprietor does not allow the director-general to inspect the premises.

(2) The director-general need not decide whether the licensed proprietor is eligible for renewal of a childcare service licence.



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## 757 Childcare service licence renewal—eligibility

(1) A licensed proprietor of a childcare service is eligible for renewal of the licence only if the director-general is satisfied that the licensed proprietor—

(a) is eligible for a childcare service licence under section 746; and

(b) has complied with the childcare services standards during the period of the childcare service licence.

*Note 1* The proprietor and each controlling person must tell the director-general not later than 7 days after any of their suitability information changes (see s 70).

*Note 2* The Minister may make childcare services standards under s 887.

(2) For subsection (1) (b), the director-general may take into account—

(a) any periods of noncompliance, or persistent noncompliance, with the childcare services standards; and

(b) actions taken to rectify any noncompliance with the child care services standards; and

(c) the future likelihood of compliance with the childcare service standards.

## 758 Childcare service licence renewal—decision on application

(1) This section applies if the director-general receives an application for renewal of a childcare service licence under section 754.

(2) If the licensed proprietor is eligible under section 757 for renewal of the childcare service licence, the director-general must give the licensed proprietor a new childcare service licence.

(3) If the licensed proprietor is not eligible under section 757 for renewal of the childcare service licence, the director-general must refuse to renew the childcare service licence.

*Note* A decision under this subsection is a reviewable decision (see s 839).



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(4) The director-general must, not later than the required time for an application—

(a) decide the application; and

(b) tell the licensed proprietor about the decision on the application.

(5) For subsection (4), the required time for an application is the latest of the following:

(a) if the director-general requires the licensed proprietor or a controlling person to provide a reference or report under section 68 (2) (a)—30 days after the day the director-general receives the reference or report;

(b) if the director-general requires the licensed proprietor or a controlling person to undergo a test or medical examination under section 68 (2) (b)—30 days after the day the director-general receives the results of the test or examination;

(c) if the director-general asks the licensed proprietor to give the director-general more information under section 755 (2)—30 days after the day the director-general receives the information;

(d) if the director-general asks the licensed proprietor, to allow the director-general to inspect premises under section 755 (3)—30 days after the day the director-general is allowed to inspect the premises;

(e) in any other case—30 days after the day the director-general receives the application.

*Note* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).



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## Division 20.4.3 Childcare service licences—suspension and cancellation

### 759 Who is an *affected child*?

In this division:

***affected child***, for an event, for a childcare service, includes—

(a) a child who is being cared for by the childcare service when the event happens; and

(b) a child who is enrolled at the childcare service, whether or not the child attends the childcare service on the day the event happens.

### 760 Childcare service licence—compliance notices

(1) This section applies if the director-general believes on reasonable grounds that the licensed proprietor of a childcare service has operated the childcare service in a way that does not comply with this chapter or a childcare services standard.

*Note 1* For s (1), the director-general may also give an intention to cancel notice (see s 764).

*Note 2* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

*Note 3* The Minister may make childcare services standards under s 887.

(2) The director-general may give a written notice (a ***compliance notice***) to the licensed proprietor of the childcare service—

(a) directing the licensed proprietor to take the steps stated in the notice to comply with the relevant provisions or standard not later than the day stated in the notice; and



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(b) telling the licensed proprietor that the licensed proprietor may make a submission, orally or in writing, to the director-general about the notice not later than 7 days after the day the notice is given to the licensed proprietor.

(3) If the licensed proprietor does not make a submission in accordance with the compliance notice, the director-general must take reasonable steps to tell a person with daily care responsibility for each affected child about the compliance notice.

*Note* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

(4) If the licensed proprietor makes a submission in accordance with the compliance notice, the director-general must consider the submission and must either—

(a) confirm the compliance notice; or

(b) amend the compliance notice; or

(c) revoke the compliance notice.

*Note* A decision under this subsection is a reviewable decision (see s 839).

(5) After making a decision under subsection (4), the director-general must tell the licensed proprietor about the decision.

(6) If the licensed proprietor makes a submission in accordance with the compliance notice and the director-general decides to confirm or amend the compliance notice, the director-general must take reasonable steps to tell a person with daily care responsibility for each affected child about the compliance notice and the decision to confirm or amend it.



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## 761 Childcare service licence—suspension for noncompliance

(1) This section applies if—

(a) the director-general gives the licensed proprietor of a childcare service a compliance notice under section 760; and

(b) the licensed proprietor does not take the steps stated in the notice not later than the day stated in the notice or, if the director-general allows further time, the further time.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

(2) The director-general may give a written notice (a ***compliance suspension notice***) to the licensed proprietor—

(a) suspending the childcare service licence starting on the date stated in the notice; and

(b) telling the licensed proprietor that the licensed proprietor may make a submission, in writing, to the director-general about the notice not later than 30 days after the day the notice is given to the licensed proprietor.

*Note* A decision under par (a) is a reviewable decision (see s 839).

(3) If the director-general gives a compliance suspension notice to the licensed proprietor, the director-general must also take reasonable steps to tell a person with daily care responsibility for each affected child about the suspension.



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(4) The compliance suspension notice has effect until either—

(a) the suspension is ended under section 762; or

(b) the notice is revoked by the director-general by written notice given to the licensed proprietor.

*Note* If a form is approved under s 886 for this provision, the form must be used.

## 762 Childcare service licence—ending noncompliance suspension

(1) This section applies if—

(a) the director-general gives the licensed proprietor of a childcare service a compliance suspension notice under section 761; and

(b) the licensed proprietor makes a submission in accordance with the notice.

(2) The director-general must consider the submission.

(3) After considering the submission, the director-general may consider any other relevant matter and must decide to either—

(a) confirm the suspension and decide the length of the suspension; or

(b) end the suspension.

*Note* A decision under par (a) is a reviewable decision (see s 839).

(4) The director-general must tell—

(a) the licensed proprietor about the decision under subsection (3); and

(b) anyone else about the decision who was told under section 761 about the suspension.



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## 763 Childcare service licence—suspension if children unsafe

(1) This section applies if the director-general believes on reasonable grounds that—

(a) children being cared for by a licensed childcare service are unsafe; and

(b) the exercise of the director-general's powers under this section is necessary to protect the children.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

(2) The director-general may give a written notice (a ***safety suspension notice***) to the licensed proprietor, immediately suspending the childcare service licence.

*Note* A decision under this subsection is a reviewable decision (see s 839).

(3) If the director-general gives a safety suspension notice to the licensed proprietor, the director-general must also take reasonable steps to tell a person with daily care responsibility for each affected child about the suspension.

*Note* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

(4) The safety suspension notice has effect until revoked by the director-general by written notice given to the licensed proprietor.

*Note* If a form is approved under s 886 for this provision, the form must be used.



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## 764 Childcare service licence—notice of intention to cancel

(1) This section applies if—

(a) the licensed proprietor of a childcare service is convicted or found guilty of an offence against this Act; or

(b) the director-general believes on reasonable grounds that—

(i) a childcare service licence was obtained improperly; or

(ii) the licensed proprietor of a childcare service has operated the childcare service in a way that does not comply with a childcare services standard; or

*Note 1* The Minister may make childcare services standards under s 887.

*Note 2* For subpar (ii), the director-general may instead give a compliance notice (see s 760).

(iii) the licensed proprietor of a childcare service is not a suitable entity to provide the childcare service; or

(iv) a controlling person for a childcare service is not a suitable entity to provide the childcare service.

*Note* Suitable entities to provide services are dealt with in pt 2.4.

(2) The director-general may give a written notice (an ***intention to cancel notice***) to the licensed proprietor telling the licensed proprietor—

(a) that the director-general intends to cancel the childcare service licence; and

(b) the reasons for the intended cancellation; and

(c) that the licensed proprietor may make a submission, in writing, to the director-general about the intended cancellation not later than 21 days after the day the notice is given to the licensed proprietor.



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(3) If the director-general gives an intention to cancel notice to the licensed proprietor, the director-general must also take reasonable steps to tell a person with daily care responsibility for each affected child about the notice.

*Note* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

## 765 Childcare service licence—cancellation

(1) This section applies if the director-general gives a licensed proprietor of a childcare service an intention to cancel notice under section 764.

(2) If the licensed proprietor makes a submission in accordance with the intention to cancel notice, the director-general must consider the submission.

(3) After considering the submission, the director-general may consider any other relevant matter and must decide to either—

(a) cancel the childcare service licence; or

(b) revoke the intention to cancel notice.

*Note* A decision under par (a) is a reviewable decision (see s 839).

(4) If the licensed proprietor does not make a submission in accordance with the notice, the director-general must decide to cancel the childcare service licence.

(5) If the director-general decides to revoke the intention to cancel notice, the director-general must tell the following people about the decision:

(a) the licensed proprietor;

(b) anyone else who was told under section 764 (3) about the intention to cancel notice.



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## 766 Childcare service licence—cancellation notice

(1) This section applies if the director-general decides to cancel a licensed proprietor's childcare service licence.

(2) The director-general must give a written notice (a ***cancellation notice***) to the licensed proprietor, cancelling the childcare service licence starting on the date stated in the notice (the ***cancellation date***).

(3) If the director-general gives a cancellation notice to the licensed proprietor, the director-general must also take reasonable steps to tell a person with daily care responsibility for each affected child about the cancellation.

(4) The cancellation notice must be given to the licensed proprietor at least 7 days before the cancellation date.

## 767 Offence—fail to return cancelled childcare service licence

(1) A person commits an offence if—

(a) the person is a licensed proprietor of a childcare service; and

(b) the director-general cancels the childcare service licence by giving the licensed proprietor a cancellation notice; and

(c) the person fails to return the childcare service licence to the director-general not later than 7 days after the day the cancellation notice is given to the person.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.



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### 768 Childcare service licence—identity of childcare workers protected

If the director-general is required to tell a person with daily care responsibility for an affected child about something under this division, the director-general must not tell the person information that—

(a) identifies a person as a childcare worker for a childcare service; or

(b) would allow the identity of a person as a childcare worker for a childcare service to be worked out.

## Division 20.4.4 Childcare service licences—offences

### 769 Offence—operate unlicensed childcare service

A person commits an offence if—

(a) the person is—

(i) a proprietor of a childcare service; or

(ii) a controlling person for a childcare service; and

(b) the proprietor of the childcare service—

(i) operates the childcare service; and

(ii) does not hold a childcare service licence to operate the childcare service.

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

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).



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## 770 Offence—advertise unlicensed childcare service

(1) A person commits an offence if—

(a) the person is—

(i) a proprietor of a childcare service; or

(ii) a controlling person for a childcare service; and

(b) the person publishes an advertisement for the childcare service; and

(c) the proprietor of the childcare service does not hold a childcare service licence to operate the childcare service.

Maximum penalty: 30 penalty units.

(2) This section does not apply if—

(a) a person applies for a childcare service licence to operate a childcare service; and

(b) the application has not been decided; and

(c) the person publishes an advertisement for the childcare service; and

(d) the advertisement clearly states that the person does not hold a licence to operate the service.

(3) In this section:

***advertisement***—

(a) includes an enrolment form, circular, label, notice and sign; but

(b) does not include a document published for a feasibility study.



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## 771 Offence—operate childcare service when licence suspended

A person commits an offence if—

(a) the person is—

(i) a licensed proprietor of a childcare service; or

(ii) a controlling person for a licensed childcare service; and

(b) the childcare service licence is suspended under—

(i) section 761 (Childcare service licence—suspension for noncompliance); or

(ii) section 763 (Childcare service licence—suspension if children unsafe); and

(c) the licensed proprietor operates the childcare service.

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

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

## 772 Offence—operate childcare service in contravention of standards

(1) A person commits an offence if—

(a) the person is—

(i) a licensed proprietor of a childcare service; or

(ii) a controlling person for a licensed childcare service; and



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(b) the childcare service is operated in a way that does not comply with the childcare services standards.

*Note* The Minister may make childcare services standards under s 887.

Maximum penalty: 50 penalty units.

(2) This section does not apply if—

(a) a temporary standards exemption under section 749 (2) is in force for the childcare service; and

(b) the exemption exempts the childcare service from the operation of this section; and

(c) the proprietor of the childcare service operates the childcare service in accordance with the exemption.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

## Division 20.4.5 Childcare service licences—register, assessment and reporting

### 773 Childcare service licence—register

The director-general must establish a register of childcare service licences.

### 774 Assessing compliance with childcare services standards

(1) At least once during the period of a childcare service licence, the director-general must assess the childcare service's compliance with the childcare services standards.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises (see s 817).

(2) The Minister may make childcare services assessment requirements.



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(3) A childcare services assessment requirement is a disallowable instrument.

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

(4) An assessment must be carried out in accordance with the childcare services assessment requirements.

(5) The director-general may ask the licensed proprietor of a childcare service to give the director-general any information about the childcare service reasonably required by the director-general to carry out the assessment.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

(6) The licensed proprietor must comply with the request as soon as practicable.

## 775 Annual childcare standards report

(1) The director-general must, for each financial year, prepare a report (a ***childcare standards report***) about the compliance of licensed childcare services with the childcare services standards.

(2) A childcare standards report must include—

(a) any temporary standards exemptions under section 749 (2); and

(b) any compliance notices confirmed or amended under section 760 (4); and

(c) any compliance suspension notices given under section 761; and

(d) any safety suspension notices given under section 763 (2); and

(e) any intention to cancel notices or cancellation notices given under section 765 or section 766; and

(f) any assessments made by the director-general under section 774 during the financial year to which the report relates; and



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(g) if no assessment was made by the director-general under section 774 during the financial year to which the report relates for a childcare service—the date the service was last assessed and the year the service is to be assessed; and

(h) any submissions that the director-general is required to include under section 777 in a childcare standards report; and

(i) if a proprietor, controlling person or childcare worker for a childcare service was found guilty of, or convicted of an offence against this chapter—details of the offence.

*Note* Before including in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard, the director-general must consult, and consider submissions by, the licensed proprietor (see s 777).

(3) A childcare standards report is a notifiable instrument.

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

(4) A childcare standards report must comply with the childcare standards report requirements.

(5) A childcare standards report must not include information that—

(a) identifies a person as a person who made a confidential report; or

(b) would allow a person's identity as a person who made a confidential report to be worked out; or

(c) identifies a child; or

(d) would allow the identity of a child to be worked out; or

(e) identifies a person as a childcare worker for a childcare service; or

(f) would allow the identity of a person as a childcare worker for a childcare service to be worked out.



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## 776 Annual childcare standards report—requirements

(1) The Minister may make childcare standards report requirements.

(2) A childcare standards report requirement is a disallowable instrument.

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

## 777 Annual childcare standards report—consultation

(1) This section applies if the director-general proposes to include in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard.

(2) The director-general must give the licensed proprietor of the childcare service a written notice (a ***childcare standards report notice***) stating—

(a) the director-general's proposal; and

(b) that the licensed proprietor may, not later than 30 days after the day the notice is given to the licensed proprietor, make a submission about the proposal to the director-general; and

(c) that if the proprietor makes a written submission in accordance with the notice, the submission may be included in a childcare standards report.

(3) A childcare standards report notice must not include information that—

(a) identifies a person as a person who made a confidential report; or

(b) would allow a person's identity as a person who made a confidential report to be worked out.



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(4) Before including in a childcare standards report information about a childcare service being operated in a way that does not comply with a childcare services standard, the director-general must consider any submission made by the licensed proprietor in accordance with the childcare standards report notice.

(5) If the director-general decides to include in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard, the director-general must also include in the report a copy of any written submission given to the director-general by the licensed proprietor in accordance with a childcare standard report notice.



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# Part 20.5 Childcare services—enforcement

*Note to pt 20.5*

Other enforcement provisions apply to this chapter (see ch 23).

## 778 Removal of child in immediate danger

(1) This section applies if the director-general is satisfied that there is an immediate danger to the health or safety of a child being cared for by a childcare service.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the director-general suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

(2) The director-general may—

(a) remove the child from the premises where the childcare service is operating; and

(b) also remove from the premises anything reasonably required for the child's care; and

(c) arrange for the child to be—

(i) returned to the care of a person with daily care responsibility for the child; or



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(ii) temporarily cared for by a licensed childcare service.

**Examples—par (b)**

1 the child's nappies

2 the child's food

3 medication for the child provided by child's parent

4 contact details of a person with daily care responsibility for the child

5 information about the child's medical conditions

*Note* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

(3) If the director-general arranges for the child to be temporarily cared for by a licensed childcare service, the director-general must take all reasonable steps to tell a person with daily care responsibility for the child—

(a) that the child is being temporarily cared for by a licensed childcare service; and

(b) the reason for the temporary care; and

(c) the location of the child.

(4) If the director-general removes something required for a child's care under subsection (2) (b), the director-general must take all reasonable steps to ensure that the thing is used for the child's care and returned to its owner when no longer needed.



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# Chapter 21 Employment of children and young people

*Notes to ch 21*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

## Part 21.1 Important concepts

### 780 Definitions—ch 21

In this chapter:

***contrary to the best interests of a child or young person***—see section 782.

***educational institution*** means a school, college or other educational institution, whether or not operated by or on behalf of the Territory.

***employment***—see section 781.

***employment conditions notice***—see section 790.

***employment prohibition notice***—see section 788.

***work experience*** means the engagement of a child or young person who is under 15 years old by someone if the engagement is—

(a) arranged by an educational institution where the child or young person is enrolled; and

(b) part of a work experience program (however described) conducted by the educational institution.



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## 781 When does someone *employ* a child or young person?

(1) In this chapter:

***employment*** means—

(a) performance of work under a contract of service or a contract for services (whether written or unwritten); or

(b) an apprenticeship, traineeship or other work-related training for a trade or occupation; or

(c) work experience, other than work experience as part of a work experience program exempted under section 784.

(2) In deciding whether something is ***employment*** of a child or young person for this chapter, it does not matter whether the child or young person receives payment (however described) or not.

(3) Taking part in an approved program of compliance testing under the *Tobacco and Other Smoking Products Act 1927*, part 6A (Tobacco compliance testing) is not ***employment*** for this chapter.

## 782 When is employment *contrary to the best interests of a child or young person*?

In this chapter, employment is taken to be ***contrary to the best interests of a child or young person*** if—

(a) for a child or young person under 15 years old who is required to attend a school or participate in an education course under the *Education Act 2004*—it is likely to prejudice the ability of the child or young person to benefit from the education; or

(b) for a child or young person engaged in education or training—it is likely to prejudice the ability of the child or young person to benefit from the education or training; or

(c) it is otherwise likely to harm the child's or young person's health, safety, personal or social development (including by sexual or financial exploitation).



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# Part 21.2 Work experience programs—exemption

## 783 Work experience program—exemption from ch 21

(1) An educational institution may apply for an exemption from the operation of this chapter for a work experience program conducted by the educational institution.

(2) The application must—

(a) be made in writing to the director-general; and

(b) include complete details of how the work experience program complies with the work experience standards.

*Note 1* The Minister may make work experience standards under s 887.

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

*Note 3* A fee may be determined under s 885 for this provision.

## 784 Work experience program—decision on application

(1) This section applies if the director-general has received an application from an educational institution for an exemption under section 783.

(2) The director-general may exempt the educational institution in relation to a work experience program only if the director-general believes on reasonable grounds that the work experience program complies with, and will continue to comply with, the work experience standards.

(3) The exemption may be subject to conditions.

(4) The director-general need not decide the application if the application does not contain sufficient information to allow the director-general to decide it.



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## 785 Work experience program exemption—further information

(1) This section applies if the director-general has—

(a) received an application from an educational institution for an exemption under section 783; or

(b) exempted an educational institution from the operation of this chapter in relation to a work experience program under section 784.

(2) The director-general may, at any time, ask the educational institution to give the director-general further information about—

(a) the application; or

(b) the work experience program.

(3) The educational institution must comply with a request as soon as practicable.

## 786 Suspension of work experience program exemption

(1) The director-general may suspend an educational institution's exemption under section 784 if the director-general suspects on reasonable grounds that the educational institution has not complied with, or continued to comply with, the work experience standards.

(2) The director-general may suspend the exemption by—

(a) giving the educational institution written notice of the suspension, including the director-general's reasons for suspending the exemption; and

(b) telling the educational institution that it may make a submission, in writing, to the director-general about the suspension not later than 14 days after the day the notice is given to the educational institution.

(3) A suspension takes effect immediately.



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(4) After the end of 14 days after the director-general gives notice of the suspension, the director-general must—

(a) consider any submission made by the entity; and

(b) either—

(i) revoke the suspension; or

(ii) give the entity notice of the director-general's intention to revoke the authorisation under section 787.

## 787 Revocation of educational institution's exemption

(1) The director-general may revoke an educational institution's exemption under section 784 if satisfied that the educational institution has not complied with, or continued to comply with, the work experience standards.

(2) Before revoking an exemption under subsection (1), the director-general must—

(a) give the educational institution written notice of the director-general's intention to revoke the exemption, including the director-general's reasons; and

(b) tell the educational institution that it may make a submission, in writing, to the director-general about the notice not later than 14 days after the day the notice is given to the educational institution; and

(c) if the educational institution makes a submission—consider the submission.



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(3) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

*Note 1* Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

*Note 2* A decision under this section is a reviewable decision (see s 839).



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# Part 21.3 Employment of children and young people

*Note* Work safety matters are dealt with in the *Work Health and Safety Act 2011*.

## 788 Director-general may prohibit employment

The director-general may, by written notice given to an employer (an ***employment prohibition notice***), prohibit the employer from employing, or continuing to employ, a child or young person named in the notice if the director-general believes on reasonable grounds that the employment is, or is likely to be, contrary to the best interests of the child or young person.

## 789 Offence—contravene employment prohibition notice

An employer commits an offence if—

(a) the director-general gives the employer an employment prohibition notice under section 788; and

(b) the employer engages in conduct that contravenes the employment prohibition notice.

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



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## 790 Director-general may state conditions of employment

The director-general may, by written notice given to an employer (an ***employment conditions notice***), state conditions in relation to the employment of a child or young person named in the notice, that must be complied with to ensure the employment is not contrary to the best interests of the child or young person.

**Examples—conditions**

1 conditions about adequate direct supervision of the young person

2 conditions about appropriate induction and training

3 conditions about supply and use of suitable protective clothing

4 conditions about workplace premises including compliance with any registration or licensing requirement

5 conditions about availability of grief or trauma counselling at the workplace

## 791 Offence—contravene employment conditions notice

An employer commits an offence if—

(a) the director-general gives the employer an employment conditions notice under section 790; and

(b) the employer engages in conduct that contravenes the employment conditions notice.

Maximum penalty: 50 penalty units.

## 792 Children and young people employment standards

An employer of a child or young person must comply with the children and young people employment standards in relation to the employment.

*Note* The Minister may make children and young people standards under s 887.



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# Part 21.4 Employment of children and young people under 15 years old

*Note* Work safety matters are dealt with in the *Work Health and Safety Act 2011*.

## 793 What is *light work*?

In this part:

***light work*** means work that—

(a) is not contrary to the best interests of a child or young person; and

(b) is declared by regulation to be light work.

## 794 What is *high risk employment*?

In this part:

***high risk employment*** means employment declared to be high risk employment under section 798 (1).

## 795 Offence—employment of children and young people under 15 years old

(1) A person commits an offence if—

(a) the person employs a child or young person; and

(b) the child or young person is under 15 years old.

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

*Note* Employment as part of an exempted work experience program is not employment for this chapter (see s 781 (1), def ***employment***, par (c)).



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(2) This section is subject to the following sections:

(a) section 796 (which is about light work);

(b) section 797 (which is about family businesses).

## 796 Exception to s 795—employment in light work

(1) Section 795 (1) does not apply to the employment of a child or young person if—

(a) the employment is in light work; and

(b) the child or young person is employed for 10 hours per week or less.

(2) Section 795 (1) does not apply to the employment of a child or young person in light work for more than 10 hours per week if—

(a) the employment is in light work; and

(b) the proposed employer has, at least 7 days before the day the employment starts, told the director-general in writing about the employment.

*Note* If a form is approved under s 886 for this provision, the form must be used.

## 797 Exception to s 795—employment in family business

Section 795 (1) does not apply to the employment of a child or young person if—

(a) the employer is—

(i) a parent of the child or young person; or

(ii) a company of which a parent of the child or young person is a director; or



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(iii) a partnership of which a parent of the child or young person is a partner; and

(b) the employment is light work.

## 798 Declaration of high risk employment

(1) The Minister may declare employment in an industry, occupation or activity to be high risk employment if satisfied that it is likely to harm a child's or young person's health, safety, personal or social development (including by sexual or financial exploitation).

(2) A declaration is a notifiable instrument.

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

## 799 High risk employment—employer may apply for permit

(1) An employer may apply for a permit to employ a child or young person who is under 15 years old in high risk employment (a ***high risk employment permit***).

(2) The application must—

(a) be made in writing to the director-general; and

(b) include complete details of—

(i) the activities that the child or young person will be expected to perform during the proposed employment; and

(ii) the period of proposed employment; and

(iii) how the employer proposes to protect the young person's health, safety, personal or social development during the employment; and



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(c) be accompanied by written consent to the proposed employment of a person with daily care responsibility for the young person.

*Note 1* Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

*Note 3* A fee may be determined under s 885 for this provision.

## 800 High risk employment permit—decision on application

(1) This section applies if the director-general has received an application for a high risk employment permit.

(2) The director-general may issue the permit only if the director-general believes on reasonable grounds that the proposed employment is not likely to harm the child's or young person's health, safety, personal or social development (including by sexual or financial exploitation).

(3) The permit may be subject to conditions about the child's or young person's health and safety.

**Examples—conditions**

1 conditions about adequate direct supervision of the young person

2 conditions about appropriate induction and training

3 conditions about supply and use of suitable protective clothing

4 conditions about workplace premises including compliance with any registration or licensing requirement

5 conditions about availability of grief or trauma counselling at the workplace

(4) The employer must give a copy of the permit to the person with daily care responsibility who gave consent for section 799 (2) (c) when the application for the permit was made.

(5) The director-general need not decide the application if the application does not contain sufficient information to allow the director-general to decide it.



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## 801 High risk employment permit—further information

(1) This section applies if the director-general has received an application from an employer for a high risk employment permit under section 799 or has issued a high risk employment permit to an employer under section 800.

(2) The director-general may, at any time, ask the employer to give the director-general further information about—

(a) the application; or

(b) the employment of the child or young person.

(3) The employer must comply with a request as soon as practicable.

