

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Children and Young People)

Children and Young People Bill 2008

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2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Children and Young People)

Children and Young People Bill 2008

A Bill for

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Chapter 1 Preliminary

Part 1.1 Introduction

1 Name of Act

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

2 Commencement

- (1) This Act commences on a day fixed by the Minister.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply in relation to this Act.

- (3) However, if any provision of this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

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 '*mental health order*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.' means that the term 'mental health order' 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.

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

- 1 (ii) section 355 (Offence—mandatory reporting of abuse)
2 arising from something happening in the ACT; or
3 (iii) section 361 (Prenatal reporting—anticipated abuse and
4 neglect) if the pregnant woman ordinarily lives in the
5 ACT or is in the ACT.

1 **Part 1.2** **Objects, principles and**
2 **considerations**

3 **7** **Main objects of Act**

4 The objects of this Act include—

- 5 (a) providing for, and promoting, the wellbeing, care and
6 protection of children and young people in a way that—
- 7 (i) recognises their right to grow in a safe and stable
8 environment; and
- 9 (ii) takes into account the responsibilities of parents, families,
10 the community and the whole of government for them;
11 and
- 12 (b) ensuring that children and young people are provided with a
13 safe and nurturing environment by organisations and people
14 who, directly or indirectly, provide for their wellbeing, care
15 and protection; and
- 16 (c) preventing abuse and neglect of children and young people by
17 providing whole of government assistance to children and
18 young people, their parents and families, the community, and
19 others who have responsibility for them; and
- 20 (d) ensuring that Aboriginal and Torres Strait Islander people are
21 included and participate in—
- 22 (i) providing for, and promoting, the wellbeing, care and
23 protection of Aboriginal and Torres Strait Islander
24 children and young people; and
- 25 (ii) preventing the abuse and neglect of Aboriginal and Torres
26 Strait Islander children and young people; and

- 1 (iii) rehabilitating and reintegrating Aboriginal and Torres
2 Strait Islander young offenders; and
- 3 (e) ensuring that services provided by, or for, government for the
4 wellbeing, care and protection of children and young people—
 - 5 (i) are centred on the needs of children and young people;
6 and
 - 7 (ii) take into account the views and wishes of children and
8 young people; and
 - 9 (iii) foster and promote the health, education, developmental
10 needs, spirituality, self-respect, self-reliance and dignity
11 of children and young people; and
 - 12 (iv) respect the individual race, ethnicity, religion, disability,
13 sexuality and culture of children and young people; and
- 14 (f) ensuring that young offenders—
 - 15 (i) receive positive support and opportunities to become
16 rehabilitated and reintegrated community members; and
 - 17 (ii) share responsibility for rehabilitation and reintegration
18 with their parents and families, the community and the
19 government in partnership; and
- 20 (g) imposing standards that must be complied with for the delivery
21 of services to children and young people; and
- 22 (h) ensuring the protection of children and young people in
23 employment.

24 **8 Best interests of children and young people paramount**
25 **consideration**

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

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

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

7 *Note 2* For the care and protection chapters (see s 335), there are further
8 provisions about how a decision-maker decides what is in the best
9 interests of a child or young person (see s 348).

10 **9 Principles applying to Act**

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

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

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

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

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

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

29 (a) for the care and protection chapters—care and protection
30 principles (see s 349);

31 (b) for ch 20—childcare services principles (see s 729).

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

5 **10 Aboriginal and Torres Strait Islander children and young**
6 **people principle**

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

- 11 (a) the need for the child or young person to maintain a connection
12 with the lifestyle, culture and traditions of the child's or young
13 person's Aboriginal or Torres Strait Islander community;
- 14 (b) submissions about the child or young person made by or on
15 behalf of any Aboriginal or Torres Strait Islander people or
16 organisations identified by the chief executive as providing
17 ongoing support services to the child or young person or the
18 child's or young person's family;
- 19 (c) Aboriginal and Torres Strait Islander traditions and cultural
20 values (including kinship rules) as identified by reference to
21 the child's or young person's family and kinship relationships
22 and the community with which the child or young person has
23 the strongest affiliation.

24 *Note* For decisions about placement of an Aboriginal or Torres Strait Islander
25 child or young person with an out-of-home carer, see s 512 (Priorities
26 for placement with out-of-home carer—Aboriginal or Torres Strait
27 Islander child or young person).

1 **Part 1.3 Important concepts**

2 **Division 1.3.1 Definitions**

3 **11 Who is a *child*?**

4 In this Act:

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

6 **12 Who is a *young person*?**

7 In this Act:

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

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

11 **13 Who is a *family member* of a child or young person?**

12 In this Act:

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

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

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

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

17 (iii) sibling; or

18 (iv) uncle or aunt; or

19 (v) nephew, niece or cousin; and

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

6 **14 Who is a *significant person* for a child or young person?**

7 In this Act:

8 *significant person*, for a child or young person, means a person,
9 (other than a family member) who the child or young person, a
10 family member of the child or young person or the chief executive
11 considers is significant in the child's or young person's life.

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

- 13 1 a father-in-law, mother-in-law, brother-in-law or sister-in-law of a young
14 person
15 2 a long-term friend of a child or young person
16 3 a person who normally lives with the child or young person
17 4 a domestic partner of a young person
18 5 a domestic partner of a parent of a child or young person
19 6 a boyfriend or girlfriend of a young person
20 7 a person who has responsibility for the child or young person in accordance
21 with the cultural traditions and customs of the child's or young person's
22 community

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

1 **Division 1.3.2 Parental responsibility**

2 **15 What is *parental responsibility*?**

3 In this Act:

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

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

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

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

12 **16 Parents have parental responsibility**

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

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

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

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

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

20 **17 Aspects of parental responsibility may be transferred**

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

23 (a) a family group conference agreement; or

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

- 1 (b) an appraisal order including a temporary parental responsibility
2 provision; or
- 3 *Note* Appraisal orders and temporary parental responsibility provisions
4 are dealt with in s 371 and s 372.
- 5 (c) emergency action; or
- 6 *Note* Emergency action is dealt with in pt 13.1.
- 7 (d) a care and protection order including a parental responsibility
8 provision; or
- 9 *Note* Care and protection orders are dealt with in ch 14.
- 10 (e) a safe custody warrant; or
- 11 (f) a court order (under this Act or another law in force in the
12 Territory); or
- 13 **Example—court order under another law**
14 a parenting order under the *Family Law Act 1975* (Cwlth)
- 15 *Note* An example is part of the Act, is not exhaustive and may extend,
16 but does not limit, the meaning of the provision in which it
17 appears (see Legislation Act, s 126 and s 132).
- 18 (g) a provision of another law in force in the Territory.
- 19 (2) If parental responsibility is transferred from a person to someone
20 else—
- 21 (a) only the aspect of parental responsibility expressly stated to be
22 transferred is transferred; and
- 23 (b) no-one else's parental responsibility, or aspect of parental
24 responsibility, for the child or young person is diminished
25 except to the extent expressly stated or necessary to give effect
26 to the transfer.

- 1 **18 Aspects of parental responsibility may be shared**
- 2 (1) Parental responsibility may be shared between 2 or more people
- 3 under—
- 4 (a) a family group conference agreement; or
- 5 *Note* Family group conferences are dealt with in ch 3 and ch 12.
- 6 (b) a voluntary care agreement; or
- 7 *Note* Voluntary care agreements are dealt with in pt 12.3.
- 8 (c) a care and protection order including a parental responsibility
- 9 provision; or
- 10 *Note* Care and protection orders are dealt with in ch 14.
- 11 (d) a court order (under this Act or another law in force in the
- 12 Territory).
- 13 (2) If parental responsibility is shared between 2 or more people, either
- 14 of them may discharge the responsibility.
- 15 (3) This section is subject to the following sections:
- 16 (a) section 474 (Chief executive sharing daily care responsibility);
- 17 *Note* If the chief executive shares daily care responsibility for a child or
- 18 young person, no other person with daily care responsibility for
- 19 the child or young person may discharge the responsibility in a
- 20 way that would be incompatible with the chief executive's
- 21 discharge of the responsibility (see s 474 (2)).

(b) section 503 (Chief executive sharing long-term care responsibility);

Note If the chief executive 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 chief executive's proposed decision, the person or chief executive may apply to the Childrens Court for an order about the matter and the chief executive is required to not make the decision without the person's agreement (see s 503 (2)).

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

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

(2) 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 professional—consent to health care treatment, not including surgery (other than surgery mentioned in paragraph (c)), for the child or young person;

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

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

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

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

10 **Examples—par (a)**

11 1 A decision by a person who has daily care responsibility for a child
12 about people with whom the child may or may not have contact is
13 subject to a care and protection order that includes a contact provision
14 about who may, or must not, have contact with the child.

15 2 A decision by a person who has daily care responsibility for a child or
16 young person about where and with whom the child or young person
17 lives is subject to a care and protection order that includes a residence
18 provision.

19 3 The Childrens Court makes a care and protection order for a young
20 person that includes a parental responsibility provision that a stated
21 person who has daily care responsibility for the young person must
22 exercise it in a stated way. The person's exercise of daily care
23 responsibility for the young person is subject to the order.

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

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

29 *Note* A care plan for a child or young person is a written plan of the
30 chief executive's proposals for the care and protection of the child
31 or young person (see s 454).

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

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

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

(2) A person who has long-term care responsibility for a child or young person may, on the advice of a health professional, 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)).

(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

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

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

9 *Note 2* A care plan for a child or young person is a written plan of the
10 chief executive's proposals for the care and protection of the child
11 or young person (see s 454).

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

14 **21 Parents or people with parental responsibility who cannot**
15 **be found**

- 16 (1) This section applies if a provision of this Act requires a person to act
17 in relation to a parent of, or a person with parental responsibility for,
18 a child or young person.
- 19 (2) The person is not required to act in relation to the parent or other
20 person if the person cannot after reasonable inquiry find the parent
21 or other person.

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 Chief executive

Note to pt 2.1

For provisions applying when the chief executive has parental responsibility for a child or young person, see ch 15.

22 Chief executive's functions

(1) The chief executive 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;

- 1 (e) providing, or assisting in providing, information to people who
2 report suspected abuse or neglect of children and young people
3 and encouraging those people to continue their involvement in
4 matters arising from their report;
- 5 (f) exercising aspects of parental responsibility for children and
6 young people;
- 7 (g) providing, or assisting in providing, information, services or
8 assistance to children and young people who have left the chief
9 executive's care;
- 10 (h) providing, or assisting in providing, services for young
11 offenders, including by ensuring the provision of the care,
12 support, rehabilitation and guidance necessary for them to
13 become rehabilitated and reintegrated community members;
- 14 (i) working with other government agencies and community
15 organisations, to coordinate and promote the care and
16 protection of children and young people, including young
17 offenders.
- 18 (2) The chief executive has all the functions of an authorised person.
- 19 *Note* A provision of a law that gives an entity (including a person) a function
20 also gives the entity powers necessary and convenient to exercise the
21 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

22 **23 Chief executive instructions**

- 23 (1) The chief executive may make instructions, consistent with this Act,
24 for the management or operation of any administrative function
25 under this Act.
- 26 (2) A person exercising an administrative function under this Act must
27 comply with the instructions.

- 1 **24 Ministerial directions to chief executive**
- 2 (1) The Minister may give written directions to the chief executive
- 3 about the exercise of functions under this Act.
- 4 **Example—direction**
- 5 a direction to make policies or operating procedures to ensure that functions are
- 6 exercised in accordance with a particular decision of the Supreme Court or a
- 7 particular finding of a board of inquiry or royal commission
- 8 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 9 does not limit, the meaning of the provision in which it appears (see
- 10 Legislation Act, s 126 and s 132).
- 11 (2) The chief executive must comply with a direction under this section.
- 12 (3) A direction is a notifiable instrument.
- 13 *Note* A notifiable instrument must be notified under the Legislation Act.
- 14 **25 Chief executive may ask for assistance, etc**
- 15 (1) The chief executive may ask a territory entity or an ACT education
- 16 provider to provide assistance, facilities or services relevant to the
- 17 physical or emotional wellbeing of a child or young person.
- 18 (2) A territory entity or a government school or school-related
- 19 institution that receives a request under subsection (1) must comply
- 20 with the request promptly.
- 21 (3) In this section:
- 22 ***ACT education provider*** means any of the following:
- 23 (a) a government or non-government school under the *Education*
- 24 *Act 2004*;
- 25 (b) a school-related institution under the *Education Act 2004*;
- 26 (c) a registered training organisation under the *Training and*
- 27 *Tertiary Education Act 2003*;

1 (d) a higher education provider under the *Training and Tertiary*
2 *Education Act 2003*;

3 (e) an ACT university declared to be established or recognised as a
4 university under the *Training and Tertiary Education*
5 *Act 2003*, section 88 (Declaration of ACT university).

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

7 (a) an administrative unit;

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

10 (c) a territory instrumentality;

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

12 (e) a police officer.

13 **26 Chief executive must give identity cards**

14 (1) This section applies if the chief executive delegates a power under
15 this Act or another territory law to someone else (an ***authorised***
16 ***person***).

17 *Note* The chief executive may delegate a power under the *Public Sector*
18 *Management Act 1994*, s 36.

19 (2) The chief executive must give an authorised person an identity card
20 stating the person's name and that the person is an authorised
21 person.

22 (3) The identity card must show—

23 (a) a recent photograph of the person; and

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

25 (c) anything else prescribed by regulation.

- 1 (4) A person commits an offence if the person—
2 (a) stops being an authorised person; and
3 (b) does not return the person’s identity card to the chief executive
4 as soon as practicable, but not later than 7 days after the day
5 the person stops being an authorised person.
6 Maximum penalty: 1 penalty unit.
7 (5) An offence against this section is a strict liability offence.
8 (6) Subsection (3) applies only in relation to a card given by the chief
9 executive after the commencement of this section.
10 (7) Subsection (6) is a law to which the Legislation Act, section 88
11 (Repeal does not end effect of transitional laws etc) applies.
12 (8) Subsections (6) and (7) and this subsection expire on the day they
13 commence.

1 **Part 2.2** **Children and Youth Services**
2 **Council**

3 **27** **Establishment of council**

4 The Children and Youth Services Council is established.

5 **28** **Functions of council**

6 The Children and Youth Services Council has the following
7 functions:

- 8 (a) to report to the Minister, at the Minister's request, on anything
9 relating to the operation or administration of this Act;
- 10 (b) to make recommendations to the Minister about services for
11 children and young people in the ACT.

12 **29** **Council members**

13 The Children and Youth Services Council has at least 5, but not
14 more than 10, members.

15 **30** **Appointment of council members**

- 16 (1) The Minister may appoint the members of the Children and Youth
17 Services Council.

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

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

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

- 1 (2) The criteria for deciding whether to appoint a person as a member
2 are that the person—
- 3 (a) has expertise in relation to services for children or young
4 people; or
- 5 (b) represents the interests of children and young people; or
- 6 (c) represents the interests of kinship carers and foster carers; or
- 7 (d) represents the interests of Aboriginal and Torres Strait Islander
8 people.
- 9 (3) The Minister must ensure that there is always at least—
- 10 (a) 1 member who represents the interests of kinship carers and
11 foster carers; and
- 12 (b) 1 member who is an Aboriginal or Torres Strait Islander and
13 who represents the interests of Aboriginal and Torres Strait
14 Islander people; and
- 15 (c) 1 member who represents the interests of young people; and
- 16 (d) 1 member who represents the interests of children.
- 17 (4) The appointment of a member is for the term stated in the
18 appointment.
- 19 (5) The conditions of appointment of a member are the conditions
20 stated in the appointment.

21 **31 Appointment of chair and deputy**

- 22 (1) The Minister must appoint a chair and deputy chair for the Children
23 and Youth Services Council.
- 24 (2) The conditions of appointment of the chair are the conditions agreed
25 between the Minister and the chair, subject to any determination
26 under the *Remuneration Tribunal Act 1995*.

- 1 **32 Ending member appointments**
- 2 The Minister may end the appointment of a member of the Children
3 and Youth Services Council—
- 4 (a) for misbehaviour; or
- 5 (b) if the member is convicted, or found guilty, in Australia of an
6 indictable offence; or
- 7 (c) if the member is convicted, or found guilty, outside Australia
8 of an offence that, if it had been committed in the ACT, would
9 be an indictable offence; or
- 10 (d) if the member is absent from 3 consecutive meetings of the
11 council, otherwise than on approved leave; or
- 12 (e) for physical or mental incapacity, if the incapacity substantially
13 affects the exercise of the member's functions.
- 14 *Note* A person's appointment also ends if the person resigns (see Legislation
15 Act, s 210).
- 16 **33 Presiding member at meetings**
- 17 (1) The chair presides at all meetings at which the chair is present.
- 18 (2) If the chair is absent, the deputy chair presides.
- 19 **34 Quorum at meetings**
- 20 Business may be carried on at a meeting of the Children and Youth
21 Services Council only if at least $\frac{1}{2}$ the number of members
22 appointed are present.
- 23 **35 Voting at meetings**
- 24 (1) At a meeting of the Children and Youth Services Council, each
25 member has a vote on each question to be decided.

- 1 (2) A question is decided by a majority of the votes of the members
2 present and voting but, if the votes are equal, the member presiding
3 has a deciding vote.

4 **36 Advice and assistance by chief executive and public**
5 **advocate**

6 The chief executive and the public advocate must give the Children
7 and Youth Services Council the advice and assistance that the
8 council reasonably asks for.

Part 2.3 Official visitors

37 Meaning of *entitled child or young person*—pt 2.3

In this part:

entitled child or young 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 a young detainee who is 18 years old or older.

Note *Investigative entity*—see the dictionary.

38 Official visitors—appointment

(1) The Minister must appoint at least 1 official visitor.

(2) The Minister may appoint a person as an official visitor only if satisfied that the person has suitable qualifications or experience to exercise the functions of an official visitor.

(3) However, the Minister must not appoint a person as an official visitor unless the person—

(a) is not a public employee; and

(b) is a suitable entity.

(4) An appointment as an official visitor must not be for longer than 3 years.

- 1 (5) The conditions of appointment of an official visitor are the
2 conditions agreed between the Minister and the person, subject to
3 any determination under the *Remuneration Tribunal Act 1995*.

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

6 *Note 2* Certain Ministerial appointments require consultation with an Assembly
7 committee and are disallowable (see Legislation Act, div 19.3.3).

8 *Note 3* A person may be reappointed to a position if the person is eligible to be
9 appointed to the position (see Legislation Act, s 208 and dict, pt 1,
10 def *appoint*).

11 **39 Official visitors—functions**

- 12 (1) An official visitor's functions are—

- 13 (a) to inspect—

14 (i) detention places (and places outside detention places
15 where detainees are, or have been, directed to work or
16 participate in an activity); and

17 (ii) therapeutic protection places; and

18 (iii) places of care; and

- 19 (b) to report to—

20 (i) the Minister under section 40; and

21 (ii) the chief executive under section 41 (2); and

- 22 (c) to receive and consider complaints from entitled children and
23 young people, and others on their behalf; and

- 24 (d) to be available to talk with entitled children and young people;
25 and

- 26 (e) to exercise any other function given to an official visitor under
27 this Act or another territory law.

- 1 (2) For subsection (1), an official visitor—
- 2 (a) must, if practicable, visit each detention place at least once
- 3 each fortnight; and
- 4 (b) must, if practicable, visit a therapeutic protection place at least
- 5 once each week if a child or young person is confined at the
- 6 therapeutic protection place; and
- 7 (c) must, if practicable, visit a place of care at least once each
- 8 month if a child or young person is being cared for at the place
- 9 of care; and
- 10 (d) may, at any reasonable time, enter a detention place (or any
- 11 place outside a detention place where detainees are, or have
- 12 been, directed to work or participate in an activity), therapeutic
- 13 protection place or place of care.

14 **Example—time that would not be reasonable**

15 a time that would hinder a search, or coincide with an escape attempt, at a

16 detention place

17 *Note* An example is part of the Act, is not exhaustive and may extend,

18 but does not limit, the meaning of the provision in which it

19 appears (see Legislation Act, s 126 and s 132).

- 20 (3) An operating entity for a detention place, therapeutic protection
- 21 place or place of care must give an official visitor any reasonable
- 22 assistance the official visitor asks for to exercise the official visitor's
- 23 functions at the place.

24 **Examples**

- 25 1 giving access to documents and records relating to a complaint
- 26 2 answering reasonable questions about the facts of a complaint
- 27 3 giving reasonable access to facilities

28 *Note 1* The Legislation Act, s 170 deals with the application of the privilege

29 against selfincrimination.

30 *Note 2* **Operating entity**—see the dictionary.

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

4 (4) Before asking the operating entity for a detention place, therapeutic
5 protection place or place of care for assistance that involves the
6 giving of sensitive information, the official visitor must consider
7 whether the complaint would be better dealt with by, and should be
8 referred to, an investigative entity under section 49 (Complaints
9 may be closed—referral to other entity).

10 **40 Official visitors—reporting to Minister**

11 (1) If an official visitor believes on reasonable grounds that either of the
12 following is not in accordance with this Act:

13 (a) the care provided to entitled children or young people at a
14 detention place or therapeutic protection place;

15 (b) the living conditions, education or activities of entitled children
16 or young people at a detention place or therapeutic protection
17 place;

18 the official visitor must report the belief to the Minister in writing.

19 (2) If an official visitor believes on reasonable grounds that the
20 detention of a child or young person at a detention place (including
21 any aspect of the treatment, living conditions, work or activities of
22 the detainee) is not in accordance with this Act, the official visitor
23 must report the belief to the Minister in writing.

24 **41 Official visitors—reporting to chief executive**

25 (1) This section applies if an official visitor believes on reasonable
26 grounds that either of the following is not in accordance with this
27 Act or the out-of-home care standards:

28 (a) the care provided to entitled children or young people at a
29 place of care;

- 1 (b) the living conditions, education or activities of entitled children
2 or young people at a place of care.

3 *Note* The Minister may make out-of-home care standards under s 886.

- 4 (2) The official visitor must report the belief to the chief executive in
5 writing.

6 **42 Ending appointment of official visitors**

- 7 (1) The Minister may end a person's appointment as an official
8 visitor—

9 (a) for misbehaviour; or

10 (b) if the person—

11 (i) does not inspect a detention place, therapeutic protection
12 place or place of care as required under the complaints
13 guidelines made under section 43; and

14 (ii) continues to fail to inspect the place as required for
15 4 consecutive weeks; or

16 (c) if the person is not a suitable entity.

- 17 (2) The Minister must end the person's appointment as official visitor—

18 (a) for physical or mental incapacity, if the incapacity substantially
19 affects the exercise of the person's functions; or

20 (b) if the person fails to take all reasonable steps to avoid being
21 placed in a position where a conflict of interest arises during
22 the exercise of the person's functions.

- 23 (3) A person's appointment as official visitor ends, by force of this
24 section, if the person becomes a public employee.

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

1 **43 Complaints guidelines**

- 2 (1) The Minister may make guidelines, consistent with this part, about
3 the handling of complaints by official visitors.
- 4 (2) The guidelines must include a schedule that sets out—
- 5 (a) each detention place, therapeutic protection place and place of
6 care that an official visitor must inspect; and
- 7 (b) how often the official visitor must inspect each place.
- 8 (3) A guideline is a notifiable instrument.

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

10 **44 Complaints to official visitors**

- 11 (1) An entitled child or young person, or anyone else, may complain to
12 an official visitor about any aspect of the child's or young person's
13 detention, confinement or accommodation including—
- 14 (a) the conditions of detention, confinement or accommodation of
15 an entitled child or young person; or
- 16 (b) the care provided to an entitled child or young person at a
17 detention place, therapeutic protection place or place of care;
18 or
- 19 (c) how a detention place, therapeutic protection place or place of
20 care is conducted.
- 21 (2) The entitled child or young person may make the complaint to the
22 official visitor personally or through someone else.
- 23 (3) The entitled child or young person may ask the official visitor to
24 hear the complaint with no-one else present and, if so—
- 25 (a) the official visitor must comply; and
- 26 (b) the operating entity must provide reasonably private facilities
27 for the official visitor to hear the complaint.

1 **45 Requests to see official visitor**

- 2 (1) This section applies if an entitled child or young person has told the
3 operating entity that the child or young person wants to see an
4 official visitor.
- 5 (2) The operating entity must ensure that an official visitor is told of the
6 request as soon as practicable, but not later than 12 hours after the
7 request is made.
- 8 (3) An entitled child or young person need not explain to the operating
9 entity why the child or young person wants to see an official visitor.

10 **46 Notice of complaints**

- 11 (1) This section applies if an official visitor receives a complaint about
12 a detention place, therapeutic protection place or place of care under
13 section 44.
- 14 (2) The official visitor must tell the chief executive, in writing, that a
15 complaint has been made and the name of the place to which it
16 relates.

17 **47 Official visitors must try to resolve complaints**

- 18 (1) After receiving a complaint under section 44, an official visitor must
19 take all reasonable steps to promptly and efficiently resolve the
20 complaint with the operating entity for the detention place,
21 therapeutic protection place or place of care.
- 22 (2) To resolve a complaint, the official visitor may—
- 23 (a) make inquiries about any matter raised in the complaint; and
- 24 (b) exercise any other function given to an official visitor under
25 this Act.

- 1 (3) The official visitor may also—
- 2 (a) make a recommendation about the complaint to the operating
- 3 entity for the detention place, therapeutic protection place or
- 4 place of care; or
- 5 (b) give the chief executive or the Minister a report about the
- 6 complaint or any inquiries made about a matter raised in the
- 7 complaint.
- 8 (4) This section is subject to the following sections:
- 9 (a) section 48 (Withdrawal of complaints);
- 10 (b) section 49 (Complaints may be closed—referral to other
- 11 entity);
- 12 (c) section 50 (Complaints may be closed—other entity
- 13 investigating);
- 14 (d) section 51 (Complaints closed—frivolous, etc);
- 15 (e) section 52 (Complaints closed—resolved);
- 16 (f) section 53 (Complaints closed—complainant left detention
- 17 etc).

18 **48 Withdrawal of complaints**

- 19 (1) At any time, a complainant may, by written notice given to an
- 20 official visitor, withdraw a complaint.
- 21 (2) If a complaint is withdrawn, the official visitor to whom the
- 22 complaint was made must close the complaint if satisfied that the
- 23 complaint—
- 24 (a) is about a minor issue; or
- 25 (b) has been resolved appropriately; or

1 (c) has lapsed.

2 **Example—par (c)**

3 the entitled child or young person is no longer detained in a detention place
4 or confined at a therapeutic protection place

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

8 (3) If the official visitor suspects on reasonable grounds that it is in the
9 public interest that a withdrawn complaint be considered, the
10 official visitor must—

11 (a) refer the complaint to the human rights commission for
12 consideration under the *Human Rights Commission Act 2005*,
13 section 48 (3) (Consideration without complaint or appropriate
14 complainant); and

15 (b) close the complaint; and

16 (c) tell the complainant about the referral and closing of the
17 complaint.

18 (4) If the official visitor refers the complaint to the human rights
19 commission, the official visitor must give the human rights
20 commission any information that the official visitor has in relation
21 to the complaint.

22 **49 Complaints may be closed—referral to other entity**

23 (1) This section applies if an official visitor—

24 (a) receives a complaint; and

25 (b) after considering the complaint, is satisfied that the complaint
26 would be better dealt with by an investigative entity with
27 power to investigate the complaint.

28 (2) The official visitor may refer the complaint to the investigative
29 entity.

- 1 (3) If the official visitor refers the complaint to an investigative entity,
2 the official visitor—
- 3 (a) must give the entity any information that the official visitor has
4 in relation to the complaint; and
- 5 (b) must tell the complainant about the referral; and
- 6 (c) may close the complaint.

7 **50 Complaints may be closed—other entity investigating**

- 8 (1) This section applies if the official visitor—
- 9 (a) receives a complaint; and
- 10 (b) after considering the complaint, is satisfied that the substance
11 of the complaint has been, is being or will be investigated by
12 an appropriate investigative entity.
- 13 (2) The official visitor may—
- 14 (a) give the investigative entity any information that the official
15 visitor has in relation to the complaint; and
- 16 (b) close the complaint.

17 **51 Complaints closed—frivolous, etc**

- 18 (1) This section applies if the official visitor —
- 19 (a) receives a complaint about a detention place, therapeutic
20 protection place or place of care; and
- 21 (b) after considering the complaint, is satisfied that the complaint
22 is frivolous, vexatious or not made honestly.
- 23 (2) The official visitor must close the complaint.

- 1 **52 Complaints closed—resolved**
- 2 (1) This section applies if the official visitor—
- 3 (a) receives a complaint about a detention place, therapeutic
- 4 protection place or place of care; and
- 5 (b) is satisfied that the complaint is resolved—
- 6 (i) with the operating entity for the place; and
- 7 (ii) to the satisfaction of the complainant.
- 8 (2) The official visitor must close the complaint.
- 9 **53 Complaints closed—complainant left detention etc**
- 10 (1) This section applies if the official visitor —
- 11 (a) receives a complaint about a detention place, therapeutic
- 12 protection place or place of care; and
- 13 (b) is satisfied that the complainant—
- 14 (i) has left the detention place, therapeutic protection place
- 15 or place of care; and
- 16 (ii) cannot be found after reasonable enquiry.
- 17 (2) The official visitor must close the complaint.
- 18 **54 Complainant must be told if complaint closed**
- 19 (1) This section applies if an official visitor closes a complaint, other
- 20 than under section 48 (Withdrawal of complaints) or section 53
- 21 (Complaints closed—complainant left detention etc).
- 22 (2) The official visitor must tell the complainant—
- 23 (a) that the official visitor has closed the complaint; and

1 (b) the reasons why the official visitor has closed the complaint.

2 **Example—reason for closing complaint**

3 the complaint has been referred to the human rights commission

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

7 **55 Information about complaints being investigated**
8 **elsewhere**

9 (1) This section applies if an official visitor has—

10 (a) referred a complaint under section 48 (3) (a) or section 49 (2);
11 or

12 (b) given an investigative entity information under section 50 in
13 relation to a complaint.

14 (2) The official visitor may ask the entity investigating the complaint
15 about the investigation of the complaint.

16 (3) The entity must tell the official visitor about the investigation of the
17 complaint.

18 (4) The official visitor may tell the complainant about progress of the
19 investigation of the complaint.

20 **56 Reopening complaints**

21 (1) This section applies if—

22 (a) a complaint about a detention place, therapeutic protection
23 place or place of care is resolved with the operating entity for
24 the place; and

25 (b) as part of resolving the complaint, the operating entity agrees
26 to do, or not do, something; and

27 (c) an official visitor is satisfied that the operating entity has not
28 done what was agreed.

- 1 (2) The official visitor may reopen the complaint.
- 2 (3) If the official visitor reopens a complaint, the official visitor must
- 3 try to resolve the complaint under section 47.

4 **57 Other matters of concern—referral to other entity**

- 5 (1) This section applies if—
- 6 (a) an official visitor becomes aware of a matter that may be the
- 7 subject of a complaint to an official visitor under section 44;
- 8 and
- 9 (b) no complaint is made under section 44 about the matter; and
- 10 (c) the official visitor is satisfied that the matter should be dealt
- 11 with by an investigative entity with power to investigate the
- 12 matter.
- 13 (2) The official visitor may do either or both of the following:
- 14 (a) tell the chief executive about the matter;
- 15 (b) refer the matter to the investigative entity.
- 16 (3) If the official visitor refers the matter to an investigative entity, the
- 17 official visitor must give the entity or the chief executive any
- 18 information that the official visitor has in relation to the matter.

19 **58 Monthly reports by official visitors**

- 20 (1) As soon as practicable after the end of each month, an official
- 21 visitor must give the Minister and the chief executive a written
- 22 report for the month summarising—
- 23 (a) the number and kinds of complaints received by the official
- 24 visitor; and
- 25 (b) the action taken on the complaints received; and
- 26 (c) the number and kinds of matters referred by the official visitor
- 27 to an investigative entity under section 57.

- 1 (2) The monthly report may include comments by the official visitor
2 about anything in relation to a complaint to which the report applies.
- 3 (3) However, an official visitor may only include in a monthly report
4 material that may be adverse to, or critical of, a person if the official
5 visitor has given the person an opportunity to be heard.
- 6 (4) This section applies whether or not the adverse or critical material
7 is—
- 8 (a) express or implicit; or
- 9 (b) by way of opinion or otherwise.

10 **59 Handover of records by official visitors**

- 11 (1) This section applies if a person's appointment as official visitor
12 ends.
- 13 (2) The person must, not later than 7 days after the day the appointment
14 ends, give any official visitor record held by the person to the public
15 advocate or another official visitor.
- 16 (3) To remove any doubt, an official visitor record received by the
17 public advocate or an official visitor under this section is a record of
18 the activities of the administrative unit responsible for the
19 administration of this section for the *Territory Records Act 2002*.
- 20 (4) In this section:
- 21 *official visitor record* held by a person, means—
- 22 (a) a record made or received by the person because of the
23 person's functions as official visitor; or
- 24 (b) information held by the person because of the person's
25 functions as official visitor.

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 chief executive under section 63 as a suitable entity for the purpose.

Examples—suitable entities for purposes stated in Act

- 1 family group conference facilitators—someone appointed under s 78 by the chief executive
- 2 kinship carers—a family member or significant person authorised under s 515 by the chief executive
- 3 foster care service—an entity authorised under s 516 by the chief executive
- 4 foster carers for a stated child or young person—someone specifically authorised under s 517 by the chief executive
- 5 foster carers for any child or young person—someone generally authorised under s 518 by the chief executive
- 6 residential care services for any child or young person—an entity authorised under s 519 by the chief executive

1 7 childcare service licences—the proposed proprietor and each proposed
2 controlling person for the childcare service (see s 745)

3 8 research projects—the researcher and any other person who is to have
4 contact with children or young people for the project (see s 808)

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

8 **62 Entity may apply to be suitable entity for purpose**

9 An entity may apply, in writing, to the chief executive for approval
10 as a suitable entity for a stated purpose.

11 *Note* If a form is approved under s 885 for this provision, the form must be
12 used.

13 **63 Chief executive may approve suitable entity for purpose**

14 (1) The chief executive may, in writing, approve an entity as a suitable
15 entity for a stated purpose if satisfied that the entity is suitable for
16 the purpose.

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

21 *Note 2* The chief executive must establish a suitable entities register (see s 72).

22 (2) However, if the chief executive orally authorises a person or entity
23 under section 515 (Authorisation of kinship carer—specific parental
24 authority), section 517 (Authorisation of foster carer—specific
25 parental authority) or section 518 (Authorisation of foster carer—
26 general parental authority) in relation to a child or young person, the
27 chief executive—

28 (a) may, at the same time, orally approve the person or entity as a
29 suitable entity in relation to the child or young person; and

- 1 (b) if the chief executive approves the person or entity under
2 paragraph (a)—must, as soon as practicable, approve the
3 person or entity in writing.

4 **64 Chief executive must consider suitability information, etc**

- 5 (1) In deciding whether an entity is a suitable entity for a stated
6 purpose, the chief executive—

- 7 (a) must consider each of the following:

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

11 (ii) if the chief executive requires the entity to provide a
12 reference or report under section 68 (2) (a)—the reference
13 or report;

14 (iii) if the chief executive requires the entity to undergo a test
15 or medical examination under section 68 (2) (b)—the
16 result of the test or medical examination; and

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

- 20 (2) If the chief executive is considering suitability information under
21 section 65 (1), definition of *suitability information*, paragraph (d) or
22 (e), the chief executive must give the entity written notice of that
23 fact.

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

- 1 **65 What is *suitability information*?**
- 2 (1) In this Act:
- 3 *suitability information*, about an entity, means information about
- 4 the following:
- 5 (a) any conviction of, or finding of guilt against, the entity for—
- 6 (i) an offence relating to the provision of services for
- 7 children or young people; or
- 8 (ii) an offence against a child or young person; or
- 9 (iii) an offence involving a child or young person; or
- 10 (iv) an offence involving violence; or
- 11 (v) a sex offence; or
- 12 (vi) an offence involving dishonesty or fraud; or
- 13 (vii) an offence involving possession of, or trafficking in, a
- 14 drug of dependence or controlled drug; or
- 15 (viii) an offence against an animal;
- 16 (b) any proven noncompliance by the entity with a legal obligation
- 17 in relation to providing services for children or young people;
- 18 **Example**
- 19 the entity is a licensed proprietor of a childcare service and the licence is
- 20 suspended for safety reasons under s 762 or under a law of another
- 21 jurisdiction that substantially corresponds to s 762
- 22 **Note** An example is part of the Act, is not exhaustive and may extend,
- 23 but does not limit, the meaning of the provision in which it
- 24 appears (see Legislation Act, s 126 and s 132).
- 25 (c) any refusal of an application for a licence or other authority
- 26 (however described) in relation to providing services for
- 27 children or young people;

- 1 (d) the soundness of the entity's financial reputation and the
2 stability of the entity's financial background;
- 3 (e) the entity's reputation for honesty and integrity;
- 4 (f) whether the entity has proven experience or demonstrated
5 capacity in providing services for children and young people;
- 6 (g) whether a child concern report about the entity has been
7 received by the chief executive and any action that has been
8 taken in response to the report by the chief executive or a court
9 or tribunal;
- 10 (h) for an entity in relation to suitability for the purpose of foster
11 care—information in paragraphs (a) to (g) for each other adult
12 member of the entity's household;
- 13 (i) any other consideration relevant to the entity's ability to
14 provide high quality services for children or young people.
- 15 (2) To remove any doubt, the information may be about any
16 circumstance or thing mentioned in subsection (1) whether inside or
17 outside the ACT.

18 **Example**

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

21 **66 Chief executive may require suitability information**

- 22 (1) This section applies if the chief executive is making a decision about
23 whether an entity is a suitable entity for a stated purpose.
- 24 (2) The chief executive may, by written notice given to the entity
25 (a *suitability information notice*), require the entity to give the chief
26 executive stated suitability information about the entity not later
27 than a stated reasonable time.
- 28 (3) A suitability information notice must also tell the entity that giving
29 false or misleading information is an offence against the Criminal
30 Code, section 338 (Giving false or misleading information).

67 Chief executive need not decide suitability if information not provided

- (1) This section applies if—
- (a) the chief executive has given an entity a suitability information notice; and
 - (b) the entity does not give the chief executive the suitability information in accordance with the notice.
- (2) The chief executive need not decide whether the entity is a suitable entity for a stated purpose.

68 Chief executive may require test etc

- (1) This section applies if the chief executive is making a decision about whether an entity is a suitable entity for a stated purpose.
- (2) The chief executive may, by written notice given to the entity (a **requirement notice**), require the entity to do any or all of the following not later than a stated reasonable time:
- (a) provide a stated reference or report;
 - (b) undergo a stated test or medical examination.

Example—medical examination
a psychiatric examination

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

69 Chief executive need not decide suitability if test not taken, etc

- (1) This section applies if—
- (a) the chief executive has given the entity a requirement notice; and

- 1 (b) the entity does not do the thing required in accordance with the
2 requirement notice.
- 3 (2) The chief executive need not decide whether the entity is a suitable
4 entity for a stated purpose.

5 **70 Offence—ongoing duty to update suitability information**

- 6 (1) This section applies to an entity if—
- 7 (a) either—
- 8 (i) the chief executive is deciding whether the entity is a
9 suitable entity for a stated purpose; or
- 10 (ii) the chief executive has decided that the entity is a suitable
11 entity for a stated purpose and the entity is exercising
12 functions for the purpose; and
- 13 (b) the entity has given the chief executive suitability information
14 about the entity.

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

- 16 (2) The entity commits an offence if—
- 17 (a) the entity's suitability information under section 65 (1),
18 definition of **suitability information**, paragraph (a), (b) or (c)
19 changes; and
- 20 (b) the entity does not tell the chief executive about the change as
21 soon as practicable, but not later than 7 days after the change
22 happens.

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

- 1 (3) The entity commits an offence if—
- 2 (a) the chief executive gave the entity written notice that the
- 3 suitability information under section 65 (1), definition of
- 4 ***suitability information***, paragraph (d) was being considered in
- 5 deciding whether the entity was a suitable entity; and
- 6 (b) the entity becomes bankrupt or executes a personal insolvency
- 7 agreement; and
- 8 (c) the entity does not tell the chief executive about the bankruptcy
- 9 or agreement as soon as practicable, but not later than 7 days
- 10 after the bankruptcy happens or agreement is executed.
- 11 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 12 both.
- 13 (4) The entity commits an offence if—
- 14 (a) the chief executive gave the entity written notice that the
- 15 suitability information under section 65 (1), definition of
- 16 ***suitability information***, paragraph (e) was being considered in
- 17 deciding whether the entity was a suitable entity; and
- 18 (b) any of the following makes an adverse finding against the
- 19 entity:
- 20 (i) a court or tribunal;
- 21 (ii) an authority or person with power to require the
- 22 production of documents or the answering of questions;
- 23 and
- 24 **Examples—subpar (ii)**
- 25 1 commissioner for fair trading
- 26 2 human rights commission
- 27 3 discrimination commissioner
- 28 *Note* An example is part of the Act, is not exhaustive and may
- 29 extend, but does not limit, the meaning of the provision in
- 30 which it appears (see Legislation Act, s 126 and s 132).

- 1 (c) the entity does not tell the chief executive about the finding as
2 soon as practicable, but not later than 7 days after the finding is
3 made.

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

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

10 **71 Chief executive may employ etc suitable entity**

11 The chief executive may appoint, engage, employ or authorise a
12 suitable entity for a stated purpose (whether for payment or as a
13 volunteer) for children and young people under this Act.

14 **72 Suitable entities register**

15 (1) The chief executive must establish a register of suitable entities
16 (a *suitable entities register*) for this Act.

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

- 19 (a) the entity's name;
20 (b) the purpose for which the entity is approved;
21 (c) any other detail the chief executive considers appropriate.

22 *Note* Power to make a statutory instrument includes power to make different
23 provision for different categories (see Legislation Act, s 48).

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 means a family group conference facilitator appointed under 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.

- 1 **74 Family group conferences—objects**
- 2 The objects of a family group conference about a child or young
3 person are to—
- 4 (a) encourage the child or young person and his or her family
5 members, to take part in decisions affecting the child or young
6 person; and
- 7 (b) increase the support for the child or young person by his or her
8 family members and significant people; and
- 9 (c) make arrangements for the care of the child or young person to
10 reduce the likelihood of the child or young person being in
11 need of care and protection in the future.
- 12 **75 What is a *family group conference*?**
- 13 In this Act:
- 14 *family group conference* means a conference about a child or young
15 person to give the participants an opportunity to—
- 16 (a) reach an agreement about a matter relating to the wellbeing of
17 the child or young person; and
- 18 (b) enter into a family group conference agreement detailing the
19 agreed arrangements for the wellbeing of the child or young
20 person; and
- 21 (c) if a family group conference agreement is already in force for
22 the child or young person—review the agreement.
- 23 **76 What is a *family group conference agreement*?**
- 24 (1) In this Act:
- 25 *family group conference agreement* means an agreement that—
- 26 (a) arises from a family group conference about a child or young
27 person; and

- 1 (b) is between—
2 (i) the chief executive; and
3 (ii) a relevant conference participant; and
4 (iii) for an agreement about a young person who is
5 school-leaving age or older—the young person; and
6 (c) details the arrangements agreed to by the parties for the
7 wellbeing of the child or young person; and
8 (d) is in writing and signed by—
9 (i) the chief executive; and
10 (ii) the relevant conference participant; and
11 (iii) any other conference participant who agrees with the
12 arrangements; and
13 (e) may, but need not, include a requirement for the chief
14 executive to arrange for a family group conference to review
15 the family group conference agreement not later than a stated
16 day.
17 (2) However, a family group conference agreement must not—
18 (a) transfer parental responsibility for the child or young person
19 from a person to the chief executive; or
20 (b) share parental responsibility for the child or young person with
21 the chief executive.

22 **77 Offence—publish details of family group conferences**

- 23 (1) A person commits an offence if the person publishes all or part of—
24 (a) a family group conference agreement; or
25 (b) a family group conference outcome report; or

- 1 (c) a record or report prepared for and presented to a family group
2 conference.
- 3 Maximum penalty: 50 penalty units.
- 4 (2) A person commits an offence if the person publishes anything said
5 or done at a family group conference.
- 6 Maximum penalty: 50 penalty units.
- 7 (3) This section does not apply if the publication is made under this Act
8 or another territory law.
- 9 *Note* Chapter 25 contains further provisions about information secrecy and
10 sharing.

Part 3.2 Family group conferences— facilitators

78 Family group conference facilitators—appointment

- (1) The chief executive 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 chief executive 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 chief executive 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

- 1 3 asking someone to give information or a report to the conference without
2 inviting the person to be a participant
- 3 4 inviting someone to attend the conference as a participant, at any time
- 4 5 allowing someone to take part in the conference by telephone,
5 video-conference or in another way
- 6 6 deciding when and where the family group conference will take place
- 7 *Note 1* A family group conference facilitator may give the chief executive
8 protected information (including sensitive information) about a child or
9 young person if the family group conference facilitator considers that
10 giving the information is in the best interests of the child or young
11 person (see s 850).
- 12 *Note 2* A provision of a law that gives an entity (including a person) a function
13 also gives the entity powers necessary and convenient to exercise the
14 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).
- 15 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
16 does not limit, the meaning of the provision in which it appears (see
17 Legislation Act, s 126 and s 132).

Part 3.3 **Family group conferences—
arrangement and conduct**

80 **Family group conferences—criteria**

- (1) The chief executive 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 chief executive considers that the agreement should be reviewed
- 2 if the child or young person is in out-of-home care and the chief executive 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 chief executive considers that a family group conference may help the child's or young person's transition back into the community

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

- (2) The chief executive may also arrange for a family group conference about a child or young person if the chief executive 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 chief executive 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 chief executive 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 chief executive believes Jane is in need of care and protection and arranges a family group conference to ensure Jane's care and protection.

3 The chief executive appraises a child protection report of sexual abuse in relation to 8 year old Sally. The chief executive substantiates the abuse by Sally's stepfather and decides that Sally is in need of care and protection. The chief executive 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.

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

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 chief executive must arrange for a family group conference to review the family group conference agreement if the chief executive 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.

- 1 (3) However, the chief executive is not required to arrange a family
2 group conference under subsection (2) (b) if the chief executive—
3 (a) has already arranged a conference to review the agreement
4 because of a request under subsection (2) (b); or
5 (b) considers it is not in the best interests of the child or young
6 person to do so.

7 **82 Family group conferences—facilitator to organise**

- 8 (1) If the chief executive arranges a family group conference about a
9 child or young person, the chief executive must assign a family
10 group conference facilitator to the conference.
11 (2) The family group conference facilitator must, as soon as practicable
12 after being assigned to the family group conference—
13 (a) decide, under section 83 (1) (b) to (e), who should be invited to
14 the conference; and
15 (b) take reasonable steps to tell each person to be invited to the
16 conference when and where the conference will take place; and
17 (c) conduct the conference.

18 **83 Family group conferences—who must be invited**

- 19 (1) A family group conference facilitator for a family group conference
20 must take all reasonable steps to invite the following people to the
21 conference:
22 (a) the chief executive;
23 (b) if the family group conference facilitator is satisfied that the
24 child or young person can understand and take part in the
25 conference—the child or young person;

- 1 (c) each parent of the child or young person, unless the family
2 group conference facilitator considers that it would not be in
3 the best interests of the child or young person for the parent to
4 attend;
- 5 (d) each other person (if any) who has parental responsibility for
6 the child or young person, unless the family group conference
7 facilitator considers that it would not be in the best interests of
8 the child or young person for the person to attend;
- 9 *Note* **Parental responsibility**, for a child or young person, is dealt with
10 in div 1.3.2.
- 11 (e) any person with an interest in, or knowledge of, the care,
12 wellbeing or development of the child or young person who the
13 family group conference facilitator considers should attend the
14 conference.
- 15 (2) If a child or young person invited to a family group conference does
16 not take part in the conference, the family group conference
17 facilitator must take all reasonable steps—
- 18 (a) to find out the views and wishes of the child or young person;
19 and
- 20 (b) to make the views and wishes of the child or young person
21 known to each other person taking part in the conference; and
- 22 (c) to ensure that the views and wishes of the child or young
23 person are considered in reaching any agreement at the
24 conference.
- 25 (3) Subsection (2) does not create any requirement for a child or young
26 person to express a view or wish about any matter.
- 27 (4) A participant may not be represented at a family group conference
28 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

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

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 886.

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 chief executive 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.

- 1 (3) Before the parties enter into a family group conference agreement—
2 (a) the facilitator must—
3 (i) give the relevant conference participants an opportunity to
4 get legal advice about the meaning and effect of the
5 proposed family group conference agreement; and
6 (ii) if the facilitator is satisfied that the child or young person
7 has sufficient maturity and developmental capacity to
8 understand the proposed family group conference
9 agreement—
10 (A) find out and consider the child's or young person's
11 views and wishes about the proposed family group
12 conference agreement; and
13 (B) if the proposed family group conference agreement
14 is about a young person who is school-leaving age or
15 older—give the young person an opportunity to get
16 legal advice about the meaning and effect of the
17 proposed family group conference agreement; and
18 (b) for a family group conference agreement reached at a family
19 group conference arranged under section 80 (2) (Family group
20 conferences—criteria)—the chief executive must be satisfied
21 that the proposed family group conference agreement is in the
22 best interests of the child or young person.

23 **86 Family group conferences—agreement of young person**

- 24 (1) This section applies if a family group conference agreement
25 proposed under section 85 (2) is about a young person who is
26 school-leaving age or older.

27 *Note School-leaving age* is 15 years old (see dict).

- 1 (2) The parties may enter the proposed family group conference
2 agreement only if the facilitator for the family group conference is
3 satisfied that the young person either—
4 (a) agrees to the proposed family group conference agreement; or
5 (b) does not have sufficient maturity or developmental capacity to
6 understand and agree to the proposed family group conference
7 agreement.

8 **87 Family group conferences—before family group**
9 **conference agreement**

- 10 (1) This section applies if the family group conference facilitator for a
11 family group conference about a child or young person—
12 (a) has, under section 85—
13 (i) proposed that the parties enter into a family group
14 conference agreement; and
15 (ii) given the relevant conference participants an opportunity
16 to get legal advice; and
17 (iii) if required, found out and considered the child's or young
18 person's views and wishes; and
19 (b) for a young person who is school-leaving age or older—is
20 satisfied under section 86 that the young person either—
21 (i) agrees to the proposed family group conference
22 agreement; or
23 (ii) does not have sufficient maturity or developmental
24 capacity to understand and agree to the proposed family
25 group conference agreement.

- 1 (2) The facilitator must encourage the parties to enter into the proposed
2 family group conference agreement by putting the agreement in
3 writing and seeking—
4 (a) the signatures of the parties; and
5 (b) the signature of any other participant who agrees with the
6 arrangements in the agreement.
7 (3) If the child or young person (not being a young person mentioned in
8 subsection (1) (b)) agrees to the proposed family group conference
9 agreement, the child or young person may also sign the agreement.

10 **88 Family group conferences—outcome report**

- 11 (1) Within 28 days after a family group conference ends, the family
12 group conference facilitator must give a written report about the
13 outcome of the conference (the *family group conference outcome*
14 *report*) to—
15 (a) the chief executive; and
16 (b) the child or young person; and
17 (c) each person invited to attend the conference.
18 (2) A family group conference outcome report must include the
19 following:
20 (a) details of when and where the conference took place;
21 (b) the name of—
22 (i) the family group conference facilitator; and
23 (ii) each person invited to the conference and whether they
24 attended; and
25 (iii) the name of anyone else who was not a participant but
26 who provided information or a report to the conference.

- 1 (3) If the conference resulted in a family group conference agreement,
2 the family group conference outcome report must include a copy of
3 the agreement.
- 4 (4) Despite anything else in this section, the family group conference
5 facilitator must not give a copy of the family group conference
6 outcome report, or a copy of the family group conference
7 agreement, to the child or young person if the facilitator believes on
8 reasonable grounds—
- 9 (a) that it would not be in the child's or young person's best
10 interests to be given information contained in the report or
11 agreement; or
- 12 (b) that the child or young person is not able to understand the
13 report or agreement.

14 **89 Family group conference agreement—when takes effect**

15 A family group conference agreement takes effect—

- 16 (a) when it has been signed by all parties to the agreement; or
17 (b) if the parties agree to a later time of effect—at that time.

18 **90 Family group conference agreements—implementation**

19 After receiving a family group conference agreement, the chief
20 executive must implement the arrangements in the agreement in a
21 way that complies with the family group conference standards
22 (if any).

23 *Note 1* The Minister may make family group conference standards under s 886.

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

1 **Chapter 4** **Children and young people and** 2 **criminal matters—general**

3 **91** **What are the *criminal matters chapters*?**

4 In this Act:

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

- 7 (a) this chapter;
- 8 (b) chapter 5 (Criminal matters—transfers);
- 9 (c) chapter 6 (Criminal matters—detention places);
- 10 (d) chapter 7 (Criminal matters—search and seizure at detention
- 11 places);
- 12 (e) chapter 8 (Criminal matters—discipline at detention places);
- 13 (f) chapter 9 (Criminal matters—conduct of disciplinary reviews).

14 **92** **Overview of the criminal matters chapters**

- 15 (1) This chapter sets out the principles (the youth justice principles) that
- 16 apply in the criminal matters chapters, sets out general rules about
- 17 keeping young detainees separate from adult detainees and defines
- 18 some important concepts.
- 19 (2) Chapter 5 deals with transfers of young detainees and young
- 20 offenders.
- 21 (3) Chapter 6 deals with detention places generally.
- 22 (4) Chapter 7 deals with search and seizure at detention places.
- 23 (5) Chapter 8 deals with the discipline of young detainees at detention
- 24 places.

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

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

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

18 **93 Application of criminal matters chapters generally**

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

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

- 24 (a) section 184 (2) (m) (Register of young detainees);
- 25 (b) section 254 (Strip searches of young detainees under 18 years
26 old—no-one with parental responsibility available);
- 27 (c) section 266 (Body searches of young detainees under 18 years
28 old—no-one with parental responsibility available).

- 1 (3) Also, certain requirements of the following provisions are different
2 for young detainees who are under 18 years old and young detainees
3 who are adults:
- 4 (a) section 112 (Transfer—notifying people responsible for or
5 nominated by young detainees);
- 6 (b) section 156 (Detention—notifying people responsible for or
7 nominated by young detainees);
- 8 (c) section 181 (Injury etc—notifying people responsible for or
9 nominated by young detainees);
- 10 (d) section 206 (Notice of segregation directions—safe room and
11 other);
- 12 (e) section 220 (Notice of decision about segregation direction);
- 13 (f) section 236 (Alcohol and drug testing of young detainees);
- 14 (g) section 250 (Notice of strip and body searches—person
15 responsible for or nominated by young detainee);
- 16 (h) section 253 (Strip searches on admission to detention place);
- 17 (i) section 265 (People present at body searches).

18 **94 Youth justice principles**

- 19 (1) For the criminal matters chapters, in deciding what is in the best
20 interests of a child or young person, a decision-maker must consider
21 each of the following matters that is relevant (the *youth justice*
22 *principles*):
- 23 (a) if a child or young person does something that is contrary to
24 law, he or she should be encouraged to accept responsibility
25 for the behaviour and be held accountable;
- 26 (b) a child or young person should be dealt with in a way that
27 acknowledges his or her needs and that will provide the
28 opportunity to develop in socially responsible ways;

- 1 (c) a child or young person should be consulted about, and be
2 given the opportunity to take part in making, decisions that
3 affect the child or young person, to the maximum extent
4 possible taking into consideration their age, maturity and
5 developmental capacity;
- 6 (d) if practicable and appropriate, decisions about an Aboriginal
7 and Torres Strait Islander child or young person should be
8 made in a way that involves their community;
- 9 (e) if a child or young person is charged with an offence, he or she
10 should have prompt access to legal assistance, and any legal
11 proceeding relating to the offence should begin as soon as
12 possible;
- 13 (f) a child or young person may only be detained in custody for an
14 offence (whether on arrest, on remand or under sentence) as a
15 last resort and for the minimum time necessary;
- 16 (g) children, young people and other young offenders should be
17 dealt with in the criminal law system in a way consistent with
18 their age, maturity and developmental capacity and have at
19 least the same rights and protection before the law as would
20 adults in similar circumstances;
- 21 (h) on and after conviction, it is a high priority to give a young
22 offender the opportunity to re-enter the community;
- 23 (i) it is a high priority that intervention with young offenders must
24 promote their rehabilitation, and must be balanced with the
25 rights of any victim of the young offender's offence and the
26 interests of the community.
- 27 (2) The decision-maker may also consider any other relevant matter.