## 802 High risk employment permit—content

A high risk employment permit must state—

(a) the name of the employer who is to employ the child or young person; and

(b) the name of the child or young person who is to be employed; and

(c) the location of the premises where the employment is to be undertaken; and

(d) the length of the permit; and

(e) any conditions to which the permit is subject.

## 803 Offence—employment of child or young person under 15 years old in high risk employment

(1) A person commits an offence if—

(a) the person employs a child or young person; and

(b) the employment is in high risk employment; and



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(c) the child or young person is under 15 years old.

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

(2) This section does not apply to the employment of a child or young person if the director-general has issued a high risk employment permit in relation to the employment of the child or young person.

## 804 Offence—contravene condition of permit

A person commits an offence if—

(a) the director-general has issued a high risk employment permit under section 800; and

(b) the permit is conditional; and

(c) the person engages in conduct that contravenes a condition of the permit.

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



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# Chapter 22 Research involving children and young people

## 805 Definitions—ch 22

In this chapter:

***approved research project*** means a research project approved under section 807 (1).

***ethics committee*** means a committee approved under section 810 as an ethics committee.

***researcher***, for a research project, means the person or entity carrying out, or proposing to carry out, the research project.

***research project***—see section 806.

## 806 What is a *research project*?

(1) In this chapter:

***research project*** means a research project by an entity (the ***researcher***) that involves—

(a) the director-general giving the researcher protected information (including sensitive information) about a child or young person; or

*Note 1* The director-general may give protected information to a researcher for an approved project (see s 855).

*Note 2* ***Protected information*** is defined in s 844. ***Sensitive information*** is defined in s 845.



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(b) the researcher recruiting a person through the director-general to take part in the project if—

(i) the person is a child or young person who is the subject of a proceeding under this Act; or

(ii) the person is a child or young person for whom a care and protection order is in force; or

(iii) the person is a child or young person who is the subject of a child concern report; or

(iv) the person is a child or young person for whom the director-general has parental responsibility; or

(v) the person is a young detainee; or

(c) the researcher recruiting a person who exercises a function under this Act; or

(d) the researcher conducting the research project at a place of care, a place of detention or a place of therapeutic protection.

(2) However, a ***research project*** does not include—

(a) the director-general giving the researcher protected information (including sensitive information) about a child or young person in a form that does not identify an individual or allow an individual's identity to be worked out (including a person who made a child concern report); or

(b) an activity conducted by the director-general that would reasonably be considered to be a quality assurance exercise or an audit.



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## 807 Approval of research projects—generally

(1) The director-general may approve a research project.

(2) However, the director-general may approve a research project only if—

(a) the director-general is satisfied the project complies with or is likely to comply with the research standards; and

(b) if the project involves a child or young person taking part in the project—the director-general has approved the project under section 809.

(3) In deciding whether to approve a research project, the director-general may have regard to a recommendation made by an ethics committee approved by the Minister under section 810.

## 808 Research standards—certain matters to be covered

(1) If a child or young person is to take part in a research project, the research standards must—

(a) ensure that the safety and wellbeing of the child or young person is paramount; and

(b) appropriately protect the child's or young person's health, safety and personal and social development; and

(c) allow the child or young person to stop taking part in the project at any time; and

(d) ensure that the child's or young person's identity as a participant in the project is protected; and

(e) comply with anything else prescribed by regulation.

*Note* The Minister may make research standards under s 887.

(2) If the director-general is to give a researcher protected information about a child or young person for a research project, the research standards must ensure that the secrecy of the information is protected.



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## 809 Approval of research projects—child or young person to take part

(1) This section applies if the director-general is deciding whether to approve a research project that involves a child or young person taking part in the project.

(2) The director-general may approve the research project only if satisfied that—

(a) the researcher is a suitable entity to have contact with children or young people in the way proposed in the project; and

*Note* Suitable entities to provide services are dealt with in pt 2.4.

(b) any other person who is to have contact with children or young people for the project is a suitable entity to have contact with children or young people in the way proposed in the project.

(3) If the director-general approves a research project that involves a child or young person, the researcher must—

(a) seek the written consent, for the child or young person to take part in the research project, of—

(i) the child or young person (if the child or young person has sufficient developmental capacity to give consent); or

(ii) a person with daily care responsibility for the child or young person; and

(b) tell the child or young person that—

(i) he or she can refuse consent; and

(ii) if consent is given, he or she can stop taking part in the project at any time.



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## 810 Approval of ethics committees

(1) The Minister may approve a stated committee as an ethics committee for this chapter.

(2) An approval is a notifiable instrument.

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

## 811 Offence—researcher contravene approved standards

A person commits an offence if the person—

(a) is a researcher for an approved research project; and

(b) carries out the approved research project in a way that does not comply with the research standards.

Maximum penalty: 50 penalty units.



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# Chapter 23 Enforcement

*Notes to ch 23*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

The decision-maker must, where practicable and appropriate, have suitable qualifications, experience or skills to make decisions in relation to children and young people (see s 9).

## Part 23.1 General

### 812 Definitions—ch 23

In this chapter:

***authorised person***—see section 26.

*Note* If the director-general delegates the functions under this chapter the delegate is an authorised person and must be given an identity card (see s 26).

***connected***—a thing is connected with an offence if—

(a) the offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used to commit the offence.



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***occupier***, of premises, includes—

(a) a person believed on reasonable grounds to be an occupier of the premises; and

(b) a person apparently in charge of the premises.

***offence*** includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.



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# Part 23.2 Powers of authorised people

## 813 Power to enter premises—general

(1) For this Act, an authorised person may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or

(b) at any time, enter premises with the occupier's consent; or

(c) enter premises in accordance with a search warrant.

(2) The authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.

(3) To remove any doubt, the authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

(4) However, subsection (1) does not authorise entry into a part of premises that is being used only for residential purposes.

(5) In this section:

***at any reasonable time*** includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).



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## 814 Power to enter premises—Chapter 13 (Care and protection and therapeutic protection—emergency situations)

(1) For this Act, an authorised person or police officer may, at any time, enter premises if—

(a) the authorised person or police officer believes on reasonable grounds that a child or young person at the premises is in need of emergency care and protection or emergency therapeutic protection; and

*Note 1* ***In need of emergency care and protection*** is defined in s 403.

*Note 2* ***In need of emergency therapeutic protection*** is defined in s 404.

(b) the purpose of the entry is for the authorised person or police officer to take emergency action for the child or young person under section 406.

*Note* ***Emergency action*** is defined in s 405.

(2) The authorised person or police officer may use reasonable and necessary force to enter the premises to safeguard the wellbeing of the child or young person.

(3) This section is additional to section 813.

## 815 Power to enter premises—ch 15 (Care and Protection—director-general has aspect of parental responsibility)

(1) For this Act, an authorised person may, at any reasonable time, enter premises where a child or young person is living if—

(a) the director-general has placed the child or young person with an out-of-home carer under section 512; and

(b) the purpose of the entry is to ensure that the child or young person is being properly cared for.



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(2) For this Act, an authorised person may also, at any reasonable time, enter a place operated by a residential care service if—

(a) the Minister—

(i) is deciding whether to approve the place as a place of care under section 525; and

(ii) has asked the residential care service to allow the director-general to inspect the place; and

(b) the residential care service has agreed to allow the director-general to inspect the place.

*Note* If the residential care service does not allow the director-general to inspect the place, the Minister need not decide whether to approve the place as a place of care (see s 525).

(3) This section is additional to section 813.

(4) In this section:

***at any reasonable time*** includes at any time during normal business hours.

*Note* An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see pt 2.3 and *Official Visitor Act 2012*).



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## 816 Power to enter premises—ch 16 (Care and protection—therapeutic protection of children and young people)

(1) For this Act, an authorised person may, at any reasonable time, enter a therapeutic protection place for which the operating entity is not the director-general.

(2) For this Act, an authorised person may also, at any reasonable time, enter any place for which the operating entity is not the director-general if—

(a) the Minister—

(i) is deciding whether to declare the place as a therapeutic protection place under section 625; and

(ii) has asked the operating entity to allow the director-general to inspect the place; and

(b) the operating entity for the place has agreed to allow the director-general to inspect the place.

(3) However, subsection (1) authorises entry into a part of premises used for residential purposes only if the part of the premises is used to operate the therapeutic protection place.

(4) This section is additional to section 813.

(5) In this section:

***at any reasonable time*** includes at any time during normal business hours.



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## 817 Power to enter premises—ch 20 (Childcare services)

(1) For this Act, an authorised person may, at any reasonable time, enter premises if—

(a) the director-general has—

(i) received an application for a childcare service licence under section 743 and has asked the proposed proprietor to allow the director-general to inspect the premises where the proposed proprietor proposes to operate the childcare service under section 744; or

(ii) received an application for renewal of a childcare service licence under section 754 and has asked the proposed proprietor to allow the director-general to inspect the premises where the proposed proprietor proposes to operate the childcare service under section 755; and

(b) the proposed proprietor has agreed to allow the director-general to inspect the premises.

*Note* If the proposed proprietor does not allow the director-general to inspect the premises, the director-general need not decide whether the proposed proprietor is eligible for the childcare service licence or for renewal of the licence (see s 745 and s 756).

(2) For this Act, an authorised person may also—

(a) at any reasonable time, enter premises if a licensed childcare service is operating on the premises; or

(b) at any time, enter premises with the occupier's consent.

(3) However, this section authorises entry into a part of premises used for residential purposes only if the part of the premises is used to operate the childcare service.

(4) This section is additional to section 813.



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(5) In this section:

***at any reasonable time*** includes at any time during normal business hours.

## 818 Production of identity card

An authorised person must not remain at premises entered under this chapter if the authorised person does not produce his or her identity card when asked by the occupier.

## 819 Consent to entry

(1) When seeking the consent of an occupier of premises to enter premises under section 813 (1) (b), an authorised person must—

(a) produce his or her identity card; and

(b) tell the occupier—

(i) the purpose of the entry; and

(ii) that anything found and seized under this chapter may be used in evidence in court; and

(iii) that consent may be refused.

(2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—

(a) that the occupier was told—

(i) the purpose of the entry; and

(ii) that anything found and seized under this chapter may be used in evidence in court; and

(iii) that consent may be refused; and

(b) that the occupier consented to the entry; and

(c) stating the time and date when consent was given.



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(3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

(4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this chapter if—

(a) the question arises in a proceeding in the court whether the occupier consented to the entry; and

(b) an acknowledgment of consent is not produced in evidence; and

(c) it is not proved that the occupier consented to the entry.

## 820 General powers on entry to premises

(1) An authorised person who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:

(a) inspect or examine;

(b) take measurements or conduct tests;

(c) take samples;

(d) take photographs, films, or audio, video or other recordings;

(e) make copies of, or take extracts from, a document kept at the premises;

(f) require the occupier, or anyone at the premises, to give the authorised person records, or copies of records that the person has or has access to that are reasonably required by the authorised person for this Act;

(g) require the occupier, or an employee or agent of the occupier, to give the authorised person any other assistance to exercise a power under this chapter.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.



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(2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (f) or (g).

Maximum penalty: 50 penalty units.

## 821 Duty to give information or documents

(1) An authorised person may, by written notice given to a person, require the person to give to the authorised person the stated information or document required for this Act.

(2) The information or document must be given to the authorised person within the period stated in the notice or, if an authorised person allows a longer period, the longer period.

(3) The period stated in the notice must be not less than 14 days after the day the notice is given to the person.

(4) A person commits an offence if—

(a) the person is required to give information or a document to an authorised person under subsection (1); and

(b) the person does not take all reasonable steps to comply with the requirement within the period applying under subsection (2).

Maximum penalty: 50 penalty units.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

## 822 Power to require name and address

(1) An authorised person may require a person to state the person's name and home address if the authorised person believes on reasonable grounds that the person is committing or has just committed an offence against this Act.

*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).



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(2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.

(3) The authorised person must also produce his or her identity card for inspection by the person.

(4) A person must comply with a requirement made of the person under subsection (1) if the authorised person—

(a) told the person the reason for the requirement; and

(b) produced his or her identity card for inspection by the person.

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

## 823 Power to seize things

(1) An authorised person who enters premises under this chapter with the occupier's consent may seize anything at the premises if—

(a) satisfied on reasonable grounds that the thing is connected with an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

(2) An authorised person who enters premises under a warrant under this chapter may seize anything at the premises that the authorised person is authorised to seize under the warrant.

(3) An authorised person who enters premises under this chapter (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure is necessary to prevent the thing from being—

(i) concealed, lost or destroyed; or



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(ii) used to commit, continue or repeat the offence.

(4) Having seized a thing, an authorised person may—

(a) remove the thing from the premises where it was seized (the ***place of seizure***) to another place; or

(b) leave the thing at the place of seizure but restrict access to it.

(5) A person commits an offence if—

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and

(b) the person knows access to the seized thing has been restricted; and

(c) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

(6) Strict liability applies to subsection (5) (a).



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# Part 23.3 Search warrants

## 824 Warrants generally

(1) An authorised person may apply to a magistrate for a warrant to enter premises.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

(5) The warrant must state—

(a) that an authorised person may, with any necessary assistance and force, enter stated premises and exercise the authorised person's powers under this chapter; and

(b) the offence for which the warrant is issued; and

(c) the things that may be seized under the warrant; and

(d) the hours when the premises may be entered; and

(e) the date, within 14 days after the day of the warrant's issue, the warrant ends.



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## 825 Warrants—application made other than in person

(1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of urgent circumstances.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately provide a written copy to the authorised person if it is practicable to do so.

(5) If it is not practicable to provide a written copy to the authorised person—

(a) the magistrate must tell the authorised person—

(i) the terms of the warrant; and

(ii) the date and time the warrant was issued; and

(b) the authorised person must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this chapter.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and



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(b) if the authorised person completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—

(a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a warrant under this section.

## 826 Search warrants—announcement before entry

(1) An authorised person must, before anyone enters premises under a search warrant—

(a) announce that the authorised person is authorised to enter the premises; and

(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

(2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including the authorised person or a person assisting); or

(b) that the effective execution of the warrant is not frustrated.



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## 827 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

(a) a copy of the warrant; and

(b) a document setting out the rights and obligations of the person.

## 828 Occupier entitled to be present during search etc

(1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.

(2) However, the person is not entitled to observe the search if—

(a) to do so would impede the search; or

(b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.



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# Part 23.4 Return and forfeiture of things seized

## 829 Receipt for things seized

(1) As soon as practicable after an authorised person seizes a thing under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 823 (Power to seize things).

(3) A receipt under this section must include the following:

(a) a description of the thing seized;

(b) an explanation of why the thing was seized;

(c) the authorised person's name, and how to contact the authorised person;

(d) if the thing is moved from the premises where it is seized—where the thing is to be taken;

(e) if an authorised person has restricted access to the thing under section 823 (4) (b)—it is an offence under section 823 (5) to interfere with the thing without an authorised person's approval.

## 830 Moving things to another place for examination or processing under search warrant

(1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

(a) both of the following apply:

(i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;



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(ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

(b) the occupier of the premises agrees in writing.

(2) The thing may be moved to another place for examination or processing for not longer than 72 hours.

(3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.

(4) The authorised person must give the occupier of the premises notice of the application, and the occupier is entitled to be heard on the application.

(5) If a thing is moved to another place under this section, the authorised person must, if practicable—

(a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and

(b) allow the occupier or the occupier's representative to be present during the examination or processing.

(6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

## 831 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may—

(a) inspect it; and

(b) if it is a document—take extracts from it or make copies of it.



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## 832 Return of things seized

(1) A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—

(a) a prosecution for an offence relating to the thing is not started within 90 days after the day of the seizure; or

(b) a prosecution for an offence relating to the thing is started within 90 days after the day of the seizure but the court does not find the offence proved.

(2) If anything seized under this chapter is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—

(a) is forfeited to the Territory; and

(b) may be sold, destroyed or otherwise disposed of as the director-general directs.



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# Part 23.5 Miscellaneous

## 833 Damage etc to be minimised

(1) In the exercise, or purported exercise, of a function under this chapter, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.

(2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this chapter, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.

(3) If the damage happens at premises entered under this chapter in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

## 834 Compensation for exercise of enforcement powers

(1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this chapter by an authorised person or a person assisting an authorised person.

(2) Compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.



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# Chapter 24 Appeals and review

*Notes to ch 24*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

## Part 24.1 Appeals

### Division 24.1.1 Appeals generally

#### 835 Appeals to Supreme Court—generally

(1) A person may appeal to the Supreme Court in relation to a matter arising under this Act in accordance with section 836.

*Note* An appeal in relation to a protection order under the *Family Violence Act 2016* or the *Personal Violence Act 2016* made by the Childrens Court under s 459, is dealt with under the relevant Act (see s 460 (c)).

(2) 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.

### Division 24.1.2 Appeals—Care and protection chapters

#### 836 Appeals to Supreme Court—care and protection chapters

(1) An appeal from any of the following decisions of the Childrens Court under the care and protection chapters may be made to the Supreme Court:

(a) the making of an order or other decision;

(b) a refusal to make an order or other decision applied for;



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(c) to extend an order or other decision;

(d) a refusal to extend an order or other decision;

(e) to amend an order or other decision;

(f) a refusal to amend an order or other decision;

(g) to revoke an order or other decision;

(h) a refusal to revoke an order or other decision.

(2) The following people may appeal under this section:

(a) a party to the proceeding in which the decision was made;

(b) a person named in the order or other decision;

(c) anyone else with the leave of the Supreme Court.

## 837 Application of Magistrates Court Act

The *Magistrates Court Act 1930*, part 4.5 (Civil appeals) applies in relation to an appeal mentioned in section 836 of this Act as if—

(a) it were an appeal from a judgment or order mentioned in the *Magistrates Court Act 1930*, section 274 (2); and

(b) all other necessary changes, and any changes prescribed by regulation, were made.

## 838 Orders that Supreme Court may make

On an appeal mentioned in section 836, the Supreme Court must not make an order or other decision that is not an order or other decision that could have been made by the Childrens Court in the proceeding appealed from.



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## Division 24.1.3 Notification and review of decisions

### 839 Meaning of *reviewable decision*—div 24.1.3

In this division:

***reviewable decision*** means a decision mentioned in table 839.1, 839.1A, 839.2 or 839.3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

**Table 839.1 Review of decisions—ch 2 (Administration)**

| column 1<br>item | column 2<br>section | column 3<br>decision | column 4<br>organisation |
|---|---|---|---|
| 1 | 63 (1) | refuse to approve organisation as suitable entity to be approved care and protection organisation | organisation |
| 2 | 63 (1) | revoke approval of organisation as suitable entity to be approved care and protection organisation | organisation |
| 3 | 63 (1) | refuse to approve individual as suitable entity to be responsible person for approved care and protection organisation | individual or organisation |
| 4 | 63 (1) | revoke approval of individual as suitable entity to be responsible person for approved care and protection organisation | individual or organisation |



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**Table 839.1A Review of decisions—ch 15 (Care and protection—director-general has aspect of parental responsibility)**

| column 1<br>item | column 2<br>section | column 3<br>decision | column 4<br>entity |
|---|---|---|---|
| 1 | 514B | refuse to approve person as approved carer | person |
| 2 | 514E | refuse to renew person's approval as approved carer | person |
| 3 | 514EA | revoke person's approval as approved carer | person |
| 4 | 516 | refuse to authorise person as kinship carer | person |
| 5 | 518 | refuse to authorise person as foster carer | person |
| 6 | 520 | refuse to authorise approved residential care organisation as residential care service | approved residential care organisation |
| 7 | 524 (4) (a) | revoke authorisation of approved residential care organisation as residential care service | approved residential care organisation |
| 8 | 525 (1) | refuse to approve place operated by approved residential care organisation as place of care | approved residential care organisation |
| 9 | 525 (4) | revoke approval of place operated by approved residential care organisation as place of care | approved residential care organisation |

**Table 839.2 Review of decisions—ch 20 (Childcare services)**

| column 1<br>item | column 2<br>section | column 3<br>decision | column 4<br>entity |
|---|---|---|---|
| 1 | 747 (3) | refuse to give proprietor childcare service licence | proprietor |
| 2 | 751 (4) | refuse to extend childcare service licence | licensed proprietor |
| 3 | 752 (3) | refuse to amend childcare service licence | licensed proprietor |



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| column 1<br>item | column 2<br>section | column 3<br>decision | column 4<br>entity |
|---|---|---|---|
| 4 | 753 (3) | refuse to transfer childcare service licence | licensed proprietor |
| 5 | 758 (3) | refuse to renew childcare service licence | licensed proprietor |
| 6 | 760 (4) (a) | confirm compliance notice | licensed proprietor |
| 7 | 761 (2) | suspend childcare service licence | proprietor whose licence suspended |
| 8 | 762 (3) (a) | confirm suspension of childcare service licence | proprietor whose licence suspended |
| 9 | 763 (2) | immediately suspend childcare service licence | proprietor whose licence suspended |
| 10 | 765 (3) | cancel childcare service licence | proprietor whose licence cancelled |

**Table 839.3 Review of decisions—ch 21 (Employment of children and young people)**

| column 1<br>item | column 2<br>section | column 3<br>decision | column 4<br>entity |
|---|---|---|---|
| 1 | 786 | suspend educational institution's exemption (in relation to work experience program) | educational institution |
| 2 | 787 | revoke educational institution's exemption (in relation to work experience program) | educational institution |
| 3 | 788 | prohibit employer from employing, or continuing to employ, child or young person | employer<br>child or young person |
| 4 | 790 | state conditions in relation to employment of child or young person that must be complied with | employer<br>child or young person |
| 5 | 800 (2) | refuse to issue high risk employment permit | employer<br>child or young person |



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| column 1<br>item | column 2<br>section | column 3<br>decision | column 4<br>entity |
|---|---|---|---|
| 6 | 800 (3) | issue high risk employment permit subject to conditions | employer<br>child or young person |

## 839A Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in table 839.1, 839.1A, 839.2 or 839.3, column 4 in relation to the decision.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

## 839B Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

(a) an entity mentioned in a table in this part, column 4 in relation to the decision;

(b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.



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## 840 Decision to refuse to give childcare service licence must not be stayed or otherwise affected pending outcome of review

(1) The ACAT must not make an interim order staying or otherwise affecting the operation or implementation of a decision under section 747 (3) (Childcare service licence—decision on application) to refuse to give a childcare service licence.

(2) The Supreme Court must not make an order or other decision under the *Administrative Decisions (Judicial Review) Act 1989*, section 16 in relation to a decision under section 747 (3) (Childcare service licence—decision on application) to refuse to give a childcare service licence.



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# Chapter 25 Information secrecy and sharing

*Notes to ch 25*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

## Part 25.1 Application and definitions

### 841 Application—ch 25

The provisions of this chapter apply to young offenders and young detainees who are adults in the same way as they apply to young offenders and young detainees who are under 18 years old.

### 842 Definitions—Act and ch 25

(1) In this Act:

***protected information***—see section 844.

***sensitive information***—see section 845.

(2) In this chapter:

***divulge*** includes communicate.

***information*** means information in any form and includes advice.

**Examples—information**

1 a verbal opinion of a health practitioner
2 a written document
3 an electronic record
4 a verbal recommendation for action



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***information holder***—see section 843.

***State*** includes New Zealand.

## 843 Who is an *information holder*?

In this chapter:

***information holder*** means a person who—

(a) is or has been—

(i) the director-general; or

(ii) the public advocate; or

(iii) an official visitor; or

(iv) a researcher for an approved research project; or

*Note* Approval of researchers and research projects is dealt with in ch 22.

(v) someone else exercising a function, or purporting to exercise a function, under this Act (other than a judge or magistrate); or

(vi) someone else engaged in the administration of this Act; or

(b) has been given information under this Act by a person mentioned in paragraph (a).

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

- s 497 (Annual review report—must be given to certain people);
- s 850 (Minister or director-general—giving information to person about the person);
- s 851 (Minister or director-general—giving information in best interests of child or young person);
- s 852 (Director-general—giving information to person under corresponding provisions);
- s 855 (Director-general—giving information to researcher);



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- s 860 (Minister or director-general—giving safety and wellbeing information to information sharing entity);
- s 865 (Giving protected information to court or investigative entity);
- s 865A (Giving protected information to police).

## 844 What is *protected information*?

(1) In this Act:

***protected information*** means information about a person that is disclosed to, or obtained by, an information holder because the information holder is, or has been, an information holder.

(2) Without limiting subsection (1), ***protected information*** includes sensitive information.

## 845 What is *sensitive information*?

(1) For this Act:

***sensitive information*** means any of the following:

(a) care and protection report information;

(b) care and protection appraisal information;

(c) interstate care and protection information;

(d) family group conference information;

(e) contravention report information;

(f) information prescribed by regulation.

*Note* Prenatal report information is also ***sensitive information*** (see s 365).

(2) In this section:

***care and protection appraisal information*** means information—

(a) in a record of an appraisal; or

(b) that would allow information in a record of an appraisal to be worked out; or



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(c) in a report (an ***incident report***) to the public advocate under section 507 (Public advocate to be told about action following appraisals); or

(d) that would allow information in a record of an appraisal or incident report to be worked out.

***care and protection report information*** means information—

(a) in a child concern report; or

(b) received by the director-general under section 360 or section 361; or

(c) in a record that relates to—

(i) a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or

(ii) a report under the *Children and Young People Act 1999*, section 157A, section 158 or section 159 (as in force at any time); or

(iii) any other information received by the director-general under the *Children and Young People Act 1999* about the suspected abuse or neglect of a child or young person; or

(iv) any information received about the suspected abuse or neglect of a child or young person at any time an ordinance was in force in relation to child welfare; or

(d) that would allow information mentioned in paragraph (a), (b) or (c) to be worked out; or

(e) that identifies a person as a person who gave the information mentioned in paragraph (a), (b) or (c); or

(f) that would allow a person's identity as a person who gave the information mentioned in paragraph (a), (b) or (c) to be worked out.



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***contravention report information*** means information—

(a) in a confidential report made under section 876 (Confidential report of contravention of Act); or

(b) that would allow the information in a confidential report to be worked out; or

(c) that identifies a person as a person who made a confidential report; or

(d) that would allow a person's identity as a person who made a confidential report to be worked out.

***family group conference information*** means information—

(a) about anything said or done to facilitate, or anything said or done at, a family group conference arranged under section 80 (2); or

(b) information in a family group conference agreement, or in a family group conference outcome report, that relates to a family group conference arranged under section 80 (2); or

(c) information that would allow information mentioned in paragraph (a) or (b) to be worked out.