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

4 **Example**

5 Convention on the Rights of the Child

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

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

13 **95 Who is a *young detainee*?**

- 14 (1) A child or young person is a *young detainee* if—
15 (a) the child or young person is—
16 (i) in custody following arrest; or
17 (ii) remanded in custody under the *Crimes (Sentence*
18 *Administration) Act 2005*; or
19 (iii) in detention under the *Crimes (Sentencing) Act 2005*; or
20 (iv) otherwise in custody or detention under this Act or
21 another territory law or a law of the Commonwealth or a
22 State; and
23 (b) the child or young person is required to be held in the chief
24 executive'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 chief executive's custody:

(a) the 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*;

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 chief executive;

(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 chief executive 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 chief executive delegates a power under the Act to the person.

- 1 **97 Treating doctors—health service appointments**
- 2 (1) The chief executive responsible for the administration of the *Health*
- 3 *Act 1993* must appoint a doctor (a ***treating doctor***) for each
- 4 detention place.
- 5 (2) The treating doctor’s functions are—
- 6 (a) to provide health services to young detainees; and
- 7 (b) to protect the health of young detainees (including preventing
- 8 the spread of disease at detention places).
- 9 (3) A treating doctor appointed for a detention place must be available
- 10 to provide health services at the detention place at least once each
- 11 week.
- 12 (4) The treating doctor may give written directions to the chief
- 13 executive for subsection (2) (b).
- 14 (5) The chief executive must ensure that each direction under
- 15 subsection (4) is complied with unless the chief executive believes
- 16 on reasonable grounds that compliance would undermine security or
- 17 good order at the detention place.
- 18 **98 Health professionals—non-treating functions**
- 19 (1) The chief executive may, orally or in writing, authorise a health
- 20 professional (a ***non-treating health professional***) to exercise
- 21 non-treating functions under the criminal matters chapters.
- 22 *Note Health professional* includes a doctor and nurse registered under the
- 23 *Health Professionals Act 2004* (see dict).
- 24 (2) In this section:
- 25 ***non-treating function*** does not include a health service or other
- 26 function mentioned in section 97.

1 **99 Transporting young detainees to and from court—young**
2 **detainees to be kept separate from adult detainees**

- 3 (1) This section applies if it is necessary to transport a young detainee
4 who is under 18 years old—
5 (a) from a detention place to a court; or
6 (b) from a court to a detention place.
7 (2) The young detainee must not be transported with an adult who is
8 under detention.
9 (3) The young detainee must not be placed in a room with an adult who
10 is under detention.

11 **100 Detaining young detainees at court—young detainees to**
12 **be kept separate from adult detainees**

- 13 (1) This section applies if a young detainee who is under 18 years old
14 has been transported—
15 (a) from a detention place to a court; or
16 (b) from a court to a detention place.
17 (2) The young detainee may be detained at the court—
18 (a) before a hearing relating to the young detainee; or
19 (b) after a hearing relating to the young detainee but before the
20 young detainee is transported to the detention place.
21 (3) However, the young detainee must not be placed in a room with an
22 adult who is under detention.

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

1 **Chapter 5 Criminal matters—transfers**

2 **Part 5.1 Transfers within ACT**

3 **Division 5.1.1 Transfers within ACT—general**

4 **101 Directions to escort officers**

5 (1) For the criminal matters chapters, the chief executive may give
6 directions to an escort officer in relation to a young detainee,
7 including directions to take the young detainee into custody or to a
8 place stated in the direction.

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

13 **102 Orders to bring young detainee before court etc**

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

17 (2) Without limiting subsection (1), the chief executive must arrange for
18 a young detainee or child or young person in the chief executive's
19 custody to be brought before a court or other entity in accordance
20 with any order or direction (however described) of the court or
21 entity.

Division 5.1.2 Escorting young detainees etc

103 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 chief executive'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 chief executive's custody; and

(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 chief executive (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

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

104 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.

- 1 (2) A police officer may require an escort officer to bring the arrested
2 person before the court or tribunal.
- 3 (3) The escort officer must bring the arrested person before the court or
4 tribunal and, for that purpose, may—
- 5 (a) take the arrested person into custody; and
- 6 (b) arrange for the arrested person to be detained under this Act
7 until the arrested person is brought before the court or tribunal.
- 8 (4) In this section:
- 9 *arrested person* means—
- 10 (a) a child or young person who is arrested; or
- 11 (b) someone else who is under 21 years old and is arrested in
12 relation to an offence he or she is alleged to have committed
13 when under 18 years old.

14 **105 Custody etc during proceedings**

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

- 18 (a) the safe custody of the young detainee for the purposes of the
19 proceeding; and
- 20 (b) that the young detainee does not obstruct or hinder the
21 proceeding.

22 **106 Executing warrants of commitment or remand etc**

- 23 (1) The chief executive may make escort officers available to attend at a
24 court or tribunal—
- 25 (a) to take a young detainee into custody; or
- 26 (b) to arrange for a young detainee be kept in custody; or

- 1 (c) to transfer or otherwise deal with a young detainee.
- 2 (2) An order or direction of the court or tribunal addressed to all
3 escorts—
- 4 (a) is taken to be addressed to each escort; and
- 5 (b) may be executed by any escort.

6 **107 Other powers not limited**

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

11 **Examples—other provisions**

- 12 1 the *Crimes (Sentence Administration) Act 2005*, pt 3.3 (Committal—
13 miscellaneous)—
- 14 • s 20 (Directions to escort officers)
 - 15 • s 21 (Orders to bring offender or remandee before court etc)
- 16 2 a law of a State relating to the escort of prisoners through the ACT

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

18 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 **Division 5.1.3 Transfers to health facilities**

22 **108 Transfers to health facilities**

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

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

- 1 (2) The chief executive must have regard to the advice of a treating
2 doctor when considering whether to make a direction under
3 subsection (1).
- 4 (3) The chief executive may direct an escort officer to escort the young
5 detainee to or from the health facility, or while at the facility.
- 6 (4) The young detainee may be discharged from the health facility only
7 if—
- 8 (a) the health professional in charge of the young detainee's care
9 approves the discharge; or
- 10 (b) the chief executive directs that the young detainee be removed
11 from the facility.
- 12 **Example—direction for removal of young detainee from health facility**
13 where the young detainee is a danger to the safety of people at the facility
- 14 *Note* An example is part of the Act, is not exhaustive and may extend,
15 but does not limit, the meaning of the provision in which it
16 appears (see Legislation Act, s 126 and s 132).
- 17 (5) The chief executive must have regard to the health of the young
18 detainee when considering whether to make a direction under
19 subsection (4).
- 20 (6) The chief executive may give a direction for ensuring that a young
21 detainee discharged from a health facility under subsection (4) is
22 returned to a detention place stated in the direction.
- 23 (7) A young detainee discharged from a health facility under
24 subsection (4) may be discharged into the custody of the chief
25 executive.
- 26 (8) For chapter 8 (Criminal matters—discipline at detention places), this
27 section is taken to provide an entitlement for each young detainee in
28 relation to health care.

Division 5.1.4 Transfers of young detainees who become adults

109 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.

110 Transfers to correctional centres—under 21 years old

- (1) The chief executive may, on the chief executive'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 chief executive 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.
- (3) In deciding whether the transfer is in the best interests of the young detainee or other young detainees, the chief executive 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;

- 1 (h) whether the young detainee is more likely to be rehabilitated in
2 the detention place or correctional centre.
- 3 (4) The chief executive may also consider any other relevant matter.
- 4 (5) If the chief executive gives a direction under this section for a young
5 detainee, the chief executive may direct an escort officer to escort
6 the young detainee from the detention place to the correctional
7 centre.
- 8 (6) The young detainee must be dealt with as a detainee under the
9 *Corrections Management Act 2007* once the young detainee is taken
10 to the correctional centre.

11 **111 Transfers to correctional centres—21 year olds**

- 12 (1) A young detainee who is 21 years old or older cannot be detained at
13 a detention place, but must be detained at a correctional centre.
- 14 (2) The chief executive must give the directions necessary to ensure that
15 a young detainee at a detention place who turns 21 years old is
16 transferred to a correctional centre.

17 **Division 5.1.5 Notifying people of transfers**

18 **112 Transfer—notifying people responsible for or nominated**
19 **by young detainees**

- 20 (1) This section applies if a young detainee is transferred under—
21 (a) division 5.1.3 (Transfers to health facilities); or
22 (b) division 5.1.4 (Transfers of young detainees who become
23 adults).
- 24 (2) If the young detainee is under 18 years old, the chief executive must
25 take reasonable steps to tell someone who has daily care
26 responsibility, or long-term care responsibility, for the young
27 detainee about the transfer.

- 1 (3) If the chief executive and someone else share daily care
2 responsibility, or long-term care responsibility, for the young
3 detainee, the chief executive must act under subsection (2) in
4 relation to the other person.
- 5 (4) If the young detainee is 18 years old or older, the chief executive
6 must take reasonable steps to tell the young detainee's nominated
7 person about the transfer.

Part 5.2 Interstate transfers

Division 5.2.1 Interstate transfer generally

113 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*.

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 114.

transfer arrangement—see section 115.

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

4 *transfer order*—see section 119.

5 *young offender* means a person who—

- 6 (a) has been convicted or found guilty of an offence by a court;
7 and
8 (b) was under 18 years old when the offence was committed; and
9 (c) has been sentenced for the offence.

10 **114 General agreements with other jurisdictions**

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

- 15 (a) from or to the ACT; or
16 (b) through the ACT from a State to another State.

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

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

22 (4) A declaration is a notifiable instrument.

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

1 **115 Transfer arrangements—general**

2 (1) If a transfer agreement with a Minister of a State is in force, the
3 chief executive may make an arrangement (a *transfer arrangement*)
4 with the Minister, or a person authorised to enter into a transfer
5 arrangement for the Minister, for the transfer of a particular young
6 offender—

7 (a) from the ACT to the State; or

8 (b) to the ACT from the State.

9 (2) The chief executive may also make a transfer arrangement with the
10 Minister, or a person authorised to enter into a transfer arrangement
11 for the Minister, to fix a mistake in a transfer arrangement.

12 (3) The chief executive may only make a transfer arrangement for a
13 particular young offender from the ACT to a State in the
14 circumstances mentioned in section 116.

15 **116 Power to arrange for transfers**

16 (1) The chief executive may make a transfer arrangement for the
17 transfer of a young offender from the ACT to a State—

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

20 (b) if the chief executive has daily care responsibility, or long-term
21 care responsibility, for the young offender.

- 1 (2) However, the chief executive may only make a transfer arrangement
2 for the transfer of a young offender from the ACT to a State if—
- 3 (a) the chief executive believes on reasonable grounds that the
4 transfer is appropriate, having regard to all the circumstances,
5 including—
- 6 (i) the place or intended place of residence of the parents of
7 the young offender and other people (if any) who have
8 daily care responsibility, or long-term care responsibility,
9 for the young offender, or the young offender's family
10 members; and
- 11 (ii) the present and future education, training or employment
12 of the young offender; and
- 13 (iii) the medical needs of the young offender; and
- 14 (iv) the safety, health and wellbeing of the young offender;
15 and
- 16 (b) either—
- 17 (i) the young offender agrees to the transfer; or
- 18 (ii) the chief executive decides that the particular
19 circumstances of the case indicate that the transfer should
20 be arranged without the young offender's agreement; and
- 21 (c) the young offender has been given independent legal advice
22 about the effect of the transfer arrangement; and
- 23 (d) the chief executive is satisfied that there is no appeal pending
24 against an order of a Childrens Court to which the young
25 offender is subject.
- 26 (3) In deciding whether to arrange for the transfer of a young offender
27 on an application under subsection (1) (a), the chief executive may
28 ask the following people for relevant information:
- 29 (a) the young offender;

- 1 (b) a person responsible for the young offender.
- 2 (4) The chief executive may refuse to make a transfer arrangement if
3 information asked for is not supplied within the time stated by the
4 chief executive.
- 5 (5) The chief executive may make a transfer arrangement to transfer a
6 young offender from the ACT to a State other than under
7 subsection (1) if—
- 8 (a) the young offender is detained in a detention place; and
- 9 (b) the chief executive believes on reasonable grounds that the
10 behaviour of the young offender in the detention place puts at
11 risk the safety, health or wellbeing of other people detained in
12 the detention place or of staff at the detention place; and
- 13 (c) the young offender has been given independent legal advice
14 about the effect of the transfer arrangement; and
- 15 (d) the chief executive is satisfied that there is no appeal pending
16 against an order of the Childrens Court to which the young
17 offender is subject.
- 18 (6) This section does not apply to a transfer arrangement to fix a
19 mistake.

20 **117 Transfer arrangements—facilities must be adequate**

21 A transfer arrangement for the transfer of a young offender from a
22 State to the ACT may be made only if the chief executive is satisfied
23 that there are adequate facilities in the ACT for the young offender
24 to be accepted and dealt with as provided in the transfer
25 arrangement.

- 1 **118 Transfer arrangements—content**
- 2 (1) A transfer arrangement for the transfer of a young offender from or
- 3 to the ACT must—
- 4 (a) be in writing; and
- 5 (b) provide for the acceptance of, and means of dealing with, the
- 6 young offender in the receiving State; and
- 7 (c) state each order of a court of the sending State to which the
- 8 young offender is subject (including an order required by a
- 9 previous transfer arrangement with the Territory or with a State
- 10 to be treated as having been made by a court of the sending
- 11 State).
- 12 (2) For each order mentioned in subsection (1) (c), the transfer
- 13 arrangement must state—
- 14 (a) the way that the order must operate in the receiving State,
- 15 which must be as similar as possible to the way that it would
- 16 operate in the sending State if the transfer arrangement were
- 17 not made; and
- 18 (b) the maximum time for which the order may operate, which
- 19 must not be longer than the maximum time for which it could
- 20 operate in the sending State if the transfer arrangement were
- 21 not made; and
- 22 (c) any entitlement of the young offender to a reduction in
- 23 detention in the sending State and how that entitlement must
- 24 operate in the receiving State, which must be as similar as
- 25 possible to the way that it would operate in the sending State if
- 26 the transfer arrangement were not made; and
- 27 (d) that a young offender who is subject to a nonprobation period
- 28 may be treated as being subject to an equivalent nonparole
- 29 period, if the laws of the receiving State do not provide for
- 30 nonprobation periods.

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

4 **119 Custody of person on transfer order**

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

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

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

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

18 (a) a police officer; or

19 (b) a corrections officer; or

20 (c) a youth detention officer; or

21 (d) a person acting as a transfer escort with the approval of the
22 chief executive.

23 **120 Custody pending interstate transfer**

24 If the chief executive makes a transfer arrangement under this Act
25 for the transfer of a young offender from the ACT to a State in the
26 custody of a transfer escort mentioned in section 119 (2), the young
27 offender may be detained in a detention place until the young
28 offender is delivered to the transfer escort.

1 **121 Transfer to ACT in custody of transfer escort**

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

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

9 **122 Powers of transfer escorts**

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

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

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

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

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

23 (a) part 7.2 (Searches generally);

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

25 (c) part 7.9 (Seizing property).

1 **123 Offence—escapes during transfer**

2 A person commits an offence if—

- 3 (a) an order sentencing the person to imprisonment has been
4 made; and
- 5 (b) the person is in custody under a transfer arrangement made for
6 the person's transfer from the ACT to a State; and
- 7 (c) the person escapes from that custody while the person is not in
8 the ACT or the receiving State.

9 Maximum penalty: imprisonment for 6 months.

10 **Division 5.2.2 Transfer of sentence or order**

11 **124 Transfer from ACT of sentence or order**

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

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

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

1 **125 Transfer to ACT of sentence or order**

- 2 (1) This section applies if a young offender is transferred to the ACT
3 from a State under a transfer arrangement.
- 4 (2) From the time the young offender arrives in the ACT—
- 5 (a) a sentence imposed on, or order made in relation to, the young
6 offender by a court of the sending State and stated in the
7 transfer arrangement must be considered as having been
8 imposed or made by the Territory court stated in the transfer
9 arrangement; and
- 10 (b) a sentence or order considered by a previous transfer
11 arrangement with the Territory, or with a State, to have been
12 imposed or made by a court of the sending State, which is a
13 sentence or order stated in the transfer arrangement under
14 which the young offender is transferred to the ACT, must be
15 considered as having been imposed or made by the Territory
16 court stated in the transfer arrangement; and
- 17 (c) a direction given or order made by a court of the sending State
18 concerning the time when anything must be done under an
19 order made by a court of that State is, as far as practicable, to
20 be considered as having been given or made by the Territory
21 court stated in the transfer arrangement.
- 22 (3) A sentence, order or direction has effect in the ACT as stated in the
23 transfer arrangement and the laws of the Territory apply as if the
24 Territory court stated in the transfer arrangement—
- 25 (a) had, at the relevant time, power to impose the sentence and to
26 make or give the order or direction; and
- 27 (b) did in fact impose the sentence and make or give the order or
28 direction when it was imposed, made or given.

1 **Division 5.2.3 Transit through ACT**

2 **126 Chief executive may receive young offenders**

3 The chief executive may receive, at a detention place, young
4 offenders being transferred through the ACT from a State to another
5 State under a transfer agreement.

6 **127 Lawful custody for transit through ACT**

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

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

12 (3) The chief executive may, at the request of the transfer escort and on
13 receiving from the transfer escort written authority for the transfer
14 of the young offender as provided in the transfer agreement—

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

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

20 **128 Escapees may be apprehended without warrant**

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

1 **129 Escapes to be brought before magistrate**

- 2 (1) This section applies if a young offender being transferred through
3 the ACT from a State to another State in the custody of a transfer
4 escort—
- 5 (a) escapes and is apprehended; or
- 6 (b) attempts to escape.
- 7 (2) The young offender may be taken before a magistrate and the
8 magistrate may, by warrant, order the young offender to be detained
9 in custody at a detention place.
- 10 (3) The warrant may be executed according to its terms.

11 **130 Court may arrange transfer of apprehended escapees**

- 12 (1) A young offender who is apprehended under a warrant under
13 section 129 must, as soon as practicable, be brought before—
- 14 (a) if the young offender is 18 years old or older—the Magistrates
15 Court; or
- 16 (b) in any other case—the Childrens Court.
- 17 (2) The Magistrates Court or Childrens Court may order that the young
18 offender —
- 19 (a) be delivered to the custody of a transfer escort; or
- 20 (b) be detained for not longer than 7 days until a transfer escort is
21 available from the sending State to carry out the transfer
22 arrangement or an order made by a court of the State.
- 23 (3) If a young offender who is the subject of an order made by a
24 magistrate is not, under the order, delivered into the custody of a
25 transfer escort before the end of 7 days after the day the order is
26 made, the order has no further effect.
- 27 (4) If an order ceases to have further effect under subsection (3), a
28 further order may be made under subsection (2).

- 1 (5) In this section:
- 2 *transfer escort*, for a young offender being transferred through the
- 3 ACT from a State to another State under a transfer agreement,
- 4 means—
- 5 (a) the transfer escort authorised by the transfer agreement to have
- 6 custody of the young offender; or
- 7 (b) if the young offender has escaped or attempted to escape—1 or
- 8 more of the following people:
- 9 (i) the transfer escort;
- 10 (ii) a police officer of the sending State;
- 11 (iii) a person appointed in writing by the Minister of the
- 12 sending State, or a person authorised to enter into a
- 13 transfer arrangement for that Minister, to be a transfer
- 14 escort to carry out an order of a court of the sending State.

15 **131 Search warrants for escapees**

- 16 (1) A transfer escort or police officer may apply to a magistrate for a
- 17 search warrant if the transfer escort or police officer believes on
- 18 reasonable grounds that a young offender who has escaped from the
- 19 custody of a transfer escort while being transferred through the ACT
- 20 from a State to another State under a transfer agreement is at
- 21 premises.
- 22 (2) The magistrate may, if satisfied that there are reasonable grounds for
- 23 doing so, issue a search warrant authorising the person named in the
- 24 warrant with the assistance, and with the force, that is necessary and
- 25 reasonable to—
- 26 (a) enter stated premises; and
- 27 (b) inspect the premises for evidence of the young offender who
- 28 has escaped from custody; and

- 1 (c) observe and converse with a person apparently living there;
2 and
3 (d) apprehend the young offender at the premises.
- 4 (3) A warrant issued under this section must state—
- 5 (a) why the warrant is issued, including the name and description
6 of the young offender for whom entry and search are
7 authorised; and
- 8 (b) whether entry is authorised to be made at any time of the day
9 or night or during stated hours of the day or night; and
- 10 (c) a date, not being later than 14 days after the date of issue of the
11 warrant, on which the warrant ceases to have effect.
- 12 (4) A police officer may—
- 13 (a) accompany a transfer escort executing a search warrant issued
14 under this section; and
- 15 (b) take all reasonable steps to assist in the apprehension of the
16 young offender at the premises.
- 17 (5) In this section:
- 18 *transfer escort* means the transfer escort authorised by the transfer
19 agreement to have custody of the young offender.

20 **Division 5.2.4 Revocation of transfer orders**

21 **132 Revocation of transfer order—offence during transfer**

- 22 (1) The Childrens Court may, on application by the chief executive,
23 revoke a transfer order in relation to a young offender if the young
24 offender has, while being transferred, committed—
- 25 (a) the offence of escaping or attempting to escape; or
- 26 (b) another offence.

- 1 (2) This section applies whether or not—
2 (a) the offence was an offence against a law of—
3 (i) the Territory; or
4 (ii) the receiving State; or
5 (iii) a State through which the young offender was being
6 transferred; or
7 (b) an information has been laid for the offence; or
8 (c) a conviction has been recorded for the offence.

9 **133 Revocation of transfer order by chief executive**

- 10 (1) The chief executive may revoke a transfer order in relation to a
11 young offender at any time before the young offender is delivered in
12 the receiving State into the custody stated in the transfer
13 arrangement for the young offender.
14 (2) If the chief executive revokes a transfer order, the chief executive
15 may make a further transfer arrangement with the receiving State for
16 the return of the young offender to the ACT.

17 **134 Chief executive may consider reports etc**

- 18 (1) In forming an opinion or exercising a discretion under this part, the
19 chief executive may—
20 (a) be informed as the chief executive considers appropriate; and
21 (b) consider reports from—
22 (i) a person responsible for a young offender in the ACT or a
23 State; or
24 (ii) a person who has had the custody, care or supervision of a
25 young offender in the ACT or a State.

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

1 **Chapter 6 Criminal matters—detention**
2 **places**

3 **Part 6.1 Detention places—general**

4 **135 Application—ch 6**

5 This chapter applies to young detainees.

6 *Note* **Young detainee**—see s 95.

7 **136 Definitions—ch 6**

8 In this chapter:

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

- 11 (a) the chief executive if the chief executive is a person who has
12 daily care responsibility, or long-term care responsibility, for
13 the young detainee;
- 14 (b) a representative, approved by the chief executive, of an entity
15 providing a service or program to the young detainee at a
16 detention place;
- 17 (c) a lawyer representing the young detainee;
- 18 (d) an official visitor;
- 19 (e) a commissioner exercising functions under the *Human Rights*
20 *Commission Act 2005*;
- 21 (f) the public advocate;
- 22 (g) the ombudsman;
- 23 (h) a person prescribed by regulation.

1 **case management plan**, for a young detainee, means the young
2 detainee's case management plan maintained under section 187.

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

5 **prohibited thing** means a thing declared to be a prohibited thing
6 under section 147.

7 **register of young detainees** means the register kept under
8 section 184.

9 **security classification**, for a young detainee, means the young
10 detainee's security classification under section 189.

11 **visiting conditions**, at a detention place, means conditions declared
12 under section 227 in relation to the place.

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

15 **young remandee** means—

16 (a) a child or young person remanded in custody under the *Crimes*
17 (*Sentence Administration*) *Act 2005*; or

18 (b) a person who is at least 18 years old but under 21 years old and
19 is remanded in custody under the *Crimes (Sentence*
20 *Administration)* *Act 2005*.

21 **youth detention policy** means a youth detention policy made by the
22 chief executive under section 142.

23 **137 Treatment of young detainees generally**

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

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

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

- 1 (c) to preclude torture or cruel, inhuman or degrading treatment;
- 2 (d) to ensure the young detainee is not subject to further
- 3 punishment (in addition to deprivation of liberty) only because
- 4 of the conditions of detention;
- 5 (e) to ensure the young detainee's conditions in detention comply
- 6 with section 140 (Detention places—minimum living
- 7 conditions);
- 8 (f) to promote, as far as practicable, the young detainee's
- 9 reintegration into society;
- 10 (g) for a young detainee who is a young offender—to promote, as
- 11 far as practicable, the young detainee's rehabilitation.

12 **138 Treatment of young remandees**

- 13 (1) Functions under the criminal matters chapters in relation to a young
- 14 remandee must also be exercised to recognise and respect that—
- 15 (a) the young remandee must be presumed innocent of any offence
- 16 for which the young remandee is remanded in custody; and
- 17 (b) the detention is not imposed as punishment of the young
- 18 remandee.
- 19 (2) Subsection (1) does not apply if the young remandee—
- 20 (a) has been convicted or found guilty of the offence for which the
- 21 young remandee is detained; or
- 22 (b) is under a sentence of imprisonment in relation to another
- 23 offence.

24 **Example—par (2) (a)**

25 a convicted young person remanded in custody for sentencing

26 *Note* An example is part of the Act, is not exhaustive and may extend,

27 but does not limit, the meaning of the provision in which it

28 appears (see Legislation Act, s 126 and s 132).

1 **139 Treatment of certain young detainees**

- 2 (1) This section applies to a young detainee (other than a sentenced
3 young offender or young remandee) while the young detainee is
4 required to be held in custody or detention under a territory law or a
5 law of the Commonwealth, a State or another Territory.
- 6 (2) Functions under the criminal matters chapters in relation to the
7 young detainee must be exercised to recognise and respect the
8 purpose for which the young detainee is held in custody or
9 detention.
- 10 (3) The criminal matters chapters apply in relation to the young
11 detainee, with any changes prescribed by regulation.

12 **140 Detention places—minimum living conditions**

- 13 (1) To protect the human rights of young detainees in detention at
14 detention places, the chief executive must ensure, as far as
15 practicable (including during any emergency declared under
16 section 148), that conditions at detention places meet at least the
17 following minimum standards:
- 18 (a) young detainees must have access to sufficient nutritional food
19 and drink to avoid hunger and poor nourishment;
- 20 (b) young detainees must have access to sufficient suitable
21 clothing that does not degrade or humiliate young detainees;
- 22 (c) young detainees must have access to suitable facilities for
23 personal hygiene;
- 24 (d) young detainees must have suitable accommodation and
25 bedding for sleeping in reasonable privacy and comfort;
- 26 (e) young detainees must have reasonable access to the open air
27 and exercise;

- 1 (f) young detainees must have reasonable access to telephone,
2 mail and other facilities for communicating with people in the
3 community;
- 4 (g) young detainees must have reasonable opportunities to receive
5 visits from family members, significant people and accredited
6 people;
- 7 *Note 1* **Accredited person**—see s 136.
- 8 *Note 2* One family member or a significant person may visit for at least 1
9 hour each week (see s 176).
- 10 *Note 3* For further provisions about access, see div 6.6.5.
- 11 (h) young detainees must have reasonable opportunities to
12 communicate with their lawyers;
- 13 (i) young detainees must have reasonable access to news and
14 education services and facilities to maintain contact with
15 society;
- 16 (j) young detainees must have access to suitable health services
17 and health facilities;
- 18 (k) young detainees must have reasonable opportunities for
19 religious, spiritual and cultural observances.
- 20 **Example—par (k)**
21 observances and practices relating to religious or spiritual beliefs, including
22 Aboriginal and Torres Strait Islander spiritual beliefs
- 23 *Note* An example is part of the Act, is not exhaustive and may extend,
24 but does not limit, the meaning of the provision in which it
25 appears (see Legislation Act, s 126 and s 132).
- 26 (2) Part 6.5 applies to living conditions at detention places.

Part 6.2 Administration

Division 6.2.1 Administration—general

141 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.)

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

(3) For the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, a detention place is a public place.

142 Youth detention policies and operating procedures

(1) The chief executive 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.

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

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

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

- 7 (3) Each youth detention policy and operating procedure—
8 (a) must be available for inspection by anyone at each detention
9 place; and
10 (b) may be made available for inspection at any other place
11 decided by the chief executive.

12 **143 Exclusion of matters from notified youth detention**
13 **policies etc**

- 14 (1) The chief executive may exclude from a youth detention policy or
15 operating procedure notified or available for inspection in
16 accordance with section 142 any matter that the chief executive
17 believes on reasonable grounds would be likely to disclose—

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

20 (b) anything prescribed by regulation.

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

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

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

27 (i) a judge;

28 (ii) a magistrate;

- 1 (iii) a member of the Legislative Assembly;
- 2 (iv) a commissioner exercising functions under the *Human*
- 3 *Rights Commission Act 2005*;
- 4 (v) the public advocate;
- 5 (vi) the ombudsman;
- 6 (vii) an official visitor;
- 7 (viii) anyone to whom this section applies because of a
- 8 declaration under subsection (3).

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

10 (4) A declaration is a notifiable instrument.

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

12 **144 Copies of Act, policies etc to be available for inspection**

13 **at detention place**

14 The chief executive must ensure copies of the following are

15 available for inspection by young detainees at each detention place:

- 16 (a) this Act;
- 17 (b) youth detention policies and operating procedures available
- 18 under section 142.

19 **145 Chief executive directions**

20 (1) The chief executive may give reasonable directions in relation to a

21 young detainee about anything related to the criminal matters

22 chapters.

23 (2) Without limiting subsection (1), the chief executive may give a

24 direction that the chief executive considers necessary and reasonable

25 in relation to any of the following:

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

- 1 (b) security or good order at a detention place;
2 (c) ensuring compliance with any requirement under this Act or
3 another territory law.
- 4 (3) A direction may be given orally or in writing, and may apply to a
5 particular young detainee or 2 or more young detainees.
- 6 (4) A direction by the chief executive under this Act, or anything done
7 under the direction, is not invalid because of a defect or irregularity
8 in or in relation to the direction.

9 **146 Prohibited areas**

- 10 (1) The chief executive may, in writing, declare an area of a detention
11 place to be a prohibited area if the chief executive believes on
12 reasonable grounds that the declaration is necessary or prudent to
13 ensure 1 or more of the following:
- 14 (a) the safety of anyone at the detention place;
15 (b) security or good order at a detention place;
16 (c) that the best interests of detainees are protected.
- 17 *Note* The power to make an instrument includes power to make different
18 provisions in relation to different matters or different classes of matters,
19 and provisions that apply differently by reference to stated exceptions or
20 factors (see Legislation Act, s 48.)
- 21 (2) As soon as practicable after the chief executive declares an area of a
22 detention place to be a prohibited area, the chief executive must
23 ensure that each detainee to whom the prohibition applies is told
24 about the prohibited area.

1 **147 Prohibited things**

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

6 **Examples—prohibited things**

- 7 1 a weapon or something crafted as a weapon
8 2 alcohol
9 3 a controlled drug under the Criminal Code
10 4 a mobile phone

11 *Note 1* The power to make an instrument includes power to make different
12 provisions in relation to different matters or different classes of matters,
13 and provisions that apply differently by reference to stated exceptions or
14 factors (see Legislation Act, s 48.)

15 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
16 does not limit, the meaning of the provision in which it appears (see
17 Legislation Act, s 126 and s 132).

- 18 (2) A declaration is a notifiable instrument.

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

20 **148 Declaration of emergency**

- 21 (1) This section applies if the chief executive believes on reasonable
22 grounds that an emergency (including an imminent emergency)
23 exists in relation to a detention place that threatens or is likely to
24 threaten—

- 25 (a) good order or security at the place; or
26 (b) the safety of anyone at the place or elsewhere.

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

- 29 (a) 3 days; or

- 1 (b) if another period is prescribed by regulation—the period
2 prescribed.
- 3 (3) To remove any doubt, the chief executive may make declarations for
4 2 or more consecutive periods under this section in relation to the
5 same emergency.
- 6 (4) A declaration commences—
7 (a) when it is made; or
8 (b) if it provides for a later commencement—on that later
9 commencement.
- 10 (5) The first declaration in relation to an emergency is a notifiable
11 instrument.
- 12 (6) A declaration for a second or subsequent consecutive period in
13 relation to the same emergency is a disallowable instrument.
- 14 (7) An instrument under subsection (5) or (6) must be notified under the
15 Legislation Act not later than the day after the day it is made.
- 16 *Note* A disallowable instrument must be notified, and presented to the
17 Legislative Assembly, under the Legislation Act.

18 **149 Emergency powers**

- 19 (1) While an emergency is declared under section 148 in relation to a
20 detention place, the chief executive may do 1 or more of the
21 following:
- 22 (a) restrict any activity at the place;
- 23 (b) restrict access in, or to or from, the place or any part of the
24 place;
- 25 (c) restrict communications between a young detainee and anyone
26 else;

1 (d) authorise a police officer or public servant to exercise any
2 function exercisable by a youth detention officer under the
3 criminal matters chapters in accordance with any direction by
4 the chief executive.

5 (2) The chief executive must ensure that action taken under this section
6 is necessary and reasonable in the circumstances.

7 *Note* Section 140 (Detention places—minimum living conditions) continues
8 to apply during an emergency (see s 140 (1)).

9 **150 Arrangements with police**

10 (1) The chief executive may make arrangements with the chief police
11 officer for police assistance in relation to the administration of the
12 criminal matters chapters.

13 (2) Subject to any arrangement under this section, the chief police
14 officer must comply, as far as practicable, with any request by the
15 chief executive for police assistance mentioned in subsection (1).

16 (3) A police officer providing assistance under this section may exercise
17 any function exercisable by a youth detention officer under the
18 criminal matters chapters in accordance with any direction by the
19 chief executive.

20 **151 Assistance from other chief executives**

21 (1) The chief executive may ask another chief executive for assistance
22 in relation to the exercise of functions under the criminal matters
23 chapters.

24 **Examples—functions for which chief executive may ask for assistance**

- 25 1 development of a case management plan for a young detainee under s 187
26 2 provision of an assessment or advice in relation to a health, education or
27 other matter
28 3 arrangements for search dogs

1 4 escorting a young detainee to and from court or leave

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

5 (2) The chief executive must comply with the request as far as
6 practicable.

Part 6.3 Inspection at detention places

152 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 public advocate;
- (f) the ombudsman.

Note Official visitors must inspect detention places (see s 39).

(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

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

153 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.

- 1 (2) The criminal matters chapters are taken to be consistent with an
2 inspection law to the extent that they are capable of operating
3 concurrently with that law.
- 4 (3) The chief executive may make arrangements with a person
5 responsible for the exercise of functions under an inspection law to
6 ensure, as far as practicable, the safety of an inspector (however
7 described) or anyone else affected by the exercise of the function in
8 relation to a young detainee or detention place.
- 9 (4) A person exercising a function under an inspection law in relation to
10 a young detainee or detention place must exercise the function in
11 accordance with any reasonable direction by the chief executive in
12 relation to—
- 13 (a) the safety of anyone at the detention place; or
14 (b) security or good order at the detention place.
- 15 (5) In this section:
- 16 ***inspection law*** means an Act that provides for the entry and
17 inspection of premises, or the search of people or premises.
- 18 **Examples—inspection laws**
- 19 • *Crimes Act 1900*
20 • *Emergencies Act 2004*
21 • *Food Act 2001*
22 • *Public Health Act 1997*
- 23 **Note** An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 Legislation Act, s 126 and s 132).

Part 6.4 Admission to detention places

154 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.

155 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 1 **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Before a young detainee is admitted to a detention place, the chief executive 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.

- 1 **156 Detention—notifying people responsible for or nominated**
2 **by young detainees**
- 3 (1) If a young detainee who is under 18 years old is detained at a
4 detention place, the chief executive must take reasonable steps to
5 tell someone who has daily care responsibility, or long-term care
6 responsibility, for the young detainee about—
- 7 (a) the young detainee’s admission to a detention place; and
- 8 (b) if the young detainee is required to appear before a court or
9 tribunal—the time and place of each appearance.
- 10 (2) If the chief executive and someone else share daily care
11 responsibility, or long-term care responsibility, for the young
12 detainee, the chief executive must act under subsection (1) in
13 relation to the other person.
- 14 (3) If a young detainee who is 18 years old or older is detained at a
15 detention place, the chief executive must take reasonable steps to
16 tell the young detainee’s nominated person about the matters
17 mentioned in subsection (1) (a) and (b).
- 18 **157 Identification of young detainees**
- 19 (1) For the identification of a young detainee admitted to a detention
20 place, the chief executive may direct that all or any of the following
21 be taken of or from the young detainee:
- 22 (a) prints of the young detainee’s hands or fingers;
- 23 (b) a photograph or video recording;
- 24 (c) a buccal swab or saliva sample;
- 25 (d) anything else prescribed by regulation.

1 (2) Anything taken from a young detainee under subsection (1) must be
2 destroyed if—

3 (a) the young detainee is found not guilty of any offence to which
4 the detention relates, other than on the ground of unsoundness
5 of mind; or

6 (b) a proceeding for any offence to which the detention relates is
7 discontinued or dismissed.

8 (3) However, subsection (2) does not apply if, for any part of the period
9 of detention for an offence, the young detainee was also being
10 detained for another offence—

11 (a) of which the young detainee has been convicted; or

12 (b) for which a proceeding (including any appeal proceeding) is
13 still pending.

14 *Note* The *Crimes (Forensic Procedures) Act 2000* includes provision for
15 carrying out forensic procedures on people in custody. See particularly
16 pt 2.7 (Carrying out of certain forensic procedures after conviction of
17 serious offenders).

18 **158 Information—entitlements and obligations**

19 (1) As soon as practicable after a young detainee is admitted to a
20 detention place, the chief executive must take reasonable steps to
21 explain the following to the young detainee:

22 (a) the young detainee's entitlements and obligations under this
23 Act;

24 (b) the case management plan arrangements;

25 (c) the role of official visitors;

26 (d) the procedures for seeking information and making complaints
27 to official visitors;

28 (e) which areas of the detention place are prohibited areas;

29 *Note* Prohibited areas are declared under s 146.

- 1 (f) if the young detainee is a national of a foreign country—that
2 the young detainee may ask the chief executive to tell a
3 diplomatic or consular representative of the country about the
4 detention;
- 5 (g) anything else the chief executive considers necessary or
6 desirable.
- 7 **Examples—par (g)**
- 8 1 youth detention policies and operating procedures relevant to the
9 young detainee
- 10 2 the scope and effect of the chief executive’s directions
- 11 *Note* An example is part of the Act, is not exhaustive and may extend,
12 but does not limit, the meaning of the provision in which it
13 appears (see Legislation Act, s 126 and s 132).
- 14 (2) The explanation under subsection (1)—
- 15 (a) may be in general terms; and
- 16 (b) as far as practicable, must be in language the young detainee
17 can readily understand.
- 18 (3) The chief executive must arrange for the assistance of an interpreter
19 in complying with subsection (1) or (2) if the chief executive
20 believes on reasonable grounds that the young detainee is unable,
21 because of inadequate knowledge of the English language or a
22 disability, to communicate with reasonable fluency in English.
- 23 (4) Without limiting subsection (3), the assistance of the interpreter may
24 be provided by telephone.
- 25 (5) The chief executive must tell a diplomatic or consular representative
26 of a foreign country about the detention of a national of that country,
27 if asked by the young detainee or if the chief executive, after making
28 reasonable inquiries, considers it in the best interests of the young
29 detainee to do so.

1 **159 Initial assessment**

- 2 (1) The chief executive must ensure that—
- 3 (a) each young detainee admitted to a detention place is assessed
- 4 as soon as practicable, and in any event within 24 hours after
- 5 admission, to identify any immediate—
- 6 (i) physical or mental health needs or risks (including any
- 7 risk of self-harm); and
- 8 (ii) safety or security needs or risks; and
- 9 (b) any needs and risks identified by the assessment are addressed.
- 10 *Note* For an initial assessment, the chief executive may direct a youth
- 11 detention officer to strip search a young detainee (see s 253).
- 12 (2) In particular, the chief executive must ensure that any ongoing needs
- 13 and risks are addressed in the young detainee's case management
- 14 plan (if any).

15 **160 Health assessment**

- 16 (1) The assessment under section 159 of a young detainee's physical
- 17 health needs and risks must be made by a treating doctor or a nurse.
- 18 (2) The assessment under section 159 of a young detainee's mental
- 19 health needs and risks may be made by a treating doctor, a nurse or
- 20 another suitable health professional.
- 21 *Note* The *Mental Health (Treatment and Care) Act 1994* also includes
- 22 provision for assessment orders, and emergency detention and care,
- 23 under that Act.
- 24 (3) An assessment under section 159 made by a health professional
- 25 other than a treating doctor must be reviewed by a treating doctor.
- 26 (4) A treating doctor who makes an assessment or reviews an
- 27 assessment made under section 159 must give a report of the
- 28 assessment to the chief executive.

1 **161 Alcohol and drug tests on admission**

- 2 (1) For an assessment under section 159, the chief executive may direct
3 the young detainee, orally or in writing, to provide a test sample.
- 4 (2) Division 6.7.2 (Alcohol and drug testing—detainees) applies in
5 relation to the direction and any sample given under the direction.

6 **162 Security classification**

7 The chief executive must arrange for a young detainee to be given a
8 security classification under section 189 (Security classification—
9 basis etc) as soon as practicable after the young detainee's
10 admission to a detention place.

11 **163 Case management plan**

- 12 (1) The chief executive must arrange for a case management plan to be
13 prepared for a young detainee (other than a young remandee) as
14 soon as practicable after the young detainee's admission to a
15 detention place.

- 16 (2) The chief executive may prepare a case management plan for a
17 young detainee at a detention place who is a young remandee.

18 *Note* The scope of case management plans, and the criteria for deciding
19 whether to maintain one for a young remandee, are set out in s 187.

20 **164 Entries in register of young detainees**

21 The chief executive must ensure that details of each young detainee
22 admitted to a detention place are entered in the register of young
23 detainees on the young detainee's admission to the detention place.

24 *Note* The chief executive must keep a register of young detainees at a
25 detention place (see s 184).

- 1 **165 Requirements and considerations about placement and**
2 **separation of young detainees**
- 3 (1) A youth detention policy or operating procedure may make
4 provision, consistent with this section, in relation to the placement
5 and separation of young detainees, including separation for—
6 (a) use of facilities; and
7 (b) participation in education or other activities.
- 8 (2) In placing a young detainee, the chief executive must ensure that—
9 (a) young remandees are segregated from other young detainees;
10 and
11 (b) male young detainees are segregated from female young
12 detainees; and
13 (c) a young detainee who is under 18 years old is not placed with
14 an adult.
- 15 (3) Subsection (2) does not apply if the chief executive believes on
16 reasonable grounds that another placement will be in the best
17 interests of all affected detainees.
- 18 (4) When deciding where to place a young detainee, the chief executive
19 must consider the following:
20 (a) the needs and special requirements of the young detainee
21 because of the young detainee's age, sex, emotional or
22 psychological state, physical health, cultural background,
23 vulnerability or any other relevant matter;
24 (b) if it is proposed that a young detainee be isolated in detention,
25 whether the isolation is in the best interests of the young
26 detainee;
27 (c) the desirability of the care provided to a young detainee being
28 suited to the particular needs of the young detainee in order to
29 protect the young detainee's physical and emotional wellbeing;

- 1 (d) that it is in the best interests of young detainees to be separated
2 from co-offenders.
- 3 (5) When deciding where to place a young detainee, the chief executive
4 may also consider any security classification given to the young
5 detainee under section 162.

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.

166 Food and drink

- (1) The chief executive 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 chief executive 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 chief executive 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;

- 1 (c) the appointment of a nutritionist.
- 2 (5) For chapter 8, a young detainee's entitlement in relation to food and
- 3 drink includes anything expressed to be an entitlement in a youth
- 4 detention policy or operating procedure made for subsection (4).

5 **167 Clothing**

- 6 (1) The chief executive must ensure that—
- 7 (a) sufficient suitable clothing is provided for young detainees;
- 8 and
- 9 (b) any particular clothing, including a uniform, issued to young
- 10 detainees is not likely to degrade or humiliate young detainees.
- 11 (2) The chief executive must also ensure, as far as practicable, that
- 12 clothing provided for young detainees is clean and hygienic.
- 13 (3) For chapter 8, this section is taken to provide an entitlement for each
- 14 young detainee in relation to clothing.

15 **168 Personal hygiene**

- 16 (1) The chief executive must ensure that—
- 17 (a) toilet facilities and washing or showering facilities are
- 18 available to young detainees; and
- 19 (b) the facilities are clean, hygienic and private enough to ensure
- 20 the dignity and self-respect of young detainees.
- 21 (2) For chapter 8, this section is taken to provide an entitlement for each
- 22 young detainee in relation to personal hygiene.

23 **169 Sleeping areas**

- 24 (1) The chief executive must ensure that—
- 25 (a) young detainees have sleeping places, with beds and bedding,
- 26 suitable to provide reasonable privacy and comfort; and

1 (b) sleeping places, including beds and bedding, are clean and
2 hygienic.

3 (2) For chapter 8, this section is taken to provide an entitlement for each
4 young detainee in relation to sleeping areas.

5 **170 Treatment of convicted and non-convicted young**
6 **detainees**

7 (1) Without limiting section 142 (Youth detention policies and
8 operating procedures), the chief executive must make a youth
9 detention policy or operating procedure providing for different
10 treatment of convicted young detainees and non-convicted young
11 detainees.

12 **Example**

13 a youth detention policy or operating procedure, in accordance with the United
14 Nations *Rules for the Protection of Juveniles Deprived of Liberty*, for
15 non-convicted young detainees to:

- 16 • be provided, if possible, with opportunities to pursue work with
17 remuneration and to continue education and training (r 18)
18 • receive and retain materials for their leisure and recreation that are
19 compatible with the interests of the administration of justice (r 18)

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

23 (2) For chapter 8, a young detainee's entitlement in relation to treatment
24 in detention includes anything expressed to be an entitlement in a
25 youth detention policy or operating procedure made for
26 subsection (1).

27 (3) In this section:

28 ***convicted young detainee*** means a young detainee whose detention
29 is because of the young detainee's conviction for an offence.

1 **171 Access to open air and exercise**

- 2 (1) The chief executive must ensure, as far as practicable, that young
3 detainees—
- 4 (a) have access to the open air for at least 2 hours each day; and
- 5 (b) can exercise for at least 2 hours each day.
- 6 (2) The standards under subsection (1) may both be satisfied during the
7 same 2 hours on any day.
- 8 (3) For chapter 8, this section is taken to provide an entitlement for each
9 young detainee in relation to access to the open air and exercise.

10 **172 Communication with family and others**

- 11 (1) The chief executive must ensure, as far as practicable, that adequate
12 opportunities are provided for young detainees to be able to remain
13 in contact with family members, friends, associates and others by
14 telephone calls, mail and visits.
- 15 (2) For subsection (1), the chief executive must have regard, in addition
16 to any other relevant matter, to whether the young detainee's
17 detention is for a reason other than conviction for an offence.
- 18 (3) The chief executive must also ensure that the overall treatment of a
19 young detainee, including any segregation or disciplinary action,
20 does not unreasonably deprive the young detainee generally of all
21 communication with other people.
- 22 (4) In particular, the chief executive must ensure that the overall
23 treatment of a young detainee does not deprive the young detainee
24 generally of all communication with any of the following:
- 25 (a) the courts;
- 26 (b) accredited people;
- 27 (c) a doctor of the young detainee's choice for health services;
- 28 (d) family members;

- 1 (e) other people with whom the young detainee may communicate
2 under the criminal matters chapters.
- 3 (5) For chapter 8, subsections (1) to (4) are taken to provide an
4 entitlement for each young detainee in relation to communication
5 generally with other people.
- 6 (6) However, this section is subject to the following:
- 7 (a) section 173 (Telephone calls);
- 8 (b) section 174 (Mail);
- 9 (c) section 176 (Visits by family members etc);
- 10 (d) section 177 (Contact with accredited people).

11 **173 Telephone calls**

- 12 (1) The chief executive must ensure that each detention place has
13 telephone facilities for young detainees to make and receive
14 telephone calls.
- 15 (2) A young detainee may make—
- 16 (a) 1 telephone call on admission to a detention place; and
- 17 (b) 2 telephone calls each week to a family member or a
18 significant person.
- 19 (3) A young detainee may also make and receive further telephone calls
20 for necessary contact with a family member, significant person,
21 friend or associate.
- 22 (4) The chief executive must pay for telephone calls made by a young
23 detainee unless the chief executive believes on reasonable grounds
24 that it is appropriate for the young detainee to pay for the calls.
- 25 (5) For chapter 8, subsections (2) and (3) are taken to provide
26 entitlements for each young detainee in relation to telephone calls.

- 1 (6) However, the chief executive may give directions denying or
2 limiting the use of a telephone by a young detainee for a call
3 mentioned in subsection (2) or (3) if the chief executive suspects on
4 reasonable grounds that—
- 5 (a) the call may—
- 6 (i) undermine security or good order at a detention place; or
- 7 (ii) revictimise a victim; or
- 8 (iii) circumvent any process for investigating complaints or
9 reviewing decisions under this Act; or
- 10 (iv) have the purpose of causing community distress; or
- 11 (v) cause harm to the young detainee; or
- 12 (b) the direction is necessary and reasonable to safeguard the best
13 interests of the young detainee.
- 14 (7) Also, subsections (2) and (3) are subject to—
- 15 (a) section 199 (Monitoring telephone calls etc); and
- 16 (b) any operating procedure mentioned in subsection (8).
- 17 (8) An operating procedure may include provision regulating the
18 following in relation to young detainees' telephone calls:
- 19 (a) the times for making or receiving calls;
- 20 (b) the frequency and length of calls;
- 21 (c) payment for the cost of calls made.

22 **174 Mail**

- 23 (1) The chief executive must ensure, as far as practicable, that young
24 detainees can send and receive as much mail as they wish.

- 1 (2) A young detainee may send mail to, and receive mail from any
2 family member, significant person or other person nominated by the
3 young detainee by written notice given to the chief executive.
- 4 (3) For chapter 8, subsection (2) is taken to provide entitlements for
5 each young detainee in relation to mail.
- 6 (4) However, the chief executive may give directions denying or
7 limiting the sending or receiving of mail by a young detainee if the
8 chief executive suspects on reasonable grounds that—
- 9 (a) the mail may—
- 10 (i) undermine security or good order at a detention place; or
- 11 (ii) revictimise a victim; or
- 12 (iii) circumvent any process for investigating complaints or
13 reviewing decisions under this Act; or
- 14 (iv) have the purpose of causing community distress; or
- 15 (v) cause harm to the young detainee; or
- 16 (b) the direction is necessary and reasonable to safeguard the best
17 interests of the young detainee.
- 18 (5) Also, subsections (1) and (2) are subject to—
- 19 (a) section 200 (Monitoring ordinary mail); and
- 20 (b) section 201 (Monitoring protected mail); and
- 21 (c) any operating procedure mentioned in subsection (6).
- 22 (6) An operating procedure may include provision regulating the
23 following in relation to young detainees' mail:
- 24 (a) the way mail is sent or received;
- 25 (b) the provision of writing and other material for sending mail;
- 26 (c) the storage, and return to the detainee, of mail for which a
27 direction is given under subsection (4).

1 **175 News and education**

- 2 (1) The chief executive must ensure, as far as practicable, that young
3 detainees have reasonable access to—
- 4 (a) newspapers, radio and television broadcasts and other mass
5 media (including the internet) for news and information; and
- 6 (b) a library or library service; and
- 7 (c) education or training designed to meet the young detainee's
8 individual needs.
- 9 (2) The chief executive must, as part of a young detainee's case
10 management plan, approve a young detainee participating in
11 academic, vocational or cultural education or training if satisfied it
12 would benefit the young detainee in any of the following ways:
- 13 (a) by providing the young detainee with suitable vocational skills;
- 14 (b) by promoting the young detainee's rehabilitation or
15 reintegration into society;
- 16 (c) by contributing satisfactorily to the young detainee's personal
17 development.
- 18 (3) For chapter 8, participation in education or training approved under
19 subsection (2) is taken to be an entitlement for the young detainee in
20 relation to news and education.

21 **176 Visits by family members etc**

- 22 (1) The chief executive must ensure that each detention place has
23 suitable facilities for young detainees to receive visits from family
24 members and significant people.
- 25 (2) One family member or significant person may visit a young detainee
26 for at least 1 hour each week.

27 *Note* A young detainee has a right to reasonable opportunities to receive
28 visits from family members and significant people (see s 140 (1) (g)).

- 1 (3) For chapter 8, subsection (2) is taken to provide an entitlement for
2 each young detainee in relation to visits by family members.
- 3 (4) However, the chief executive may give directions denying or
4 limiting a visit mentioned in subsection (2) if the chief executive
5 suspects on reasonable grounds that—
- 6 (a) the visit may—
- 7 (i) undermine security or good order at a detention place; or
- 8 (ii) revictimise a victim; or
- 9 (iii) circumvent any process for investigating complaints or
10 reviewing decisions under this Act; or
- 11 (iv) have the purpose of causing community distress; or
- 12 (v) cause harm to the young detainee; or
- 13 (b) the direction is necessary and reasonable to safeguard the best
14 interests of the young detainee.
- 15 (5) Also, this section is subject to division 6.6.5 (Access to detention
16 places).

17 **177 Contact with accredited people**

- 18 (1) The chief executive must ensure that a young detainee has adequate
19 opportunities for contact with an accredited person, whether by
20 telephone or mail or by a visit by an accredited person.

21 *Note Accredited person*—see s 136.

- 22 (2) For chapter 8, subsection (1) is taken to provide an entitlement for
23 each young detainee in relation to contact with an accredited person.

- 1 (3) However, the chief executive may give directions denying or
2 limiting a young detainee's contact with an accredited person if the
3 chief executive suspects on reasonable grounds that the contact
4 may—
- 5 (a) undermine security or good order at a detention place; or
- 6 (b) circumvent any process for investigating complaints or
7 reviewing decisions under this Act.
- 8 (4) Also, this section is subject to division 6.6.5 (Access to detention
9 places).

10 **178 Visits—protected communications**

11 The chief executive must not listen to, or record, a communication
12 at a visit between a young detainee and any of the following people:

- 13 (a) a lawyer representing the young detainee;
- 14 (b) an official visitor;
- 15 (c) a commissioner exercising functions under the *Human Rights*
16 *Commission Act 2005*;
- 17 (d) the public advocate;
- 18 (e) the ombudsman;
- 19 (f) a person prescribed by regulation.

20 *Note 1* Electronic communications between a young detainee and a person
21 mentioned in this section must not be monitored, see s 199.

22 *Note 2* For restrictions on monitoring mail between a young detainee and a
23 person mentioned in this section, see s 201.

24 **179 Health care**

- 25 (1) The chief executive must ensure that—
- 26 (a) young detainees have a standard of health care equivalent to
27 that available to other people in the ACT; and

- 1 (b) arrangements are made to ensure the provision of appropriate
2 health services for young detainees; and
- 3 (c) conditions in detention promote the health and wellbeing of
4 young detainees; and
- 5 (d) as far as practicable, young detainees are not exposed to risks
6 of infection.
- 7 *Note* The chief executive may direct that a young detainee be transferred to a
8 health facility (see s 108).
- 9 (2) In particular, the chief executive must ensure that young detainees
10 have access to—
- 11 (a) regular health checks; and
- 12 (b) timely treatment where necessary, particularly in urgent
13 circumstances; and
- 14 (c) hospital care where necessary; and
- 15 (d) as far as practicable—
- 16 (i) specialist health services from health professionals; and
- 17 (ii) necessary health care programs, including rehabilitation
18 programs.
- 19 *Note* The chief executive may also ask for a health report about a young
20 detainee (see s 185).
- 21 (3) For chapter 8, subsections (1) and (2) are taken to provide an
22 entitlement for each young detainee in relation to health care.
- 23 (4) A regulation may make provision in relation to health services for
24 young detainees, including provision about the following:
- 25 (a) the provision of health service clinics for young detainees;
- 26 (b) appointments for young detainees with health professionals;
- 27 (c) rehabilitation for young detainees who suffer personal injury
28 arising out of or in the course of their detention;

- 1 (d) security arrangements for young detainees visiting health
2 professionals or health facilities, particularly outside detention
3 places.
- 4 (5) For chapter 8, a young detainee's entitlement in relation to health
5 care includes anything expressed to be an entitlement in a regulation
6 made for subsection (4).
- 7 **180 Chief executive's consent to medical treatment for young**
8 **detainees**
- 9 (1) This section applies if—
- 10 (a) a young detainee is a child or young person; and
- 11 (b) the young detainee needs medical treatment that requires the
12 consent of a person who has daily care responsibility for the
13 young detainee; and
- 14 (c) the chief executive does not have daily care responsibility for
15 the young detainee; and
- 16 (d) despite reasonable inquiries, the chief executive is unable to
17 locate a person who has daily care responsibility for the young
18 detainee.
- 19 (2) The chief executive may consent to medical treatment for the young
20 detainee if delaying the treatment until a person who has daily care
21 responsibility for the young detainee can be located would be
22 detrimental to the young detainee's health.
- 23 (3) To remove any doubt, this section does not affect any right of a
24 child or young person to consent to their own health care treatment.