*Note* Family group conferences are dealt with in ch 3 and ch 12.

***interstate care and protection information*** means information—

(a) in a report (an ***interstate care and protection report***) made under a provision of a law of a State corresponding (or substantially corresponding) to section 354 (Voluntary reporting of abuse and neglect), section 356 (Offence—mandatory reporting of abuse) or section 362 (Prenatal reporting—anticipated abuse and neglect), that is provided to the director-general under a section corresponding (or substantially corresponding) to—

(i) section 852 (Director-general—giving information to person under corresponding provisions); or



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(ii) section 861 (Information sharing entity—giving safety and wellbeing information to director-general); or

(b) that would allow the information in an interstate care and protection report to be worked out; or

(c) that identifies a person as a person who made an interstate care and protection report; or

(d) that would allow a person's identity as a person who made an interstate care and protection report to be worked out.



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# Part 25.2 Offence to record or divulge protected information

## 846 Offence—secrecy of protected information

(1) An information holder commits an offence if the information holder—

(a) makes a record of protected information about someone else; and

(b) is reckless about whether the information is protected information about someone else.

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

(2) An information holder commits an offence if the information holder—

(a) does something that divulges protected information about someone else; and

(b) is reckless about whether—

(i) the information is protected information about someone else; and

(ii) doing the thing would result in the information being divulged to someone else.

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



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## 847 Exception to s 846—information given under this Act

(1) Section 846 (1) does not apply to the making of a record of protected information if the record is made—

(a) under this Act; or

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

(2) Section 846 (2) does not apply to the divulging of protected information if the information is divulged—

(a) under this Act; or

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

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

- s 497 (Annual review report—must be given to certain people);
- pt 25.3 (Sharing protected information);
- pt 25.4 (Courts and investigative entities).

## 848 Exception to s 846—information given under another law

(1) Section 846 (1) (Offence—secrecy of protected information) does not apply to the making of a record of protected information if—

(a) the information is not sensitive information; and

(b) the record is made—

(i) in the exercise of a function, as an information holder, under another law in force in the Territory; or

(ii) under another law in force in the Territory.



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(2) Section 846 (2) does not apply to the divulging of protected information if—

(a) the information is not sensitive information; and

(b) the information is divulged—

(i) under another territory law; or

(ii) in the exercise of a function, as an information holder, under another territory law.

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

- *Freedom of Information Act 2016*, s 7 (Right of access to government information)
- *Health Records (Privacy and Access) Act 1997*, s 10 (Statement of principle regarding right of access), and s 14A (No access to health record relating to Children and Young People Act complaint etc).

## 849 Exception to s 846—information given with agreement

Section 846 (Offence—secrecy of protected information) does not apply to protected information about a person if the information—

(a) is not sensitive information; and

(b) is divulged with the person's consent.



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# Part 25.3 Sharing protected information

*Note to pt 25.3*

The Minister may make standards for the giving and seeking of protected information by the director-general under this chapter (see s 887 (2) (j) (Standard-making power)).

## Division 25.3.1 Generally

### 850 Minister or director-general—giving information to person about the person

The Minister or director-general may give a person protected information held by the Minister or director-general about the person.

### 851 Minister or director-general—giving information in best interests of child or young person

(1) The Minister or director-general may give someone protected information about a child or young person if the Minister or director-general considers that giving the information is in the best interests of the child or young person.

(2) Before the Minister gives protected information under this section, the Minister must ask the director-general for advice about giving the information and consider any advice given by the director-general.

(3) An information sharing entity may ask the director-general for information the director-general may give the information sharing entity under this section.



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## 852 Director-general—giving information to person under corresponding provisions

The director-general may give protected information to any person who is exercising a function, or otherwise engaged in the administration of, a provision of a law of a State corresponding (or substantially corresponding) to a provision of this Act if the director-general considers that giving the information is necessary to allow the person to exercise the function to administer the law.

## 853 Family group conference facilitator—giving information in best interests of child or young person

A family group conference facilitator may give the director-general protected information about a child or young person if the family group conference facilitator considers that giving the information is in the best interests of the child or young person.

*Note* Family group conferences are dealt with in ch 3 and ch 12.

## 854 Out-of-home carer and approved kinship and foster care organisation—giving information necessary for responsibilities

(1) A carer may give someone protected information, that is not sensitive information, about a child or young person if—

(a) the carer considers that giving the information is necessary for the proper exercise of the carer's responsibilities for the child or young person; and

(b) the giving of the information is in accordance with any directions given by the director-general.

(2) In this section:

***carer*** means—

(a) an out-of-home carer; or

(b) an approved kinship and foster care organisation.



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## 855 Director-general—giving information to researcher

(1) The director-general may give protected information to a researcher for an approved research project.

(2) The information may be about the child or young person, his or her family or someone else.

(3) In this section:

***approved research project***—see section 805.

## 856 Director-general—giving information to authorised assessor

(1) The director-general may give an authorised assessor for a care and protection assessment protected information in relation to the child or young person, or other person, who is the subject of the assessment.

(2) In this section:

***authorised assessor***—see section 438.

## 856A Director-general—giving information to commissioner for fair trading

(1) The director-general may give the commissioner for fair trading protected information if satisfied on reasonable grounds that the information is relevant to the exercise of the commissioner's functions under the *Working with Vulnerable People (Background Checking) Act 2011*.

(2) This section does not limit the information that the director-general may otherwise give to the commissioner under this Act or any other territory law.



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## 856B Responsible person—giving information to commissioner for fair trading

(1) A responsible person for an approved care and protection organisation may give the commissioner for fair trading protected information if satisfied on reasonable grounds that the information is relevant to the exercise of the commissioner's functions under the *Working with Vulnerable People (Background Checking) Act 2011*.

(2) This section does not limit the information that the person may otherwise give to the commissioner under this Act or any other territory law.

## 857 Certain identifying information not to be given

Information must not be given to anyone under this part if it is information that—

(a) identifies a person as a person who made—

(i) a child concern report; or

(ii) a prenatal report; or

(iii) a confidential report; or

(iv) an interstate care and protection report; or

(v) a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or

(vi) a report under the *Children and Young People Act 1999*, section 157A, section 158 or section 159 (as in force at any time); or

(b) would allow a person's identity as a person who made a report or notification mentioned in paragraph (a) to be worked out.



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## Division 25.3.2 Sharing safety and wellbeing information

### 858 What is *safety and wellbeing information*?

(1) In this division:

***safety and wellbeing information***, in relation to a child or young person, means information that is relevant to the health, safety or wellbeing of the child or young person.

**Examples—information relevant to safety or wellbeing of child or young person**

1 information needed to assess whether a child or young person is at risk of abuse or neglect

2 information needed to assess whether a child or young person is in need of care and protection

3 information needed to implement a care and protection order

4 information needed to respond to a serious risk of harm to a child or young person

5 information about the health of the child or young person

6 information about the educational needs of the child or young person

7 information about the immunisation history of the child or young person

(2) The information may be about the child or young person, his or her family or someone else.

(3) To remove any doubt, safety and wellbeing information may be protected or sensitive information.

### 859 Who is an *information sharing entity*?

(1) In this part:

***information sharing entity***, for a child or young person, means any of the following:

(a) a parent of the child or young person;



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(b) someone else who has parental responsibility for the child or young person;

*Note* Parental responsibility for a child or young person is dealt with in div 1.3.2.

(c) an out-of-home carer for the child or young person;

*Note* Out-of-home carers are dealt with in pt 15.4.

(d) an approved kinship and foster care organisation;

*Note* ***Approved kinship and foster care organisation***—see s 502.

(e) a Minister;

(f) an ACT education provider;

(g) a police officer or a member of a police service or force of a State;

(h) a health facility;

(i) any of the following entities that provides services to, or has contact with, the child or young person or his or her family:

(i) an administrative unit;

(ii) a community-based service;

(iii) a territory authority (other than the legal aid commission);

(iv) a territory instrumentality;

(v) an entity established under a law of a State or the Commonwealth;

(vi) the holder of a position established under a law of a State or the Commonwealth;

(vii) a public employee (other than a judge or magistrate).

(2) In this section:

***ACT education provider***—see section 25.



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## 860 Minister or director-general—giving safety and wellbeing information to information sharing entity

(1) The Minister or director-general may give an information sharing entity for a child or young person safety and wellbeing information in relation to the child or young person.

(2) An information sharing entity may ask the director-general for information the director-general can give the information sharing entity under this section.

(3) This section is additional to section 25 (Director-general may ask for assistance, etc).

*Note* The director-general may also ask an information sharing entity for information relevant to the safety, welfare and wellbeing of a child or young person (see s 862).

## 861 Information sharing entity—giving safety and wellbeing information to director-general

An information sharing entity for a child or young person may give the director-general safety and wellbeing information in relation to the child or young person if the information sharing entity considers that giving the information is in the best interests of the child or young person.

## 862 Director-general—asking information sharing entity for safety and wellbeing information

(1) The director-general may ask an information sharing entity for a child or young person to give the director-general safety and wellbeing information in relation to the child or young person.

(2) An information sharing entity must comply with a request under subsection (1)—

(a) promptly; and



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(b) if the director-general tells the entity that the situation is an emergency—not later than 24 hours after the entity receives the request.

(3) This section is additional to section 25 (Director-general may ask for assistance, etc).

## 863 Care teams—sharing safety and wellbeing information

(1) The director-general may declare that the director-general and a group of other people and entities are a care team for a child or young person.

**Examples—care team members**

1 an out-of-home carer
2 a counsellor
3 a psychologist
4 a health practitioner
5 an education provider
6 an approved kinship and foster care organisation
7 a family support worker
8 a youth support worker
9 a therapeutic protection service
10 a member of the child or young person's treating team under the *Health Records (Privacy and Access) Act 1997*

(2) The director-general may include a person or entity as a member of a care team for a child or young person only if satisfied that the person or entity is responsible for coordinating or delivering a service or care to the child or young person, or his or her family members—

(a) under this Act; or

(b) for a criminal proceeding under another territory law; or



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(c) for the administration of a sentence or order under another territory law.

**Examples—par (c)**

1 administration of a sentence under the *Crimes (Sentence Administration) Act 2005*

2 administration of a mental health order or forensic mental health order under the *Mental Health Act 2015*

3 administration of a treatment order under the *Drugs of Dependence Act 1989*

(3) A member of a care team for a child or young person—

(a) may ask another member of the care team for safety and wellbeing information about the child or young person; and

(b) may give safety and wellbeing information to another member of the care team.

(4) The giving or receiving of safety and wellbeing information under this section is subject to any instruction made by the director-general under section 23.

## Division 25.3.3 Sharing reportable conduct information

### 863A Definitions—div 25.3.3

(1) In this division:

***child safety information sharing entity*** means an entity to which the ombudsman may disclose information under the *Ombudsman Act 1989*, section 34A.

***designated entity***—

(a) see the *Ombudsman Act 1989*, section 17EA; and

(b) includes the ombudsman.

***head***, of a designated entity—see the *Ombudsman Act 1989*, section 17D (1).



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***reportable conduct information*** means any information, including protected information, that is relevant to the protection of a child or young person or a class of child or young person against reportable conduct.

(2) In this section:

***reportable conduct***—see the *Ombudsman Act 1989*, dictionary.

## 863B Entity may request reportable conduct information

(1) A child safety information sharing entity or the head of a designated entity (the ***requesting entity***) may ask another child safety information sharing entity or designated entity, in writing, to give the requesting entity reportable conduct information in relation to a child, young person or class of child or young person.

(2) However, a requesting entity must not ask another child safety information sharing entity or designated entity for information under this section unless satisfied on reasonable grounds that the information is relevant for the requesting entity to—

(a) do any of the following for the safety, welfare or wellbeing of a child, young person or class of child or young person:

(i) make a decision or an assessment;

(ii) plan, begin, or conduct an investigation;

(iii) provide any other service in accordance with the entity's functions; or

(b) deal with a risk to a child, young person or class of child or young person that might arise in the course of the requesting entity's operation as a child safety information sharing entity or a designated entity, including as an employer.



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## 863C Entity may provide reportable conduct information

(1) If a child safety information sharing entity or a designated entity (a ***requested entity***) is asked under section 863B (1) to provide reportable conduct information, and is satisfied on reasonable grounds that the information is relevant for the entity making the request (the ***requesting entity***) to do or deal with something mentioned in section 863B (2), the requested entity must provide the information.

(2) However, a requested entity may refuse to provide reportable conduct information if satisfied on reasonable grounds that providing the information would—

(a) prejudice an investigation of a contravention or possible contravention of a law in force in the territory; or

(b) prejudice a coronial inquest or inquiry; or

(c) contravene legal professional or client legal privilege; or

(d) enable the existence or identity of a confidential source of information for the enforcement or administration of a territory law to be revealed; or

(e) endanger a person's life or physical safety; or

(f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a territory law; or

(g) prejudice a proceeding in relation to a care and protection order; or

(h) not be in the public interest.

(3) If a requested entity refuses to provide reportable conduct information to a requesting entity, the requested entity must tell the requesting entity, in writing, that the entity refuses to provide the information and the reason for the refusal.



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## 863CA Unsolicited provision of information

A child safety information sharing entity or the head of a designated entity (the ***providing entity***) may, on the providing entity's own initiative, give reportable conduct information to another child safety information sharing entity or a designated entity (the ***receiving entity***) if the providing entity is satisfied on reasonable grounds that giving the information is relevant for the receiving entity to—

(a) do any of the following for the safety, welfare or wellbeing of a child, young person or class of child or young person:

(i) make a decision or an assessment;

(ii) plan, begin, or conduct an investigation;

(iii) provide any other service in accordance with the receiving entity's functions; or

(b) deal with a risk to a child, young person or class of child or young person that might arise in the course of the receiving entity's operation as a child safety information sharing entity or designated entity, including as an employer.

## 863D Restriction on use of information given under this division

Reportable conduct information given under this division to a child safety information sharing entity or a designated entity must not be used or given for a purpose that is not associated with the safety, welfare or wellbeing of a child, young person or class of child or young person to whom the information relates, except in accordance with a territory law.



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## 863E Protection from liability for providing reportable conduct information

A person who honestly and without recklessness provides reportable conduct information under this division to a child safety information sharing entity or a designated entity—

(a) does not commit a breach of—

(i) confidence; or

(ii) professional etiquette or ethics; or

(iii) a rule of professional conduct; and

(b) is not liable for any civil, criminal or other disciplinary action only because of providing the information.

## 863F Reportable conduct information may be given despite territory law to the contrary

Reportable conduct information may be given to a child safety information sharing entity or a designated entity in accordance with this division despite any territory law to the contrary.

## 863G Coordination etc between entities

To ensure the safety, welfare or wellbeing of children and young people, child safety information sharing entities and designated entities must take reasonable steps to ensure cooperative, coordinated and efficient provision of reportable conduct information between child safety information sharing entities and designated entities.



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# Part 25.4 Courts and investigative entities

## 864 Definitions—pt 25.4

In this part:

***court*** includes a tribunal.

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

*Note* ***Investigative entity***—see the dictionary.

## 865 Giving protected information to court or investigative entity

(1) An information holder must give protected information to a court or investigative entity if required to do so for this Act or another territory law.

(2) An information holder must produce a document containing protected information to a court or investigative entity if required to do so for this Act or another territory law.

(3) An information holder may give protected information to a court or investigative entity if authorised to do so by this Act or another territory law.

(4) An information holder may produce a document containing protected information to a court or investigative entity if authorised to do so by this Act or another territory law.

(5) In this section:

***court*** includes a court of the Commonwealth, a State or another Territory.

**Example**

the Family Court of Australia



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## 865A Giving protected information to police

(1) The director-general must give protected information to the chief police officer if a matter has been referred to the chief police officer under section 360 (4) (c).

(2) The director-general may otherwise give protected information to the chief police officer if satisfied that the information is materially relevant to an investigation a police officer is carrying out.

*Note* The director-general must regard the best interests of the child or young person as the paramount consideration or if a decision does not relate to a particular child or young person, the director-general must consider the best interests of children and young people (see s 8).

(3) Section 867 (Investigative entity may divulge protected information etc) applies to the chief police officer in relation to protected information provided to the chief police officer under this section.

## 866 Court may order sensitive information to be given or produced

(1) A court may, in any proceeding, order an information holder to—

(a) give sensitive information to the court; or

(b) produce a document containing sensitive information to the court.

(2) However, the court must not allow information given or produced to it under subsection (1) to be given to the parties to the proceeding unless satisfied that—

(a) the information is materially relevant to the proceeding; and

(b) if the information is about a child or young person—the best interests of the child or young person are protected.



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(3) In making a decision under subsection (2), the court must consider the desirability of protecting the identity of a person who made a child concern report, confidential report or interstate care and protection report.

(4) To enable the court to make a decision under subsection (2), the court must allow the information holder to be heard in relation to its disclosure to the parties.

(5) In making a decision under subsection (2), the court must deal with the information given or produced under subsection (3) in a way that ensures the information is not divulged or produced to anyone else.

(6) In particular, the court must ensure that no copies of the information can be made without leave of the court.

(7) If the court decides not to allow a document produced to it under subsection (1) (b) to be given to the parties, the court must return the document to the information holder.

## 867 Investigative entity may divulge protected information etc

(1) An investigative entity may—

(a) divulge protected information (including sensitive information) in relation to an investigation it is carrying out to another investigative entity; and

(b) divulge protected information (other than sensitive information) in relation to an investigation it is carrying out to someone else.

(2) However, an investigative entity may divulge sensitive information in relation to an investigation to someone other than another investigative entity only if satisfied that—

(a) the information is materially relevant to the investigation; and

(b) disclosure of the information is in the public interest; and

(c) if the information is about a child or young person—the best interests of the child or young person are protected; and



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(d) the information does not include information that—

(i) identifies a person as a person who made—

(A) a child concern report; or

(B) a prenatal report; or

(C) a confidential report; or

(D) an interstate care and protection report; or

(E) a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or

(F) a report under the *Children and Young People Act 1999*, section 157A, section 158 or section 159 (as in force at any time); or

(ii) would allow a person's identity as a person who made a report or notification mentioned in subparagraph (i) to be worked out.

(3) To enable the investigative entity to make a decision under subsection (2), the investigative entity must allow the information holder to be heard in relation to the divulging of the information.



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# Part 25.5 Admissibility of evidence

## 868 How child concern reports may be used in evidence

(1) This section applies if a person honestly and without recklessness makes a child concern report.

(2) The report, or evidence of the contents of the report, is admissible in evidence in a proceeding in a court or tribunal only if—

(a) the report or evidence is given to the court or tribunal by the person who made the report; or

(b) the proceeding is a proceeding under the care and protection chapters in relation to the child or young person who is the subject of the report; or

(c) the proceeding is before a court hearing an appeal from a decision of the Childrens Court in a proceeding mentioned in paragraph (b); or

(d) the proceeding is about a charge or allegation made in a proceeding against a person in relation to the person's exercising a function under this Act.

(3) Before admitting a report, or evidence of a report, under this section, the court or tribunal must give the director-general the opportunity to be heard.

*Note* For admissibility of a prenatal report, see s 364.

## 869 Confidential report—not admissible in evidence

(1) A confidential report is not admissible in evidence in any proceeding in a court or tribunal.

*Note* For the meaning of ***confidential report***, see s 876.

(2) Evidence of the contents of a confidential report is also not admissible in evidence in any proceeding in a court or tribunal.



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(3) No-one may be compelled in any proceeding before a court or tribunal—

(a) to produce a confidential report or a copy of, or extract from, a confidential report; or

(b) to disclose, or give evidence of, the contents of a confidential report.

(4) This section is subject to section 870 and section 871.

## 870 Confidential report—confidential reporter may give evidence

In any proceeding in a court or tribunal, the confidential reporter may give evidence about the confidential reporter's suspicion under section 876 (1), and the reasons for the suspicion.

## 871 Confidential report—evidence admissible with agreement or leave

(1) This section applies to evidence—

(a) that a particular matter is contained in a confidential report; or

(b) that identifies, or is likely to lead to the identification of, the confidential reporter.

(2) The evidence is admissible in a proceeding in a court or tribunal only if—

(a) the confidential reporter agrees, in writing, to the admission of the evidence; or

(b) the court or tribunal gives leave for the evidence to be given.



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(3) The court or tribunal may give leave under subsection (2) (b) only if satisfied that it is necessary for the evidence to be given—

(a) to ensure the safety and wellbeing of a child or young person; or

(b) in relation to a charge or allegation made in a proceeding against someone about the exercise of the person's functions under this Act; or

(c) to decide whether the report was made honestly and without recklessness.

## 872 Things said at conference not admissible in care and protection proceedings

(1) Evidence of anything said or done at a family group conference arranged under section 80 (2) is not admissible in a proceeding under the care and protection chapters.

(2) However, a conference outcome report is admissible in a proceeding under the care and protection chapters to prove whether an agreement was or was not reached.

## 873 Interim matters—things said at court-ordered meeting

Evidence of anything said or done at a court-ordered meeting in relation to a proceeding under the care and protection chapters is admissible in the proceeding only if—

(a) the parties to the proceeding agree to the evidence being admitted; or

(b) the Childrens Court gives leave for the evidence to be admitted.



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# Part 25.6 Protection of people who give information

## 874 Protection of people giving certain information

(1) If a person gives information mentioned in subsection (2) honestly and without recklessness—

(a) giving the information is not a breach of—

(i) confidence; or

(ii) professional etiquette or ethics; or

(iii) a rule of professional conduct; and

(b) the person does not incur civil or criminal liability only because of giving the information.

(2) Subsection (1) applies to information given by—

(a) a relevant person to the director-general in response to a request made by the director-general under section 25 (Director-general may ask for assistance, etc); and

(b) a person to the official visitor under the *Official Visitor Act 2012*, section 22 (Complaints to official visitors); and

(c) a person to a director-general for a report under the *Court Procedures Act 2004*, section 74D (Court may order report about young person); and

(d) a health practitioner to the director-general in a report of assessment made by the health practitioner under section 161 (3) (Health assessment); and

(e) a relevant director-general to the director-general in a report under section 186 (Health reports); and



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(f) a person in a report to the director-general under section 193 (Mandatory reporting of threats to security etc at detention place); and

(g) a person to the director-general under section 354 (Voluntary reporting of abuse and neglect); and

(h) a person to the director-general under section 356 (Offence—mandatory reporting of abuse); and

(i) a person to the public advocate under section 359 (Reports made to public advocate); and

(j) a person to the director-general under section 360 (4) (a) (Director-general to act on child concern report); and

(k) a person to the director-general under section 361 (3) (a) (Director-general action on child protection report); and

(l) a person to the director-general under section 362 (Prenatal reporting—anticipated abuse and neglect); and

(m) a person in a report to the director-general under section 362 (Prenatal reporting—anticipated abuse and neglect); and

(n) a person to a police officer under section 680 (1) (d) (Police powers); and

(o) an out-of-home carer, or approved kinship and foster care organisation, to someone under section 854 (Out-of-home carer and approved kinship and foster care organisation—giving information necessary for responsibilities); and

*Note* ***Out-of-home carer***—see s 508.
***Approved kinship and foster care organisation***—see s 502.

(p) an information sharing entity to the director-general under section 861 (Information sharing entity—giving safety and wellbeing information to director-general) or section 862 (Director-general—asking information sharing entity for safety and wellbeing information); and



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(q) a member of a care team to another member of the care team under section 863 (Care teams—sharing safety and wellbeing information); and

(r) a person to the director-general under section 876 (Confidential report of contravention of Act); and

(s) an ACT child welfare service to the public advocate under section 879 (ACT child welfare services must assist public advocate).

*Note* The director-general is protected from civil liability for giving information by s 878 and an official visitor is protected under the *Official Visitor Act 2012*, s 24.

## 875 Interaction with other laws

(1) This chapter does not limit a power or obligation under another law to give relevant information to the director-general.

(2) This chapter applies to information despite any other law that would otherwise prohibit or restrict the giving of the information.

**Examples—other laws**

- *Evidence Act 2011*
- *Health Records (Privacy and Access) Act 1997*
- *Information Privacy Act 2014*
- *Privacy Act 1988* (Cwlth)
- *Public Sector Management Act 1994*
- *Working with Vulnerable People (Background Checking) Act 2011*



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# Chapter 26 Miscellaneous

*Notes to ch 26*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

## 876 Confidential report of contravention of Act

(1) This section applies if a person suspects that a provision of this Act is being, or has been, contravened.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any standards made under s 887 (see Legislation Act, s 104).

(2) The person may report (in a ***confidential report***) the suspicion, and the reasons for the suspicion, to the director-general.

## 876A Power of court to bring young detainee before it—civil proceeding

(1) For a civil proceeding, a court may order the director-general to bring a young detainee in a detention place before the court, if the young detainee consents, and to return the young detainee to the detention place in accordance with the order.

(2) In this section:

***civil proceeding***—see the *Evidence Act 2011*, dictionary, part 1.

***court*** includes the ACAT.



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## 877 Offence—tattoo child or young person without agreement

(1) A person commits an offence if—

(a) the person tattoos a part of another person's body; and

(b) the other person is a child or young person; and

(c) the person does not have agreement, in writing, from a person who has daily care responsibility, or long-term care responsibility, for the child or young person, to—

(i) tattoo that part of the child's or young person's body; or

(ii) tattoo the child or young person in that way.

Maximum penalty: 50 penalty units.

(2) An offence against this section is a strict liability offence.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that—

(a) before tattooing the person, the person had shown a document of identification to the defendant; and

(b) the defendant had no reasonable grounds for believing that the document was not a genuine document of identification of the person.

(4) In this section:

***document of identification***, of a person, means a document that—

(a) is—

(i) an Australian driver licence or a licence to drive a motor vehicle (however described) issued under the law of an external Territory or a foreign country; or

(ii) a proof of identity card under the *Liquor Act 2010* or a corresponding document issued under the law of a State; or

(iii) a passport; and



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(b) contains a photograph that could reasonably be taken to be of the person; and

(c) indicates that the person to whom the document was issued is at least 18 years old.

## 878 Protection of officials from liability

(1) In this section:

***official*** means—

(a) the director-general; or

(b) a person who is exercising, or has exercised, a function under this Act; or

(c) a person who is, or has been, engaged in the administration of this Act.

*Note* An official visitor exercising a function under this Act is protected from civil liability by the *Official Visitor Act 2012*, s 24.

(2) An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(3) Any liability that would, apart from this section, attach to an official attaches instead to the Territory.

*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).