- 1 **181 Injury etc—notifying people responsible for or nominated**
2 **by young detainees**
- 3 (1) This section applies if a young detainee has a condition that
4 requires—
- 5 (a) clinical care for not less than 24 hours; or
6 (b) the young detainee’s transfer under section 108 (Transfers to
7 health facilities); or
8 (c) anything else prescribed by regulation.
- 9 (2) If the young detainee is under 18 years old, the chief executive must
10 take reasonable steps to tell a person who has daily care
11 responsibility or long-term care responsibility for a young detainee
12 about the condition.
- 13 (3) If the chief executive and another person share daily care
14 responsibility or long-term care responsibility for the young
15 detainee, the chief executive must act under subsection (2) in
16 relation to the other person.
- 17 (4) If the young detainee is 18 years old or older, the chief executive
18 must take reasonable steps to tell the young detainee’s nominated
19 person about the condition.
- 20 **182 Religious, spiritual and cultural needs**
- 21 (1) The chief executive must ensure, as far as practicable, that provision
22 is made at detention places for the religious, spiritual and cultural
23 needs of young detainees.
- 24 **Examples—religious, spiritual or cultural needs**
- 25 1 observances and practices relating to religious or spiritual beliefs, including
26 Aboriginal or Torres Strait Islander spiritual beliefs

- 1 2 observances or practices arising because a person belongs to a particular
2 culture
- 3 *Note* An example is part of the Act, is not exhaustive and may extend, but
4 does not limit, the meaning of the provision in which it appears (see
5 Legislation Act, s 126 and s 132).
- 6 (2) In particular, the chief executive must ensure, as far as practicable,
7 that young detainees have reasonable access to—
- 8 (a) ministers of religion and other people with standing in a
9 particular culture whom young detainees wish to see for
10 religious, spiritual or cultural purposes; and
- 11 (b) religious services at the detention place; and
- 12 (c) books and other articles associated with their religious,
13 spiritual or cultural practices.
- 14 (3) However, the chief executive may give directions denying or
15 limiting a young detainee's access under subsection (1) or (2) if the
16 chief executive suspects on reasonable grounds that it may—
- 17 (a) undermine security or good order at a detention place; or
- 18 (b) revictimise a victim; or
- 19 (c) circumvent any process for investigating complaints or
20 reviewing decisions under this Act; or
- 21 (d) have the purpose of causing community distress.
- 22 (4) A young detainee must not be required to receive a visit from
23 anyone representing a particular religion, spiritual belief or culture,
24 or attend any related service or practice, if the young detainee does
25 not wish to do so.
- 26 (5) For chapter 8, subsections (1) and (2) are taken to provide an
27 entitlement for each young detainee in relation to religious, spiritual
28 and cultural needs.

- 1 (6) In this section:
- 2 ***minister of religion*** means—
- 3 (a) a person registered under the *Marriage Act 1961* (Cwlth),
- 4 part 4.1 (Authorised celebrants); or
- 5 (b) a person prescribed by regulation.

Part 6.6 Management and security

Division 6.6.1 Management and security—general

183 Compliance with chief executive's directions

A young detainee must comply with any direction given under the criminal matters chapters to the young detainee by the chief executive.

184 Register of young detainees

(1) The chief executive 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 188.

(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;

- 1 (k) details of anything taken from the young detainee under
2 section 157 (Identification of young detainees);
- 3 (l) details of property the young detainee has at the detention
4 place;
- 5 (m) for a young detainee who is under 18 years old—details of
6 people who have daily care responsibility, or long-term care
7 responsibility, for the young detainee and details of
8 notifications under this Act of those people;
- 9 (n) for a young detainee who is 18 years old or older—details of a
10 person nominated by the young detainee (the ***nominated***
11 ***person***) to whom the chief executive can give any notifications
12 required under—
- 13 (i) section 112 (Transfer—notifying people responsible for
14 or nominated by young detainees); or
- 15 (ii) section 156 (Detention—notifying people responsible for
16 or nominated by young detainees); or
- 17 (iii) section 181 (Injury etc—notifying people responsible for
18 or nominated by young detainees); or
- 19 (iv) section 206 (2) (c) (Notice of segregation directions—safe
20 room and other); or
- 21 (v) section 220 (2) (c) (Notice of decision about segregation
22 direction); or
- 23 (vi) section 236 (5) (c) (Alcohol and drug testing of young
24 detainees); or
- 25 (vii) section 250 (Notice of strip and body searches—person
26 responsible for or nominated by young detainee);
- 27 (o) for a young detainee who is 18 years old or older—details of
28 any notifications given to the young detainee’s nominated
29 person;

- (p) anything else the chief executive considers necessary or appropriate for the proper management of the young detainee.

Examples—other things chief executive 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

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

185 Health reports

- (1) For the criminal matters chapters, the chief executive may ask a relevant chief executive for a written report about a young detainee's health.
- (2) The relevant chief executive must comply with the request as soon as practicable.
- (3) The relevant chief executive's report must include personal health information about the young detainee that is in a health record—
 - (a) in the relevant chief executive's custody; or
 - (b) to which the relevant chief executive has access through any arrangement with another chief executive.
- (4) The chief executive must ensure that a treating doctor assesses the report from a relevant chief executive and includes a statement of the young detainee's condition (the *health schedule*) in the young detainee's case management plan (if any).

1 (5) The health schedule must include—

2 (a) a summary of—

3 (i) the young detainee's condition and health risks, including
4 any likelihood of the condition resulting in a medical
5 emergency or the onset of significant health problems and
6 any associated symptoms; and

7 (ii) a treatment regime for the young detainee; and

8 (b) details of any medicine approved by the chief executive under
9 section 186 for use by the young detainee.

10 **Examples—s (5)**

11 1 Young detainee D has diabetes. The health schedule for D explains the type
12 of diabetes, the treatment required, any likely medical emergency or
13 significant health problem and the associated symptoms, such as
14 hypoglycaemia.

15 2 Young detainee P has epilepsy. The health schedule for P explains the type
16 of epilepsy, the treatment required, and the symptoms and consequences of
17 any failure to maintain the treatment regime.

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

21 (6) A youth detention policy or operating procedure may include
22 provision in relation to the health schedule, including provision in
23 relation to any of the following:

24 (a) the content of the schedule and, in particular, any statement
25 about the young detainee's health risks and treatment regime;

26 (b) the people who may access the health schedule and the
27 circumstances for access.

28 (7) The chief executive must ensure that the relevant chief executive's
29 report and the health schedule is available only to people authorised
30 by the chief executive.

- 1 (8) In this section:
- 2 *health record*—see the *Health Records (Privacy and Access)*
- 3 *Act 1997*, dictionary.
- 4 *personal health information*—see the *Health Records (Privacy and*
- 5 *Access) Act 1997*, dictionary.
- 6 *relevant chief executive* means a chief executive whose
- 7 administrative unit is responsible for any provision of the following
- 8 Acts:
- 9 (a) the *Corrections Management Act 2007*;
- 10 (b) the *Crimes (Sentence Administration) Act 2005*;
- 11 (c) the *Disability Services Act 1991*;
- 12 (d) the *Health Act 1993*;
- 13 (e) the *Mental Health (Treatment and Care) Act 1994*.
- 14 *Note* Compliance with a request under this section does not involve a
- 15 contravention of a privacy principle under the *Health Records (Privacy*
- 16 *and Access) Act 1997* (see that Act, s 5).

17 **186 Use of medicines**

- 18 (1) The chief executive may approve the use of a medicine, other than a
- 19 prescription only medicine, by a young detainee.
- 20 *Note* The taking of an unauthorised medicine by a young detainee is a
- 21 behaviour breach (see s 286).
- 22 (2) The chief executive may seek the advice of a treating doctor before
- 23 approving the use of a medicine, other than a prescription only
- 24 medicine, by a young detainee.
- 25 (3) If the chief executive approves the use of a medicine by a young
- 26 detainee, the chief executive must ensure that the details of the
- 27 approval, and the reasons for it, are recorded in relation to the young
- 28 detainee in the register kept under section 184.

- 1 (4) In this section:
2 *prescription only medicine*—see the *Medicines, Poisons and*
3 *Therapeutic Goods Act 2007*, section 11.

4 **187 Case management plans—scope etc**

- 5 (1) The chief executive—
6 (a) must maintain an individual case management plan for each
7 young detainee other than a young remandee; and
8 (b) may maintain an individual case management plan for a young
9 detainee who is a young remandee.
10 (2) In deciding whether to maintain a case management plan for a
11 young remandee, the chief executive—
12 (a) must consider the following:
13 (i) the period of remand;
14 (ii) the young remandee's age and development;
15 (iii) the young remandee's educational needs;
16 (iv) any special needs of the young remandee; and
17 (b) may consider any other relevant matter.
18 (3) A case management plan for a young detainee must—
19 (a) outline education and training and activities for the young
20 detainee; and
21 (b) be based on an assessment of the needs, capacities and
22 disposition of the young detainee; and
23 (c) be consistent with the resources available to the chief executive
24 to manage the young detainee; and

- 1 (d) include provision to ensure that adequate plans are made for
2 the young detainee's return to community life at the end of the
3 detention, taking into account the young detainee's needs.

4 **188 Transgender and intersex young detainees—sexual**
5 **identity**

- 6 (1) This section applies to a transgender or intersex young detainee.
7 (2) On admission to a detention place—
8 (a) the young detainee may tell the chief executive the sex the
9 young detainee chooses to be identified with; or
10 (b) if the young detainee fails to make a choice under
11 paragraph (a)—the chief executive may choose the sex the
12 young detainee is to be identified with having regard to the
13 presentation of the young detainee on admission to the place.
14 *Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.
15 (3) The chief executive may, on application by the young detainee,
16 approve a change in the sex the young detainee chooses to be
17 identified with, having regard to any report obtained under
18 subsection (4) or (5).
19 (4) Before making a decision under subsection (2) (b) or (3), the chief
20 executive must obtain a report by a non-treating doctor or other
21 non-treating health professional about the young detainee's sexual
22 identity.
23 (5) The chief executive may also obtain a report by a non-treating
24 doctor or non-treating health professional about the young
25 detainee's sexual identity chosen under subsection (2) (a) if the
26 chief executive believes on reasonable grounds that obtaining the
27 report—
28 (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 chief executive must—

(a) give the young detainee written notice of a decision by the chief executive under subsection (2) or (3); and

(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 1 The young detainee may require that either a male or female conduct a search (see s 249 (2) (Searches—transgender and intersex young detainees)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

189 Security classification—basis etc

(1) The chief executive—

(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 chief executive must consider the following:

(a) the reason for the detention, including the nature of any offence for which the young detainee is detained;

- 1 (b) the risks posed by the young detainee if the young detainee
2 were to escape;
- 3 (c) the risk of the young detainee escaping;
- 4 (d) the risks posed by the young detainee while at a detention
5 place;
- 6 (e) the risks to the young detainee of being accommodated with
7 particular young detainees or in particular areas at a detention
8 place;
- 9 (f) any other matter prescribed by regulation.
- 10 (3) The chief executive may also consider anything else the chief
11 executive considers relevant.
- 12 (4) The security measures to which a young detainee is subject under a
13 security classification must be the minimum necessary to ensure
14 secure detention of the young detainee.

15 **190 Property of young detainees**

- 16 (1) The chief executive may allow a young detainee's property to be
17 brought into a detention place.
- 18 (2) However, the chief executive may give directions imposing
19 conditions in relation to the property, including conditions in
20 relation to—
- 21 (a) the nature, amount and location of property that may be held
22 by a young detainee at the place; and
- 23 (b) the use of the property.
- 24 (3) The chief executive must ensure that the register of young detainees
25 includes details of the property each young detainee has at a
26 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.

(5) In this section:

young detainee's property does not include a prohibited thing.

Note Part 7.9 (Seizing property) provides generally for the seizure, forfeiture and return of property.

191 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 chief executive approves the young detainee's possession of the thing.

192 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

1 (ii) has something concealed on him or her that is a
2 prohibited thing or that may be used by the young
3 detainee in a way that may involve a risk to the personal
4 safety of anyone at the detention place; and

5 (b) the person's reasons for the suspicion arise from information
6 obtained by the person during the course of, or because of, the
7 person's work or providing of services at the detention place.

8 **Examples—people working or providing services at detention place**

- 9 1 a youth detention officer
10 2 a health professional
11 3 a community-based youth worker
12 4 a teacher

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

16 (2) The person must, as soon as practicable after forming the suspicion,
17 report to the chief executive—

- 18 (a) the name or description of the young detainee; and
19 (b) the reasons for the person's suspicion.

20 **193 Trust accounts of young detainees**

21 (1) The chief executive must ensure that money belonging to a young
22 detainee is held for the detainee in a trust account.

23 (2) The chief executive may deduct amounts from a young detainee's
24 trust account for payment of any fine or reparation that must be paid
25 as a result of disciplinary action against the young detainee.

26 (3) A regulation may make provision in relation to the operation or
27 maintenance of trust accounts.

28 (4) In this section:

29 ***disciplinary action***—see section 316.

- 1 **194 Register of searches and uses of force**
- 2 (1) The chief executive must keep a register of—
- 3 (a) searches under any of the following:
- 4 (i) section 253 (Strip searches on admission to detention
- 5 place);
- 6 (ii) section 257 (Strip searches directed by chief executive);
- 7 (iii) section 263 (Body searches directed by chief executive);
- 8 (iv) section 274 (Searches—premises and property generally);
- 9 (v) section 275 (Searches of young detainee cells—privileged
- 10 material);
- 11 (vi) section 276 (Searches of young detainee cells—suspected
- 12 privileged material); and
- 13 (b) incidents involving the use of force under division 6.6.4.
- 14 (2) For subsection (1) (a), the register must contain the following details
- 15 in relation to each search:
- 16 (a) the name of the young detainee searched;
- 17 (b) the reason for the search;
- 18 (c) when and where the search was conducted;
- 19 (d) the name of each person present at any time during the search;
- 20 (e) if, under section 259 (4), section 265 (5) or section 269 (4), a
- 21 requirement for a youth detention officer or assistant to be the
- 22 same sex as the young detainee was not complied with—the
- 23 chief executive’s reasons for believing the requirement did not
- 24 apply;
- 25 (f) details of anything seized during the search;
- 26 (g) details of any force used for conducting the search, and why
- 27 force was used;
-

- 1 (h) anything else prescribed by regulation.
- 2 (3) For subsection (1) (b), the register must include details of each
3 incident, including the circumstances, the decision to use force and
4 the force used.
- 5 (4) The register may contain any other details the chief executive
6 considers relevant.
- 7 (5) The register must be available for inspection by any of the
8 following:
- 9 (a) a judge;
- 10 (b) a magistrate;
- 11 (c) an official visitor;
- 12 (d) a commissioner exercising functions under the *Human Rights*
13 *Commission Act 2005*;
- 14 (e) the public advocate;
- 15 (f) the ombudsman;
- 16 (g) a person prescribed by regulation.
- 17 (6) The public advocate must inspect the register at least once every
18 3 months.

1 **Division 6.6.2 Monitoring**

2 **195 Disapplication of Listening Devices Act**

3 The *Listening Devices Act 1992* does not apply in relation to
4 anything done at a detention place.

5 **196 Monitoring—general considerations**

6 In exercising a function under this division, the chief executive must
7 ensure, as far as practicable, that the following are balanced
8 appropriately:

- 9 (a) the need to protect the safety of young detainees, authorised
10 people, other people who work at or visit detention places, and
11 the community;
- 12 (b) the need for security and good order at detention places;
- 13 (c) the benefits of young detainees maintaining contact with the
14 community outside detention places;
- 15 (d) the need to protect the privacy of young detainees;
- 16 (e) the need to detect prohibited things entering, at, or leaving
17 detention places;
- 18 (f) the need to prevent intimidation and corruption at detention
19 places, and the commission of offences;
- 20 (g) anything else the chief executive believes on reasonable
21 grounds to be relevant.

22 **197 Notice of monitoring**

23 The chief executive must take reasonable steps to ensure that each
24 person who enters a detention place is aware that the person may be
25 monitored, by people and electronically, and that the person's
26 actions and voice may be recorded.

1 **198 Monitoring at detention places**

2 The chief executive may arrange for any part of a detention place to
3 be monitored for any activity, including the movement of anyone at
4 the place.

5 **Examples—monitoring**

6 direct viewing, closed-circuit television coverage and the use of other devices for
7 detecting movement

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

11 **199 Monitoring telephone calls etc**

12 (1) This section applies in relation to an electronic communication with
13 a young detainee, other than a protected electronic communication.

14 (2) The chief executive may do either or both of the following in
15 relation to the communication:

16 (a) monitor the communication;

17 (b) record the communication.

18 (3) The chief executive must tell the parties to the communication that
19 the communication might be monitored and recorded.

20 (4) If the communication reveals information about the commission of
21 an offence, the chief executive must give the information to the
22 chief police officer.

23 (5) In this section:

24 *electronic communication* means communication by—

25 (a) telephone, email or fax; or

26 (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 public advocate;
- (e) the ombudsman;
- (f) a person prescribed by regulation.

200 Monitoring ordinary mail

- (1) The chief executive may open and search a young detainee's mail, other than protected mail.
- (2) The chief executive may read a young detainee's ordinary mail only if the chief executive 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
 - (d) may not be in the best interests of the young detainee.
- (3) However, the chief executive 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 public advocate;
- (e) the ombudsman;
- (f) 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.

201 Monitoring protected mail

- (1) The chief executive may open and search a young detainee's protected mail in the young detainee's presence if the chief executive suspects on reasonable grounds that the mail contains—

- (a) something that may physically harm the addressee; or
- (b) a prohibited thing.

- (2) However, the chief executive must not read a young detainee's protected mail without the young detainee's written consent.

- (3) In this section:

search —see section 200.

202 Mail searches—consequences

- (1) Subject to section 279 (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 chief executive must give the information to the chief police officer.

Division 6.6.3 Segregation

Subdivision 6.6.3.1 General

203 Definitions—div 6.6.3

In this division:

external reviewer means a person appointed as an external reviewer under section 308.

health segregation direction means a segregation direction given under section 213.

safe room segregation direction means a direction under section 208.

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.

segregation direction means—

- (a) for division 6.6.3, a direction under any of the following:
 - (i) section 208 (Segregation—safe room);
 - (ii) section 211 (Segregation—safety and security);
 - (iii) section 212 (Segregation—protective custody);
 - (iv) section 213 (Segregation—health etc); and
- (b) for subdivision 6.6.3.4, a direction under any of the following:
 - (i) section 211 (Segregation—safety and security);
 - (ii) section 212 (Segregation—protective custody);
 - (iii) section 213 (Segregation—health etc).

204 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.

205 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 140 (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.

206 Notice of segregation directions—safe room and other

- (1) If the chief executive gives a segregation direction, the chief executive must prepare a notice—
 - (a) stating the direction; and
 - (b) explaining why the direction was given; and

- 1 (c) stating when the direction takes effect; and
2 (d) stating how long the direction lasts; and
3 (e) explaining that the direction may be reviewed or revoked—
4 (i) for a safe room segregation direction—under section 210
5 (Review of safe room segregation directions); or
6 (ii) for another segregation direction—under
7 subdivision 6.6.3.4 (Review of certain segregation
8 directions).
- 9 (2) A notice under subsection (1) must be given as soon as practicable
10 to—
11 (a) the young detainee; and
12 (b) if the young detainee is under 18 years old—a parent or
13 someone who has daily care responsibility, or long-term care
14 responsibility, for the young detainee; and
15 (c) if the young detainee is 18 years old or older—the young
16 detainee’s nominated person; and
17 (d) the public advocate.

18 **Subdivision 6.6.3.2 Safe room segregation**

19 **207 Designation of safe rooms**

- 20 (1) The chief executive may, in writing, declare a part of a detention
21 place to be a safe room.
- 22 (2) The chief executive may declare a part of a place under
23 subsection (1) only if satisfied that—
24 (a) its design will minimise the harm that a young detainee can do
25 to himself or herself while in the room; and

- 1 (b) it allows monitoring of, and communication with, the young
2 detainee by the chief executive and health professionals (other
3 than non-treating health professionals).

4 **208 Segregation—safe room**

- 5 (1) The chief executive may direct that a young detainee be segregated
6 from other young detainees by separate confinement in a safe room
7 if—

- 8 (a) the chief executive believes on reasonable grounds that the
9 segregation is necessary to prevent an imminent risk of the
10 young detainee harming themselves; and

- 11 (b) the chief executive has—

- 12 (i) tried less restrictive ways to prevent the young detainee
13 from engaging in harmful conduct but the less restrictive
14 ways have not been successful; or

- 15 (ii) considered less restrictive ways to prevent the young
16 detainee from engaging in harmful conduct but the less
17 restrictive ways were not appropriate.

- 18 (2) When considering whether to make the direction, the chief
19 executive must have regard to the young detainee's age, sex,
20 maturity, cultural identity physical and mental health and any
21 history of abuse.

- 22 (3) The chief executive may give the direction at any time, on the chief
23 executive's own initiative.

- 24 (4) The chief executive must revoke the direction if the chief executive
25 believes on reasonable grounds that the grounds for making the
26 direction no longer exist.

- 1 **209 Safe room segregation directions—privacy**
- 2 (1) The confining of a young detainee under a safe room segregation
- 3 direction, and any force used to compel compliance with the
- 4 direction, must not be done in the presence or sight of another young
- 5 detainee.
- 6 (2) However, subsection (1) does not apply if the chief executive
- 7 believes on reasonable grounds that—
- 8 (a) there is an imminent and serious threat to the personal safety of
- 9 the young detainee or someone else; and
- 10 (b) compliance with subsection (1) would exacerbate the threat.
- 11 **210 Review of safe room segregation directions**
- 12 (1) The chief executive must review a safe room segregation
- 13 direction—
- 14 (a) after it has been in effect for 2 hours; and
- 15 (b) at the end of every subsequent 2 hour period for which it is in
- 16 effect.
- 17 (2) When reviewing a direction under subsection (1) (b), the chief
- 18 executive must—
- 19 (a) seek the advice of a health professional (other than a
- 20 non-treating health professional) about the action the chief
- 21 executive should take under subsection (4); and
- 22 (b) have regard to that advice in deciding what action to take.
- 23 (3) The chief executive may also review a safe room segregation
- 24 direction at any other time, on the chief executive's own initiative or
- 25 on request by the young detainee.
- 26 (4) After reviewing a safe room segregation direction under
- 27 subsection (1) or (3), the chief executive must do 1 of the following:
- 28 (a) confirm the direction;

- 1 (b) make a further safe room segregation direction if the grounds
2 for making the direction exist;
- 3 (c) revoke the direction under section 208 (4);
- 4 (d) make a direction under section 108 that the young detainee be
5 transferred to a health facility.
- 6 (5) To remove any doubt, the chief executive may make more than
7 1 further safe room segregation direction after a review.

8 **Subdivision 6.6.3.3 Other segregation**

9 **211 Segregation—safety and security**

- 10 (1) The chief executive may direct that a young detainee be segregated
11 from other young detainees if the chief executive believes on
12 reasonable grounds that the segregation is necessary or prudent to
13 ensure—
- 14 (a) the safety of anyone else at a detention place; or
15 (b) security or good order at a detention place.
- 16 (2) When making a direction under this section, the chief executive
17 must also have regard, as far as practicable, to any relevant cultural
18 consideration and the likely impact of segregation on the health or
19 wellbeing of the young detainee.
- 20 (3) The chief executive must revoke the direction if the chief executive
21 believes on reasonable grounds that the protection mentioned in
22 subsection (1) is no longer necessary or prudent.

23 **212 Segregation—protective custody**

- 24 (1) The chief executive may direct that a young detainee be segregated
25 from other young detainees if the chief executive believes on
26 reasonable grounds that the segregation is necessary or prudent to
27 protect the young detainee's safety.

- 1 (2) The chief executive may give the direction at any time, on the chief
2 executive's own initiative or on request by the young detainee.
- 3 (3) The chief executive must revoke the direction if the chief executive
4 believes on reasonable grounds that the protection mentioned in
5 subsection (1) is no longer necessary or prudent.

6 **213 Segregation—health etc**

- 7 (1) The chief executive may direct that a young detainee be segregated
8 from other young detainees if the chief executive believes on
9 reasonable grounds that the segregation is necessary or prudent—
- 10 (a) to assess the young detainee's physical or mental health; or
11 (b) to protect anyone (including the young detainee) from harm
12 because of the young detainee's physical or mental health; or
13 (c) to prevent the spread of disease.
- 14 (2) The chief executive must revoke the direction if the chief executive
15 believes on reasonable grounds that the purpose mentioned in
16 subsection (1) for making the direction is no longer necessary or
17 prudent.
- 18 (3) When acting under subsection (1) or (2), the chief executive must
19 have regard to any advice by a treating doctor given in relation to
20 the segregation of the young detainee.

21 **214 Interstate segregated detainees transferred to ACT**

- 22 (1) This section applies if—
- 23 (a) an interstate segregation direction applies to a young detainee;
24 and
- 25 (b) the young detainee is transferred (however described) into
26 custody at a detention place in the ACT.

- 1 (2) Despite the transfer, the interstate segregation direction—
2 (a) continues to apply in relation to the young detainee—
3 (i) as if it were a segregation direction under this division;
4 and
5 (ii) with any necessary changes, and any change prescribed
6 by regulation; and
7 (b) subject to this division, ends 3 days after the day the young
8 detainee is taken into custody at the detention place.
9 (3) In this section:
10 *interstate segregation direction* means a direction or order
11 (however described) that—
12 (a) corresponds substantially to a segregation direction under this
13 division; and
14 (b) is in force under a law of the Commonwealth, a State or
15 another Territory that is declared by regulation to be a
16 corresponding law for this section.

17 **Subdivision 6.6.3.4 Review of certain segregation directions**

18 **215 Meaning of *segregation direction*—subdiv 6.6.3.4**

19 In this subdivision:

20 *segregation direction* means a direction under any of the following:

- 21 (a) section 211 (Segregation—safety and security);
22 (b) section 212 (Segregation—protective custody);
23 (c) section 213 (Segregation—health etc).

- 1 **216 Internal review of segregation directions**
- 2 (1) The chief executive—
- 3 (a) may review a segregation direction (the *original segregation*
- 4 *direction*) at any time, on the chief executive's own initiative
- 5 or on request by the young detainee; and
- 6 (b) must review the direction before any transfer of the young
- 7 detainee to a correctional centre or elsewhere; and
- 8 (c) must review the direction—
- 9 (i) before the end of 7 days after it has been in force (the
- 10 *initial review*); and
- 11 (ii) before the end of 7 days after the day of the initial review;
- 12 and
- 13 (iii) before the end of each subsequent period of 14 days while
- 14 it remains in force; and
- 15 (d) for a health segregation direction—must review the direction
- 16 on request by a treating doctor.
- 17 (2) After reviewing the original segregation direction, the chief
- 18 executive may—
- 19 (a) confirm the direction; or
- 20 (b) make a further segregation direction under the same provision
- 21 that the original segregation direction was made under if the
- 22 grounds for making the direction exist; or
- 23 (c) revoke the original segregation direction under section 211 (3),
- 24 section 212 (3) or section 213 (2).
- 25 (3) When acting under subsection (2) in relation to a health segregation
- 26 direction, the chief executive must have regard to any advice by a
- 27 treating doctor given in relation to the segregation.

- 1 (4) To remove any doubt, the chief executive may make more than
2 1 further segregation direction after a review.

3 **217 End of segregation directions**

4 Unless revoked sooner, a segregation direction ends at the end of—

- 5 (a) 28 days after the day it is given; or
6 (b) if a further segregation direction has been given after review
7 under section 216—90 days after the day the further
8 segregation direction, or latest further segregation direction, is
9 given.

10 **218 Application for review of segregation directions**

- 11 (1) A young detainee may apply to an external reviewer for a review of
12 a segregation direction under section 219.

13 *Note* If a form is approved under s 885 for this provision, the form must be
14 used.

- 15 (2) Subject to any decision by the external reviewer under that section,
16 the application does not affect the segregation of the young detainee
17 under the segregation direction under review.

18 **219 External review of segregation directions**

- 19 (1) On application under section 218, an external reviewer may—

- 20 (a) review the segregation direction; or
21 (b) refuse to review the direction.