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## 879 ACT child welfare services must assist public advocate

(1) For the purpose of exercising a statutory function, the public advocate may ask an ACT child welfare service to provide information, advice, guidance, assistance, documents, facilities or services in relation to the physical or emotional welfare of children and young people.

(2) If the public advocate makes a request of an ACT child welfare service under subsection (1), the service must comply with the request promptly.

(3) In this section:

***ACT child welfare service*** means any of the following entities if the entity is involved in providing welfare services for children and young people:

(a) an administrative unit;

(b) a territory authority;

(c) a territory instrumentality;

(d) a public employee;

(e) a police officer;

(f) an approved care and protection organisation.

## 880 Notification of location of child or young person

(1) This section applies if—

(a) a child or young person has voluntarily entered a hospital, police station or refuge (the ***place***); and

(b) the person in charge, or an occupier, of the place suspects on reasonable grounds that none of the following people knows the location of the child or young person:

(i) a parent of the child or young person;



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(ii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.

(2) The person in charge, or occupier, may, if the person or occupier believes on reasonable grounds that it is in the best interests of the child or young person to do so—

(a) tell a parent of the child or young person, or someone else who has daily care responsibility, or long-term care 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—tell a police officer that the child or young person is at the hospital or refuge.

## 881 Evidentiary certificates—director-general—parental responsibility

In a proceeding under this Act, a certificate purporting to be signed by the director-general stating that, on a stated date or during a stated period, the director-general had, or shared, daily care responsibility, or long-term care responsibility, for a stated child or young person is evidence of the matters stated in the certificate.

## 882 Evidentiary certificates—director-general—custody etc

(1) A certificate that appears to be signed by the director-general that states any of the following is evidence of the matter:

(a) that a stated person was, or was not, subject to detention on a stated day;

(b) that a stated person was, or was not, in the director-general's custody on a stated day;

(c) that a stated young offender subject to full-time detention did not comply with a stated obligation of the detention;



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(d) that the director-general gave a stated direction to a stated person on a stated day;

(e) that a stated person did not comply with a stated direction by the director-general on a stated day;

(f) that a stated decision was made by the director-general on a stated date;

(g) that a stated person did, or did not, occupy a position under this Act on a stated day;

(h) that a stated instrument under this Act was, or was not, in force on a stated day;

(i) that a stated instrument is a copy of an instrument made, given, issued or received under this Act.

(2) A certificate mentioned in subsection (1) may state a matter by reference to a date or period.

(3) A certificate of the results of the analysis of a substance under this Act, signed by an analyst appointed under section 883, is evidence of the facts stated in the certificate.

(4) A certificate signed by or for the director-general that states any matter prescribed by regulation is evidence of the stated matter.

(5) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.



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## 883 Appointment of analyst for Act

(1) The director-general may appoint analysts for this Act.

*Note 1* For the making of appointments (including acting appointments), see the 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 Legislation Act, s 207).

(2) An appointment under subsection (1) is a notifiable instrument.

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

## 883A Director-general delegations—approved care and protection organisations

(1) The director-general may delegate any of the following to a responsible person for an approved kinship and foster care organisation:

(a) the director-general's functions under the following provisions:

(i) division 14.3.4 (Care plans);

(ii) part 14.13 (Annual review reports—parental responsibility provisions and supervision provisions);

(iii) division 15.4.1 (Placement with out-of-home carer);

(iv) division 15.4.1A (Approval of carers);

(v) division 15.5.2 (Transition plans);

(vi) division 15.5.4 (Entitlement to personal items and access to protected information);

(vii) section 863 (1) (Care teams—sharing safety and wellbeing information);



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(b) if parental responsibility for a child or young person is transferred to, or shared with, the director-general—the parental responsibility;

(c) if, for a contact provision, the director-general is authorised to decide with whom a child or young person may have contact and to decide any conditions for the contact—the authority to decide.

*Note 1* The responsible person may subdelegate certain functions in certain circumstances (see s 883B).

*Note 2* The director-general must ensure the delegated or subdelegated function is properly exercised (see Legislation Act, s 238). In addition, the director-general may provide that the delegation has effect only in stated circumstances or subject to stated conditions, limitations or directions (see Legislation Act, s 234 and s 239). For other provisions about the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

(2) The director-general may delegate any of the director-general's functions under the following provisions to a responsible person for a residential care service:

(a) division 14.3.4 (Care plans);

(b) part 14.13 (Annual review reports—parental responsibility provisions and supervision provisions);

(c) division 15.5.2 (Transition plans);

(d) division 15.5.4 (Entitlement to personal items and access to protected information);

(e) section 863 (1) (Care teams—sharing safety and wellbeing information).

(3) In this section:

***contact provision***—see section 485.



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## 883B Subdelegations—approved care and protection organisations

(1) A responsible person who has been delegated a function under section 883A may subdelegate the function to the occupant of a position in the responsible person's organisation.

*Note* The responsible person must ensure the subdelegated function is properly exercised (see Legislation Act, s 238). In addition, the responsible person may provide that the subdelegation has effect only in stated circumstances or subject to stated conditions, limitations or directions (see Legislation Act, s 234 and s 239). For other provisions about the making of subdelegations and the exercise of subdelegated functions, see the Legislation Act, pt 19.4.

(2) However, a function may be subdelegated under subsection (1) only if the responsible person is satisfied that—

(a) within the organisation the position has responsibility for the operation or administration of the function; and

(b) the occupant of the position—

(i) is an employee of the organisation; and

(ii) has skills and qualifications appropriate for the function to be exercised.

## 883C Register of subdelegations

(1) The head of an organisation in which 1 or more responsible person has been delegated a function under section 883A must keep a register of any subdelegation of the function under section 883B.

(2) For each subdelegation, the register must include—

(a) the day the subdelegation starts; and

(b) each position to which the subdelegation is made; and

(c) if the subdelegation has effect only in stated circumstances—the circumstances; and



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(d) if the subdelegation has effect subject to stated conditions, limitations or directions—the conditions, limitations or directions; and

(e) the function, or part of the function that is subdelegated; and

(f) if the subdelegation is amended—

(i) the day the subdelegation is amended; and

(ii) the nature of the amendment; and

(g) if the subdelegation is revoked—the day the subdelegation ends.

(3) The head of the organisation must allow the director-general to inspect the register within a reasonable time requested by the director-general.

## 884 Chief police officer delegations

(1) The chief police officer may delegate any of the chief police officer's functions under this Act to a police officer.

(2) This section does not limit the chief police officer's power to delegate a function under any other territory law.

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

## 885 Determination of fees

(1) The director-general may determine fees for this Act.

*Note* The Legislation Act 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.



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## 886 Approved forms

(1) The director-general may approve forms for this Act (other than for use in relation to the Childrens Court).

(2) If the director-general approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

(3) An approved form is a notifiable instrument.

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

## 887 Standard-making power

(1) The Minister may make standards for this Act.

*Note* Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

(2) The standards may make provision for the following:

(a) the conduct of family group conferences and the implementation of family group conference agreements (***family group conference standards***);

*Note* Family group conferences are dealt with in ch 3 and ch 12.

(b) the operation of approved care and protection organisations (***care and protection organisation standards***);

*Note* Approved care and protection organisations are dealt with in pt 10.4.

(c) the conduct of drug testing under a drug use provision in a care and protection order (***drug testing standards***);

*Note* Drug use provisions in care and protection orders are dealt with in pt 14.9.



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(d) the care to be provided for children and young people by out-of-home carers (***out-of-home care standards***);

*Note* Out-of-home care is dealt with in pt 15.4.

(e) the operation of therapeutic protection places and services (***therapeutic protection standards***);

*Note* A child or young person may be confined at a therapeutic protection place under a therapeutic protection order (see pt 16.2).

(f) the operation of childcare services (***childcare services standards***);

*Note* Childcare services are dealt with in ch 20.

(g) employers of children and young people (***children and young people employment standards***);

*Note* Employment of children and young people is dealt with in ch 21.

(h) the requirements for the operation of work experience programs (***work experience standards***);

*Note* Work experience programs are dealt with in pt 21.2.

(i) research involving children and young people (***research standards***);

*Note* Research is dealt with in ch 22.

(j) the giving and seeking of protected information by the director-general under chapter 25 (***information sharing standards***).

(3) A standard is a disallowable instrument.

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



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## 888 Regulation-making power

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

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

(2) A regulation may make provision for—

(a) the duties of people in charge of detention places; and

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

(c) any of the following in relation to injuries suffered by children or young people, and other people, that arise out of, or in the course of, their detention, or the performance of community service:

(i) injury management;

(ii) compensation for a permanent injury;

(iii) vocational rehabilitation;

(iv) death benefits; and

(d) travel and transport arrangements for children or young people, and other people, performing community service; and

(e) the discipline and security (including the use of force, inspection of mail, and the use of video surveillance and other monitoring devices) at or for places of detention; and

(f) the safety, management and good order of places of detention.

(3) A regulation may also prescribe offences for contraventions of the regulation and prescribe maximum penalties of not more than 10 penalty units for offences against the regulation.



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(4) In this section:

***injury*** includes—

(a) disease; and

(b) aggravation, acceleration and recurrence of an injury or disease.



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# Chapter 31 Transitional—Children and Young People Amendment Act 2018

## 987 Certain director-general delegations

(1) This section applies if immediately before the commencement day a delegation is in force under any of the following provisions:

(a) section 457A (Care plans—director-general delegations);

(b) section 501A (Annual review report—director-general delegations);

(c) section 503A (Parental responsibility—director-general delegations);

(d) section 513A (Placement with out-of-home carer—director-general delegations);

(e) section 514G (Approved carers—director-general delegations);

(f) section 529HA (Transition plans—director-general delegations);

(g) section 529NA (Access to protected information—director-general delegations);

(h) section 863 (5) (Care teams—sharing safety and wellbeing information).

(2) The delegation is taken to have been made under section 883A (Director-general delegations—approved care and protection organisations).



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(3) In this section:

***commencement day*** means the day the *Children and Young People Amendment Act 2018*, section 3 commences.

(4) This chapter expires on 31 December 2020.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).



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# Dictionary

(see s 3)

*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:

- ACAT
- ACT
- administrative unit
- adult
- bankrupt or personally insolvent
- chief police officer
- children and young people commissioner
- Childrens Court
- corrections officer
- dentist
- director-general (see s 163)
- disallowable instrument (see s 9)
- doctor
- domestic partner (see s 169 (1))
- entity
- Executive
- found guilty
- function
- head of service
- health practitioner
- home address
- human rights commission
- indictable offence (s 190)
- individual
- information privacy commissioner
- in relation to
- intersex person (see s 169B)



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- judge
- lawyer
- legal aid commission
- magistrate
- midwife
- Minister (see s 162)
- notifiable instrument (see s 10)
- nurse
- ombudsman
- parent
- penalty unit (see s 133)
- police officer
- public advocate
- public employee
- public holiday
- public servant
- public trustee and guardian
- reviewable decision notice
- State
- statutory-office holder
- territory authority
- territory instrumentality
- the Territory
- transgender person (see s 169A (1) and (2))
- working day.

***Aboriginal or Torres Strait Islander person*** means a person who—

(a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and

(b) identifies as an Aboriginal person or a Torres Strait Islander person; and



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(c) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

***abuse***, of a child or young person—see section 342.

***ACAT mental health provision***—see section 491.

***accredited person***—

(a) in relation to a young detainee, for chapter 6 (Criminal matters—detention places)—see section 137; and

(b) for a child or young person in therapeutic protection, for division 16.3.3 (Visits by accredited people)—see section 576.

***accused detainee***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***administrator***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***admission***, of a young detainee to a detention place, for part 6.4 (Admission to detention places)—see section 155.

***affected child***, for division 20.4.3 (Childcare service licences—suspension and cancellation)—see section 759.

***allegation report***, for chapter 8 (Criminal matters—discipline at detention places)—see section 293.

***annual review report***, for a reviewable care and protection order, for chapter 14 (Care and protection—care and protection orders )—see section 494.

***annual review report order***, for part 14.13 (Annual review reports—parental responsibility provisions and supervision provisions)—see section 500 (2).

***application***, for chapter 19 (Care and protection—provisions applying to all proceedings under care and protection chapters)—see section 695.



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***appraisal order***, for the care and protection chapters—see section 372.

***approved care and protection organisation***—see section 352C.

***approved carer***—see section 514B.

***approved kinship and foster care organisation***—see section 502.

***approved research project***, for chapter 22 (Research involving children and young people)—see section 805.

***approved residential care organisation***—see section 502.

***assessment order***, for the care and protection chapters—see section 436.

***at risk of abuse or neglect***, in the care and protection chapters—see section 344.

***authorised assessor***—see section 438.

***authorised person***—see section 26.

***behaviour breach***—see section 287.

***behaviour management consequence***—

(a) for part 8.3 (Dealing with minor behaviour breaches)—see section 298; and

(b) for part 8.4 (Disciplinary action—behaviour breach charge)—see section 318.

***behaviour management framework***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***body search—***

(a) of a young detainee, for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and

(b) of a child or young person, for part 16.3 (Children and young people in therapeutic protection)—see section 588.



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***cancellation notice***, for chapter 20 (Childcare services)—see section 766 (2).

***care and protection appraisal***, for the care and protection chapters—see section 366.

***care and protection assessment***, for the care and protection chapters—see section 367.

***care and protection chapters***—see section 336.

***care and protection order***—see section 422.

***care and protection organisation standards***—see section 887 (2) (b).

***care and protection principles***—see section 350.

***care and protection purpose***, for an organisation—see section 352B.

***care entities***, for a child or young person for a placement, for division 15.4.3 (Information and items to be kept by foster carers and residential care services)—see section 526.

***care plan***—see section 455.

***case management plan***, for chapter 6 (Criminal matters—detention places)—see section 137.

***charge***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***charge notice***, for chapter 8 (Criminal matters—discipline at detention places)—see section 296.

***child***—see section 11.

***childcare centre***—see section 733.

***childcare service***—see section 732.

***childcare service licence***, for chapter 20 (Childcare services)—see section 728 (2).

***childcare services standards***—see section 887 (2) (f).



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***childcare worker***, for chapter 20 (Childcare services)—see section 728 (2).

***child concern report***—see section 353.

***children and young people employment standards***—see section 887 (2) (g).

***children and young people deaths register***—see section 727N (1).

***Children and Youth Services Council*** means the Children and Youth Services Council established under section 27.

***child safety information sharing entity***, for division 25.3.3 (Sharing reportable conduct information)—see section 863A (1).

***child welfare law***—see section 640 (1).

***child welfare order***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 638.

***child welfare proceeding***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 639.

***complainant***, for division 10.4.3 (Approved care and protection organisations—complaints)—see section 352H.

***compliance notice***, for chapter 20 (Childcare services)—see section 760.

***compliance suspension notice***, for chapter 20 (Childcare services)—see section 761.

***conduct***—see the Criminal Code, section 13.

***confidential report***—see section 876.

***connected***, for chapter 23 (Enforcement)—see section 812.

***contact***—see section 348.

***contact provision***, in a care and protection chapter—see section 485.



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***contrary to the best interests of a child or young person***, for chapter 21 (Employment of children and young people)—see section 780.

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

***controlling person***, for a childcare service or proposed childcare service, for chapter 20 (Childcare services)—see section 736.

***court***, for part 25.4 (Courts and investigative entities)—see section 864.

***court-ordered meeting***—see section 431 (2) (a).

***criminal matters chapter***—see section 91.

***CYP death review committee*** means the Children and Young People Death Review Committee established under section 727A.

***daily care responsibility***—see section 19.

***dangerous thing***, for part 16.3 (Children and young people in therapeutic protection)—see section 590.

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

***designated entity***, for division 25.3.3 (Sharing reportable conduct information)—see section 863A (1).

***detention place*** means a place declared to be a detention place under section 142.

***disciplinary action***, for chapter 8 (Criminal matters—discipline at detention places)—see section 317.

***divulge***, for chapter 25 (Information secrecy and sharing)—see section 842 (2).

***drug***, for Part 6.7 (Alcohol and drug testing)—see section 235.

***drug of dependence***—see the *Drugs of Dependence Act 1989*, dictionary.



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***drug testing standards***—see section 887 (2) (c).

***drug use provision***, in a care and protection order, for the care and protection chapters—see section 488.

***due date***, for a noncompliance notice—see section 352N (3) (e).

***educational institution***, for chapter 21 (Employment of children and young people)—see section 780.

***emergency action***—see section 405.

***emergency action release order***—see section 416.

***employment***, for chapter 21 (Employment of children and young people)—see section 781.

***employment conditions notice***, for chapter 21 (Employment of children and young people)—see section 790.

***employment prohibition notice***, for chapter 21 (Employment of children and young people)—see section 788.

***enduring parental responsibility provision***, in the care and protection chapters—see section 481.

***engage in conduct***—see the Criminal Code, section 13.

***entitled person***—see section 37.

***escort officer*** means—

(a) a police officer; or

(b) a corrections officer; or

(c) a youth detention officer.

***ethics committee***, for chapter 22 (Research involving children and young people)—see section 805.



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***external reviewer***—

(a) for division 6.6.3 (Segregation)—see section 204; and

(b) for division 8.4.3 (External review of internal review decisions)—see section 308.

***family day care scheme***—see section 734.

***family group conference***—see section 75.

***family group conference agreement***—see section 76.

***family group conference facilitator***—see section 78.

***family group conference outcome report***, for chapter 3 (Family group conferences)—see section 88.

***family group conference standards***—see section 887 (2) (a).

***family member***, of a child or young person—see section 13.

***former caregiver***, of a child or young person, for the care and protection chapters—see section 347.

***foster carer***, for a child or young person—see section 518 (2).

***frisk search***—

(a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 586.

***general parental authority***, for a residential care service—see section 520 (2).

***government agency*** for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

***harmful conduct***, engaged in by a child or young person—see section 533.



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***head***, of a designated entity, for division 25.3.3 (Sharing reportable conduct information)—see the *Ombudsman Act 1989*, section 17D (1).

***health care treatment*** means treatment of an illness, disability, disorder or condition by a health practitioner.

***health facility*** means a hospital or other facility where health services are provided.

***health segregation direction***, for division 6.6.3 (Segregation)—see section 204.

***health service***—

(a) means a service provided to someone (the ***service user***) for any of the following purposes:

(i) assessing, recording, maintaining or improving the physical, mental or emotional health, comfort or wellbeing of the service user;

(ii) diagnosing or treating an illness, disability, disorder or condition of the service user; and

(b) includes a service provided by a health practitioner in the practitioner's capacity as a health practitioner.

***hearing***, for a review, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***high risk employment***, for part 21.4 (Employment of children and young people under 15 years old)—see section 794.

***information***, for chapter 25 (Information secrecy and sharing)—see section 842 (2).

***information holder***, for chapter 25 (Information secrecy and sharing)—see section 843.

***information sharing entity***, for part 25.3 (Sharing protected information)—see section 859 (1).



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***information sharing standards***—see section 887 (2) (j).

***initial review***, for division 16.2.5 (Review of therapeutic protection orders)—see section 553 (2).

***in need of care and protection***, for the care and protection chapters—see section 345 (1).

***in need of emergency care and protection***, for the care and protection chapters—see section 403.

***in need of emergency therapeutic protection***, for the care and protection chapters—see section 404.

***intention to cancel notice***—

(a) for division 10.4.4 (Approved care and protection organisations—intervention)—see section 352Q; and

(b) for chapter 20 (Childcare services)—see section 764 (2).

***interim care and protection order***, for chapter 14 (Care and protection—care and protection orders)—see section 433 (1).

***interim child welfare order***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 661 (1).

***interim therapeutic protection order***—see section 543.

***interstate care and protection report***—see section 845 (2), definition of ***interstate care and protection information***, paragraph (a).

***interstate child welfare order***—see section 666 (1).

***interstate law***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 641 (1).

***interstate leave permit***—see section 242 (1).

***interstate officer***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 642 (1).

***interstate proceedings transfer order***—see section 672 (1).

***in therapeutic protection***—see section 572.



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***investigative entity*** means an entity with power to require the production of documents or the answering of questions including, for example, the chief police officer, the human rights commission, the public advocate and the ombudsman.

***investigator***, for part 8.2 (Responding to behaviour breaches)—see section 291.

***kinship carer***, for a child or young person—see section 516 (2).

***licensed childcare service***, for chapter 20 (Childcare services)—see section 728 (2).

***licensed proprietor***, of a childcare service, for chapter 20 (Childcare services)—see section 728 (2).

***light work***, for part 21.4 (Employment of children and young people under 15 years old)—see section 793.

***long-term care responsibility***, for a child or young person—see section 20.

***long-term parental responsibility provision***, for the care and protection chapters—see section 479.

***mail*** means postal mail.

***mandatory report***—see section 356 (1) (e).

***mental disorder***—see the *Mental Health Act 2015*, section 9.

***mental illness***—see section 530 (1).

***Minister of a State***, for part 5.2 (Interstate transfers)—see section 114.

***minor behaviour breach***, for chapter 8 (Criminal matters—discipline at detention places)—see section 288.

***neglect***, of a child or young person—see section 343.

***nominated person***, for a young detainee—see section 185 (2) (n).



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***noncompliance direction***, for division 10.4.4 (Approved care and protection organisations—intervention)—see section 352O.

***noncompliance notice***, for division 10.4.4 (Approved care and protection organisations—intervention)—see section 352N.

***noncompliant***, for an approved care and protection organisation, for division 10.4.3 (Approved care and protection organisations—complaints)—see section 352G.

***non-treating doctor***—

(a) for chapter 6 (Criminal matters—detention places)—see section 137; and

(b) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and

(c) for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530 (2).

***non-treating health practitioner***—

(a) for the criminal matters chapters—see section 98; and

(b) for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530 (2).

***non-treating nurse***—

(a) for part 6.7 (Alcohol and drug testing)—see section 235; and

(b) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and

(c) for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530 (2).

***occupier***, for chapter 23 (Enforcement)—see section 812.

***offence***—

(a) includes an offence against a Commonwealth law; and

(b) for chapter 23 (Enforcement)—see section 812.



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***official visitor***, for a visitable place—see the *Official Visitor Act 2012*, section 6.

***ongoing review***, for division 16.2.5 (Review of therapeutic protection orders)—see section 554 (2).

***operating entity***, for a detention place, therapeutic protection place or place of care, means—

(a) if the Territory operates the place—the director-general; or

(b) in any other case—the entity that operates the place.

***operating procedure***, for chapter 6 (Criminal matters—detention places) and chapter 7 (Criminal matters—search and seizure at detention places) means an operating procedure made by the director-general under section 143.

***order***, for chapter 24 (Appeals and review), includes a decision.

***ordinary search***—

(a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 587.

***organisation***—see section 352A.

***out-of-home carer***, for a child or young person—see section 508.

***out-of-home care standards***—see section 887 (2) (d).

***owner***, of a thing—

(a) for part 7.9 (Seizing property)—see section 279; and

(b) for division 16.3.6 (Seizing dangerous things)—see section 620.

***parent***—see section 16 (2).

***parental responsibility***—see section 15.



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***parental responsibility provision***, for the care and protection chapters—see section 474.

***participant***, for chapter 3 (Family group conferences)—see section 73.

***participating state***—for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

***parties—***

(a) for a family group conference, for this Act generally—see section 73; and

(b) for an application, for the care and protection chapters—see section 700 (1).

***party***, for chapter 12 (Care and protection—voluntary agreements to transfer or share parental responsibility)—see section 396 (1).

***personal items***, for a child, young person or young adult—

(a) means—

(i) any of the following items belonging to, or about, the child, young person or young adult:

(A) a birth certificate;

(B) a passport;

(C) a school report or other report relating to the child's, young person's or young adult's education;

(D) a medical report;

(E) a copy of a photograph; and

(ii) anything else prescribed by regulation; but

(b) does not include sensitive information about another person.

*Note* ***Sensitive information***—see s 845.



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***person responsible***, for a young offender, for part 5.2 (Interstate transfers)—see section 114.

***place*** includes premises.

***placement***, for a child or young person, for division 15.4.3 (Information and items to be kept by foster carers and residential care services)—see section 526.

***place of care*** means a place approved as a place of care under section 525.

***positive test sample***, for part 6.7 (Alcohol and drug testing)—see section 236.

***possession***, of a thing, includes the following:

(a) receiving or obtaining possession of the thing;

(b) having control over the disposition of the thing (whether or not having custody of the thing);

(c) having joint possession of the thing.

***prenatal report***—see section 362 (2).

***previous out-of-home carer***, for a young person or young adult, for part 15.5 (Transition to adulthood)—see section 529BA.

***privilege***, for chapter 8 (Criminal matters—discipline at detention places)—see section 289.

***privileged***, in relation to material, for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246.

***produce***, for part 25.4 (Courts and investigative entities)—see section 864.



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***prohibited area***, for a criminal matters chapter, means a place declared by the director-general as a prohibited area under section 147.

***prohibited thing***—

(a) for chapter 6 (Criminal matters—detention places)—see section 137; and

(b) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246.

***proposed controlling person***, for a childcare service, for chapter 20 (Childcare services)—see section 728.

***proposed proprietor***, for a childcare service, for chapter 20 (Childcare services)—see section 728.

***proprietor***, of a childcare service, for chapter 20 (Childcare services)—see section 735.

***protected information***—see section 844 (1).

***protection order***—see section 458.

***provision***, in a care and protection order, for chapter 14 (Care and protection—care and protection orders)—see section 421.

***receiving State***, for part 5.2 (Interstate transfers)—see section 114.

***registered***, for a family group conference agreement, for Chapter 12 (Care and protection—voluntary agreements to transfer or share parental responsibility)—see section 389 (2).

***register of young detainees***, for chapter 6 (Criminal matters—detention places)—see section 137.

***relevant Act***, for division 14.3.5 (Protection orders)—see section 458.

***relevant conference participant***, for a family group conference about a child or young person—see section 73.



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***relevant presiding officer,*** for division 8.4.4 (Disciplinary action generally)—see section 316.

***reportable conduct information***, for division 25.3.3 (Sharing reportable conduct information)—see section 863A (1).

***reporting and investigation procedures*** means the procedures made by the director-general under section 294.

***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.

***requirement notice***, for part 2.4 (Suitable entities for purposes under Act)—see section 68.

***researcher***, for a research project, for chapter 22 (Research involving children and young people)—see section 805.

***research project***, for chapter 22 (Research involving children and young people)—see section 806.

***research standards***—see section 887 (2) (i).

***residence provision***, for the care and protection chapters—see section 484.

***residential care service***—see section 520 (2).

***responsible person***—

(a) for an approved care and protection organisation, for part 10.4 (Approved care and protection organisations)—see section 352D; and

(b) for a childcare service, for chapter 20 (Childcare services)—see section 738.

***review***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***reviewable care and protection order***, for chapter 14 (Care and protection—care and protection orders)—see section 493.



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***reviewable decision***, for division 24.1.3 (Notification and review of decisions)—see section 839.

***review officer—***

(a) for division 8.4.2 (Internal review)—see section 303; and

(b) for chapter 9 (Criminal matters—conduct of disciplinary reviews)—see section 322.

***risk assessment***, for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 534.

***safe custody warrant***—see section 684.

***safe room segregation direction***, for division 6.6.3 (Segregation)—see section 204.

***safety and wellbeing information***, for division 25.3.2 (Sharing safety and wellbeing information)—see section 858.

***scanning search***—

(a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 585.

***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.

***secure mental health facility***—see the *Mental Health (Secure Facilities) Act 2016*, section 7.

***security classification***, for chapter 6 (Criminal matters—detention places)—see section 137.

***segregation***, for division 6.6.3 (Segregation)—see section 204.



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***segregation direction***—

(a) for division 6.6.3 (Segregation)—see section 204; but

(b) for subdivision 6.6.3.4 (Review of certain segregation directions)—see section 216.

***sending State***—

(a) for part 5.2 (Interstate transfers)—see section 114; and

(b) for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

***sensitive information***—see section 845.

***short-term parental responsibility provision***, in a care and protection order, for the care and protection chapters—see section 476.

***sibling***, of a child or young person, includes a stepbrother or stepsister of the child or young person and a half-brother or half-sister of the child or young person.

***significant harm***, for the care and protection chapters—see section 341 (2).

***significant person***, for a child or young person—see section 14.

***specific issues provision***—see section 492.

***specific parental authority***—

(a) for a kinship carer—see section 516 (2); or

(b) for a foster carer—see section 518 (2).

***stability proposal***, for a child or young person—see section 456.

***State***—

(a) for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637; and

(b) for chapter 25 (Information secrecy and sharing) see section 842 (2).



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***State Childrens Court***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

***strip search***—

(a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 589.

***suitability information***—see section 65.

***suitability information notice***, for part 2.4 (Suitable entities for purposes under Act)—see section 66 (2).

***suitable entities register***, for part 2.4 (Suitable entities for purposes under the Act)—see section 72.

***suitable entity***, for a stated purpose—see section 61.

***supervision provision***, for the care and protection chapters—see section 489.

***support person***, of an accused detainee—

(a) for chapter 8 (Criminal matters—discipline at detention places)—see section 286; and

(b) for chapter 9 (Criminal matters—conduct of disciplinary reviews)—see section 286.

***temporary parental responsibility provision***, in the care and protection chapters—see section 373.

***test sample***, for part 6.7 (Alcohol and drug testing)—see section 235.

***therapeutic protection history***—see section 537.

***therapeutic protection order***—see section 532.

***therapeutic protection person***, for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530 (2).



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***therapeutic protection place***—see section 535.

***therapeutic protection plan***—see section 536.

***therapeutic protection register***, for chapter 16 (care and protection—therapeutic protection of children and young people)—see section 633 (1).

***therapeutic protection standards***—see section 887 (2) (e).

***therapeutic protection transition plan***, for a child or young person, for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 538.

***transfer agreement***, for part 5.2 (Interstate transfers)—see section 115.

***transfer arrangement***, means a transfer arrangement under section 116 (Transfer arrangements—general) or, if the transfer arrangement has been amended by another transfer arrangement under that section, the transfer arrangement as amended.

***transfer escort***, for part 5.2 (Interstate transfers)—see section 114.

***transfer order***—for part 5.2 (Interstate transfers)—see section 120.

***transition plan***, for a young person or young adult—see section 529C.

***treating doctor***, for the criminal matters chapters—see section 97.

***visitable place***—see section 37.

***visiting conditions***, for chapter 6 (Criminal matters—detention places)—see section 137.

***visitor***, for chapter 6 (Criminal matters—detention places)—see section 137.

***voluntary care agreement***—see section 394.

***voluntary report***—see section 354 (2).



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***waiver order***, for part 14.13 (Annual review reports—parental responsibility provisions and supervision provisions)—see section 498 (1).

***welfare body***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

***work experience***, for chapter 21 (Employment of children and young people)—see section 780.

***work experience standards***—see section 887 (2) (h).

***Working with Vulnerable People Act*** means the *Working with Vulnerable People (Background Checking) Act 2011*.

***young adult***, for part 15.5 (Transition to adulthood)—see section 529B.

***young detainee***—see section 95.

***young offender*** means—

(a) a person who—

(i) has been convicted or found guilty of an offence by a court; and

(ii) was under 18 years old when the offence was committed; but

(b) for part 5.2 (Interstate transfers)—see section 114.

***young person***—see section 12.

***young remandee***, for chapter 6 (Criminal matters—detention places)—see section 137.

***youth detention officer***, for the criminal matters chapters—see section 96.



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***youth detention policy***, for chapter 6 (Criminal matters—detention places)—see section 137.

***youth justice principles***, for the criminal matters chapters—see section 94.



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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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

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



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## 3 Legislation history

**Children and Young People Act 2008 A2008-19**

notified LR 17 July 2008

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

ss 3-14, ss 21-26, ch 4 (ss 91-100), ch 5 (ss 101-135), ch 6 (ss 136-245), ch 7 (ss 246-284), ch 8 (ss 285-320), ch 9 (ss 321-335), s 878, ss 882-886, s 888, s 889, sch 1 pt 1.1 and dict commenced 9 September 2008 (s 2 and CN2008-13)

ss 15-20, ss 37-72, ch 3 (ss 73-90), ch 10 (ss 336-352), ch 11 (ss 353-388), ch 12 (ss 389-402), ch 13 (ss 403-420), ch 14 (ss 421-501), ch 15 (ss 502-529), ch 16 (ss 530-635), ch 17 (ss 636-678), ch 18 (ss 679-694), ch 19 (ss 695-727), ch 23 (ss 812-834), ch 24 (ss 835-840), ss 841-854, ss 856-875, s 881 and s 887 commenced 27 October 2008 (s 2 and CN2008-13)

ss 27-36, ch 20 (ss 728-778), ch 22 (ss 805-811), s 855, s 876, s 877, s 879, s 880, sch 1 pts 1.2-1.8 commenced 27 February 2009 (s 2 and CN2008-17 (and see CN2008-13))

ch 21 (ss 779-804) commenced 17 July 2009 (s 2 (3))

ch 27 (ss 890-975) commenced 9 September 2008 (LA s 79A and A2008-20)

as amended by

**Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 1 pt 1.1**

notified LR 17 July 2008

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

sch 1 pt 1.1 commenced 17 July 2008 (s 2 (2) and see Children and Young People Act 2008 A2008-19, s 2)

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.9**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.9 commenced 2 February 2009 (s 2 (2) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)



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**Domestic Violence and Protection Orders Act 2008 A2008-46 sch 3 pt 3.2**

notified LR 10 September 2008
s 1, s 2 commenced 10 September 2008 (LA s 75 (1))
sch 3 pt 3.2 amendments ineffective but done editorially under LA

as modified by

**Children and Young People (Transitional Provisions) Regulation 2009 SL2009-4 s 4**

notified LR 26 February 2009
s 1, s 2 commenced 26 February 2009 (LA s 75 (1))
s 4 commenced 27 February 2009 (s 2)

as amended by

**Children and Young People Amendment Act 2009 A2009-17**

notified LR 30 June 2009
s 1, s 2 commenced 30 June 2009 (LA s 75 (1))
remainder commenced 17 July 2009 (s 2 and see Children and Young People Act 2008 A2008-19 s 2)

**Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.12**

notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.12 commenced 22 September 2009 (s 2)

**Work Safety Legislation Amendment Act 2009 A2009-28 sch 2 pt 2.1**

notified LR 9 September 2009
s 1, s 2 commenced 9 September 2009 (LA s 75 (1))
sch 2 pt 2.1 commenced 1 October 2009 (s 2 and see Work Safety Act 2008 A2008-51 s 2 (1) (b) and CN2009-11)

**Adoption Amendment Act 2009 (No 2) A2009-36 sch 1 pt 1.2**

notified LR 22 October 2009
s 1, s 2 commenced 22 October 2009 (LA s 75 (1))
sch 1 pt 1.2 commenced 22 April 2010 (s 2 and LA s 79)

**Education (Participation) Amendment Act 2009 A2009-40 sch 1 pt 1.1**

notified LR 17 November 2009
s 1, s 2 commenced 17 November 2009 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 January 2010 (s 2)



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**Statute Law Amendment Act 2009 (No 2) A2009-49 sch 1 pt 1.3, sch 3 pt 3.8**

notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
sch 1 pt 1.3, sch 3 pt 3.8 commenced 17 December 2009 (s 2)

**Health Legislation Amendment Act 2010 A2010-2 sch 1 pt 1.1**

notified LR 16 February 2010
s 1, s 2 commenced 16 February 2010 (LA s 75 (1))
sch 1 pt 1.1 commenced 16 August 2010 (s 2 and LA s 79)

**Children and Young People Amendment Act 2010 A2010-9**

notified LR 4 March 2010
s 1, s 2 commenced 4 March 2010 (LA s 75 (1))
remainder commenced 5 March 2010 (s 2)

**Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10 sch 2 pt 2.2**

notified LR 31 March 2010
s 1, s 2 commenced 31 March 2010 (LA s 75 (1))
sch 2 pt 2.2 commenced 1 July 2010 (s 2 (1) (a))

**Statute Law Amendment Act 2010 A2010-18 sch 1 pt 1.3**

notified LR 13 May 2010
s 1, s 2 commenced 13 May 2010 (LA s 75 (1))
sch 1 pt 1.3 commenced 3 June 2010 (s 2)

**Children and Young People Amendment Act 2010 (No 2) A2010-38**

notified LR 29 September 2010
s 1, s 2 commenced 29 September 2010 (LA s 75 (1))
remainder commenced 30 September 2010 (s 2)

**Justice and Community Safety Legislation Amendment Act 2010 (No 3) A2010-40 sch 2 pt 2.1**

notified LR 5 October 2010
s 1, s 2 commenced 5 October 2010 (LA s 75 (1))
s 3 commenced 6 October 2010 (s 2 (1))
sch 2 pt 2.1 commenced 2 November 2010 (s 2 (2))



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**Liquor (Consequential Amendments) Act 2010 A2010-43 sch 1 pt 1.4**
notified LR 8 November 2010
s 1, s 2 commenced 8 November 2010 (LA s 75 (1))
sch 1 pt 1.4 commenced 1 December 2010 (s 2 (4) and see Liquor Act 2010 A2010-35, s 2 (3) (as am by A2010-43 amdt 1.19) and CN2010-14)

**Children and Young People (Death Review) Amendment Act 2011 A2011-9**
notified LR 17 March 2011
s 1, s 2 commenced 17 March 2011 (LA s 75 (1))
remainder commenced 17 September 2011 (s 2 and LA s 79)

**Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.25**
notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
amdt 1.89, amdt 1.90 commenced 17 September 2011 (s 2 (2) and see Children and Young People (Death Review) Amendment Act 2011 A2011-9, s 2 and LA s 79)
sch 1 pt 1.25 remainder commenced 1 July 2011 (s 2 (1))

**Statute Law Amendment Act 2011 (No 2) A2011-28 sch 3 pt 3.5**
notified LR 31 August 2011
s 1, s 2 commenced 31 August 2011 (LA s 75 (1))
sch 3 pt 3.5 commenced 21 September 2011 (s 2 (1))

**Children and Young People (Education and Care Services National Law) Consequential Amendment Act 2011 A2011-43**
notified LR 3 November 2011
s 1, s 2 commenced 3 November 2011 (LA s 75 (1))
remainder commenced 1 January 2012 (s 2 and see Education and Care Services National Law (ACT) Act 2011 A2011-42, s 2 and CN2011-16)

**Working with Vulnerable People (Consequential Amendments) Act 2011 A2011-45 sch 1 pt 1.2**
notified LR 8 November 2011
s 1, s 2 commenced 8 November 2011 (LA s 75 (1))
sch 1 pt 1.2 commenced 8 November 2012 (s 2 and see Working with Vulnerable People (Background Checking) Act 2011 A2011-44 s 2 (2))



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**Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.8**

notified LR 22 November 2011

s 1, s 2 commenced 22 November 2011 (LA s 75 (1))

sch 1 pt 1.8 commenced 1 March 2012 (s 2 (1) and see Evidence Act 2011 A2011-12, s 2 and CN2012-4)

**Work Health and Safety (Consequential Amendments) Act 2011 A2011-55 sch 1 pt 1.1**

notified LR 14 December 2011

s 1, s 2 commenced 14 December 2011 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 January 2012 (s 2 and see Work Health and Safety Act 2011 A2011-35, s 2 and CN2011-12)

**Children and Young People (Transition from Out-of-Home Care) Amendment Act 2012 A2012-3**

notified LR 29 February 2012

s 1, s 2 commenced 29 February 2012 (LA s 75 (1))

remainder commenced 1 March 2012 (s 2)

**Official Visitor Act 2012 A2012-33 sch 1 pt 1.1**

notified LR 15 June 2012

s 1, s 2 commenced 15 June 2012 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 September 2013 (s 2 as am by Official Visitor Amendment Act 2013 A2013-22 s 4)

**Children and Young People Amendment Act 2013 A2013-10**

notified LR 27 March 2013

s 1, s 2 commenced 27 March 2013 (LA s 75 (1))

remainder commenced 28 March 2013 (s 2)

**Children and Young People Amendment Act 2013 (No 2) A2013-21**

notified LR 13 June 2013

s 1, s 2 commenced 13 June 2013 (LA s 75 (1))

remainder commenced 13 July 2013 (s 2)

**Official Visitor Amendment Act 2013 A2013-22 sch 1 pt 1.1**

notified LR 17 June 2013

s 1, s 2 commenced 17 June 2013 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 September 2013 (s 2 and see Official Visitor Act 2012 A2012-33 s 2 as amended by this Act)



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**Statute Law Amendment Act 2013 (No 2) A2013-44 sch 3 pt 3.2**
notified LR 11 November 2013
s 1, s 2 commenced 11 November 2013 (LA s 75 (1))
sch 3 pt 3.2 commenced 25 November 2013 (s 2)

**Training and Tertiary Education Amendment Act 2014 A2014-48 sch 1 pt 1.4**
notified LR 6 November 2014
s 1, s 2 commenced 6 November 2014 (LA s 75 (1))
sch 1 pt 1.4 commenced 20 November 2014 (s 2)

**Justice and Community Safety Legislation Amendment Act 2014 (No 2) A2014-49 sch 1 pt 1.3**
notified LR 10 November 2014
s 1, s 2 commenced 10 November 2014 (LA s 75 (1))
sch 1 pt 1.3 commenced 17 November 2014 (s 2)

**Mental Health (Treatment and Care) Amendment Act 2014 A2014-51 sch 1 pt 1.1 (as am by A2015-38 amdt 2.54)**
notified LR 12 November 2014
s 1, s 2 commenced 12 November 2014 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 March 2016 (s 2 (as am by Mental Health Act 2015 A2015-38 amdt 2.54))

**Crimes Legislation Amendment Act 2015 A2015-3 pt 2**
notified LR 2 March 2015
s 1, s 2 commenced 2 March 2015 (LA s 75 (1))
pt 2 commenced 3 March 2015 (s 2 (1))

**Children and Young People Amendment Act 2015 A2015-13**
notified LR 20 May 2015
s 1, s 2 commenced 20 May 2015 (LA s 75 (1))
remainder commenced 21 May 2015 (s 2 (1))

**Children and Young People Amendment Act 2015 (No 2) A2015-22**
notified LR 16 June 2015
s 1, s 2 commenced 16 June 2015 (LA s 75 (1))
remainder commenced 1 July 2015 (s 2)



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**Veterinary Surgeons Act 2015 A2015-29 sch 2 pt 2.1**
notified LR 20 August 2015
s 1, s 2 commenced 20 August 2015 (LA s 75 (1))
sch 2 pt 2.1 commenced 1 December 2015 (s 2 (1) and CN2015-22)

**Corrections Management Amendment Act 2015 A2015-37 s 8**
notified LR 1 October 2015
s 1, s 2 commenced 1 October 2015 (LA s 75 (1))
s 8 commenced 2 October 2015 (s 2 (1))

**Mental Health Act 2015 A2015-38 sch 2 pt 2.2, sch 2 pt 2.4 div 2.4.2**
notified LR 7 October 2015
s 1, s 2 commenced 7 October 2015 (LA s 75 (1))
sch 2 pt 2.2 (amdt 2.54) commenced 8 October 2015 (s 2 (2))
sch 2 pt 2.4 div 2.4.2 commenced 1 March 2016 (s 2 (1) and see Mental Health (Treatment and Care) Amendment Act 2014 A2014-51, s 2 (as am by A2015-38 amdt 2.54))

*Note* Sch 2 pt 2.2 (amdt 2.54) only amends the Mental Health (Treatment and Care) Amendment Act 2014 A2014-51

**Crimes (Domestic and Family Violence) Legislation Amendment Act 2015 A2015-40 sch 1 pt 1.1**
notified LR 4 November 2015
s 1, s 2 commenced 4 November 2015 (LA s 75 (1))
sch 1 pt 1.1 amdt 1.1 commenced 4 May 2016 (s 2 (2))
sch 1 pt 1.1 amdt 1.2 commenced 5 November 2015 (s 2 (1))

**Children and Young People Amendment Act 2015 (No 3) A2015-46**
notified LR 6 November 2015
s 1, s 2 commenced 6 November 2015 (LA s 75 (1))
remainder commenced 1 January 2016 (s 2)

**Statute Law Amendment Act 2015 (No 2) A2015-50 sch 3 pt 3.5**
notified LR 25 November 2015
s 1, s 2 commenced 25 November 2015 (LA s 75 (1))
sch 3 pt 3.5 commenced 9 December 2015 (s 2)

**Justice Legislation Amendment Act 2016 A2016-7 sch 1 pt 1.2**
notified LR 29 February 2016
s 1, s 2 commenced 29 February 2016 (LA s 75 (1))
sch 1 pt 1.2 commenced 29 August 2016 (s 2 and LA s 79)



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**Protection of Rights (Services) Legislation Amendment Act 2016 (No 2) A2016-13 sch 1 pt 1.7**

notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 1 pt 1.7 commenced 1 April 2016 (s 2 and see Protection of Rights (Services) Legislation Amendment Act 2016 A2016-1 s 2)

**Red Tape Reduction Legislation Amendment Act 2016 A2016-18 sch 2 pt 2.2, sch 3 pt 3.11**

notified LR 13 April 2016
s 1, s 2 commenced 13 April 2016 (LA s 75 (1))
sch 2 pt 2.2, sch 3 pt 3.11 commenced 27 April 2016 (s 2)

**Smoke-Free Legislation Amendment Act 2016 A2016-20 sch 1 pt 1.1**

notified LR 13 April 2016
s 1, s 2 commenced 13 April 2016 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 August 2016 (s 2 and CN2016-13)

**Mental Health Amendment Act 2016 A2016-32 sch 1 pt 1.1**

notified LR 20 June 2016
s 1, s 2 commenced 20 June 2016 (LA s 75 (1))
sch 1 pt 1.1 commenced 21 June 2016 (s 2 (1))

**Children and Young People Legislation Amendment Act 2016 A2016-38 pt 3**

notified LR 22 June 2016
s 1, s 2 commenced 22 June 2016 (LA s 75 (1))
pt 3 commenced 23 June 2016 (s 2)

**Reportable Conduct and Information Sharing Legislation Amendment Act 2016 A2016-39 pt 2**

notified LR 17 August 2016
s 1, s 2 commenced 17 August 2016 (LA s 75 (1))
s 5, s 6 commenced 1 July 2017 (s 2 (2) and CN2017-2)
pt 2 remainder commenced 18 August 2016 (s 2 (1))



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**Family Violence Act 2016 A2016-42 sch 2 pt 2.2, sch 3 pt 3.2 (as am by A2017-10 s 7)**

notified LR 18 August 2016

s 1, s 2 commenced 18 August 2016 (LA s 75 (1))

sch 2 pt 2.2, sch 3 pt 3.2 commenced 1 May 2017 (s 2 (2) as am by Family and Personal Violence Legislation Amendment Act 2017 A2017-10 s 7)

**Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.11**

notified LR 25 August 2016

s 1, s 2 commenced 25 August 2016 (LA s 75 (1))

sch 1 pt 1.11 commenced 1 September 2016 (s 2)

**Freedom of Information Act 2016 A2016-55 sch 4 pt 4.2 (as am by A2017-14 s 19)**

notified LR 26 August 2016

s 1, s 2 commenced 26 August 2016 (LA s 75 (1))

sch 4 pt 4.2 commenced 1 January 2018 (s 2 as am byJustice and Community Safety Legislation Amendment Act 2017 (No 2) A2017-14 s 19)

**Family and Personal Violence Legislation Amendment Act 2017 A2017-10 s 7**

notified LR 6 April 2017

s 1, s 2 commenced 6 April 2017 (LA s 75 (1))

s 7 commenced 30 April 2017 (s 2 (1))

*Note* This Act only amends the Family Violence Act 2016 A2016-42.

**Justice and Community Safety Legislation Amendment Act 2017 (No 2) A2017-14 s 19**

notified LR 17 May 2017

s 1, s 2 commenced 17 May 2017 (LA s 75 (1))

s 19 commenced 24 May 2017 (s 2 (1))

*Note* This Act only amends the Freedom of Information Act 2016 A2016-55.

**Inspector of Correctional Services Act 2017 A2017-47 sch 1 pt 1.1**

notified LR 7 December 2017

s 1, s 2 commenced 7 December 2017 (LA s 75 (1))

sch 1 pt 1.1 awaiting commencement



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**Reportable Conduct and Information Sharing Legislation Amendment Act 2017 A2017-48 pt 2**

notified LR 12 December 2017
s 1, s 2 commenced 12 December 2017 (LA s 75 (1))
pt 2 commenced 13 December 2017 (s 2)

**Courts and Other Justice Legislation Amendment Act 2018 A2018-9 pt 4**

notified LR 29 March 2018
s 1, s 2 commenced 29 March 2018 (LA s 75 (1))
pt 4 commenced 26 April 2018 (s 2)

**Children and Young People Amendment Act 2018 A2018-24**

notified LR 8 August 2018
s 1, s 2 commenced 8 August 2018 (LA s 75 (1))
remainder commenced 9 August 2018 (s 2)

**Prostitution Amendment Act 2018 A2018-25 sch 1 pt 1.1**

notified LR 8 August 2018
s 1, s 2 commenced 8 August 2018 (LA s 75 (1))
sch 1 pt 1.1 commenced 9 August 2018 (s 2)

**Red Tape Reduction Legislation Amendment Act 2018 A2018-33 sch 1 pt 1.3**

notified LR 25 September 2018
s 1, s 2 commenced 25 September 2018 (LA s 75 (1))
sch 1 pt 1.3 commenced 23 October 2018 (s 2 (4))

**Statute Law Amendment Act 2018 A2018-42 sch 3 pt 3.6**

notified LR 8 November 2018
s 1, s 2 taken to have commenced 1 July 2018 (LA s 75 (2))
sch 3 pt 3.6 commenced 22 November 2018 (s 2 (1))

**Royal Commission Criminal Justice Legislation Amendment Act 2018 A2018-46 sch 1 pt 1.1**

notified LR 4 December 2018
s 1, s 2 commenced 4 December 2018 (LA s 75 (1))
sch 1 pt 1.1 commenced 5 December 2018 (s 2)



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**Integrity Commission Act 2018 A2018-52 sch 1 pt 1.2 (as am by A2019-18 s 4)**

notified LR 11 December 2018

s 1, s 2 commenced 11 December 2018 (LA s 75 (1))

sch 1 pt 1.2 awaiting commencement

**Royal Commission Criminal Justice Legislation Amendment Act 2019 A2019-6 pt 2**

notified LR 27 March 2019

s 1, s 2 commenced 27 March 2019 (LA s 75 (1))

s 3 commenced 28 March 2019 (LA s 75AA)

pt 2 commenced 1 September 2019 (s 2 (2) and CN2019-15)

**Integrity Commission Amendment Act 2019 A2019-18 s 4**

notified LR 14 June 2019

s 1, s 2 commenced 14 June 2019 (LA s 75 (1))

s 3, s 4 commenced 15 June 2019 (s 2 (1))

*Note* This Act only amends the Integrity Commission Act 2018 A2018-52.