- 22 (2) Chapter 9 (Criminal matters—conduct of disciplinary reviews)
23 applies, with any necessary changes, in relation to the review as if it
24 were a review under that chapter.

- 25 (3) After completing a review, the external reviewer may—

- 26 (a) confirm the direction under review; or

(b) give any direction the chief executive 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.

220 Notice of decision about segregation direction

(1) This section applies if an external reviewer has made a decision under section 219 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 chief executive.

(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).

Subdivision 6.6.3.5 Register of segregation directions

221 Register of segregation directions

- (1) The chief executive 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 206 (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 chief executive 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 public advocate;

- 1 (f) the ombudsman;
2 (g) a person prescribed by regulation.

3 **Division 6.6.4 Use of force**

4 **222 Managing use of force**

- 5 (1) The chief executive must make arrangements to ensure, as far as
6 practicable, that the use of force in relation to the management of
7 young detainees is always—
8 (a) a last resort; and
9 (b) in accordance with this division.

10 **Example**

11 adoption of a methodology or protocol for the graduated use of force

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

- 15 (2) The chief executive must also ensure, as far as practicable, that—
16 (a) youth detention officers do not use force in relation to a young
17 detainee without first considering the following:
18 (i) the young detainee's age, sex, physical and mental health
19 and any history of abuse;
20 (ii) if the proposed force involves any restraint of the young
21 detainee—the physical and developmental capacity of the
22 young detainee; and
23 (b) the use of force in relation to a young detainee is not observed
24 by any other young detainee.
25 (3) However, a youth detention officer need not comply with
26 subsection (2) if, in urgent circumstances, the officer believes on
27 reasonable grounds that doing so would create a risk of injury to the
28 officer, the young detainee or anyone else.

- 1 (4) The chief executive must ensure that a young detainee injured by the
2 use of force under this division is examined as soon as practicable
3 by a treating doctor and that appropriate health care is available to
4 the young detainee.
- 5 (5) Without limiting subsection (4), the chief executive must give a
6 child or young person the opportunity to be examined by a treating
7 doctor or a nurse after any use of force in relation to the child or
8 young person.
- 9 (6) The chief executive must make a youth detention policy or
10 operating procedure in relation to the use of force, including
11 provision in relation to the following:
- 12 (a) the circumstances, and by whom, force may be used;
- 13 (b) the kinds of force that may be used;
- 14 (c) the use of restraints.
- 15 *Note* The power to make a youth detention policy or operating procedure
16 includes power to make different provisions in relation to different
17 matters or different classes of matters, and provisions that apply
18 differently by reference to stated exceptions or factors (see Legislation
19 Act, s 48).

20 **223 Authority to use force**

21 A youth detention officer may use force under this division if—

- 22 (a) the officer believes on reasonable grounds that the purpose for
23 which force may be used cannot be achieved in another way;
24 and
- 25 (b) the force is necessary and reasonable for any of the following:
- 26 (i) to compel compliance with a direction given in relation to
27 a young detainee by the chief executive;
- 28 (ii) to prevent or stop the commission of an offence or
29 behaviour breach;

- 1 (iii) to prevent unlawful damage, destruction or interference
- 2 with property;
- 3 (iv) to defend the person or someone else;
- 4 (v) to prevent a young detainee from inflicting self-harm;
- 5 (vi) to prevent a young detainee from escaping.

6 **224 Application of force**

- 7 (1) A youth detention officer may use force under this division only if
- 8 the officer—
- 9 (a) gives a clear warning of the intended use of force; and
 - 10 (b) allows enough time for the warning to be observed; and
 - 11 (c) uses no more force than is necessary and reasonable in the
 - 12 circumstances; and
 - 13 (d) uses force, as far as practicable, in a way that reduces the risk
 - 14 of causing injury.
- 15 (2) However, the youth detention officer need not comply with
- 16 subsection (1) (a) or (b) if, in urgent circumstances, the officer
- 17 believes on reasonable grounds that doing so would create a risk of
- 18 injury to the officer, the young detainee or anyone else.

19 **Example—urgent circumstances**

20 the young detainee is assaulting someone or engaging in self-harm

21 *Note* An example is part of the Act, is not exhaustive and may extend, but

22 does not limit, the meaning of the provision in which it appears (see

23 Legislation Act, s 126 and s 132).

1 **225 Use of restraint**

- 2 (1) The use of force under this division includes the use of restraint.
- 3 (2) The chief executive must ensure, as far as practicable, that the use of
4 force involving a restraint is proportionate to the circumstances, and
5 in particular that—
- 6 (a) the circumstances are sufficiently serious to justify the use; and
- 7 (b) the kind of restraint is appropriate in the circumstances; and
- 8 (c) the restraint is used appropriately in the circumstances.
- 9 (3) The chief executive must also ensure that restraints are only used
10 under this division—
- 11 (a) by youth detention officers trained to use them; and
- 12 (b) in accordance with a youth detention policy or operating
13 procedure that applies to their use.
- 14 (4) In applying force under this division, a youth detention officer may
15 use a restraint, including any of the following:
- 16 (a) body contact;
- 17 (b) handcuffs, restraint jackets and other restraining devices;
- 18 (c) anything else prescribed by regulation.

19 **226 Monthly reports about use of force**

20 The chief executive must ensure that, as soon as practicable after the
21 end of each month, a youth detention officer gives the chief
22 executive a report summarising the incidents (if any) during the
23 month that involved the use of force in relation to a young detainee.

Division 6.6.5 Access to detention places

227 Visiting conditions

- (1) The chief executive 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

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

- (2) 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.

228 Notice of visiting conditions

- (1) The chief executive must take reasonable steps to bring the visiting conditions to the attention of visitors at a detention place.
- (2) Without limiting subsection (1), the chief executive 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.

- 1 **229 Taking prohibited things etc into detention place**
- 2 (1) A person commits an offence if the person—
- 3 (a) takes a prohibited thing into a detention place; or
- 4 (b) gives a prohibited thing to a young detainee; or
- 5 (c) removes a prohibited thing from a detention place.
- 6 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 7 both.
- 8 (2) Subsection (1) does not apply to any action approved by the chief
- 9 executive.
- 10 (3) In this section:
- 11 *give* includes send.
- 12 *prohibited thing* includes something the person intends a detainee to
- 13 use for making a prohibited thing or use otherwise in relation to a
- 14 prohibited thing.
- 15 **230 Directions to visitors**
- 16 (1) The chief executive may, orally or in writing, give a direction to a
- 17 visitor at a detention place to do, or not do, something if the chief
- 18 executive believes on reasonable grounds that the direction is
- 19 necessary and reasonable—
- 20 (a) to ensure compliance with the visiting conditions; or
- 21 (b) for security or good order at a detention place.
- 22 *Note* The chief executive may also direct a youth detention officer to search a
- 23 visitor (see s 273).

- 1 (2) A person commits an offence if the person fails to comply with a
2 direction given to the person under this section.
- 3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.
- 5 (3) An offence against this section is a strict liability offence.
- 6 (4) Subsection (2) does not apply if the person takes reasonable steps to
7 comply with the direction.

8 **231 Directions to leave detention place etc**

- 9 (1) The chief executive may direct a person at a detention place—
10 (a) not to enter the place; or
11 (b) if the person is already in the place—to leave the place.
- 12 (2) However, the chief executive may give the direction only if—
13 (a) the chief executive suspects on reasonable grounds that—
14 (i) the person is intoxicated; or
15 (ii) the person has possession of a prohibited thing; or
16 (iii) the direction is necessary and reasonable for security or
17 good order at a detention place; or
18 (iv) the direction is necessary and reasonable to safeguard the
19 best interests of a young detainee; or

20 **Example—subpar (iv)**

21 the person is intentionally causing a detainee distress

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

- 25 (b) the person contravenes a direction given to the person under—
26 (i) section 230 (Directions to visitors); or

- 1 (ii) section 255 (Strip searches on admission—directing
2 person to leave); or
- 3 (iii) section 267 (Body searches—directing people to leave).
- 4 (3) To remove any doubt, this section applies to a family member or
5 significant person for a young detainee, even if the person has been
6 visiting the young detainee for less than 1 hour.
- 7 (4) A person commits an offence if the person fails to comply with a
8 direction given to the person under this section.
- 9 Maximum penalty: 50 penalty units, imprisonment for 6 months or
10 both.
- 11 (5) An offence against this section is a strict liability offence.
- 12 (6) Subsection (4) does not apply if the person takes reasonable steps to
13 comply with the direction.

14 **232 Removing people from detention place**

- 15 (1) The chief executive may direct a youth detention officer to enforce a
16 direction under section 231 if the officer given the direction
17 contravenes the direction.
- 18 (2) The youth detention officer may use force that is necessary and
19 reasonable to enforce the direction.

20 **Division 6.6.6 Maintenance of family relationships**

21 **233 Chief executive may allow young child to stay with young**
22 **detainee**

- 23 (1) This section applies to a young detainee if—
- 24 (a) the young detainee has a child who is under 6 years old and not
25 enrolled in school; and
- 26 (b) before being detained, the young detainee was the primary
27 caregiver for the child or was having contact with the child.

- 1 (2) The chief executive may, by direction, allow the young detainee to
2 have contact with, or care for, the child in a detention place.
- 3 (3) However, the chief executive must not give a direction under
4 subsection (2) unless the chief executive—
- 5 (a) has carried out a care and protection appraisal of the child; and
6 (b) is satisfied that it is in the best interests of the child for the
7 young detainee to have contact with, or care for, the child in
8 the detention place.
- 9 (4) The chief executive may make a youth detention policy or operating
10 procedure about the arrangements to apply in relation to a young
11 detainee having contact with, or caring for, a child in a detention
12 place.

Part 6.7 Alcohol and drug testing

Division 6.7.1 General

234 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 professional;

(ii) a drug lawfully supplied and self-administered;

(iii) a drug exempted under section 235 (3).

non-treating nurse means a nurse authorised under section 98.

positive test sample—see section 235.

test sample means a sample of breath, saliva, urine, hair, blood, or
anything else prescribed by regulation.

- 1 **235 Positive test samples**
- 2 (1) A person is taken to provide a *positive test sample* for alcohol or a
- 3 drug if, when directed under this Act to provide a test sample—
- 4 (a) the person fails to provide a test sample in accordance with the
- 5 direction; or
- 6 *Note Fail* includes refuse, see the Legislation Act, dict, pt 1.
- 7 (b) the person provides an invalid test sample; or
- 8 (c) for a young detainee—the young detainee provides a test
- 9 sample that shows that the young detainee has taken alcohol or
- 10 a drug.
- 11 (2) However, subsection (1) (a) does not apply if the person has a
- 12 reasonable excuse for failing to provide the test sample within a
- 13 reasonable time of the direction being given.
- 14 **Examples—reasonable excuse**
- 15 1 a medical condition that prevents the person from providing a test sample as
- 16 directed
- 17 2 prescribed medication that may affect test results
- 18 *Note An example is part of the Act, is not exhaustive and may extend, but*
- 19 *does not limit, the meaning of the provision in which it appears (see*
- 20 *Legislation Act, s 126 and s 132).*
- 21 (3) The chief executive may exempt a drug from the application of this
- 22 part.
- 23 (4) An exemption is a notifiable instrument.
- 24 *Note A notifiable instrument must be notified under the Legislation Act.*
- 25 (5) In this section:
- 26 *invalid*—a test sample provided by a person is *invalid* if the
- 27 person—
- 28 (a) tampers, or attempts to tamper, with the test sample; or

- 1 (b) otherwise changes, or attempts to change, the results of the test
2 sample.

3 **Division 6.7.2 Alcohol and drug testing—detainees**

4 **236 Alcohol and drug testing of young detainees**

- 5 (1) The chief executive may direct a young detainee to provide a stated
6 kind of test sample.
- 7 (2) The chief executive, a non-treating doctor or a non-treating nurse
8 may give a young detainee a direction about the way the young
9 detainee must provide the test sample.
- 10 (3) However—
- 11 (a) a direction under this section must be consistent with any
12 requirement of an operating procedure made for this section;
13 and
- 14 (b) only a non-treating doctor or a non-treating nurse may take a
15 blood sample.
- 16 (4) A non-treating doctor or non-treating nurse who takes a test sample
17 from a young detainee must give the sample to a youth detention
18 officer.
- 19 (5) The chief executive must, as soon as practicable after the chief
20 executive receives the results of any test conducted on the test
21 sample, give notice of the results to—
- 22 (a) the young detainee; and
- 23 (b) if the young detainee is under 18 years old—a person who has
24 daily care responsibility or long-term care responsibility for the
25 young detainee; and
- 26 (c) if the young detainee is 18 years old or older—a person
27 nominated by the young detainee.

1 **237 Effect of positive test sample by young detainee**

- 2 (1) This section applies if—
- 3 (a) a young detainee is directed under this Act to provide a test
- 4 sample; and
- 5 (b) the test sample provided by the young detainee is positive.
- 6 (2) The chief executive may have regard to the positive test sample in
- 7 making any decision in relation to the management of the young
- 8 detainee under this Act.

9 **Examples—decisions—s (2)**

- 10 1 decisions under s 187 (Case management plans—scope etc) or s 189
- 11 (Security classification—basis etc)
- 12 2 decisions under ch 8 (Criminal matters—discipline at detention places)

13 *Note 1* The taking of alcohol or a drug (in any way) into the body is a

14 behaviour breach (see s 286). The results of the analysis of a substance

15 under this Act, signed by an analyst, is evidence of the facts stated in

16 the certificate (see s 881).

17 *Note 2* An example is part of the Act, is not exhaustive and may extend, but

18 does not limit, the meaning of the provision in which it appears (see

19 Legislation Act, s 126 and s 132).

20 **Division 6.7.3 Alcohol and drug testing—youth**

21 **detention officers**

22 **238 Alcohol and drug testing of youth detention officers**

- 23 (1) A regulation may make provision in relation to alcohol and drug
- 24 testing of youth detention officers whose duties bring them into
- 25 contact with detainees.

- 1 (2) In particular, a regulation may make provision in relation to any of
2 the following:
- 3 (a) the circumstances for testing, including when and where tests
4 may be conducted;
- 5 (b) the conduct of the tests.

Part 6.8 Young detainees—leave

Division 6.8.1 Local leave

239 Local leave directions

- (1) The chief executive may, in writing, direct that a young detainee be taken from a detention place to another place in the ACT for any purpose the chief executive considers appropriate.

Example

a direction that a young detainee be taken to a place to assist the young detainee's education and training

Note 1 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)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In making a decision under subsection (1), the chief executive 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 chief executive 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

1 **240 Local leave permits**

2 (1) If the chief executive gives a young detainee a local leave direction
3 under section 239, the chief executive must give the young detainee
4 a written permit (a *local leave permit*) to be absent from the
5 detention place for the purpose for which the direction was given.

6 (2) The chief executive may give a young detainee a written permit
7 (also a *local leave permit*) to be absent from a detention place, and
8 to be in another place in the ACT, for any other purpose the chief
9 executive considers appropriate.

10 **Examples—purposes**

- 11 1 to attend an education or training program
12 2 to attend a health or rehabilitation service
13 3 for compassionate reasons
14 4 to attend employment or an interview for employment

15 *Note 1* If a form is approved under s 885 for this provision, the form must be
16 used.

17 *Note 2* Power given under an Act to make a statutory instrument (including a
18 direction) includes power to amend or revoke the instrument (see
19 Legislation Act, s 46 (1)).

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

23 (3) In making a decision under subsection (2), the chief executive must
24 consider the young detainee's best interests.

25 (4) A local leave permit must state the following:

- 26 (a) the purpose for which the leave is granted;
27 (b) for a permit to attend an educational or training program—the
28 place where the program is being undertaken, and the period
29 for which the leave is granted;
30 (c) for a permit to attend employment—the place of the
31 employment, and the period for which the leave is granted;

- 1 (d) for a permit (other than a permit mentioned in paragraph (b) or
2 (c))—the period, not longer than 7 days, for which the leave is
3 granted;
- 4 (e) any conditions to which the leave is subject.
- 5 (5) A local leave permit is subject to the following conditions:
- 6 (a) any condition prescribed by regulation;
- 7 (b) any other condition, consistent with the conditions (if any)
8 prescribed by regulation, that—
- 9 (i) the chief executive believes on reasonable grounds is
10 necessary and reasonable; and
- 11 (ii) is stated in the permit.
- 12 **Example—condition stated in leave permit**
- 13 a condition prohibiting association with a particular person or being
14 near a particular place
- 15 (6) A local leave permit authorises the young detainee to be absent from
16 the detention place in accordance with the permit—
- 17 (a) unescorted; or
- 18 (b) if the permit is subject to a condition that an escort officer
19 escort the young detainee—while under escort in accordance
20 with the condition.

21 **Division 6.8.2 Interstate leave**

22 **241 Interstate leave permits**

- 23 (1) The chief executive may, by written notice (an *interstate leave*
24 *permit*) given to a young detainee, give the young detainee leave to
25 travel to and from, and remain in, another State.

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

- 1 (2) In making a decision under subsection (1), the chief executive must
2 consider the young detainee's best interests.
- 3 (3) An interstate leave permit must include the following details:
- 4 (a) the State to which the permit applies;
- 5 (b) the purpose for which the leave is granted;
- 6 (c) for a permit to attend an educational or training program—the
7 place where the program is being undertaken, and the period
8 for which the leave is granted;
- 9 (d) for a permit to attend employment—the place of the
10 employment, and the period for which the leave is granted;
- 11 (e) for a permit (other than a permit mentioned in paragraph (c)
12 or (d))—the period, not longer than 7 days, for which the leave
13 is granted.
- 14 *Note 1* If a form is approved under s 885 for this provision, the form must be
15 used.
- 16 *Note 2* Power given under an Act to make a statutory instrument (including an
17 interstate leave permit) includes power to amend or revoke the
18 instrument (see Legislation Act, s 46 (1)).
- 19 (4) An interstate leave permit may be issued—
- 20 (a) for a young detainee with a high security classification—only
21 if the leave is to enable the young detainee to receive a health
22 service or for a compassionate reason; or
- 23 (b) in any other case—for any purpose the chief executive believes
24 on reasonable grounds is appropriate.
- 25 (5) An interstate leave permit is subject to the following conditions:
- 26 (a) any condition prescribed by regulation;

(b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—

(i) the chief executive 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

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

242 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

(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.

- 1 **243 Powers of escort officers**
- 2 (1) An escort officer escorting a young detainee under an interstate
- 3 leave permit may, to keep custody of the young detainee under the
- 4 permit or to arrest the young detainee if the young detainee has
- 5 escaped—
- 6 (a) give the young detainee any direction that the officer believes
- 7 on reasonable grounds is necessary and reasonable; and
- 8 (b) use force in accordance with division 6.6.4 (Use of force).
- 9 (2) An escort officer escorting a young detainee under an interstate
- 10 leave permit may conduct a scanning search, frisk search or ordinary
- 11 search of the young detainee if the officer suspects on reasonable
- 12 grounds that the young detainee may be carrying a prohibited thing.
- 13 (3) The following provisions apply, with any necessary changes and
- 14 any changes prescribed by regulation, in relation to a search under
- 15 this section:
- 16 (a) part 7.2 (Searches generally);
- 17 (b) part 7.3 (Scanning, frisk and ordinary searches);
- 18 (c) part 7.9 (Seizing property).

1 **Division 6.8.3 Leave—miscellaneous**

2 **244 Lawful temporary absence from detention place**

3 (1) This section applies to a young detainee who is absent from a
4 detention place under any of the following:

5 (a) a direction by the chief executive, including a direction under
6 section 108 (Transfers to health facilities) or section 110
7 (Transfers to correctional centres—under 21 years old);

8 (b) a local leave permit under section 240;

9 (c) an interstate leave permit under section 241;

10 (d) any other authority (however described) prescribed by
11 regulation.

12 (2) To remove any doubt, the young detainee is—

13 (a) taken to be in the chief executive's custody; and

14 (b) if under escort by an escort officer—also taken to be in the
15 escort officer's custody.

- 1 **Chapter 7** **Criminal matters—search and**
2 **seizure at detention places**
- 3 **Part 7.1** **Preliminary—ch 7**
- 4 **245** **Definitions—ch 7**
- 5 In this chapter:
- 6 **body search**, of a young detainee, means a search of the young
7 detainee’s body, including an examination of an orifice or cavity of
8 the young detainee’s body.
- 9 **frisk search**, of a young detainee, means—
- 10 (a) a search of the young detainee conducted by quickly running
11 the hands over the young detainee’s outer clothing; and
- 12 (b) an examination of anything worn or carried by the young
13 detainee that is conveniently and voluntarily removed by the
14 young detainee.
- 15 **non-treating doctor** means a doctor authorised under section 98
16 (Health professionals—non-treating functions).
- 17 **non-treating nurse** means a nurse authorised under section 98.
- 18 **ordinary search**, of a young detainee, means a search of the young
19 detainee or of anything in the young detainee’s possession, and may
20 include—
- 21 (a) requiring the young detainee to remove only the young
22 detainee’s overcoat, coat, jacket or a similar article of clothing
23 and any footwear, gloves, or headwear; and
- 24 (b) an examination of anything removed.

1 ***privileged***—material is ***privileged*** if—

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

6 ***prohibited thing*** means a thing declared to be a prohibited thing
7 under section 147.

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

12 **Examples—scanning searches**

- 13 1 passing a portable electronic or other device over or close to a young
14 detainee
- 15 2 requiring a young detainee to pass by or through an electronic or other device

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

19 ***strip search***, of a young detainee, means a search of the young
20 detainee, or of anything in the young detainee's possession, under
21 section 253 (Strip searches on admission to detention place) or
22 section 257 (Strip searches directed by chief executive) and may
23 include—

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

1 **246 Relationship with other laws**

2 To remove any doubt, this chapter is additional to, and does not
3 limit, any other provision about searches of young detainees under
4 another territory law, or a law of the Commonwealth, a State or
5 another Territory.

Part 7.2 Searches generally

247 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

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

248 Searches—use of search dog

- (1) The chief executive 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 chief executive may give the direction only if the chief executive 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

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

249 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 188 (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 188 (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.

1 **250 Notice of strip and body searches—person responsible**
2 **for or nominated by young detainee**

3 (1) If a strip search or body search is to be conducted on a young
4 detainee who is younger than 18 years old, the chief executive must
5 ensure, as far as practicable, that a person who has daily care
6 responsibility, or long-term care responsibility for the young
7 detainee (other than the chief executive) is told about the search—

8 (a) before the search is conducted; or

9 (b) if it is impracticable to tell the person before the search—as
10 soon as practicable after the search.

11 *Note 1* In some circumstances the chief executive is a person with daily care
12 responsibility, or long-term care responsibilities, for a young detainee
13 (see div 1.3.2).

14 *Note 2* A proposed strip or body search need not be conducted in the presence
15 of the person notified (see s 253, s 255 and s 265).

16 (2) If a strip search or body search is to be conducted on a young
17 detainee who is 18 years old or older, the chief executive must
18 ensure, as far as practicable, that the young detainee's nominated
19 person is told about the search—

20 (a) before the search is conducted; or

21 (b) if it is impracticable to tell the person before the search—as
22 soon as practicable after the search.

Part 7.3 Scanning, frisk and ordinary searches

251 Directions for scanning, frisk and ordinary searches

- (1) The chief executive may, at any time, direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a young detainee if the chief executive 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.

252 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

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

Part 7.4 Strip searches—young detainees

253 Strip searches on admission to detention place

- (1) The chief executive may direct a youth detention officer to strip search a young detainee if the chief executive believes on reasonable grounds that the strip search is necessary for an initial assessment under section 159 (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 chief executive 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 chief executive 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 chief executive 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 chief executive must have regard to the young detainee's age, maturity, developmental capacity and any known history.

**254 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 253 (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 250.

(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 chief executive must ensure that the strip search is conducted in the presence of someone (a *support person*) who—

(a) the chief executive believes on reasonable grounds can support and represent the interests of the young detainee; and

(b) the young detainee agrees should be present at the search.

Note In some circumstances the chief executive 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 chief executive directs the support person to leave under section 255 (2).

- 1 **255 Strip searches on admission—directing person to leave**
- 2 (1) This section applies if a strip search of a young detainee under
- 3 section 253 (Strip searches on admission to detention place) is being
- 4 conducted in the presence of—
- 5 (a) a person who has daily care responsibility, or long-term care
- 6 responsibility, for the young detainee; or
- 7 (b) a support person under section 253 (3) or section 254 (2).
- 8 (2) The chief executive may direct the person to leave if the chief
- 9 executive believes on reasonable grounds that the person is
- 10 preventing or hindering the conduct of the search.
- 11 **256 Removing people from search area**
- 12 (1) The chief executive may direct a youth detention officer to enforce a
- 13 direction under section 255 (2) if the person given the direction
- 14 contravenes the direction.
- 15 (2) The youth detention officer may use force that is necessary and
- 16 reasonable to enforce the direction.
- 17 **257 Strip searches directed by chief executive**
- 18 (1) The chief executive may direct a youth detention officer to strip
- 19 search a young detainee only if—
- 20 (a) the chief executive suspects on reasonable grounds that the
- 21 young detainee has something concealed on the young detainee
- 22 that—
- 23 (i) is a prohibited thing; or
- 24 (ii) may be used by the young detainee in a way that may
- 25 involve an offence, a behaviour breach, a risk to the
- 26 personal safety of the young detainee or someone else, or
- 27 a risk to the security or good order at a detention place;
- 28 and

- 1 (b) a scanning search, frisk search or ordinary search of the young
2 detainee has failed to detect the thing.
- 3 (2) To remove any doubt, the strip search need not be conducted in the
4 presence of a person who has daily care responsibility, or long-term
5 care responsibility, for the young detainee.
- 6 (3) This section does not apply to a strip search under section 253 (Strip
7 searches on admission to detention place).

8 **258 Obligations on youth detention officers before strip**
9 **searches**

- 10 (1) This section applies if a youth detention officer proposes to strip
11 search a young detainee.
- 12 (2) The youth detention officer must tell the young detainee—
- 13 (a) whether the young detainee will be required to remove clothing
14 during the search; and
- 15 (b) if the young detainee will be required to remove clothing, why
16 the removal is necessary.
- 17 (3) If the young detainee asks why the search is being conducted in a
18 particular way, the youth detention officer must tell the young
19 detainee the reasons.
- 20 (4) The youth detention officer must ask for the young detainee's
21 cooperation for the search.

22 **259 Youth detention officers at strip searches**

- 23 (1) A strip search of a young detainee must be conducted—
- 24 (a) by a youth detention officer of the same sex as the young
25 detainee; and
- 26 (b) in the presence of 1 or more other youth detention officers,
27 each of whom must be the same sex as the young detainee.

- 1 (2) However, the number of youth detention officers present during the
2 search must be no more than is necessary and reasonable to ensure
3 the search is carried out as safely and effectively as possible.
- 4 (3) The youth detention officer conducting the search may direct
5 another youth detention officer mentioned in subsection (1) (b) to
6 provide assistance that the conducting officer believes on reasonable
7 grounds is necessary and reasonable for the search.
- 8 (4) The requirement in subsection (1) (b) that a youth detention officer
9 be the same sex as the young detainee does not apply if the chief
10 executive believes on reasonable grounds that—
- 11 (a) there is an imminent and serious threat to the personal safety of
12 the young detainee; and
- 13 (b) compliance with the requirement would exacerbate the threat.

14 **260 Strip searches—general rules**

- 15 (1) The youth detention officer conducting a strip search of a young
16 detainee must conduct the strip search—
- 17 (a) in a way that—
- 18 (i) provides reasonable privacy for the young detainee; and
- 19 (ii) is appropriate, having regard as far as practicable, to the
20 young detainee's sexuality and any known impairment,
21 condition or history; and
- 22 (b) as quickly as practicable.
- 23 (2) The strip search must be conducted in a private area or an area that
24 provides reasonable privacy for the young detainee.

- 1 (3) The strip search must not be conducted—
2 (a) in the presence of someone of the opposite sex to the young
3 detainee, other than—
4 (i) a person present under section 253 (2) or (3) (Strip
5 searches on admission to detention place) or section 254
6 (Strip searches of young detainees under 18 years old—
7 no-one with parental responsibility available); or
8 (ii) another youth detention officer present under
9 section 259 (4); or
10 (b) in the presence or sight of someone else whose presence is not
11 necessary for the search or for the safety of anyone present.
12 (4) Subject to part 7.8 (Searches—use of force), the strip search must
13 not involve any touching of the young detainee’s body by a youth
14 detention officer.