**Official Visitor Amendment Act 2019 A2019-29 sch 1 pt 1.1**

notified LR 2 October 2019

s 1, s 2 commenced 2 October 2019 (LA s 75 (1))

sch 1 pt 1.1 commenced 3 October 2019 (s 2 (2))

**Statute Law Amendment Act 2019 A2019-42 sch 3 pt 3.5**

notified LR 31 October 2019

s 1, s 2 commenced 31 October 2019 (LA s 75 (1))

sch 3 pt 3.5 commenced 14 November 2019 (s 2 (1))



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# 4 Amendment history

**Dictionary**
s 3 am A2011-28 amdt 3.20

**Aboriginal and Torres Strait Islander children and young people principle**
s 10 am A2011-22 amdt 1.87; A2013-44 amdt 3.12

**Who is a *significant person* for a child or young person?**
s 14 am A2011-22 amdt 1.87

**Aspects of parental responsibility may be transferred**
s 17 am A2016-38 s 7; A2018-24 s 4

**Aspects of parental responsibility may be shared**
s 18 am A2011-22 amdt 1.87, amdt 1.88; A2016-38 s 8; A2018-24 s 5

**Daily care responsibility for children and young people**
s 19 am A2010-10 amdt 2.13; A2010-38 s 4, s 5; A2011-22 amdt 1.88; A2011-28 amdt 3.21; A2015-29 amdt 2.1

**Long-term care responsibility for children and young people**
s 20 am A2010-10 amdt 2.13; A2011-22 amdt 1.88; A2015-29 amdt 2.2

**Director-general**
pt 2.1 hdg am A2011-22 amdt 1.87

**Director-general's functions**
s 22 hdg am A2011-22 amdt 1.88
s 22 am A2011-22 amdt 1.87, amdt 1.88

**Director-general instructions**
s 23 hdg am A2011-22 amdt 1.87
s 23 am A2011-22 amdt 1.87

**Ministerial directions to director-general**
s 24 hdg am A2011-22 amdt 1.87
s 24 am A2011-22 amdt 1.87; A2013-44 amdt 3.13

**Director-general may ask for assistance, etc**
s 25 hdg am A2011-22 amdt 1.87
s 25 am A2011-22 amdt 1.87; A2014-48 amdt 1.7

**Director-general must give identity cards**
s 26 hdg am A2011-22 amdt 1.87
s 26 ss (6)-(8) exp 9 September 2008 (s 26 (8))
am A2011-22 amdt 1.87; A2016-38 s 9; ss renum R51 LA; A2018-24 s 6

**Children and Youth Services Council**
pt 2.2 hdg sub A2015-46 s 4



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**Establishment of council**
s 27 sub A2015-46 s 4

**Council members**
s 28 sub A2015-46 s 4

**Appointment of council members**
s 30 am A2013-44 amdt 3.14

**Advice and assistance by director-general and public advocate**
s 36 hdg am A2011-22 amdt 1.87
s 36 am A2011-22 amdt 1.87

**Official visitors**
pt 2.3 hdg sub A2012-33 amdt 1.1
pt 2.3 hdg note am A2013-22 amdt 1.1

**Meaning of *entitled person* and *visitable place***
s 37 sub A2012-33 amdt 1.1

**Appointment of official visitors—additional suitability requirement**
s 38 sub A2012-33 amdt 1.1
am A2019-29 amdt 1.1

**Request for sensitive information by official visitors**
s 39 am A2011-22 amdt 1.87
sub A2012-33 amdt 1.1
am A2019-29 amdt 1.2

**Frequency of visits by official visitors**
s 40 sub A2012-33 amdt 1.1
om A2013-22 amdt 1.2

**Official visitors—reporting to director-general**
s 41 hdg am A2011-22 amdt 1.87
s 41 am A2011-22 amdt 1.87
om A2012-33 amdt 1.1

**Ending appointment of official visitors**
s 42 om A2012-33 amdt 1.1

**Complaints guidelines**
s 43 om A2012-33 amdt 1.1

**Complaints to official visitors**
s 44 om A2012-33 amdt 1.1

**Requests to see official visitor**
s 45 om A2012-33 amdt 1.1

**Notice of complaints**
s 46 am A2011-22 amdt 1.87
om A2012-33 amdt 1.1



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**Official visitors must try to resolve complaints**
s 47 am A2011-22 amdt 1.87
om A2012-33 amdt 1.1

**Withdrawal of complaints**
s 48 om A2012-33 amdt 1.1

**Complaints may be closed—referral to other entity**
s 49 om A2012-33 amdt 1.1

**Complaints may be closed—other entity investigating**
s 50 om A2012-33 amdt 1.1

**Complaints closed—frivolous, etc**
s 51 om A2012-33 amdt 1.1

**Complaints closed—resolved**
s 52 om A2012-33 amdt 1.1

**Complaints closed—complainant left detention etc**
s 53 om A2012-33 amdt 1.1

**Complainant must be told if complaint closed**
s 54 om A2012-33 amdt 1.1

**Information about complaints being investigated elsewhere**
s 55 om A2012-33 amdt 1.1

**Reopening complaints**
s 56 om A2012-33 amdt 1.1

**Other matters of concern—referral to other entity**
s 57 am A2011-22 amdt 1.87
om A2012-33 amdt 1.1

**Monthly reports by official visitors**
s 58 am A2011-22 amdt 1.87
om A2012-33 amdt 1.1

**Handover of records by official visitors**
s 59 om A2012-33 amdt 1.1

**Who is a *suitable entity*?**
s 61 am A2011-22 amdt 1.87; A2015-22 s 4; A2015-46 s 5

**Entity may apply to be suitable entity for purpose**
s 62 am A2011-22 amdt 1.87; A2015-22 s 5

**Director-general may approve suitable entity for purpose**
s 63 hdg am A2011-22 amdt 1.87
s 63 am A2011-22 amdt 1.87; A2011-45 amdt 1.21; A2015-46 s 6; ss renum R45 LA



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**Director-general must consider suitability information, etc**
s 64 hdg am A2011-22 amdt 1.87
s 64 am A2011-22 amdt 1.87; A2015-22 s 6

**What is *suitability information*?**
s 65 am A2011-22 amdt 1.87

**Director-general may require suitability information**
s 66 hdg am A2011-22 amdt 1.87
s 66 am A2011-22 amdt 1.87

**Director-general need not decide suitability if information not provided**
s 67 hdg am A2011-22 amdt 1.87
s 67 am A2011-22 amdt 1.87

**Director-general may require test etc**
s 68 hdg am A2011-22 amdt 1.87
s 68 am A2011-22 amdt 1.87; A2013-44 amdt 3.15

**Director-general need not decide suitability if test not taken, etc**
s 69 hdg am A2011-22 amdt 1.87
s 69 am A2011-22 amdt 1.87

**Offence—ongoing duty to update suitability information**
s 70 am A2010-18 amdt 1.6, amdt 1.7; A2011-22 amdt 1.87; A2015-50 amdt 3.14

**Director-general may employ etc suitable entity**
s 71 hdg am A2011-22 amdt 1.87
s 71 am A2011-22 amdt 1.87

**Suitable entities register**
s 72 am A2011-22 amdt 1.87; A2015-22 s 7

**Definitions—Act**
s 73 def ***family group conference facilitator*** sub A2015-50 amdt 3.15

**What is a *family group conference agreement*?**
s 76 am A2009-40 amdt 1.9; A2011-22 amdt 1.87

**Family group conference facilitators—appointment**
s 78 am A2011-22 amdt 1.87

**Family group conference facilitators—functions**
s 79 am A2011-22 amdt 1.87

**Family group conferences—criteria**
s 80 am A2011-22 amdt 1.87

**Family group conferences—criteria for review conference**
s 81 am A2011-22 amdt 1.87



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**Family group conferences—facilitator to organise**
s 82 am A2011-22 amdt 1.87

**Family group conferences—who must be invited**
s 83 am A2011-22 amdt 1.87

**Family group conferences—parties reach agreement**
s 85 am A2009-40 amdt 1.9; A2011-22 amdt 1.87

**Family group conferences—agreement of young person**
s 86 am A2009-40 amdt 1.1

**Family group conferences—before family group conference agreement**
s 87 am A2009-40 amdt 1.9

**Family group conferences—outcome report**
s 88 am A2011-22 amdt 1.87

**Family group conference agreements—implementation**
s 90 am A2011-22 amdt 1.87

**Youth justice principles**
s 94 am A2019-42 amdt 3.6

**Who is a *young detainee*?**
s 95 am A2011-22 amdt 1.87, amdt 1.88

**Who is a *youth detention officer*?**
s 96 am A2011-22 amdt 1.87

**Treating doctors—health service appointments**
s 97 am A2011-22 amdt 1.87

**Health practitioners—non-treating functions**
s 98 hdg sub A2015-29 amdt 2.3
s 98 am A2010-10 amdt 2.2; A2011-22 amdt 1.87; A2015-29 amdt 2.4

**Directions to escort officers**
s 101 am A2011-22 amdt 1.87

**Orders to bring young detainee before court etc**
s 102 am A2011-22 amdt 1.87, amdt 1.88; A2015-3 s 4

**Arrangements for escorting people**
s 103 am A2011-22 amdt 1.87

**Escort officer functions etc**
s 104 am A2011-22 amdt 1.87, amdt 1.88

**Executing warrants of commitment or remand etc**
s 107 am A2011-22 amdt 1.87



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**Transfers to health facilities**
s 109 am A2010-10 amdt 2.13; A2011-22 amdt 1.87; A2015-29 amdt 2.5; A2016-32 amdt 1.1

**Transfer to mental health facility—notice of change in status**
s 109A ins A2016-32 amdt 1.2

**Transfers to correctional centres—under 21 years old**
s 111 am A2011-22 amdt 1.87, amdt 1.88

**Transfers to correctional centres—21 year olds**
s 112 am A2011-22 amdt 1.87

**Transfer—notifying people responsible for or nominated by young detainees**
s 113 am A2011-22 amdt 1.87

**General agreements with other jurisdictions**
s 115 am A2011-28 amdt 3.46

**Transfer arrangements—general**
s 116 am A2011-22 amdt 1.87

**Power to arrange for transfers**
s 117 am A2011-22 amdt 1.87

**Transfer arrangements—facilities must be adequate**
s 118 am A2011-22 amdt 1.87

**Custody of person on transfer order**
s 120 am A2011-22 amdt 1.87

**Custody pending interstate transfer**
s 121 am A2011-22 amdt 1.87

**Director-general may receive young offenders**
s 127 hdg am A2011-22 amdt 1.87
s 127 am A2011-22 amdt 1.87

**Lawful custody for transit through ACT**
s 128 am A2011-22 amdt 1.87

**Revocation of transfer order—offence during transfer**
s 133 am A2011-22 amdt 1.87

**Revocation of transfer order by director-general**
s 134 hdg am A2011-22 amdt 1.87
s 134 am A2011-22 amdt 1.87

**Director-general may consider reports etc**
s 135 hdg am A2011-22 amdt 1.87
s 135 am A2011-22 amdt 1.87



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**Definitions—ch 6**
s 137 def ***accredited person*** am A2011-22 amdt 1.87; A2016-13 amdt 1.11; pars renum R47 LA
def ***non-treating doctor*** am A2010-10 amdt 2.13; A2015-29 amdt 2.6
def ***youth detention policy*** am A2011-22 amdt 1.87

**Detention places—minimum living conditions**
s 141 am A2011-22 amdt 1.87; A2013-44 amdt 3.16

**Youth detention policies and operating procedures**
s 143 am A2011-22 amdt 1.87

**Exclusion of matters from notified youth detention policies etc**
s 144 am A2011-22 amdt 1.87; A2016-13 amdt 1.12; pars renum R47 LA

**Copies of Act, policies etc to be available for inspection at detention place**
s 145 am A2011-22 amdt 1.87

**Director-general directions**
s 146 hdg am A2011-22 amdt 1.87
s 146 am A2011-22 amdt 1.87

**Prohibited areas**
s 147 am A2011-22 amdt 1.87

**Prohibited things**
s 148 am A2011-22 amdt 1.87

**Declaration of emergency**
s 149 am A2011-22 amdt 1.87

**Emergency powers**
s 150 am A2011-22 amdt 1.87

**Arrangements with police**
s 151 am A2011-22 amdt 1.87

**Assistance from other directors-general**
s 152 hdg sub A2011-22 amdt 1.81
am A2011-22 amdt 1.87

**Inspections by judicial officers, Assembly members etc**
s 153 am A2012-33 amdt 1.2; A2013-22 amdt 1.3; A2016-13 amdt 1.13; pars renum R47 LA

**Relationship with other inspection laws**
s 154 am A2011-22 amdt 1.87

**Authority for detention**
s 156 am A2011-22 amdt 1.87



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**Detention—notifying people responsible for or nominated by young detainees**
s 157 am A2011-22 amdt 1.87

**Identification of young detainees**
s 158 am A2011-22 amdt 1.87; A2013-44 amdt 3.17

**Information—entitlements and obligations**
s 159 am A2011-22 amdt 1.87, amdt 1.88

**Initial assessment**
s 160 am A2011-22 amdt 1.87

**Health assessment**
s 161 am A2010-10 amdt 2.13; A2011-22 amdt 1.87; A2015-38 amdt 2.65

**Alcohol and drug tests on admission**
s 162 am A2011-22 amdt 1.87

**Security classification**
s 163 am A2011-22 amdt 1.87

**Case management plan**
s 164 am A2011-22 amdt 1.87

**Entries in register of young detainees**
s 165 am A2011-22 amdt 1.87

**Requirements and considerations about placement and separation of young detainees**
s 166 am A2011-22 amdt 1.87

**Food and drink**
s 167 am A2011-22 amdt 1.87

**Clothing**
s 168 am A2011-22 amdt 1.87

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s 245 am A2011-22 amdt 1.87, amdt 1.88; A2016-32 amdt 1.3

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s 258 hdg am A2011-22 amdt 1.87
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s 326 am A2011-22 amdt 1.87

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s 354 am A2011-22 amdt 1.87

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s 361 hdg am A2011-22 amdt 1.87
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s 405 am A2011-22 amdt 1.87; A2013-21 s 4

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s 411 am A2011-22 amdt 1.87

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s 438 am A2010-10 amdt 2.13; A2011-22 amdt 1.87; A2011-45 amdt 1.22; A2015-29 amdt 2.12

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s 455 am A2011-22 amdt 1.87; A2012-3 s 6

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s 456 am A2009-36 amdt 1.4; A2011-22 amdt 1.87

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def ***DVPO interim protection order*** am R10 LA
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s 462 am A2008-46 amdt 3.8 (amdts ineffective see s 463)
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s 464 am A2008-36 amdt 1.76; A2011-22 amdt 1.87

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s 476 am A2015-46 s 14

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s 478 am A2011-22 amdt 1.87; A2018-42 amdt 3.26

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s 479 am A2011-22 amdt 1.87

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s 480 am A2011-22 amdt 1.87; A2018-42 amdt 3.26, amdt 3.27

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s 481 am A2011-22 amdt 1.87

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s 483 am A2011-22 amdt 1.87

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s 485 am A2011-22 amdt 1.87

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s 488 am A2011-22 amdt 1.87

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s 489 am A2011-22 amdt 1.87

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s 490 hdg am A2011-22 amdt 1.87
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s 492 am A2011-22 amdt 1.87

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def ***annual review report order*** ins A2015-50 amdt 3.22
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**What is a *reviewable care and protection order*?**
s 493 am A2011-22 amdt 1.87

**What is an *annual review report*?**
s 494 am A2011-22 amdt 1.87



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**Annual review report—prepared at least annually**

s 495 am A2010-38 s 7; A2011-22 amdt 1.87
sub A2016-38 s 11

**Annual review report—consultation**

s 496 am A2011-22 amdt 1.87; A2015-46 s 19; pars renum R45 LA

**Annual review report—must be given to certain people**

s 497 am A2011-22 amdt 1.87; A2015-46 s 20, s 21; ss renum R45 LA

**Annual review report—application for waiver of obligation to give report to someone**

s 498 am A2011-22 amdt 1.87

**Annual review report—waiver of obligation to give annual review report to someone**

s 499 am A2011-22 amdt 1.87

**Annual review report—public advocate may require director-general to give annual review report to someone**

s 500 hdg am A2011-22 amdt 1.87
s 500 am A2011-22 amdt 1.87

**Annual review report—director-general delegations**

s 501A hdg sub A2016-38 s 12
s 501A ins A2015-46 s 22
am A2016-38 s 13
om A2018-24 s 14

**Care and protection—director-general has aspect of parental responsibility**

ch 15 hdg am A2011-22 amdt 1.87
note am A2011-22 amdt 1.87

**Definitions—Act**

s 502 sub A2015-46 s 23
def ***approved kinship and foster care organisation*** ins A2015-46 s 23
def ***approved residential care organisation*** ins A2015-46 s 23
def ***foster carer*** sub A2015-46 s 23
def ***foster care service*** sub A2015-22 s 9
om A2015-46 s 23
def ***general parental authority*** sub A2015-46 s 23
def ***in therapeutic protection*** sub A2015-46 s 23
def ***kinship carer*** sub A2015-46 s 23
def ***out-of-home carer*** sub A2015-46 s 23
def ***out-of-home carer authorisation*** om A2015-22 s 10
def ***residential care service*** sub A2015-46 s 23
def ***specific parental authority*** sub A2015-46 s 23



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**Director-general may provide assistance**

| | |
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| s 503 hdg | am A2011-22 amdt 1.87 |
| s 503 | am A2011-22 amdt 1.87; A2012-3 s 7 |

**Parental responsibility—director-general delegations**

| | |
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| s 503A | ins A2016-38 s 14 |
| | om A2018-24 s 15 |

**Director-general has long-term care responsibility**

| | |
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| pt 15.2 hdg | am A2011-22 amdt 1.87 |

**Director-general sharing long-term care responsibility**

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| s 504 hdg | am A2011-22 amdt 1.87 |
| s 504 | am A2011-22 amdt 1.87, amdt 1.88 |

**Director-general must consult about long-term care**

| | |
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| s 505 hdg | am A2011-22 amdt 1.87 |
| s 505 | am A2011-22 amdt 1.87 |

**Director-general has daily care responsibility**

| | |
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| pt 15.3 hdg | am A2011-22 amdt 1.87 |

**Pt 15.3 applies to care and protection chapters**

| | |
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| s 506 | am A2011-22 amdt 1.87 |

**Public advocate to be told about action following appraisals**

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| s 507 | am A2011-22 amdt 1.87; A2013-21 s 5 |

**Who is an *out-of-home carer*?**

| | |
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| s 508 | am A2015-46 s 24 |

**Who is a *kinship carer*?**

| | |
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| s 509 | am A2011-22 amdt 1.87 |
| | om A2015-46 s 25 |

**Meaning of *approved foster care organisation*, *foster care service* and *foster carer***

| | |
|---|---|
| s 510 | am A2011-22 amdt 1.87 |
| | sub A2015-22 s 11 |
| | om A2015-46 s 25 |

**Meaning of *approved residential care organisation* and *residential care service***

| | |
|---|---|
| s 511 | am A2011-22 amdt 1.87 |
| | sub A2015-22 s 11 |
| | om A2015-46 s 25 |

**Director-general must place child or young person with out-of-home carer**

| | |
|---|---|
| s 512 hdg | am A2011-22 amdt 1.87 |
| | sub A2013-21 s 6 |
| s 512 | am A2011-22 amdt 1.87; A2013-21 s 7; ss renum R31 LA |



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**Priorities for placement with out-of-home carer—Aboriginal or Torres Strait Islander child or young person**

s 513 am A2011-22 amdt 1.87

**Placement with out-of-home carer—director-general delegations**

s 513A ins A2016-38 s 15
om A2018-24 s 16

**Residential care service may accommodate child or young person at place of car**

s 514 am A2011-22 amdt 1.87
am A2012-33 amdt 1.3; A2015-46 s 26

**Approval of carers**

div 15.4.1A hdg ins A2015-46 s 27

**Approved carers—individual may apply**

s 514A ins A2015-46 s 27

**Approved carers—director-general may approve**

s 514B ins A2015-46 s 27
am A2018-24 s 17

**Approved carers—criteria for approval**

s 514C ins A2015-46 s 27

**Approved carers—further information, references etc**

s 514D ins A2015-46 s 27

**Approved carers—expiry and renewal of approvals**

s 514E ins A2015-46 s 27

**Approved carers—revocation of approval**

s 514EA ins A2018-24 s 18

**Offence—ongoing duty to update information**

s 514F ins A2015-46 s 27

**Approved carers—director-general delegations**

s 514G ins A2015-46 s 27
sub A2016-38 s 16
om A2018-24 s 19

**Definitions—Act**

s 515 om A2015-46 s 28
def ***foster care service*** am A2011-22 amdt 1.87
om A2015-22 s 12
def ***general parental authority*** om A2015-46 s 28
def ***out-of-home carer authorisation*** om A2015-22 s 12
def ***specific parental authority*** om A2015-46 s 28



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**Kinship carer—specific parental authority**
s 516 hdg sub A2015-46 s 29
s 516 am A2011-22 amdt 1.87; A2015-46 ss 30-33

**Authorisation of foster care service**
s 517 am A2011-22 amdt 1.87
sub A2015-22 s 13
om A2015-46 s 34

**Foster carer—specific parental authority**
s 518 hdg sub A2015-46 s 35
s 518 am A2011-22 amdt 1.87; A2015-46 ss 36-38

**Authorisation of foster carer—general parental authority**
s 519 am A2011-22 amdt 1.87
om A2015-46 s 39

**Residential care service—general parental authority**
s 520 hdg sub A2015-46 s 40
s 520 am A2011-22 amdt 1.87
sub A2015-22 s 14
am A2015-46 s 41; ss renum R45 LA

**Out-of-home carer must be given copy of authorisation and any relevant court orders**
s 521 am A2011-22 amdt 1.87

**Revocation of foster care service's authorisation**
s 522 am A2011-22 amdt 1.87, amdt 1.88; A2015-22 ss 15-17
om A2015-46 s 42

**Revocation of foster carer's authorisation**
s 523 am A2011-22 amdt 1.87, amdt 1.88; A2013-10 s 8; A2013-44 amdt 3.20
om A2015-46 s 42

**Revocation of residential care service's authorisation**
s 524 am A2011-22 amdt 1.87, amdt 1.88; A2013-10 s 9; A2012-33 amdt 1.4; A2015-22 ss 18-20; A2015-46 s 43, s 44

**Approval of places of care**
s 525 am A2011-22 amdt 1.87; A2012-33 amdt 1.5; A2015-22 s 21, s 22; A2015-46 s 45

**Information and items to be kept by foster carers and residential care services**
div 15.4.3 hdg sub A2012-3 s 8

**Definitions—div 15.4.3**
s 526 def ***care entities*** om A2015-46 s 46
def ***personal information*** om A2012-3 s 9
def ***placement*** am A2011-22 amdt 1.87; A2015-46 s 47



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**Information and items must be kept during placement**
s 527 hdg sub A2012-3 s 10
s 527 am A2011-22 amdt 1.87; A2012-3 s 11; A2015-46 s 48

**Information and items must be kept after placement ends**
s 528 hdg sub A2012-3 s 12
s 528 am A2011-22 amdt 1.87; A2012-3 s 13, s 14

**Child or young person may have access to information and items**
s 529 am A2011-22 amdt 1.87, amdt 1.88
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pt 15.5 hdg ins A2012-3 s 16

**Preliminary**
div 15.5.1 hdg ins A2012-3 s 16

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s 529A ins A2012-3 s 16

**Who is a *young adult*?—pt 15.5**
s 529B ins A2012-3 s 16

**Who is a *previous out-of-home carer* for a young person or young adult?—pt 15.5**
s 529BA ins A2016-38 s 17

**Transition plans**
div 15.5.2 hdg ins A2012-3 s 16

**What is a *transition plan*?**
s 529C ins A2012-3 s 16

**Transition plans—when prepared**
s 529D ins A2012-3 s 16

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s 529E ins A2012-3 s 16

**Transition plans—review—young person for whom director-general has parental responsibility**
s 529F ins A2012-3 s 16

**Transition plans—review—young person for whom director-general does not have parental responsibility**
s 529G ins A2012-3 s 16

**Transition plans—review—young adult**
s 529H ins A2012-3 s 16

**Transition plans—director-general delegations**
s 529HA ins A2016-38 s 18
om A2018-24 s 20



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**Assistance after leaving out-of-home care**
div 15.5.3 hdg ins A2012-3 s 16

**Assistance generally**
s 529I ins A2012-3 s 16

**Financial assistance—young person or young adult**
s 529J hdg sub A2015-46 s 49
s 529J ins A2012-3 s 16

**Financial assistance—previous out-of-home carer**
s 529JA ins A2015-46 s 50
am A2016-38 ss 19-22

**Entitlement to personal items and access to protected information**
div 15.5.4 hdg ins A2012-3 s 16

**Entitlement to personal items**
s 529K ins A2012-3 s 16
am A2016-38 s 23

**Access to protected information—young person**
s 529L ins A2012-3 s 16
am A2016-38 s 24, s 25

**Access to protected information—young adult**
s 529M ins A2012-3 s 16
am A2016-38 s 26

**Access to protected information—support and assistance**
s 529N ins A2012-3 s 16

**Access to protected information—director-general delegations**
s 529NA ins A2016-38 s 27
om A2018-24 s 21

**Definitions—Act and ch 16**
s 530 (1) def ***mental disorder*** ins A2014-51 amdt 1.1
am A2015-38 amdt 2.65
def ***mental dysfunction*** om A2014-51 amdt 1.2
def ***mental illness*** sub A2014-51 amdt 1.3
am A2015-38 amdt 2.65
s 530 (2) def ***non-treating doctor*** sub A2010-10 amdt 2.5
am A2015-29 amdt 2.13
def ***non-treating health practitioner*** ins A2010-10 amdt 2.5
am A2015-29 amdt 2.13
def ***non-treating health professional*** sub A2010-10 amdt 2.5
om A2015-29 amdt 2.14
def ***non-treating nurse*** sub A2010-10 amdt 2.5
am A2015-29 amdt 2.15



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def ***therapeutic protection person*** am A2011-22 amdt 1.87
def ***therapeutic protection register*** ins A2015-50 amdt 3.23
def ***therapeutic protection transition plan*** ins A2012-3 s 17
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s 531 am A2011-22 amdt 1.87

**What is a *therapeutic protection order*?**
s 532 am A2011-22 amdt 1.87

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s 534 am A2011-22 amdt 1.87

**What is a *therapeutic protection plan*?**
s 536 am A2011-22 amdt 1.87

**What is a *therapeutic protection transition plan*?**
s 538 hdg sub A2012-3 s 18
s 538 am A2011-22 amdt 1.87; A2012-3 s 19

**Therapeutic protection order—application by director-general**
s 539 hdg am A2011-22 amdt 1.87
s 539 am A2011-22 amdt 1.87

**Therapeutic protection order—application to state grounds etc**
s 540 am A2011-22 amdt 1.87; A2012-3 s 20

**Therapeutic protection orders—who must be given application**
s 541 am A2011-22 amdt 1.87

**Therapeutic protection order—Childrens Court to consider application promptly**
s 542 am A2011-22 amdt 1.87

**What is an *interim therapeutic protection order*?**
s 543 am A2011-22 amdt 1.87

**Interim therapeutic protection order—criteria for making**
s 544 am A2011-22 amdt 1.87

**Interim therapeutic protection order—mental health referral**
s 545 am A2008-36 amdt 1.78; A2009-20 amdt 3.28; A2015-38 amdt 2.58, amdt 2.59

**Therapeutic protection order—criteria for making**
s 549 am A2008-36 amdt 1.79; A2011-22 amdt 1.87; A2015-38 amdt 2.60, amdt 2.61

**Therapeutic protection order—statement of reasons**
s 551 am A2015-50 amdt 3.24



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**Definitions—div 16.2.5**
s 552A ins A2015-50 amdt 3.25
def ***initial review*** ins A2015-50 amdt 3.25
def ***ongoing review*** ins A2015-50 amdt 3.25

**Initial review within 4 weeks**
s 553 am A2011-22 amdt 1.87

**Ongoing review at least each 4 weeks**
s 554 am A2011-22 amdt 1.87

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s 555 am A2011-22 amdt 1.87

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s 556 am A2011-22 amdt 1.87

**Director-general's action after review**
s 557 hdg am A2011-22 amdt 1.88
s 557 am A2011-22 amdt 1.87

**Therapeutic protection order—extension application**
s 558 am A2011-22 amdt 1.87

**Therapeutic protection order—who must be given extension application**
s 560 am A2011-22 amdt 1.87

**Therapeutic protection order—criteria for extension up to 6 months**
s 562 am A2011-22 amdt 1.87; A2015-38 amdt 2.62

**Therapeutic protection order extension—statement of reasons**
s 563 am A2015-50 amdt 3.26

**Therapeutic protection order—application for amendment or revocation**
s 564 am A2011-22 amdt 1.87

**Therapeutic protection order—application for amendment must state grounds etc**
s 565 am A2011-22 amdt 1.87

**Therapeutic protection order—application for revocation must state grounds etc**
s 566 am A2011-22 amdt 1.87

**Therapeutic protection order—criteria for amendment**
s 569 am A2011-22 amdt 1.87

**Therapeutic protection order amendment or revocation—statement of reasons**
s 571 am A2015-50 amdt 3.27

**Transgender and intersex children and young people—sexual identity**
s 573 am A2010-10 amdt 2.13



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**Who is an *accredited person*?**
s 576 am A2011-22 amdt 1.87; A2016-13 amdt 1.22; pars renum R47 LA

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s 583 am A2011-22 amdt 1.87

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s 623 am A2011-22 amdt 1.87; A2016-13 amdt 1.23

**Therapeutic protection place—declaration**
s 625 am A2011-22 amdt 1.87

**Therapeutic protection place—exclusion of matters from declaration etc**
s 626 am A2011-22 amdt 1.87

**Therapeutic protection place—policies and procedures**
s 627 am A2011-22 amdt 1.87

**Authorisation of operating entity for therapeutic protection place**
s 628 am A2011-22 amdt 1.87

**Suspension of operating entity's authorisation**
s 629 am A2011-22 amdt 1.87, amdt 1.88

**Revocation of operating entity's authorisation**
s 630 am A2011-22 amdt 1.87, amdt 1.88

**Public advocate and official visitor may be given therapeutic protection plan**
s 631 am A2011-22 amdt 1.87

**Non-treating health practitioners**
div 16.4.3 hdg sub A2010-10 amdt 2.6; A2015-29 amdt 2.16

**Health practitioners—non-treating functions**
s 632 hdg sub A2015-29 amdt 2.17
s 632 sub A2010-10 amdt 2.6
am A2015-29 amdts 2.18-2.21

**Therapeutic protection register—who may have access?**
s 634 am A2011-22 amdt 1.87; A2016-13 amdt 1.24; pars renum R47 LA

**Definitions—ch 17**
s 637 def ***welfare body*** am A2011-22 amdt 1.83

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s 640 am A2011-28 amdt 3.46

**What is an *interstate law*?**
s 641 am A2011-28 amdt 3.46

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s 642 am A2011-28 amdt 3.46



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**Transfers of orders by director-general**
div 17.2.1 hdg am A2011-22 amdt 1.87

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s 643 hdg am A2011-22 amdt 1.87
s 643 am A2011-22 amdt 1.87, amdt 1.88

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s 644 hdg am A2011-22 amdt 1.87
s 644 am A2011-22 amdt 1.87

**Director-general transfer—certain people must agree**
s 645 hdg am A2011-22 amdt 1.87
s 645 am A2009-40 amdt 1.3

**Director-general transfer—certain people must be told**
s 646 hdg am A2011-22 amdt 1.87
s 646 am A2011-22 amdt 1.87

**Director-general transfer—limited time for review**
s 647 hdg am A2011-22 amdt 1.87
s 647 am A2011-22 amdt 1.87

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s 648 am A2011-22 amdt 1.87

**Childrens Court transfer—criteria**
s 649 am A2011-22 amdt 1.87

**Childrens Court transfer—considerations**
s 651 am A2011-22 amdt 1.87

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s 652 am A2011-22 amdt 1.87

**Childrens Court transfer—appeal applications**
s 653 am A2011-22 amdt 1.87

**Interstate registration of ACT orders—revocation**
s 656 am A2011-22 amdt 1.87

**Interstate registration of ACT orders—Childrens Court file**
s 657 am A2011-22 amdt 1.87

**Transfer of ACT proceedings—applications**
s 658 am A2011-22 amdt 1.87

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s 659 am A2011-22 amdt 1.87

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s 662 am A2011-22 amdt 1.87



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**Transfer of ACT proceedings—revocation of registration**
s 664 am A2011-22 amdt 1.87

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s 666 am A2011-22 amdt 1.87

**ACT registration of interstate orders—application for revocation**
s 669 am A2011-22 amdt 1.87

**ACT registration—interstate child welfare proceedings**
s 672 am A2011-22 amdt 1.87

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s 675 am A2011-22 amdt 1.87

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s 679 am A2011-22 amdt 1.87; A2016-42 amdt 3.17; pars renum R57 LA

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s 680 am A2011-22 amdt 1.87

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s 681 am A2011-22 amdt 1.87

**Safe custody—parental responsibility to director-general**
s 683 hdg am A2011-22 amdt 1.87
s 683 am A2011-22 amdt 1.87

**Safe custody warrant—application**
s 685 am A2011-22 amdt 1.87

**Safe custody warrant—criteria**
s 686 am A2016-42 amdt 3.18; pars renum R57 LA

**Safe custody warrant—content**
s 687 am A2011-22 amdt 1.87, amdt 1.88; A2015-50 amdt 3.28

**Safe custody warrant—application made other than in person**
s 688 am A2011-22 amdt 1.87; A2018-33 amdt 1.5, amdt 1.6

**Safe custody warrant—announcement before entry**
s 689 am A2011-22 amdt 1.87

**Safe custody warrant—details of warrant to be given to occupier etc**
s 690 am A2011-22 amdt 1.87

**Safe custody warrant—placement of child or young person**
s 692 am A2011-22 amdt 1.87

**Safe custody—matter must be brought to court promptly**
s 694 am A2011-22 amdt 1.87

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s 709 am A2011-22 amdt 1.87, amdt 1.88



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**Orders—must be given to people**
s 720 am A2011-22 amdt 1.87

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s 721 am A2011-22 amdt 1.87

**Orders—statement of reasons**
s 722 am A2015-50 amdt 3.29

**Children and Young People Death Review Committee**
ch 19A hdg ins A2011-9 s 4

**Establishment and functions of committee**
pt 19A.1 hdg ins A2011-9 s 4

**Establishment of committee**
s 727A ins A2011-9 s 4

**Functions of committee**
s 727B ins A2011-9 s 4

**Committee members**
s 727C ins A2011-9 s 4
am A2011-22 amdt 1.89

**Appointment of committee members**
s 727D ins A2011-9 s 4
am A2015-13 s 4 ss renum R38 LA

**Appointment of chair of committee**
s 727E ins A2011-9 s 4

**Appointment of deputy chair of committee**
s 727EA ins A2015-13 s 5

**Conflict of interest**
s 727F ins A2011-9 s 4

**Appointment of advisers**
s 727G ins A2011-9 s 4

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s 727H ins A2011-9 s 4

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s 727I ins A2011-9 s 4
am A2011-22 amdt 1.89, amdt 1.90
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pt 19A.2 hdg ins A2011-9 s 4



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**Meetings**

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| s 727J | ins A2011-9 s 4<br>am A2015-13 s 6 |

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| s 727K | ins A2011-9 s 4<br>sub A2015-13 s 7 |

**Quorum at meetings**

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| s 727L | ins A2011-9 s 4<br>am A2015-13 s 8 |

**Voting at meetings**

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| s 727M | ins A2011-9 s 4<br>am A2015-13 s 9 |

**Register of deaths of children and young people**

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**Children and young people deaths register**

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| s 727N | ins A2011-9 s 4<br>am A2011-22 amdt 1.89; A2013-10 s 10; A2013-44 amdt 3.21<br>(6), (7) exp 17 September 2017 (s 727N (7)) |

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| s 727O | ins A2011-9 s 4<br>am A2011-22 amdt 1.89 |

**Exchanging information with corresponding interstate entities**

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| s 727P | ins A2011-9 s 4 |

**Power to ask for information, documents and other things**

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| s 727Q | ins A2011-9 s 4 |

**Children and young people deaths register—who may have access?**

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| s 727R | ins A2011-9 s 4 |

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| pt 19A.4 hdg | ins A2011-9 s 4 |

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| s 727S | ins A2011-9 s 4<br>am A2011-22 amdt 1.89; A2016-38 s 28 |

**Other reports**

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| s 727U | ins A2011-9 s 4<br>am A2011-22 amdt 1.89<br>exp 17 September 2017 (s 727U (6)) |



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**Application—ch 20**
s 731 am A2011-22 amdt 1.87; A2011-43 s 4; pars renum R27 LA; A2013-21 s 8

**Offence—fail to notify change of controlling person**
s 737 am A2011-22 amdt 1.87

**Childcare services—offences**
pt 20.3 hdg note am A2011-22 amdt 1.87

**Childcare service licence—proposed proprietor may apply**
s 743 am A2011-22 amdt 1.87

**Childcare service licence—further information**
s 744 am A2011-22 amdt 1.87

**Childcare service licence—director-general need not decide if no information or inspection**
s 745 hdg am A2011-22 amdt 1.87
s 745 am A2011-22 amdt 1.87

**Childcare service licence—eligibility**
s 746 am A2011-22 amdt 1.87

**Childcare service licence—decision on application**
s 747 am A2011-22 amdt 1.87

**Childcare service licence—childcare service standards**
s 749 am A2010-9 ss 5-8; ss renum R16 LA; A2011-22 amdt 1.87

**Childcare service licence—length**
s 750 am A2011-22 amdt 1.87

**Childcare service licence—extensions**
s 751 am A2011-22 amdt 1.87

**Childcare service licence—amendment**
s 752 am A2011-22 amdt 1.87

**Childcare service licence—transfer**
s 753 am A2011-22 amdt 1.87

**Childcare service licence renewal—licensed proprietor may apply**
s 754 am A2011-22 amdt 1.87

**Childcare service licence renewal—further information**
s 755 am A2011-22 amdt 1.87

**Childcare service licence renewal—director-general need not decide if no information or inspection**
s 756 hdg am A2011-22 amdt 1.87
s 756 am A2011-22 amdt 1.87



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**Childcare service licence renewal—eligibility**
s 757 am A2011-22 amdt 1.87

**Childcare service licence renewal—decision on application**
s 758 am A2011-22 amdt 1.87

**Childcare service licence—compliance notices**
s 760 am A2011-22 amdt 1.87

**Childcare service licence—suspension for noncompliance**
s 761 am A2011-22 amdt 1.87

**Childcare service licence—ending noncompliance suspension**
s 762 am A2011-22 amdt 1.87

**Childcare service licence—suspension if children unsafe**
s 763 am A2011-22 amdt 1.87, amdt 1.88

**Childcare service licence—notice of intention to cancel**
s 764 am A2011-22 amdt 1.87

**Childcare service licence—cancellation**
s 765 am A2011-22 amdt 1.87

**Childcare service licence—cancellation notice**
s 766 am A2011-22 amdt 1.87

**Offence—fail to return cancelled childcare service licence**
s 767 am A2011-22 amdt 1.87

**Childcare service licence—identity of childcare workers protected**
s 768 am A2011-22 amdt 1.87

**Offence—operate unlicensed childcare service**
s 769 am A2011-22 amdt 1.87

**Offence—operate childcare service when licence suspended**
s 771 am A2011-22 amdt 1.87

**Offence—operate childcare service in contravention of standards**
s 772 am A2011-22 amdt 1.87

**Childcare service licence—register**
s 773 am A2011-22 amdt 1.87

**Assessing compliance with childcare services standards**
s 774 am A2011-22 amdt 1.87

**Annual childcare standards report**
s 775 am A2011-22 amdt 1.87

**Annual childcare standards report—consultation**
s 777 am A2011-22 amdt 1.87, amdt 1.88



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**Removal of child in immediate danger**
s 778 am A2011-22 amdt 1.87

**Ch 21 subject to Education Act 2004, s 13**
s 779 om A2009-40 amdt 1.4

**Definitions—ch 21**
s 780 def ***work experience*** sub A2009-40 amdt 1.5

**When does someone *employ* a child or young person?**
s 781 am A2009-17 s 4; A2016-20 amdt 1.1

**When is employment contrary to the best interests of a child or young person?**
s 782 am A2009-40 amdt 1.6

**Work experience program—exemption from ch 21**
s 783 am A2011-22 amdt 1.87

**Work experience program—decision on application**
s 784 am A2011-22 amdt 1.87

**Work experience program exemption—further information**
s 785 am A2011-22 amdt 1.87

**Suspension of work experience program exemption**
s 786 am A2011-22 amdt 1.87, amdt 1.88

**Revocation of educational institution's exemption**
s 787 am A2011-22 amdt 1.87, amdt 1.88

**Employment of children and young people**
pt 21.3 hdg note sub A2009-28 amdt 2.1; A2011-55 amdt 1.1

**Director-general may prohibit employment**
s 788 hdg am A2011-22 amdt 1.87
s 788 am A2011-22 amdt 1.87

**Offence—contravene employment prohibition notice**
s 789 am A2011-22 amdt 1.87

**Director-general may state conditions of employment**
s 790 hdg am A2011-22 amdt 1.87
s 790 am A2011-22 amdt 1.87

**Offence—contravene employment conditions notice**
s 791 am A2011-22 amdt 1.87

**Employment of children and young people under 15 years old**
pt 21.4 hdg sub A2009-40 amdt 1.7
notes sub A2009-28 amdt 2.2; A2009-40 amdt 1.7; A2011-55 amdt 1.2



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**Offence—employment of children and young people under 15 years old**
s 795 hdg am A2009-40 amdt 1.9
s 795 am A2009-40 amdt 1.9

**Exception to s 795—employment in light work**
s 796 am A2011-22 amdt 1.87

**High risk employment—employer may apply for permit**
s 799 am A2009-40 amdt 1.9; A2011-22 amdt 1.87

**High risk employment permit—decision on application**
s 800 am A2011-22 amdt 1.87

**High risk employment permit—further information**
s 801 am A2011-22 amdt 1.87

**Offence—employment of child or young person under 15 years old in high risk employment**
s 803 hdg am A2009-40 amdt 1.9
s 803 am A2009-40 amdt 1.9; A2011-22 amdt 1.87

**Offence—contravene condition of permit**
s 804 am A2011-22 amdt 1.87

**What is a *research project*?**
s 806 am A2011-22 amdt 1.87

**Approval of research projects—generally**
s 807 am A2011-22 amdt 1.87

**Research standards—certain matters to be covered**
s 808 am A2011-22 amdt 1.87

**Approval of research projects—child or young person to take part**
s 809 am A2011-22 amdt 1.87

**Definitions—ch 23**
s 812 def ***authorised person*** am A2011-22 amdt 1.87

**Power to enter premises—ch 15 (Care and Protection—director-general has aspect of parental responsibility)**
s 815 hdg am A2011-22 amdt 1.87
s 815 am A2011-22 amdt 1.87; A2012-33 amdt 1.6

**Power to enter premises—ch 16 (Care and protection—therapeutic protection of children and young people)**
s 816 am A2009-20 amdt 3.29; A2011-22 amdt 1.87

**Power to enter premises—ch 20 (Childcare services)**
s 817 am A2011-22 amdt 1.87

**Power to require name and address**
s 822 am A2009-49 amdt 3.17



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**Warrants—application made other than in person**
s 825 am A2018-33 amdt 1.7, amdt 1.8

**Return of things seized**
s 832 am A2011-22 amdt 1.87

**Compensation for exercise of enforcement powers**
s 834 am A2008-46 amdt 3.8 (amdts ineffective see s 835)

**Appeals to Supreme Court—generally**
s 835 am R10 LA; A2016-42 amdt 3.19

**Notification and review of decisions**
div 24.1.3 hdg sub A2008-36 amdt 1.80

**Meaning of *reviewable decision*—div 24.1.3**
s 839 sub A2008-36 amdt 1.80
am A2011-22 amdt 1.87; A2015-22 s 23, s 24; A2015-46 s 51, s 52; items renum R45 LA; A2018-24 s 22; items renum R65 LA; A2018-42 amdt 3.28

**Reviewable decision notices**
s 839A ins A2008-36 amdt 1.80
am A2018-42 amdt 3.29

**Applications for review**
s 839B ins A2008-36 amdt 1.80

**Decision to refuse to give childcare service licence must not be stayed or otherwise affected pending outcome of review**
s 840 am A2008-36 amdt 1.81, amdt 1.82

**Definitions—Act and ch 25**
s 842 (2) def ***information*** am A2010-10 amdt 2.13

**Who is an *information holder*?**
s 843 am A2010-9 s 9; A2011-22 amdt 1.87

**What is *sensitive information*?**
s 845 am A2010-9 s 10; A2011-22 amdt 1.87

**Exception to s 846—information given under another law**
s 848 am A2016-55 amdt 4.4

**Sharing protected information**
pt 25.3 hdg note am A2011-22 amdt 1.87

**Minister or director-general—giving information to person about the person**
s 850 hdg am A2011-22 amdt 1.87
s 850 am A2011-22 amdt 1.87



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**Minister or director-general—giving information in best interests of child or young person**

| | |
|---|---|
| s 851 hdg | am A2011-22 amdt 1.87 |
| s 851 | am A2011-22 amdt 1.87 |

**Director-general—giving information to person under corresponding provisions**

| | |
|---|---|
| s 852 hdg | am A2011-22 amdt 1.87 |
| s 852 | am A2011-22 amdt 1.87 |

**Family group conference facilitator—giving information in best interests of child or young person**

| | |
|---|---|
| s 853 | am A2011-22 amdt 1.87 |

**Out-of-home carer and approved kinship and foster care organisation—giving information necessary for responsibilities**

| | |
|---|---|
| s 854 hdg | sub A2015-46 s 53 |
| s 854 | am A2011-22 amdt 1.87; A2015-46 s 54 |

**Director-general—giving information to researcher**

| | |
|---|---|
| s 855 hdg | am A2011-22 amdt 1.87 |
| s 855 | am A2011-22 amdt 1.87 |

**Director-general—giving information to authorised assessor**

| | |
|---|---|
| s 856 hdg | am A2011-22 amdt 1.87 |
| s 856 | am A2011-22 amdt 1.87 |

**Director-general—giving information to commissioner for fair trading**

| | |
|---|---|
| s 856A | ins A2016-39 s 4 |

**Responsible person—giving information to commissioner for fair trading**

| | |
|---|---|
| s 856B | ins A2016-39 s 4 |

**Certain identifying information not to be given**

| | |
|---|---|
| s 857 | am A2010-9 s 11, s 12 |

**Who is an *information sharing entity*?**

| | |
|---|---|
| s 859 | am A2015-22 s 25; A2015-46 s 55 |

**Minister or director-general—giving safety and wellbeing information to information sharing entity**

| | |
|---|---|
| s 860 hdg | am A2011-22 amdt 1.87 |
| s 860 | am A2011-22 amdt 1.87 |

**Information sharing entity—giving safety and wellbeing information to director-general**

| | |
|---|---|
| s 861 hdg | am A2011-22 amdt 1.87 |
| s 861 | am A2011-22 amdt 1.87 |



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**Director-general—asking information sharing entity for safety and wellbeing information**

s 862 hdg am A2011-22 amdt 1.87
s 862 am A2011-22 amdt 1.87

**Care teams—sharing safety and wellbeing information**

s 863 am A2009-49 amdt 1.10; A2010-10 amdt 2.13; A2011-22 amdt 1.87; A2015-46 s 56, s 57; A2014-51 amdt 1.4; A2015-38 amdt 2.65; A2016-38 s 29; A2018-24 s 23

**Sharing reportable conduct information**

div 25.3.3 hdg ins A2016-39 s 5
sub A2017-48 s 4

**Definitions—div 25.3.3**

s 863A ins A2016-39 s 5
def ***child safety information sharing entity*** ins A2017-48 s 6
def ***designated entity*** ins A2016-39 s 5
am A2017-48 s 5
def ***head*** ins A2017-48 s 6
def ***reportable conduct information*** ins A2016-39 s 5

**Entity may request reportable conduct information**

s 863B hdg sub A2017-48 s 7
s 863B ins A2016-39 s 5
am A2017-48 ss 8-11

**Entity may provide reportable conduct information**

s 863C hdg sub A2017-48 s 12
s 863C ins A2016-39 s 5
am A2017-48 s 13

**Unsolicited provision of information**

s 863CA ins A2017-48 s 14

**Restriction on use of information given under this division**

s 863D ins A2016-39 s 5
am A2017-48 s 15

**Protection from liability for providing reportable conduct information**

s 863E ins A2016-39 s 5
am A2017-48 s 15

**Reportable conduct information may be given despite territory law to the contrary**

s 863F ins A2016-39 s 5
am A2017-48 s 15

**Coordination etc between entities**

s 863G hdg sub A2017-48 s 16
s 863G ins A2016-39 s 5
am A2017-48 s 17



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**Giving protected information to police**
s 865A ins A2010-9 s 13
am A2011-22 amdt 1.87

**Court may order sensitive information to be given or produced**
s 866 am A2010-38 s 8

**Investigative entity may divulge protected information etc**
s 867 am A2010-9 s 14

**How child concern reports may be used in evidence**
s 868 am A2011-22 amdt 1.87

**Protection of people giving certain information**
s 874 am A2010-10 amdt 2.13; A2011-22 amdt 1.87; A2012-33 amdt 1.7, amdt 1.8; A2015-46 s 58; A2016-13 amdts 1.25-1.27; pars renum R47 LA

**Interaction with other laws**
s 875 am A2010-9 s 15; A2011-22 amdt 1.87; A2011-48 amdt 1.9; A2011-45 amdt 1.23; A2014-49 amdt 1.4

**Confidential report of contravention of Act**
s 876 am A2011-22 amdt 1.87

**Power of court to bring young detainee before it—civil proceeding**
s 876A ins A2015-3 s 5

**Offence—tattoo child or young person without agreement**
s 877 am A2010-43 amdt 1.6; A2016-7 amdt 1.6

**Protection of officials from liability**
s 878 am A2011-22 amdt 1.87; A2012-33 amdt 1.9, amdt 1.10; pars renum R32 LA

**ACT child welfare services must assist public advocate**
s 879 am A2015-46 s 59; A2016-13 amdt 1.28

**Evidentiary certificates—director-general—parental responsibility**
s 881 hdg am A2011-22 amdt 1.87
s 881 am A2011-22 amdt 1.87

**Evidentiary certificates—director-general—custody etc**
s 882 hdg am A2011-22 amdt 1.87
s 882 am A2011-22 amdt 1.87, amdt 1.88

**Appointment of analyst for Act**
s 883 am A2011-22 amdt 1.87

**Director-general delegations—approved care and protection organisations**
s 883A ins A2018-24 s 24

**Subdelegations—approved care and protection organisations**
s 883B ins A2018-24 s 24



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**Register of subdelegations**
s 883C ins A2018-24 s 24

**Determination of fees**
s 885 am A2011-22 amdt 1.87

**Approved forms**
s 886 am A2011-22 amdt 1.87

**Standard-making power**
s 887 am A2011-22 amdt 1.87; A2015-22 s 26; pars renum R39 LA

**Legislation amended**
s 889 om LA s 89 (3)

**Transitional**
ch 27 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**General**
pt 27.1 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Meaning of *repealed Act*—pt 27.1**
s 890 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Construction of outdated references**
s 891 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Procedural changes—applications under repealed Act**
s 892 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**References to orders in force immediately before commencement day**
s 893 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**References to chief executive**
s 893A ins A2011-22 amdt 1.84

**Transitional regulations**
s 894 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))



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**Expiry—ch 27**

s 895 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Care and protection matters**

pt 27.2 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Definitions—pt 27.2**

s 896 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***commencement day*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***repealed Act*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Parental responsibility generally**

s 897 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Agreement for exercise of general parental responsibility—in force before commencement day**

s 898 ins A2008-20 amdt 1.1
am A2011-28 amdt 3.22
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Authority to exercise parental responsibility for particular child or young person—in force before commencement day**

s 899 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Official visitor—continued appointment**

s 900 ins A2008-20 amdt 1.1
exp 9 March 2009 (s 900 (2))

**Official visitor—unfinished complaints**

s 901 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**Suitable entities**

s 902 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Family group conference agreement—unfinished applications for registration**

s 903 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Family group conference agreement—in force before commencement day**

s 904 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Registered family group conference agreement—in force before commencement day**

s 905 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Voluntary care agreement—in force before commencement day**

s 906 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Short care and protection order—unfinished applications**

s 907 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Final care and protection order—unfinished applications**

s 908 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Therapeutic protection order—unfinished applications**

s 909 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Short care and protection order—in force before commencement day**

s 910 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Care and protection orders—unfinished cross-applications**

s 911 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**Interim care and protection orders—in force before commencement day**

s 912 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interim therapeutic protection orders—in force before commencement day**

s 913 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interim protection orders—in force before commencement day**

s 914 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Final protection orders—in force before commencement day**

s 915 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Contact orders—in force before commencement day**

s 916 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Residence orders—in force before commencement day**

s 917 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Short care and protection order—unfinished applications for extension or variation**

s 918 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Short care and protection order—unfinished applications for revocation**

s 919 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Assessment orders—appraisals—unfinished applications**

s 920 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Assessment orders—special assessments—unfinished applications**

s 921 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**Assessment orders—in force before commencement day**

s 922 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Emergency action**

s 923 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Release after emergency action—unfinished applications**

s 924 ins A2008-20 amdt 1.1
exp 9 October 2008 (s 924 (3))