15 **261 Strip searches—rules about visual inspection of young**
16 **detainee’s body**

- 17 (1) A youth detention officer conducting a strip search of a young
18 detainee must not visually inspect the genital area of the young
19 detainee and, for a female young detainee, the young detainee’s
20 breasts, unless the officer suspects on reasonable grounds that it is
21 necessary to do so for the search.
22 (2) A strip search of a young detainee must not involve more visual
23 inspection of the young detainee’s body than is necessary and
24 reasonable for the search.
25 (3) Without limiting subsection (2), during the strip search of the young
26 detainee, any visual inspection of the young detainee’s genital area,
27 anal area, buttocks and, for a female young detainee, breasts must be
28 kept to a minimum.

- 1 **262 Strip searches—rules about young detainees' clothing**
- 2 (1) A strip search of a young detainee must not involve—
- 3 (a) the removal from the young detainee of more clothes than is
- 4 necessary and reasonable for the search; or
- 5 (b) the removal from the young detainee of more clothes at any
- 6 time than is necessary and reasonable for the search; or
- 7 (c) without limiting paragraph (b), both the upper and lower parts
- 8 of the young detainee's body being uncovered at the same
- 9 time.
- 10 (2) A young detainee who has been strip-searched must be allowed to
- 11 dress in private as soon as the search is finished.
- 12 (3) If clothing from a young detainee is seized during a strip search, the
- 13 youth detention officer conducting the search must ensure that the
- 14 young detainee is left with, or given, reasonably appropriate
- 15 clothing to wear.

Part 7.5 Body searches—young detainees

263 Body searches directed by chief executive

- (1) The chief executive may direct a non-treating doctor to conduct a body search of a young detainee if the chief executive 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 or good order at a detention place.
- (2) In making a decision under subsection (1), the chief executive must have regard to the young detainee's age, maturity, developmental capacity and any known history.

264 Obligations of chief executive before body searches

- (1) This section applies if the chief executive proposes to direct a body search of a young detainee under section 263.
- (2) The chief executive 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 chief executive must tell the young detainee the reasons.

- 1 (4) The chief executive must ask for the young detainee's cooperation
2 for the search.
- 3 (5) The chief executive must ensure that a body search is conducted—
4 (a) in a private area or an area that provides reasonable privacy for
5 the young detainee; and
6 (b) in a way that provides reasonable privacy.

7 **265 People present at body searches**

- 8 (1) A non-treating nurse must be present during the body search of a
9 young detainee.
- 10 (2) If the non-treating doctor conducting the body search is not the same
11 sex as the young detainee, the non-treating nurse present must be the
12 same sex as the young detainee.

13 *Note* If the doctor is not the same sex as the young detainee, the doctor
14 cannot touch the young detainee or examine the young detainee's body
15 orifices (see s 271).

- 16 (3) The chief executive may direct 1 or more youth detention officers to
17 be present during the search, each of whom must be the same sex as
18 the young detainee.
- 19 (4) However, the number of youth detention officers present during the
20 search must be no more than is necessary and reasonable to ensure
21 the search is conducted as safely and effectively as possible.
- 22 (5) The requirement in subsection (3) that a youth detention officer be
23 the same sex as the young detainee does not apply if the chief
24 executive believes on reasonable grounds that—
25 (a) there is an imminent and serious threat to the personal safety of
26 the young detainee; and
27 (b) compliance with the requirement would exacerbate the threat.

- 1 (6) If the young detainee is under 18 years old, the search must be
2 conducted in the presence of a person who has daily care
3 responsibility, or long-term care responsibility, for the young
4 detainee if—
- 5 (a) the chief executive believes that it is necessary, and in the best
6 interests of the young detainee, for the person to be present;
7 and
- 8 (b) the young detainee agrees to the person being present.
- 9 (7) In making a decision under subsection (6), the chief executive must
10 have regard to the young detainee's age, maturity, developmental
11 capacity and any known history.
- 12 (8) If the young detainee is 18 years old or older, the chief executive
13 may arrange for the search to be conducted in the presence of a
14 support person for the young detainee if—
- 15 (a) the chief executive considers the presence of a support person
16 necessary or desirable because of the young detainee's
17 vulnerability; and
- 18 (b) the young detainee agrees to the person being present.
- 19 **266 Body searches of young detainees under 18 years old—**
20 **no-one with parental responsibility available**
- 21 (1) This section applies in relation to a body search of a young detainee
22 who is under 18 years old if—
- 23 (a) a person who has daily care responsibility, or long-term care
24 responsibility, for the young detainee cannot be contacted
25 before the search is conducted; or
- 26 *Note* For a requirement to contact a person with parental responsibility,
27 see s 250.
- 28 (b) no-one who has daily care responsibility, or long-term care
29 responsibility, for the young detainee is available to be present
30 at the search; or
-

- 1 (c) the young detainee does not agree to a person who has daily
2 care responsibility, or long-term care responsibility, for the
3 young detainee being present at the search.
- 4 (2) The chief executive must ensure that the body search is conducted in
5 the presence of someone (a *support person*) who—
- 6 (a) the chief executive believes on reasonable grounds can support
7 and represent the interests of the young detainee; and
- 8 (b) the young detainee agrees should be present at the search.
- 9 *Note* In some circumstances the chief executive is a person who has daily
10 care responsibility, or long-term care responsibility, for a young
11 detainee (see div 1.3.2).
- 12 (3) However, the body search may continue in the absence of a support
13 person if—
- 14 (a) the young detainee does not agree to a support person being
15 present; or
- 16 (b) the chief executive directs the support person to leave under
17 section 267 (2).

18 **267 Body searches—directing people to leave**

- 19 (1) This section applies if a body search of a young detainee is being
20 conducted in the presence of—
- 21 (a) a person who has daily care responsibility, or long-term care
22 responsibility, for the young detainee; or
- 23 (b) a support person under section 265 (8) or section 266.
- 24 (2) The chief executive may direct the person to leave if the chief
25 executive believes on reasonable grounds that the person is
26 preventing or hindering the conduct of the search.

1 **268 Removing people from search area**

- 2 (1) The chief executive may direct a youth detention officer to enforce a
3 direction under section 267 (2) if the person given the direction
4 contravenes the direction.
- 5 (2) The youth detention officer may use force that is necessary and
6 reasonable to enforce the direction.

7 **269 Help for body searches**

- 8 (1) This section applies if the non-treating doctor conducting a body
9 search of a young detainee asks the chief executive for assistance
10 that the doctor believes on reasonable grounds is necessary and
11 reasonable for the search.
- 12 (2) The chief executive may direct a youth detention officer, or
13 authorise someone else present at the search (the *assistant*), to assist
14 in the conduct of the search.
- 15 (3) The assistant must be the same sex as the young detainee.
- 16 (4) However, subsection (3) does not apply if the chief executive
17 believes on reasonable grounds that—
- 18 (a) there is an imminent and serious threat to the personal safety of
19 the young detainee; and
- 20 (b) compliance with subsection (3) would exacerbate the threat.

21 **270 Body searches—rules about young detainees' clothing**

- 22 (1) A body search of a young detainee must not involve—
- 23 (a) the removal from the young detainee of more clothes than is
24 necessary and reasonable for the search; or
- 25 (b) the removal from the young detainee of more clothes at any
26 time than is necessary and reasonable for the search; or

- 1 (c) without limiting paragraph (b), both the upper and lower parts
2 of the young detainee's body being uncovered at the same
3 time.
- 4 (2) A young detainee who has been body-searched must be allowed to
5 dress in private as soon as the search is finished.
- 6 (3) If clothing from a young detainee is seized during a body search, the
7 chief executive must ensure that the young detainee is left with, or
8 given, appropriate clothing to wear.

9 **271 Body searches—rules about touching young detainees**

10 For the body search of a young detainee, the non-treating doctor or
11 non-treating nurse may touch the young detainee and examine the
12 young detainee's orifices, but only if the doctor or nurse is of the
13 same sex as the young detainee.

14 **272 Seizing things discovered during body searches**

- 15 (1) A non-treating doctor conducting a body search of a young detainee
16 may seize anything mentioned in section 263 (Body searches
17 directed by chief executive) that is discovered during the search if
18 seizing the thing would not be likely to cause injury to the young
19 detainee or someone else.
- 20 (2) The doctor must give the thing seized to a youth detention officer as
21 soon as practicable.

**Part 7.6 Searching people other than
detainees**

273 Searches of people other than detainees

- (1) The chief executive 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 chief executive suspects on reasonable grounds that the person is carrying—
- (a) a prohibited thing; or
 - (b) anything else that creates, or is likely to create, a risk to—
 - (i) the personal safety of anyone else; or
 - (ii) security or good order at the place.
- (2) Part 7.3 (Scanning, frisk and ordinary searches) applies in relation to a direction under this section, any frisk search, scanning search or ordinary search conducted under the direction, and anything found in the search, in the same way, but with any necessary changes, that it applies in relation to a young detainee.
- (3) However, part 7.8 (Searches—use of force) does not apply to a search under this section.

Part 7.7 Searches of premises and property

274 Searches—premises and property generally

(1) The chief executive may, at any time, direct a youth detention officer to search—

- (a) any part of a 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

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

(2) However, this section does not authorise a search of—

- (a) anyone at a 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

1 (c) with the assistance of a search dog.

2 **275 Searches of young detainee cells—privileged material**

3 (1) This section applies if a young detainee has privileged material at a
4 detention place.

5 (2) A youth detention officer may search the young detainee's cell
6 under section 274 in the absence of the young detainee if—

7 (a) the young detainee removes the privileged material from the
8 cell; or

9 (b) the privileged material is stored in accordance with
10 arrangements under subsection (3).

11 (3) The chief executive may make arrangements for the secure storage
12 at a detention place of privileged material for young detainees.

13 **276 Searches of young detainee cells—suspected privileged**
14 **material**

15 (1) If a youth detention officer suspects on reasonable grounds that a
16 young detainee's cell contains privileged material, the youth
17 detention officer may search the cell only if the young detainee is
18 present.

19 (2) A search under subsection (1) may include an examination of any
20 privileged material, and anything containing the material, found in
21 the cell.

22 (3) However, the youth detention officer must not read any privileged
23 material found in the cell.

24 (4) The youth detention officer need not comply with subsection (1) or
25 (3) if the youth detention officer believes on reasonable grounds that
26 urgent circumstances exist and that compliance with the subsection
27 would create a risk of injury to the youth detention officer, the
28 young detainee or someone else.

Part 7.8 Searches—use of force

277 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 269 (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).

Part 7.9 Seizing property

278 Meaning of *owner*—pt 7.9

In this part:

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

279 Seizing mail etc

(1) The chief executive may seize anything in a young detainee's protected mail if the chief executive believes on reasonable grounds that the thing—

(a) may physically harm the addressee or anyone else; or

(b) is a prohibited thing.

(2) The chief executive may seize other mail of a young detainee, or anything in the mail, if the chief executive suspects on reasonable grounds that the seizure is necessary—

(a) to stop any of the following entering or leaving a 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

- 1 (c) to stop a young detainee obtaining or buying goods without the
2 chief executive's approval.
- 3 **Example—correspondence not in best interests of young detainee—**
4 **par (b)**
5 mail addressed to a young person by someone convicted of a sexual offence
6 against a child
- 7 *Note* An example is part of the Act, is not exhaustive and may extend,
8 but does not limit, the meaning of the provision in which it
9 appears (see Legislation Act, s 126 and s 132).
- 10 (3) The chief executive may seize a document under this section only if
11 the chief executive believes on reasonable grounds that the
12 document is not privileged.
- 13 (4) If the chief executive believes on reasonable grounds that a
14 document seized under subsection (3) is privileged, the chief
15 executive must return the document to the detainee immediately.
- 16 (5) In this section:
- 17 ***mail*** means postal mail.
- 18 ***protected mail*** means mail between a young detainee and any of the
19 following:
- 20 (a) a lawyer representing the young detainee;
21 (b) an official visitor;
22 (c) the director of public prosecutions;
23 (d) a commissioner exercising functions under the *Human Rights*
24 *Commission Act 2005*;
25 (e) the privacy commissioner;
26 (f) the public advocate;
27 (g) the ombudsman;
28 (h) a person prescribed by regulation.

1 **280 Seizing property—general**

- 2 (1) The chief executive may seize—
- 3 (a) a prohibited thing found on a person or in a person’s custody or
- 4 possession, unless the person has the written approval of the
- 5 chief executive to possess the thing; or
- 6 (b) anything found at a detention place, whether or not in a
- 7 person’s custody or possession, that the chief executive
- 8 suspects on reasonable grounds—
- 9 (i) is being used, or is intended, for the commission of an
- 10 offence or a behaviour breach; or
- 11 (ii) jeopardises, or is likely to jeopardise, security or good
- 12 order at a detention place or the safety of anyone at a
- 13 detention place or elsewhere.
- 14 (2) To remove any doubt, this section extends to anything found in a
- 15 search under this chapter.
- 16 (3) The chief executive may seize a document under this section only if
- 17 the chief executive believes on reasonable grounds that the
- 18 document is not privileged.

19 **281 Notice of seizure**

- 20 (1) The chief executive must prepare written notice of a seizure under
- 21 section 279 or section 280.
- 22 (2) Not later than 7 days after the day of the seizure, the chief executive
- 23 must give written notice of the seizure to—
- 24 (a) the owner of the thing seized; or
- 25 (b) if the owner cannot be identified after reasonable inquiries
- 26 (given the thing’s apparent value)—the person from whom the
- 27 thing was seized.

- 1 (3) The notice must—
2 (a) identify the thing seized; and
3 (b) outline the grounds for the seizure; and
4 (c) include a statement about the effect of section 282; and
5 (d) include anything else prescribed by regulation.

6 **282 Forfeiture of things seized**

- 7 (1) A thing seized under section 279 (Seizing mail etc) or section 280
8 (Seizing property—general) is forfeited to the Territory if the chief
9 executive decides on reasonable grounds—
10 (a) that—
11 (i) after making reasonable inquiries (given the thing's
12 apparent value), the owner of the thing cannot be found;
13 or
14 (ii) after making reasonable efforts (given the thing's
15 apparent value), the thing cannot be returned to the
16 owner; or
17 (b) that—
18 (i) the thing is a prohibited thing; or
19 (ii) possession of the thing by a young detainee is an offence
20 or a behaviour breach; or
21 (iii) it is necessary to keep the thing to stop it being used for
22 the commission of an offence or a behaviour breach; or
23 (iv) the thing is inherently unsafe; or
24 (v) the thing may be used by the person in a way that may
25 involve a risk to the personal safety of someone else or a
26 risk to security or good order at a detention place.

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

4 **Examples**

- 5 1 giving a forfeited weapon to a youth detention officer
6 2 dumping a forfeited thing of little value

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

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

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

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

19 **283 Return of things seized but not forfeited**

- 20 (1) If a thing seized under section 279 (Seizing mail etc) or section 280
21 (Seizing property—general) is not forfeited, the chief executive
22 must return it to its owner—

- 23 (a) at the end of the 6 months after the day it was seized; or
24 (b) if a proceeding for an offence or a behaviour breach involving
25 the thing is started within the 6 months—at the end of the
26 proceeding and any appeal from, or review of, the proceeding.

- 27 (2) However, if the thing was being kept as evidence of an offence or a
28 behaviour breach and the chief executive believes on reasonable
29 grounds that its retention as evidence is no longer necessary, the
30 chief executive must return it immediately.

1 **Chapter 8** **Criminal matters—discipline at**
2 **detention places**

3 **Part 8.1** **Discipline at detention places—**
4 **general**

5 **284** **Application—ch 8**

6 This chapter applies in relation to a behaviour breach committed, or
7 allegedly committed, by a young detainee.

8 **285** **Definitions—ch 8**

9 In this chapter:

10 *accused detainee* means a young detainee charged with a behaviour
11 breach.

12 *administrator* means an authorised person to whom the chief
13 executive has delegated functions of an administrator under this
14 chapter.

15 *allegation report*—see section 292.

16 *behaviour breach*—see section 286.

17 *behaviour management consequence*—

18 (a) for part 8.3 (Dealing with minor behaviour breaches)—see
19 section 297; and

20 (b) for part 8.4 (Disciplinary action—behaviour breach charged)—
21 see section 317.

22 *behaviour management framework* means the behaviour
23 management framework established under section 296.

24 *charge* means a charge under section 295.

- 1 **charge notice**—see section 295.
- 2 **disciplinary action**—see section 316.
- 3 **hearing**, for a review, means a hearing under part 9.3.
- 4 **minor behaviour breach**—see section 287.
- 5 **privilege**, in relation to a young detainee—see section 288.
- 6 **reporting and investigation procedure**, for part 8.2 (Responding to
7 behaviour breaches), means a reporting and investigation procedure
8 under section 293.
- 9 **review** means a review under—
- 10 (a) division 8.4.2 (Internal review); or
- 11 (b) division 8.4.3 (External review of internal review decisions).
- 12 **support person**—a person can be a **support person** for a young
13 detainee if—
- 14 (a) the young detainee chooses the person to assist the young
15 detainee or represent the young detainee’s interests; and
- 16 (b) the chief executive considers—
- 17 (i) the person is capable of assisting the young detainee or
18 representing the young detainee’s interests; and
- 19 (ii) it is in the young detainee’s best interests for the person to
20 be the young detainee’s support person.
- 21 **Examples—support people**
- 22 1 the public advocate
- 23 2 a person with parental responsibility for the accused detainee
- 24 3 a close friend of the accused detainee who is capable of applying for the
25 review

1 4 a lawyer

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

5 **286 Meaning of *behaviour breach***

6 (1) Each of the following is a *behaviour breach*:

7 (a) contravening a direction by the chief executive under this Act;

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

11 (b) being in a prohibited area without the chief executive's
12 approval;

13 *Note* An area may be prohibited under s 146.

14 (c) smoking;

15 (d) taking (in any way) alcohol, a prohibited substance or an
16 unauthorised medicine into the young detainee's body;

17 (e) providing a positive test sample for alcohol or a drug when
18 directed, under this Act, to provide a test sample;

19 (f) making, possessing, concealing, knowingly consuming or
20 dealing with a prohibited thing, without the chief executive's
21 approval;

22 (g) gambling;

23 (h) being disrespectful or abusive towards a youth detention
24 officer in a way that undermines the officer's authority;

25 (i) being disrespectful or abusive towards someone in a way that
26 is likely to provoke a person to be violent;

27 (j) intentionally or recklessly engaging in conduct that endangers,
28 or may endanger, the health or safety of the young detainee or
29 anyone else;

- 1 (k) fighting;
- 2 (l) assaulting someone else;
- 3 (m) theft;
- 4 (n) possessing stolen property;
- 5 (o) possessing or dealing in things without the chief executive's
- 6 approval;
- 7 (p) intentionally or recklessly damaging or destroying property
- 8 belonging to someone else;
- 9 (q) interfering with property belonging to someone else, without
- 10 approval by the owner of the property;
- 11 (r) creating or participating in a disturbance, or other activity,
- 12 likely to endanger security or good order at a detention place;
- 13 (s) contravening a condition of a leave permit under section 240;
- 14 (t) doing anything for the purpose of escaping, or assisting a
- 15 young detainee to escape, from detention;
- 16 (u) offering, giving or taking a bribe;
- 17 (v) attempting, or assisting anyone else attempting, to commit
- 18 another behaviour breach;
- 19 (w) threatening to do anything mentioned in paragraphs (j), (k), (l),
- 20 (p) or (r);
- 21 (x) anything else prescribed by regulation.

Example—chief executive direction—par (a)

contravening a direction by the chief executive to submit to a search under this Act

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

- 1 (2) In this section:
- 2 *medicine*—see the *Medicines, Poisons and Therapeutic Goods*
- 3 *Act 2007*, section 11.
- 4 *prohibited substance*—see the *Medicines, Poisons and Therapeutic*
- 5 *Goods Act 2007*, section 13.
- 6 *unauthorised medicine*—a medicine is an *unauthorised medicine*
- 7 for a young detainee if—
- 8 (a) the medicine is not prescribed for the young detainee; or
- 9 (b) the chief executive has not approved the use of the medicine by
- 10 the young detainee under section 186.
- 11 **287 Meaning of *minor behaviour breach***
- 12 A *minor behaviour breach* is a behaviour breach that—
- 13 (a) is not of a serious or persistent nature; and
- 14 (b) does not involve a serious risk to the health or safety of
- 15 someone else at a detention place; and
- 16 (c) does not involve a serious risk, or serious or persistent
- 17 disruption, to the security or good order at a detention place.
- 18 **288 Meaning of *privilege***
- 19 A *privilege*, in relation to a young detainee—
- 20 (a) is any amenity, facility or opportunity the young detainee may
- 21 have the benefit of in detention; but
- 22 (b) does not include anything that is, for this chapter, an
- 23 entitlement for the young detainee.
- 24 **Examples—privileges**
- 25 1 using phones, email or the internet other than for entitled usage
- 26 2 buying non-essential goods from money in a young detainee’s trust account

- 1 3 using a radio, television, compact disc, MP3 player or DVD player or other
2 electronic equipment for recreational purposes
3 4 pursuing hobbies and crafts
4 5 keeping personal property in a cell
5 6 accessing leave

6 **Examples—entitlements**

- 7 1 an entitlement to health care under s 108
8 2 things expressed in pt 6.5 (Living conditions at detention places) to be
9 entitlements for young detainees

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

13 **289 Overlapping behaviour breaches and criminal offences**

14 (1) This section applies if a young detainee engages, or is alleged to
15 have engaged, in conduct that is both—

16 (a) a behaviour breach; and

17 (b) an offence (a *criminal offence*) against this Act or another
18 territory law.

19 (2) The young detainee must not be prosecuted for the criminal offence
20 if a behaviour management consequence has been imposed on the
21 young detainee under part 8.3 or part 8.4 because of the behaviour
22 breach.

23 (3) The young detainee must not be charged with the behaviour breach
24 under section 295, or the charge must not be continued with under
25 this chapter, if a prosecution for the criminal offence has been
26 started in a court.

27 (4) Disciplinary action for the behaviour breach must not be taken
28 against the young detainee if a court has convicted the young
29 detainee, or the young detainee has been found guilty, of the
30 criminal offence.

31 *Note* For the kinds of disciplinary action that may be taken, see s 316.

Part 8.2 Responding to behaviour breaches

290 Who is an *investigator*?

In this part:

investigator means—

- (a) an authorised person to whom the chief executive has delegated functions of an investigator under this part; or
- (b) a person appointed to be an investigator under section 291.

Note A person is an authorised person for this Act if the chief executive delegates a power under the Act to the person.

291 Appointment of investigators

The chief executive 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).

292 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.

- 1 (2) The youth detention officer may do 1 or more of the following if the
2 person believes on reasonable grounds that it is appropriate in the
3 circumstances:
- 4 (a) counsel the young detainee;
- 5 (b) warn the young detainee about committing a behaviour breach;
- 6 (c) reprimand the young detainee;
- 7 (d) make a report (an ***allegation report***) about the alleged
8 behaviour breach.
- 9 (3) An allegation report must be made in accordance with the reporting
10 and investigation procedures.

11 **293 Reporting and investigation procedures**

- 12 (1) The chief executive must make reporting and investigation
13 procedures, consistent with this Act, about the making, recording
14 and investigation of allegation reports.
- 15 (2) Each reporting and investigation procedure is a notifiable
16 instrument.
- 17 *Note 1* A notifiable instrument must be notified under the Legislation Act.
- 18 *Note 2* The amendment or repeal of a reporting and investigation procedure is
19 also a notifiable instrument. See the Legislation Act, s 46 (Power to
20 make instrument includes power to amend or repeal).
- 21 (3) Without limiting subsection (1), the reporting and investigation
22 procedures must—
- 23 (a) require allegation reports to be made in writing and given to an
24 administrator; and
- 25 (b) require the administrator to whom an allegation report is given,
26 and any investigator who investigates the alleged behaviour
27 breach, to be a different person to the youth detention officer
28 who makes the allegation report; and

- 1 (c) require a young detainee to be told about an alleged behaviour
2 breach in language and a way he or she can understand; and
- 3 (d) allow a young detainee to contact 1 or 2 support people for
4 assistance in responding to an alleged behaviour breach; and
- 5 (e) require a young detainee to be told that he or she has the right
6 to contact 1 or 2 support people for assistance in responding to
7 an alleged behaviour breach.

8 **294 Action by administrator**

- 9 (1) This section applies if an administrator is given an allegation report
10 about an alleged behaviour breach by a young detainee.
- 11 (2) The administrator—
 - 12 (a) must consider the allegation report; and
 - 13 (b) may arrange for an investigator to investigate the alleged
14 behaviour breach in accordance with the reporting and
15 investigation procedures if the administrator believes on
16 reasonable grounds that it is appropriate in the circumstances.
- 17 (3) After considering the allegation report and the report of any
18 investigation under subsection (2) (b), the administrator may take
19 any further action the administrator believes on reasonable grounds
20 is appropriate in the circumstances.
- 21 (4) Without limiting subsection (3), the administrator may do 1 or more
22 of the following if the administrator believes on reasonable grounds
23 that it is reasonable and proportionate in the circumstances:
 - 24 (a) take no further action in relation to the report;
 - 25 (b) counsel the young detainee;
 - 26 (c) warn the young detainee about committing a behaviour breach;
 - 27 (d) reprimand the young detainee;

- 1 (e) for a minor behaviour breach—deal with the young detainee in
2 accordance with part 8.3;
- 3 (f) charge the young detainee under section 295;
- 4 (g) refer the alleged behaviour breach to—
- 5 (i) the chief police officer; or
- 6 (ii) the director of public prosecutions.
- 7 (5) Before deciding what action (if any) to take in relation to a minor
8 behaviour breach, the administrator must review any previous minor
9 behaviour breaches and behaviour management consequences
10 imposed on the young detainee.
- 11 (6) A referral under subsection (4) (g) must be in writing and
12 accompanied by the allegation report and any reports the
13 administrator has of investigations already made about the alleged
14 behaviour breach.

15 **295 Disciplinary charge**

16 To charge a young detainee with a behaviour breach, an
17 administrator must give the young detainee written notice (a ***charge***
18 ***notice***) of the charge, including details of the following:

- 19 (a) the behaviour breach charged;
- 20 (b) a brief statement of the conduct to which the charge applies
21 and when, or the period during which, it happened;
- 22 (c) the election available under section 300 to accept the
23 disciplinary action proposed by the administrator;
- 24 (d) the disciplinary action the administrator believes on reasonable
25 grounds would be appropriate if the charge were dealt with by
26 the administrator under section 301 (Disciplinary action by
27 administrator);

1 (e) that application may be made under section 304 for review of
2 the charge.

3 *Note* If a form is approved under s 885 for a charge, the form must be used.

Part 8.3 Dealing with minor behaviour breaches

296 Behaviour management framework

(1) The chief executive 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 chief executive(including on request by a young detainee) of decisions to impose behaviour management consequences for minor behaviour breaches.

297 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;

- 1 (d) a requirement to perform extra chores, for not longer than
2 2 hours;
- 3 (e) anything prescribed by regulation to be a behaviour
4 management consequence for the behaviour management
5 framework and that is reasonable and proportionate to minor
6 behaviour breaches.
- 7 (2) In deciding whether to impose a behaviour management
8 consequence under the behaviour management framework, the
9 administrator must consider the age, developmental capacity,
10 rehabilitation needs and any known history of the young detainee.
- 11 (3) The administrator may impose a behaviour management
12 consequence if satisfied that the consequence to be imposed is—
- 13 (a) reasonable in the circumstances; and
- 14 (b) proportionate to the circumstances and gravity of the behaviour
15 breach.

16 **298 Behaviour management framework—limits**

- 17 (1) This section applies if a young detainee has been dealt with under
18 the behaviour management framework and behaviour management
19 consequences totalling any of the following have been imposed on
20 the young detainee under the framework:
- 21 (a) for fines—\$125;
- 22 (b) for withdrawals of privileges—30 days;
- 23 (c) for requirements to perform extra chores—10 hours.
- 24 (2) The young detainee must not be dealt with under the behaviour
25 management framework for any subsequent minor behaviour
26 breach.
- 27 (3) However, an administrator may take other action mentioned in
28 section 294 (other than section 294 (4) (e)) for any subsequent
29 minor behaviour breaches.

**Part 8.4 Disciplinary action—behaviour
breach charge**

Division 8.4.1 Disciplinary action by administrator

**299 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 295.
- (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 chief executive must ensure that the accused detainee has access to facilities to contact a support person as soon as practicable.