**Variation or revocation of therapeutic protection order—unfinished applications**

s 925 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interim orders before application adjourned—in force before commencement day**

s 926 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Specific issues orders—in force before commencement day**

s 927 ins A2008-20 amdt 1.1
am A2008-36 amdt 1.83
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Variation or revocation of interim care and protection orders—unfinished applications**

s 928 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Final care and protection orders—in force before commencement day**

s 929 ins A2008-20 amdt 1.1
am A2008-36 amdt 1.84
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Final care and protection orders (therapeutic protection)—in force before commencement day**

s 930 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**Variation or revocation of final care and protection orders—unfinished applications**

s 931 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Safe custody warrant—unfinished applications**

s 932 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Safe custody warrant—in force before commencement day**

s 933 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Administrative transfer of orders—in force before commencement day**

s 934 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Transfer of orders—unfinished applications**

s 935 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Childrens Court transfer of orders—in force before commencement day**

s 936 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Order transferring proceeding—unfinished applications**

s 937 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interim orders about transferred proceedings—in force before commencement day**

s 938 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Revocation of registration—unfinished applications**

s 939 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Sensitive information and protected information**

s 940 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**ACAT review of decisions**

s 941 ins A2008-20 amdt 1.1
sub A2008-36 amdt 1.85
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Care and protection matters—interim transitionals**

pt 27.3 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**Information secrecy and sharing**

s 942 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**People with parental responsibility**

s 943 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**Criminal matters—transfers**

pt 27.4 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Definitions—pt 27.4**

s 944 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***commencement day*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***repealed Act*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interstate transfers—agreements and arrangements with other jurisdictions**

s 945 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interstate transfers—application for transfer of young offender**

s 946 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interstate transfers—order for transfer of young offender**

s 947 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**Interstate transfers—escape during transit through ACT**
s 948 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interstate transfers—search warrant for escapee**
s 949 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interstate transfers—revocation of transfer order**
s 950 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Interstate transfers—arrangements after revocation of transfer order**
s 951 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Special purpose leave**
s 952 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Criminal matters—interim transitionals**
pt 27.5 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**Official visitor**
s 953 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**Person remanded in a shelter or committed to an institution**
s 954 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**Application of youth justice principles etc**
s 955 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**Application of certain provisions relating to administration**
s 956 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))

**Meaning of *daily care responsibility* and *long-term care responsibility***
s 957 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1))



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**Childcare services**

pt 27.6 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Definitions—pt 27.6**

s 958 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***commencement day*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***repealed Act*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**In-principle approval—unfinished applications**

s 959 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**In-principle approval—in force before commencement day**

s 960 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Licence—unfinished applications**

s 961 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Licence to operate childrens service—in force before commencement day**

s 962 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Licence renewal—unfinished applications**

s 963 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Search warrant—unfinished applications**

s 964 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Search warrant—in force before commencement day**

s 965 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**Notice to enforce requirements—in force before commencement day**

s 966 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Suspension for noncompliance—order in force before commencement day**

s 967 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Suspension of operation for safety—order in force before commencement day**

s 968 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Employment of children and young people**

pt 27.7 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Definitions—pt 27.7**

s 969 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***commencement day*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***repealed Act*** ins A2008-20 amdt 1.1
mod SL2009-4 s 4 (mod exp 9 September 2013 see SL2009-4 s 5 (2))
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Work experience—continued exemption**

s 970 ins A2008-20 amdt 1.1
exp 9 March 2009 (s 970 (3))

**Light work—continued application of exception**

s 971 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Notice regulating employment—in force before commencement day**

s 972 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))



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**Enforcement**
pt 27.8 hdg ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Definitions—pt 27.8**
s 973 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***commencement day*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))
def ***repealed Act*** ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Search warrant—unfinished applications**
s 974 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Search warrant—in force before commencement day**
s 975 ins A2008-20 amdt 1.1
exp 9 September 2013 (s 895 (1) (LA s 88 declaration applies))

**Transitional—Children and Young People Amendment Act 2015 (No 2)**
ch 28 hdg ins A2015-22 s 27
exp 30 June 2016 (s 980)

**Definitions—ch 28**
s 976 ins A2015-22 s 27
exp 30 June 2016 (s 980)
def ***as amended*** ins A2015-22 s 27
exp 30 June 2016 (s 980)
def ***commencement day*** ins A2015-22 s 27
exp 30 June 2016 (s 980)

**Approval of entities for certain purposes**
s 977 ins A2015-22 s 27
exp 30 June 2016 (s 980)

**Authorisation under s 517**
s 978 ins A2015-22 s 27
exp 30 June 2016 (s 980)

**Authorisation under s 520**
s 979 ins A2015-22 s 27
exp 30 June 2016 (s 980)



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**Expiry—ch 28**

s 980 ins A2015-22 s 27
exp 30 June 2016 (s 980)

**Transitional—Children and Young People Amendment Act 2015 (No 3)**

ch 29 hdg ins A2015-46 s 60
exp 1 January 2019 (s 985)

**Definitions—ch 29**

s 981 ins A2015-46 s 60
exp 1 January 2019 (s 985)
def ***as amended*** ins A2015-46 s 60
exp 1 January 2019 (s 985)
def ***commencement day*** ins A2015-46 s 60
exp 1 January 2019 (s 985)

**Foster care service to be approved kinship and foster care organisation**

s 982 ins A2015-46 s 60
exp 1 January 2019 (s 985)

**Authorisation of kinship carers**

s 983 ins A2015-46 s 60
exp 1 January 2019 (s 985)

**Authorisation of foster carers**

s 984 ins A2015-46 s 60
exp 1 January 2019 (s 985)

**Expiry—ch 29**

s 985 ins A2015-46 s 60
exp 1 January 2019 (s 985)

**Transitional—Children and Young People Legislation Amendment Act 2016**

ch 30 hdg ins A2016-38 s 30
exp 30 June 2018 (s 986 (4))

**CYP death review committee—annual report 2016**

s 986 ins A2016-38 s 30
exp 30 June 2018 (s 986 (4))

**Transitional—Children and Young People Amendment Act 2018**

ch 31 hdg ins A2018-24 s 25
exp 31 December 2020 (s 987 (4))

**Certain director-general delegations**

s 987 ins A2018-24 s 25
exp 31 December 2020 (s 987 (4))

**Amendments of other legislation**

sch 1 hdg om LA s 89 (3)



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**Corrections Management Act 2007**
sch 1 pt 1.1 om LA s 89 (3)

**Court Procedures Act 2004**
sch 1 pt 1.2 om LA s 89 (3)

**Crimes Act 1900**
sch 1 pt 1.3 om LA s 89 (3)

**Crimes (Sentence Administration) Act 2005**
sch 1 pt 1.4 om LA s 89 (3)

**Crimes (Sentencing) Act 2005**
sch 1 pt 1.5 om LA s 89 (3)

**Criminal Code 2002**
sch 1 pt 1.6 om LA s 89 (3)

**Evidence (Miscellaneous Provisions) Act 1991**
sch 1 pt 1.7 om LA s 89 (3)

**Magistrates Court Act 1930**
sch 1 pt 1.8 om LA s 89 (3)

**Dictionary**
dict am A2008-36 amdts 1.86-1.88; A2009-49 amdt 3.18; A2010-18 amdt 1.8; A2010-10 amdt 2.7; A2011-22 amdt 1.85, amdt 1.86; A2011-28 amdt 3.23, amdt 3.24; A2012-33 amdt 1.11; A2013-22 amdt 1.4; A2013-44 amdt 3.22; A2014-49 amdt 1.5, amdt 1.6; A2015-22 s 28; A2016-13 amdt 1.29; A2016-52 amdt 1.45
def ***Aboriginal*** om A2013-44 amdt 3.23
def ***Aboriginal and Torres Strait Islander organisation*** om A2015-50 amdt 3.30
def ***Aboriginal or Torres Strait Islander person*** ins A2013-44 amdt 3.24
def ***ACAT mental health provision*** ins A2008-36 amdt 1.89
def ***accredited person*** am A2011-28 amdt 3.25
def ***annual review report order*** ins A2015-50 amdt 3.31
def ***approved care and protection organisation*** ins A2015-22 s 29
def ***approved carer*** ins A2015-46 s 61
def ***approved foster care organisation*** ins A2015-22 s 29
om A2015-46 s 62
def ***approved kinship and foster care organisation*** ins A2015-46 s 63
def ***approved residential care organisation*** ins A2015-22 s 29
sub A2015-46 s 64
def ***behaviour management consequence*** am A2011-28 amdt 3.26



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def ***body*** om A2011-28 amdt 3.27
def ***body search*** sub A2011-28 amdt 3.28
def ***cancellation notice*** am A2015-50 amdt 3.32
def ***care and protection appraisal*** sub A2011-28 amdt 3.28
def ***care and protection organisation standards*** ins A2015-22 s 29
def ***care and protection purpose*** ins A2015-22 s 29
def ***care entities*** sub A2012-3 s 21
def ***childcare service licence*** sub A2011-28 amdt 3.29
def ***childcare worker*** sub A2011-28 amdt 3.29
am A2015-50 amdt 3.33
def ***child concern report*** sub A2011-28 amdt 3.29
def ***children and young people deaths register*** ins A2011-9 s 5
am A2015-50 amdt 3.34
def ***Children and Youth Services Council*** ins A2013-44 amdt 3.25
def ***child safety information sharing entity*** ins A2017-48 s 18
def ***child welfare law*** sub A2011-28 amdt 3.29
def ***complainant*** ins A2015-22 s 29
def ***court cell*** om A2011-28 amdt 3.30
def ***court ordered meeting*** ins A2015-50 amdt 3.35
def ***criminal matters chapter*** ins A2011-28 amdt 3.31
def ***criminal matters chapters*** om A2011-28 amdt 3.31
def ***CYP death review committee*** ins A2011-9 s 5
def ***designated entity*** ins A2016-39 s 6
sub A2017-48 s 19
def ***divulge*** sub A2011-28 amdt 3.32
def ***domestic violence*** om A2016-42 amdt 3.20
def ***drug of dependence*** sub A2010-2 amdt 1.1
def ***due date*** ins A2015-22 s 29
def ***DVPO final protection order*** om A2016-42 amdt 3.20
def ***DVPO interim protection order*** om A2016-42 amdt 3.20
def ***DVPO protection order*** om A2016-42 amdt 3.20
def ***entitled child or young person*** om A2012-33 amdt 1.12
def ***entitled person*** ins A2012-33 amdt 1.13
def ***family member*** sub A2011-28 amdt 3.32
def ***foster carer*** sub A2015-46 s 64
def ***foster care service*** sub A2015-22 s 30
om A2015-46 s 64
def ***general parental authority*** sub A2015-46 s 66
def ***head*** ins A2017-48 s 20
def ***health care assessment*** om A2011-28 amdt 3.33
def ***health care treatment*** am A2010-10 amdt 2.13; A2015-29 amdt 2.22



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def ***health professional*** sub A2010-10 amdt 2.8
om A2015-29 amdt 2.23
def ***health service*** sub A2010-10 amdt 2.9
am A2015-29 amdt 2.24
def ***high risk employment*** am A2009-40 amdt 1.9
def ***information*** sub A2011-28 amdt 3.34
def ***information sharing entity*** sub A2011-28 amdt 3.34
def ***initial review*** ins A2015-50 amdt 3.36
def ***in need of care and protection*** sub A2011-28 amdt 3.35
def ***in need of emergency therapeutic protection*** sub A2011-28 amdt 3.35
def ***intention to cancel notice*** sub A2011-28 amdt 3.36; A2015-22 s 30
def ***interim care and protection order*** am A2015-50 amdt 3.37
def ***interim child welfare order*** am A2015-50 amdt 3.38
def ***interstate child welfare order*** sub A2011-28 amdt 3.36
def ***interstate law*** sub A2011-28 amdt 3.36
def ***interstate leave permit*** sub A2011-28 amdt 3.36
def ***interstate officer*** sub A2011-28 amdt 3.36
def ***interstate proceedings transfer order*** sub A2011-28 amdt 3.36
def ***licensed childcare service*** sub A2011-28 amdt 3.36
def ***licensed proprietor*** sub A2011-28 amdt 3.36
def ***light work*** am A2009-40 amdt 1.9
def ***long-term care responsibility provision*** om A2011-28 amdt 3.36
def ***long-term care responsibility*** ins A2011-28 amdt 3.36
def ***kinship carer*** sub A2015-46 s 66
def ***mandatory report*** am A2015-50 amdt 3.39
def ***mental disorder*** ins A2015-38 amdt 2.63
def ***mental dysfunction*** sub A2011-28 amdt 3.36
om A2015-38 amdt 2.64
def ***mental health order*** om A2011-28 amdt 3.37
def ***mental health tribunal provision*** om A2008-36 amdt 1.90
def ***mental illness*** sub A2011-28 amdt 3.38
def ***neglect*** sub A2011-28 amdt 3.38
def ***noncompliance direction*** ins A2015-22 s 31
def ***noncompliance notice*** ins A2015-22 s 31
def ***noncompliant*** ins A2015-22 s 31
def ***non-treating doctor*** am A2015-50 amdt 3.40
def ***non-treating health practitioner*** ins A2010-10 amdt 2.10
am A2015-50 amdt 3.40
def ***non-treating health professional*** om A2015-29 amdt 2.25
def ***non-treating nurse*** am A2015-50 amdt 3.40



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def ***official visitor*** om A2012-33 amdt 1.14
ins A2013-22 amdt 1.5
am A2015-50 amdt 3.41
sub A2019-29 amdt 1.3
def ***ongoing review*** ins A2015-50 amdt 3.42
def ***operating entity*** sub A2009-20 amdt 3.30
am A2011-22 amdt 1.87
def ***operating procedure*** am A2011-22 amdt 1.87
def ***organisation*** ins A2015-22 s 31
def ***out-of-home carer*** sub A2015-46 s 66
def ***out-of-home carer authorisation*** om A2015-22 s 32
def ***paediatrician*** sub A2010-10 amdt 2.11
om A2011-28 amdt 3.39
def ***parent*** ins A2009-49 amdt 3.19
def ***parental responsibility*** sub A2011-28 amdt 3.40
def ***parties*** sub A2011-28 amdt 3.41
def ***party*** am A2011-22 amdt 1.87
sub A2011-28 amdt 3.41
def ***personal information*** om A2012-3 s 22
def ***personal items*** ins A2012-3 s 23
def ***placement*** sub A2012-3 s 24
def ***police cell*** om A2011-28 amdt 3.42
def ***prenatal report*** am A2015-50 amdt 3.43
def ***previous out-of-home carer*** ins A2016-38 s 31
def ***prohibited area*** sub A2015-50 amdt 3.44
def ***protected information*** sub A2011-28 amdt 3.43
def ***protection order*** om A2011-28 amdt 3.44;
ins A2016-42 amdt 3.21
def ***psychiatrist*** om A2010-10 amdt 2.12
def ***registered*** sub A2011-28 amdt 3.45
def ***relevant Act*** ins A2016-42 amdt 3.21
def ***reportable conduct information*** ins A2016-39 s 6
sub A2017-48 s 21
def ***reporting and investigation procedures*** am A2011-22 amdt 1.87
def ***research project*** sub A2011-28 amdt 3.45
def ***residential care service*** sub A2015-46 s 66
def ***responsible person*** sub A2015-22 s 33
def ***reviewable decision*** ins A2008-36 amdt 1.91
sub A2011-28 amdt 3.45
def ***school-leaving age*** om A2009-40 amdt 1.8
def ***secure mental health facility*** ins A2016-32 amdt 1.4
def ***significant harm*** sub A2011-28 amdt 3.45
def ***specific parental authority*** sub A2015-46 s 66
def ***suitable entity*** sub A2011-28 amdt 3.45
def ***therapeutic protection person*** sub A2011-28 amdt 3.45
def ***therapeutic protection register*** ins A2015-50 amdt 3.45



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def ***therapeutic protection transition plan*** ins A2012-3 s 25
def ***Torres Strait Islander*** om A2013-44 amdt 3.26
def ***transition plan*** sub A2012-3 s 26
def ***visitable place*** ins A2012-33 amdt 1.15
def ***voluntary report*** am A2015-50 amdt 3.46
def ***waiver order*** ins A2015-50 amdt 3.47
def ***Working with Vulnerable People Act*** ins A2011-45 amdt 1.24
def ***young adult*** ins A2012-3 s 27
def ***youth justice principles*** sub A2011-28 amdt 3.45



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## 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<br>8 Aug 2008 | 17 July 2008–<br>8 Sept 2008 (not in force) | A2008-20 | uncommenced provisions inserted by A2008-20 sch 1 pt 1.1 |
| R2<br>9 Sept 2008 | 9 Sept 2008–<br>9 Sept 2008 | A2008-36 | commenced provisions |
| R3<br>3 Oct 2008 | 10 Sept 2008–<br>9 Oct 2008 | A2008-46 | commenced expiry |
| R4<br>10 Oct 2008 | 10 Oct 2008–<br>26 Oct 2008 | A2008-46 | commenced expiry |
| R5<br>27 Oct 2008 | 27 Oct 2008–<br>15 Dec 2008 | A2008-46 | commenced provisions |
| R6<br>16 Dec 2008 | 16 Dec 2008–<br>1 Feb 2009 | A2008-46 | changed commencement by CN2008-17 |
| R7<br>2 Feb 2009 | 2 Feb 2009–<br>26 Feb 2009 | A2008-46 | amendments by A2008-36 |
| R8<br>27 Feb 2009 | 27 Feb 2009–<br>9 Mar 2009 | A2008-46 | commenced provisions and modifications by SL2009-4 |
| R9<br>10 Mar 2009 | 10 Mar 2009–<br>29 Mar 2009 | A2008-46 | commenced expiry |



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| Republication No and date | Effective | Last amendment made by | Republication for |
|---|---|---|---|
| R10<br>30 Mar 2009 | 30 Mar 2009–<br>16 July 2009 | SL2009-4 | editorial amendments under Legislation Act (see ineffective amendments by A2008-46) |
| R11<br>17 July 2009 | 17 July 2009–<br>21 Sept 2009 | A2009-17 | commenced provisions and amendments by A2009-17 |
| R12<br>22 Sept 2009 | 22 Sept 2009–<br>30 Sept 2009 | A2009-28 | amendments by A2009-20 |
| R13<br>1 Oct 2009 | 1 Oct 2009–<br>16 Dec 2009 | A2009-28 | amendments by A2009-28 |
| R14<br>17 Dec 2009 | 17 Dec 2009–<br>31 Dec 2009 | A2009-49 | amendments by A2009-49 |
| R15<br>1 Jan 2010 | 1 Jan 2010–<br>4 Mar 2010 | A2009-49 | amendments by A2009-40 |
| R16<br>5 Mar 2010 | 5 Mar 2010–<br>21 Apr 2010 | A2010-9 | amendments by A2010-9 |
| R17<br>22 Apr 2010 | 22 Apr 2010–<br>2 June 2010 | A2010-10 | amendments by A2009-36 |
| R18<br>3 June 2010 | 3 June 2010–<br>30 June 2010 | A2010-18 | amendments by A2010-18 |
| R19<br>1 July 2010 | 1 July 2010–<br>15 Aug 2010 | A2010-18 | amendments by A2010-10 |
| R20<br>16 Aug 2010 | 16 Aug 2010–<br>29 Sept 2010 | A2010-18 | amendments by A2010-2 |
| R21<br>30 Sept 2010 | 30 Sept 2010–<br>1 Nov 2010 | A2010-38 | amendments by A2010-38 |
| R22<br>2 Nov 2010 | 2 Nov 2010–<br>30 Nov 2010 | A2010-40 | amendments by A2010-40 |
| R23*<br>1 Dec 2010 | 1 Dec 2010–<br>30 June 2011 | A2010-43 | amendments by A2010-43 |



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| Republication No and date | Effective | Last amendment made by | Republication for |
|---|---|---|---|
| R24<br>1 July 2011 | 1 July 2011–<br>16 Sept 2011 | A2011-22 | amendments by A2011-22 |
| R25<br>17 Sept 2011 | 17 Sept 2011–<br>20 Sept 2011 | A2011-22 | amendments by A2011-9 and A2011-22 |
| R26<br>21 Sept 2011 | 21 Sept 2011–<br>31 Dec 2011 | A2011-28 | amendments by A2011-28 |
| R27<br>1 Jan 2012 | 1 Jan 2012–<br>29 Feb 2012 | A2011-55 | amendments by A2011-43 and A2011-55 |
| R28<br>1 Mar 2012 | 1 Mar 2012–<br>7 Nov 2012 | A2012-3 | amendments by A2011-48 and A2012-3 |
| R29<br>8 Nov 2012 | 8 Nov 2012–<br>27 Mar 2013 | A2012-3 | amendments by A2011-45 |
| R30<br>28 Mar 2013 | 28 Mar 2013–<br>12 July 2013 | A2013-10 | amendments by A2013-10 |
| R31<br>13 July 2013 | 13 July 2013–<br>31 Aug 2013 | A2013-21 | amendments by A2013-21 |
| R32<br>1 Sept 2013 | 1 Sept 2013–<br>9 Sept 2013 | A2013-22 | amendments by A2012-33 and A2013-22 |
| R33<br>10 Sept 2013 | 10 Sept 2013–<br>24 Nov 2013 | A2013-22 | expiry of transitional provisions (ch 27) and modification (s 969) |
| R34*<br>25 Nov 2013 | 25 Nov 2013–<br>16 Nov 2014 | A2013-44 | amendments by A2013-44 |
| R35<br>17 Nov 2014 | 17 Nov 2014–<br>19 Nov 2014 | A2014-49 | amendments by A2014-49 |
| R36<br>20 Nov 2014 | 20 Nov 2014–<br>2 Mar 2015 | A2014-49 | amendments by A2014-48 |



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## 5 Earlier republications

| Republication No and date | Effective | Last amendment made by | Republication for |
|---|---|---|---|
| R37<br>3 Mar 2015 | 3 Mar 2015–<br>20 May 2015 | A2015-3 | amendments by A2015-3 |
| R38<br>21 May 2015 | 21 May 2015–<br>30 June 2015 | A2015-13 | amendments by A2015-13 |
| R39<br>1 July 2015 | 1 July 2015–<br>1 Oct 2015 | A2015-22 | amendments by A2015-22 |
| R40<br>2 Oct 2015 | 2 Oct 2015–<br>7 Oct 2015 | A2015-37 | amendments by A2015-37 |
| R41<br>8 Oct 2015 | 8 Oct 2015–<br>4 Nov 2015 | A2015-37 | updated endnotes as amended by A2015-38 |
| R42<br>5 Nov 2015 | 5 Nov 2015–<br>30 Nov 2015 | A2015-40 | amendments by A2015-40 |
| R43<br>1 Dec 2015 | 1 Dec 2015–<br>8 Dec 2015 | A2015-40 | amendments by A2015-29 |
| R44<br>9 Dec 2015 | 9 Dec 2015–<br>31 Dec 2015 | A2015-50 | amendments by A2015-50 |
| R45<br>1 Jan 2016 | 1 Jan 2016–<br>29 Feb 2016 | A2015-50 | amendments by A2015-46 |
| R46<br>1 Mar 2016 | 1 Mar 2016–<br>31 Mar 2016 | A2015-50 | amendments by A2014-51 and A2015-38 |
| R47<br>1 Apr 2016 | 1 Apr 2016–<br>26 Apr 2016 | A2016-13 | amendments by A2016-13 |
| R48<br>27 Apr 2016 | 27 Apr 216–<br>3 May 2016 | A2016-18 | amendments by A2016-18 |
| R49<br>4 May 2015 | 4 May 2016–<br>20 June 2016 | A2016-18 | amendments by A2015-40 |
| R50<br>21 June 2016 | 21 June 2016–<br>22 June 2016 | A2016-32 | amendments by A2016-32 |
| R51<br>23 June 2016 | 23 June 2016–<br>30 June 2016 | A2016-38 | amendments by A2016-38 |



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| Republication No and date | Effective | Last amendment made by | Republication for |
|---|---|---|---|
| R52<br>1 July 2016 | 1 July 2016–<br>31 July 2016 | A2016-38 | expiry of transitional provisions (ch 28) |
| R53<br>1 Aug 2016 | 1 Aug 2016–<br>17 Aug 2016 | A2016-38 | amendments by A2016-20 |
| R54<br>18 Aug 2016 | 18 Aug 2016–<br>28 Aug 2016 | A2016-39 | amendments by A2016-39 |
| R55<br>29 Aug 2016 | 29 Aug 2016–<br>31 Aug 2016 | A2016-39 | amendments by A2016-7 |
| R56<br>1 Sept 2016 | 1 Sept 2016–<br>30 Apr 2017 | A2016-52 | amendments by A2016-52 |
| R57<br>1 May 2017 | 1 May 2017–<br>23 May 2017 | A2017-10 | amendments by A2016-42 as amended by A2017-10 |
| R58<br>24 May 2017 | 24 May 2017–<br>30 June 2017 | A2017-14 | updated endnotes as amended by A2017-14 |
| R59<br>1 July 2017 | 1 July 2017–<br>17 Sept 2017 | A2017-14 | amendments by A2016-39 |
| R60<br>18 Sept 2017 | 18 Sept 2017–<br>12 Dec 2017 | A2017-14 | expiry of provisions (s 727N (6), (7) and s 727U) |
| R61<br>13 Dec 2017 | 13 Dec 2017–<br>31 Dec 2017 | A2017-48 | amendments by A2017-48 |
| R62<br>1 Jan 2018 | 1 Jan 2018–<br>25 Apr 2018 | A2017-14 | amendments by A2016-55 as amended by A2017-14 |
| R63<br>26 April 2018 | 26 April 2018–<br>30 June 2018 | A2018-9 | amendments by A2018-9 |
| R64<br>1 July 2018 | 1 July 2018–<br>8 Aug 2018 | A2018-9 | expiry of transitional provisions (ch 30) |



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## 5 Earlier republications

| Republication No and date | Effective | Last amendment made by | Republication for |
|---|---|---|---|
| R65<br>9 Aug 2018 | 9 Aug 2018–<br>22 Oct 2018 | A2018-25 | amendments by A2018-24 and A2018-25 |
| R66<br>23 Oct 2018 | 23 Oct 2018–<br>21 Nov 2018 | A2018-33 | amendments by A2018-33 |
| R67<br>22 Nov 2018 | 22 Nov 2018–<br>4 Dec 2018 | A2018-42 | amendments by A2018-42 |
| R68<br>5 Dec 2018 | 5 Dec 2018–<br>1 Jan 2019 | A2018-46 | amendments by A2018-46 |
| R69<br>2 Jan 2019 | 2 Jan 2019–<br>31 Aug 2019 | A2018-46 | expiry of transitional provisions (ch 29) |
| R70<br>1 Sept 2019 | 1 Sept 2019–<br>2 Oct 2019 | A2019-6 | amendments by A2019-6 |
| R71<br>3 Oct 2019 | 3 Oct 2019–<br>13 Nov 2019 | A2019-29 | amendments by A2019-29 |



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## 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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