300 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 1 If a form is approved under s 885 for an election under this section, the form must be used.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- 1 (2) The election must be given to the administrator—
2 (a) not later 48 hours after the administrator gives the accused
3 detainee the charge notice; or
4 (b) within any extended period allowed under subsection (3).
5 (3) On written application by the accused detainee, the administrator
6 may extend the period within which the election must be made if the
7 administrator believes on reasonable grounds that it is appropriate to
8 extend the period.
9 (4) The administrator must give the accused detainee written notice of a
10 decision under subsection (3).
11 **301 Disciplinary action by administrator**
12 (1) This section applies if—
13 (a) a charge notice has been given to an accused detainee; and
14 (b) the accused detainee—
15 (i) makes an election under section 300; or
16 (ii) does not make an election under section 300, or apply for
17 review of the charge, within the period allowed.
18 (2) The administrator may, without further investigation or inquiry, take
19 the disciplinary action stated in the charge notice if the administrator
20 believes on reasonable grounds that the accused detainee
21 understands the proposed action.
22 (3) If the administrator decides to take the disciplinary action, the
23 administrator must give the accused detainee written notice of the
24 decision.
25 (4) The disciplinary action must be taken in accordance with
26 division 8.4.4 (Disciplinary action generally).

1 **Division 8.4.2 Internal review**

2 **302 Meaning of *review officer*—div 8.4.2**

3 In this division:

4 *review officer* means an authorised person to whom the chief
5 executive has delegated functions of a review officer under this
6 division.

7 **303 Right to contact support person—internal review**

8 (1) This section applies if a charge notice has been given to an accused
9 detainee under section 295.

10 (2) The accused detainee has a right to contact 1 or 2 support people to
11 assist the detainee to apply for review of the charge under this
12 division.

13 (3) The chief executive must ensure that the accused detainee has
14 access to facilities—

15 (a) to contact a support person as soon as practicable; and

16 (b) to consult with the support person.

17 **304 Application for internal review**

18 (1) An accused detainee may apply for review of the charge under this
19 division.

20 (2) The application must be given to the administrator—

21 (a) not later than the day after the day the administrator gives the
22 accused detainee the charge notice under section 295; or

23 (b) within any extended period allowed under subsection (3).

- 1 (3) On written application by the accused detainee, the administrator
2 may extend the period for making the application if the
3 administrator believes on reasonable grounds that it is appropriate to
4 extend the period.

5 *Note* The administrator may extend the period for making the application
6 after the period given in the notice has expired (see Legislation Act,
7 s 151C).

- 8 (4) The administrator must give the accused detainee written notice of a
9 decision under subsection (3) to extend the period.

10 **305 Internal review of charge**

- 11 (1) If an application for review is given to the administrator under
12 section 304, the administrator must arrange for a review officer to
13 conduct a review into the behaviour breach charged in the charge
14 notice.

- 15 (2) An authorised person must not exercise any function of a review
16 officer under this division in relation to the charge if the authorised
17 person—

18 (a) made an allegation report or carried out any investigation in
19 relation to the alleged behaviour breach to which the charge
20 relates; or

21 (b) charged the young detainee under section 295.

- 22 (3) Chapter 9 (Criminal matters—conduct of disciplinary reviews)
23 applies, with any changes prescribed by regulation, in relation to a
24 review under this division.

25 **306 Review officer's powers after internal review**

- 26 (1) This section applies if a review officer has completed a review
27 under section 305.

- 1 (2) If the review officer is satisfied on the balance of probabilities that a
2 behaviour breach charged has been proven, the review officer may
3 take disciplinary action against the accused detainee in accordance
4 with division 8.4.4
- 5 (3) The review officer must dismiss the charge—
6 (a) if not satisfied on the balance of probabilities that the
7 behaviour breach charged has been proven; or
8 (b) if satisfied on reasonable grounds that it would otherwise be
9 appropriate to do so.
- 10 (4) If the review officer believes on reasonable grounds that it is
11 necessary or appropriate to do so, the review officer may refer the
12 charge to—
13 (a) the chief police officer; or
14 (b) the director of public prosecutions.
- 15 (5) The review officer must give the accused detainee prompt written
16 notice of the review officer's decision under this section,
17 including—
18 (a) a statement of the reasons for the decision; and
19 (b) a statement that the accused detainee has a right to apply for
20 review of the decision under division 8.4.3 (External review of
21 internal review decisions); and
22 (c) a statement about the effect of section 309.
- 23 *Note 1* If a form is approved under s 885 for the notice, the form must be used.
- 24 *Note 2* For the meaning of a statement of reasons, see the Legislation Act,
25 s 179.

- 1 **Division 8.4.3** **External review of internal review**
2 **decisions**
- 3 **307** **Meaning of *external reviewer*—div 8.4.3**
- 4 In this division:
- 5 *external reviewer* means a person appointed as an external reviewer
6 under section 308.
- 7 **308** **Appointment of external reviewers**
- 8 (1) The Minister must appoint at least 1 external reviewer.
- 9 (2) A person may be appointed as an external reviewer only if the
10 person is a magistrate and consents, in writing, to the appointment.
- 11 (3) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do
12 other work) does not apply to the appointment of a magistrate as an
13 external reviewer.
- 14 *Note* For the making of appointments (including acting appointments), see
15 the Legislation Act, pt 19.3.
- 16 (4) The Legislation Act, division 19.3.3 (Appointments—Assembly
17 consultation) does not apply to the appointment of an external
18 reviewer.
- 19 (5) An appointment is a notifiable instrument.
- 20 *Note* A notifiable instrument must be notified under the Legislation Act.
- 21 **309** **Right to contact support person—external review**
- 22 (1) This section applies if a decision under section 306 (Review
23 officer’s powers after internal review) has been made in relation to
24 an accused detainee.
- 25 (2) The accused detainee has a right to contact 1 or 2 support people to
26 assist the detainee to apply for review of the decision under this
27 division.

(3) The chief executive 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.

310 Application for external review

(1) An accused detainee may apply to an external reviewer for review of a decision made under section 306 (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 306

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

(2) The application must be made not later than 7 days after the day the accused detainee is given notice of the decision under section 306.

(3) Subject to any decision by the external reviewer under section 313, the making of the application does not affect the taking of disciplinary action under the decision under review.

311 External review of charge

(1) On application under section 310, an external reviewer must—

(a) review a decision of a review officer made under section 306;
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.

1 **312 Refusal to review**

2 (1) This section applies if, under section 311, an external reviewer
3 refuses to review a decision made under section 306 in relation to an
4 accused detainee.

5 (2) The external reviewer must give the accused detainee, and any
6 support person of the accused detainee about whom the external
7 reviewer has notice, prompt written notice of the refusal,
8 including—

9 (a) a statement of the reasons for the refusal; and

10 (b) notice that a person aggrieved by the refusal may apply for
11 review of the refusal under the *Administrative Decisions*
12 *(Judicial Review) Act 1989*.

13 *Note 1* If a form is approved under s 885 for the notice, the form must be used.

14 *Note 2* For the meaning of a statement of reasons, see the Legislation Act,
15 s 179.

16 *Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a
17 person aggrieved by an administrative decision made under an
18 enactment may apply to the Supreme Court for review of the decision.
19 Subject to any order of the Court, the making of the application does not
20 affect the operation of the decision or prevent its implementation (see
21 s 16).

22 **313 External reviewer's powers after external review**

23 (1) After completing a review under section 311, the external reviewer
24 may—

25 (a) confirm the decision under review; or

26 (b) exercise any function of a review officer under 306 (Review
27 officer's powers after internal review) in relation to the
28 accused detainee, either by—

29 (i) amending the decision under review; or

- 1 (ii) setting aside the decision under review and making a
2 decision in substitution for the decision set aside.
- 3 (2) The external reviewer must give prompt written notice of the
4 external reviewer's decision under this section to—
- 5 (a) the accused detainee; and
- 6 (b) any support person of the accused detainee about whom the
7 external reviewer has notice; and
- 8 (c) the chief executive.
- 9 (3) The notice must include—
- 10 (a) a statement of the reasons for the decision; and
- 11 (b) notice that a person aggrieved by the decision may apply for
12 review of the decision under the *Administrative Decisions*
13 *(Judicial Review) Act 1989*.
- 14 *Note 1* If a form is approved under s 885 for the notice, the form must be used.
- 15 *Note 2* For the meaning of a statement of reasons, see the Legislation Act,
16 s 179.
- 17 *Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a
18 person aggrieved by an administrative decision made under an
19 enactment may apply to the Supreme Court for review of the decision.
20 Subject to any order of the Court, the making of the application does not
21 affect the operation of the decision or prevent its implementation (see
22 s 16).
- 23 (4) If the external reviewer's decision reduces or sets aside a fine
24 imposed for the behaviour breach, the chief executive must credit to
25 the accused detainee's trust account any amount deducted from the
26 account for payment of the fine.
- 27 (5) If the external reviewer's decision reduces or sets aside any other
28 behaviour management consequence imposed for the behaviour
29 breach, the chief executive must take steps, in consultation with the
30 accused detainee, to provide a reasonable remedy to the accused
31 detainee.
-

1 **Division 8.4.4 Disciplinary action generally**

2 **314 Application—div 8.4.4**

3 This division applies to a young detainee against whom disciplinary
4 action may be taken under this part.

5 **315 Meaning of *relevant presiding officer*—div 8.4.4**

6 In this division:

7 *relevant presiding officer* means—

- 8 (a) an administrator under division 8.4.1 (Disciplinary action by
9 administrator); or
- 10 (b) a review officer under division 8.4.2 (Internal review); or
- 11 (c) an external reviewer under division 8.4.3 (External review of
12 internal review decisions).

13 **316 Disciplinary action by relevant presiding officer**

14 (1) A relevant presiding officer may do 1 or more of the following
15 (each of which is *disciplinary action*) in relation to a young
16 detainee:

- 17 (a) warn the young detainee about committing a behaviour breach;
- 18 (b) reprimand the young detainee;
- 19 (c) impose a behaviour management consequence, or a
20 combination of behaviour management consequences, on the
21 young detainee.

22 (2) In deciding whether to impose a behaviour management
23 consequence, the relevant presiding officer must consider the age,
24 developmental capacity, rehabilitation needs and any known history
25 of the young detainee.

1 (3) The relevant presiding officer may impose a behaviour management
2 consequence if satisfied that the consequence to be imposed is—

3 (a) reasonable in the circumstances; and

4 (b) proportionate to the circumstances and gravity of the
5 behaviour.

6 **317 Disciplinary action—behaviour management**
7 **consequences**

8 Each of the following is a *behaviour management consequence*
9 that may be imposed under this part:

10 (a) a fine, not exceeding \$250;

11 (b) a withdrawal of privileges, for not longer than 60 days;

12 (c) a requirement to make an apology to a person affected by the
13 behaviour breach;

14 (d) a requirement to perform extra chores, for not longer than
15 20 hours;

16 (e) anything prescribed by regulation to be a behaviour
17 management consequence and that is reasonable and
18 proportionate to behaviour breaches.

19 **318 Maximum behaviour management consequences**

20 (1) This section applies if—

21 (a) a young detainee is charged with 2 or more behaviour
22 breaches; and

23 (b) the charges arise out of the same conduct.

24 (2) The total of the behaviour management consequences imposed for
25 the breaches must not, for any particular kind of consequence, be
26 more than the maximum penalty that may be imposed for any 1 of
27 the breaches.

- 1 **319** **Privileges and entitlements—impact of discipline**
- 2 To remove any doubt—
- 3 (a) anything expressed in part 6.5 (Living conditions at detention
- 4 places) to be an entitlement for this chapter is not affected by
- 5 anything that happens under this chapter, including disciplinary
- 6 action; and
- 7 (b) anything else mentioned in part 6.5 is, for this chapter, a
- 8 privilege.
- 9 *Note* Records must be kept of disciplinary action taken against young
- 10 detainees (see *Territory Records Act 2002*).

- 1 **Chapter 9** **Criminal matters—conduct of**
2 **disciplinary reviews**
- 3 **Part 9.1** **Conduct of disciplinary review—**
4 **general**
- 5 **320** **Application—ch 9**
- 6 This chapter applies to a review under—
- 7 (a) division 8.4.2 (Internal review); or
- 8 (b) division 8.4.3 (External review of internal review decisions).
- 9 *Note* This chapter also applies to a review under s 219 (External review of
- 10 segregation directions) (see s s 219 (2)).
- 11 **321** **Definitions—ch 9**
- 12 In this chapter:
- 13 *review officer*—
- 14 (a) for a review under division 8.4.2—means a review officer
- 15 under that division; and
- 16 (b) for a review under division 8.4.3—means an external reviewer
- 17 under that division.
- 18 *support person*—see section 285.

Part 9.2 Disciplinary review procedures

322 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.

323 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 chief executive.
- (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 322;
 - (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.

- 1 (3) The accused detainee may make submissions to the review officer
2 for the review in any form acceptable to the review officer.

3 **Example—acceptable form**

4 an audio recording or a document written for an accused detainee

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

- 8 (4) The chief executive must—

9 (a) offer to provide reasonable assistance to the accused detainee
10 to put the submissions in a form acceptable to the review
11 officer; and

12 (b) tell the accused detainee about the assistance he or she is
13 entitled to under subsection (5).

- 14 (5) The accused detainee is entitled to reasonable assistance from 1 or
15 2 support people for the purpose of preparing submissions.

- 16 (6) The review officer must consider any submission given to the
17 review officer by the accused detainee before the closing date for
18 submissions stated in the notice of the review given to the accused
19 detainee.

20 **324 Conduct of disciplinary reviews**

- 21 (1) A review must be conducted with as little formality and technicality,
22 and as quickly as the requirements of this Act and a proper
23 consideration of the charge allow.

- 24 (2) The review officer may hold a hearing for the review.

- 25 (3) A hearing for a review must be held in accordance with part 9.3.

- 26 (4) Proceedings at a review are not open to the public.

- 1 (5) A decision of the review officer at a review is not invalid only
2 because of any informality or lack of form.

3 *Note* However, see s 330 (5) and s 331 (2) (b) for who may be present, be
4 heard or make submissions at disciplinary hearings.

5 **325 Review officer may require official reports**

- 6 (1) For a review, the review officer may, by written notice given to any
7 of the following, require the person to promptly give the review
8 officer a written report about the accused detainee:
9 (a) the chief executive;
10 (b) the director of public prosecutions;
11 (c) a public servant.
12 (2) The person given the notice must comply with it.

13 **326 Review officer may require information and documents**

- 14 (1) For a review, the review officer may, by written notice given to a
15 person, require the person—
16 (a) to provide stated information to the review officer relevant to
17 the review; or
18 (b) to produce to the review officer a stated document or thing
19 relevant to the review.
20 (2) This section does not require a person to give information, or
21 produce a document or other thing, to the review officer if the
22 Minister certifies in writing that giving the information, or
23 producing the document or other thing—
24 (a) may endanger a young detainee or anyone else; or

1 (b) is contrary to the public interest.

2 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
3 privilege against selfincrimination and client legal privilege.

4 **327 Possession of review documents etc**

5 The review officer may have possession of a document or other
6 thing produced to the review officer for a review for as long as the
7 review officer considers necessary for the review.

8 **328 Record of review**

9 The review officer for a review must keep a written record of
10 proceedings at the review.

Part 9.3 Disciplinary hearing procedures

329 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 chief executive.
- (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 330 and section 331.
- (3) If practicable, the hearing must be held at the detention place where the accused detainee is detained.

330 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.

(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 selfincrimination 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

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

331 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 332) and the hearing may be conducted if the accused detainee fails to attend (see s 333).

(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

- 1 (b) have a support person or lawyer present to make submissions
2 on the accused detainee's behalf.

3 **332 Exclusion of accused detainee from hearing**

4 The review officer may, by written order, exclude the accused
5 detainee from a hearing for the review if the accused detainee,
6 without reasonable excuse—

- 7 (a) unreasonably interrupts, interferes with or obstructs the
8 hearing; or
9 (b) contravenes a reasonable direction by the review officer about
10 the conduct of hearing.

11 **333 Hearing in accused detainee's absence**

12 If the accused detainee fails without reasonable excuse to attend a
13 hearing for the review, the review officer may conduct the hearing,
14 and make a decision on the charge, in the accused detainee's
15 absence.

16 **334 Appearance at disciplinary hearing by audiovisual or**
17 **audio link**

18 (1) This section applies if, in relation to a hearing for a review, or part
19 of the hearing, the review officer has given a direction under the
20 following sections of the *Evidence (Miscellaneous Provisions)*
21 *Act 1991*:

- 22 (a) section 20 (Territory courts may take evidence and
23 submissions from outside ACT);
24 (b) section 32 (Use of link in proceedings).

- 1 (2) A person may appear and take part in the hearing in accordance with
2 the direction, if the person—
- 3 (a) is required or entitled to appear personally, whether as the
4 accused detainee or as a witness; or
- 5 (b) is entitled to appear for someone else.
- 6 (3) A person who appears at the hearing under this section is taken to be
7 before the review officer.

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 353 (Voluntary reporting of abuse and neglect) or s 355 (Offence—mandatory reporting of abuse) arising from something happening in the ACT.

335 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—chief executive has aspect of parental responsibility);
- (g) Chapter 16 (Care and protection—therapeutic protection of children and young people);

1 (h) Chapter 17 (Care and protection—interstate transfer of orders
2 and proceedings);

3 (i) Chapter 18 (Care and protection—police assistance);

4 (j) Chapter 19 (Care and protection—provisions applying to all
5 proceedings under care and protection chapters).

6 **336 Age—proof of age to be sought before action taken**

7 If the Childrens Court, the chief executive or a police officer intends
8 to deal with a person under the care and protection chapters as a
9 child or young person, the Childrens Court, chief executive or police
10 officer must make reasonable inquiries to find out the age of the
11 person before dealing with the person as a child or young person.

12 **337 Age—application of care and protection chapters if no**
13 **proof of age**

14 (1) This section applies if—

15 (a) the Childrens Court, chief executive or police officer is unable
16 after reasonable inquiry to find out a person's age; and

17 (b) the person appears, on reasonable grounds, to the Childrens
18 Court, the chief executive or a police officer to be a child or
19 young person.

20 (2) The person may be dealt with under the care and protection chapters
21 as if the person were a child or young person and the care and
22 protection chapters applies to the person as if a reference to a child
23 or young person included a reference to the person.

24 **338 Age—care and protection chapters stop applying if**
25 **person discovered to be adult**

26 (1) This section applies if the Childrens Court, the chief executive or a
27 police officer—

28 (a) has dealt with a person as a child or young person; and

- 1 (b) finds out that the person is not a child or young person.
- 2 (2) Any order or agreement under the care and protection chapters
- 3 applying to the person stops applying to the person.
- 4 (3) No further proceeding may be taken under the care and protection
- 5 chapters in relation to the person.
- 6 (4) If the person—
- 7 (a) is in a hospital or place of care under a provision of the care
- 8 and protection chapters—the provision ceases to apply to the
- 9 person and the person must be released; and
- 10 (b) is being confined in a therapeutic protection place under a
- 11 therapeutic protection order—the person must be released.
- 12 *Note* An official, or anyone engaging in conduct under the direction of an
- 13 official, is not civilly liable for conduct engaged in honestly and without
- 14 recklessness in the exercise of a function under this Act or in the
- 15 reasonable belief that the conduct was in the exercise of a function
- 16 under this Act. Any liability that would attach to an official attaches
- 17 instead to the Territory (see s 877).

18 **339 Care and protection chapters stop applying when young**

19 **person becomes adult**

- 20 (1) The care and protection chapters stop applying to a child or young
- 21 person when the child or young person becomes an adult.
- 22 (2) Any order or agreement under the care and protection chapters
- 23 applying to the child or young person stops applying to the child or
- 24 young person when the child or young person becomes an adult.
- 25 (3) A young person who is confined in a therapeutic protection place
- 26 under a therapeutic protection order must be released immediately
- 27 the young person becomes an adult.

- 1 (4) However, this section does not require the release of a person who
2 has been—
- 3 (a) convicted of an offence and, for the conviction, is detained
4 under an order or other decision of a court, including a court of
5 a State; or
- 6 (b) charged with an offence and is detained in relation to the
7 charge.

1 **Part 10.2** **Important concepts—care and**
2 **protection chapters**

3 **340** **Definitions—care and protection chapters**

4 (1) In this Act:

5 *abuse*, of a child or young person—see section 341.

6 *care and protection appraisal*—see section 365.

7 *care and protection assessment*—see section 366.

8 *care and protection principles*—see section 349.

9 *contact*, with a person—see section 347.

10 *family group conference*—see section 75.

11 *in need of care and protection*, for a child or young person—see
12 section 344.

13 *neglect*, of a child or young person—see section 342.

14 (2) In the care and protection chapters:

15 *at risk of abuse or neglect*—see section 343.

16 *former caregiver*, for a child or young person—see section 346.

17 *party*, for an application—see section 699.

18 *significant harm* includes a single instance of significant harm or
19 multiple instances of harm that together make up significant harm.

20 **341** **What is *abuse*?**

21 In this Act:

22 *abuse*, of a child or young person, means—

23 (a) physical abuse; or

- 1 (b) sexual abuse; or
- 2 (c) emotional abuse (including psychological abuse) if the child or
- 3 young person has experienced the abuse or is experiencing the
- 4 abuse in a way that has caused or is causing significant harm to
- 5 his or her wellbeing or development; or
- 6 (d) emotional abuse (including psychological abuse) if—
- 7 (i) the child or young person has seen or heard the physical,
- 8 sexual or psychological abuse of a person with whom the
- 9 child or young person has a domestic relationship, the
- 10 exposure to which has caused or is causing significant
- 11 harm to the wellbeing or development of the child or
- 12 young person; or
- 13 (ii) if the child or young person has been put at risk of seeing
- 14 or hearing abuse mentioned in subparagraph (i), the
- 15 exposure to which would cause significant harm to the
- 16 wellbeing or development of the child or young person.

17 **342 What is *neglect*?**

18 In this Act:

19 ***neglect***, of a child or a young person, means a failure to provide the

20 child or young person with a necessity of life if the failure has

21 caused or is causing significant harm to the wellbeing or

22 development of the child or young person.

23 **Examples—necessities of life**

- 24 1 food
- 25 2 shelter
- 26 3 clothing
- 27 4 health care treatment

28 *Note* An example is part of the Act, is not exhaustive and may extend, but

29 does not limit, the meaning of the provision in which it appears (see

30 Legislation Act, s 126 and s 132).

1 **343** **When are children and young people *at risk of abuse or***
2 ***neglect*?**

3 For the care and protection chapters, a child or young person is
4 *at risk of abuse or neglect* if, on the balance of probabilities, there is
5 a significant risk of the child or young person being abused or
6 neglected.

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

8 1 Jane is 3 months old and the chief executive has already received 5 reports
9 about her. Jane's parents are long-term drug users and Jane was born with
10 neonatal withdrawal syndrome. Jane's parents have agreed to work with the
11 chief executive to address their drug use. However, they have not actually
12 made the changes they agreed to make. Jane's parents do not have contact
13 with extended family and Jane is not regularly seen by any health
14 professionals or other community support people.

15 2 Michael is 7 years old and in the full-time care of his mother. He has never
16 had any contact with his father. Michael's mother has a mental illness
17 characterised by episodes of psychosis. When Michael's mother has been
18 unwell, she has locked Michael and herself in the home for weeks at a time.
19 Michael's mother attempted suicide by driving off a bridge with Michael in
20 the car.

21 3 Tom is 9 years old and is in the sole care of his father. Since Tom was
22 6 years old, the chief executive has received reports that Tom's father calls
23 him derogatory names and yells at him, often in the presence of other people.
24 Tom's school counsellor reports that Tom appears anxious, is fearful of loud
25 noises in the school environment and regularly cries. Tom is assessed as
26 being at risk of childhood depression by the school counsellor.

27 4 Amy is 13 years old and regularly goes missing from home to avoid the
28 constant fighting between her mother and stepfather. Amy is engaging in
29 indiscriminate sexual activity and regularly consumes alcohol and illicit
30 drugs which she pays for through prostitution. Amy has intentionally
31 overdosed on medication 3 times and each overdose has required medical
32 treatment. Amy's parents consider that she is now making her own choices
33 and there is nothing they can do to help her.

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

1 **344 When are children and young people *in need of care and***
2 ***protection?***

3 (1) For the care and protection chapters, a child or young person is
4 *in need of care and protection* if—

5 (a) the child or young person—

6 (i) has been abused or neglected; or

7 (ii) is being abused or neglected; or

8 (iii) is at risk of abuse or neglect; and

9 (b) no-one with parental responsibility for the child or young
10 person is willing and able to protect the child or young person
11 from the abuse or neglect or the risk of abuse or neglect.

12 (2) Without limiting subsection (1), a child or young person is in need
13 of care and protection if—

14 (a) there is a serious or persistent conflict between the child or
15 young person and the people with parental responsibility for
16 him or her (other than the chief executive) to the extent that the
17 care arrangements for the child or young person are, or are
18 likely to be, seriously disrupted; or

19 (b) the people with parental responsibility for the child or young
20 person are dead, have abandoned the child or young person or
21 cannot be found after reasonable inquiry; or

22 (c) the people with parental responsibility for the child or young
23 person are sexually or financially exploiting the child or young
24 person or not willing and able to keep him or her from being
25 sexually or financially exploited.

1 **345 Incident need not have happened in ACT**

- 2 (1) This section applies if a person believes that a child or young person
3 is in need of care and protection under section 344 because the child
4 or young person—
5 (a) has been abused or neglected; or
6 (b) is being abused or neglected; or
7 (c) is at risk of abuse or neglect.
8 (2) It does not matter whether conduct giving rise to the belief happened
9 completely or partly outside the ACT.

10 **346 Who is a *former caregiver*?**

- 11 (1) In the care and protection chapters:
12 *former caregiver* means—
13 (a) for a child or young person for whom it is proposed to make a
14 voluntary care agreement—the person who is providing care
15 for the child or young person when the agreement is proposed;
16 or
17 (b) for any other child or young person—a person who was
18 providing care for the child or young person immediately
19 before parental responsibility for the child or young person was
20 transferred to the chief executive or someone else by order of
21 the Childrens Court or operation of this Act, whether or not the
22 person had that aspect of parental responsibility for the child or
23 young person at that time.
24 (2) However, *former caregiver* does not include a person providing
25 care for the child or young person—
26 (a) at a childcare centre, under a family day care scheme or
27 otherwise for reward; or

- 1 (b) if the person provides care on a casual basis and is not a family
2 member.

3 **347 What is *contact* with a person?**

4 In this Act:

5 ***contact***, with a person, means direct or indirect contact with the
6 person.

7 **Examples—direct contact**

8 physical or face to face contact with the person

9 **Examples—indirect contact**

10 contact by an agent, by telephone or letter or by giving the person something

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

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).

348 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;

- 1 (f) the capacity of the child's or young person's parents, or anyone
2 else, to provide for the child's or young person's needs
3 including emotional and intellectual needs;
- 4 (g) for an Aboriginal or Torres Strait Islander child or young
5 person—that it is a high priority to protect and promote the
6 child's or young person's cultural and spiritual identity and
7 development by, wherever possible, maintaining and building
8 the child's or young person's connections to family,
9 community and culture;
- 10 (h) that it is important for the child or young person to have
11 settled, stable and permanent living arrangements;
- 12 (i) for decisions about placement of a child or young person—the
13 need to ensure that the earliest possible decisions are made
14 about a safe, supportive and stable placement;
- 15 (j) the attitude to the child or young person, and to parental
16 responsibilities, demonstrated by each of the child's or young
17 person's parents or anyone else;
- 18 (k) any abuse or neglect of the child or young person, or a family
19 member of the child or young person;
- 20 (l) any court order that applies to the child or young person, or a
21 family member of the child or young person.
- 22 (2) For the care and protection chapters, in deciding what is in the best
23 interests of a child or young person, a decision-maker may also
24 consider any other fact or circumstance the decision-maker
25 considers relevant.

- 1 **349 Care and protection principles**
- 2 (1) In making a decision under the care and protection chapters in
- 3 relation to a child or young person, a decision-maker must apply the
- 4 following principles (the *care and protection principles*) except
- 5 when it is, or would be, contrary to the best interests of a child or
- 6 young person—
- 7 (a) the primary responsibility for providing care and protection for
- 8 the child or young person lies with the child's or young
- 9 person's parents and other family members;
- 10 (b) priority must be given to supporting the child's or young
- 11 person's parents and other family members to provide for the
- 12 wellbeing, care and protection of the child or young person;
- 13 (c) if the child or young person does not live with his or her family
- 14 because of the operation of this Act—contact with his or her
- 15 family, and significant people, must be encouraged, if
- 16 practicable and appropriate;
- 17 (d) if the child or young person is in need of care and protection
- 18 and the child's or young person's parents and other family
- 19 members are unwilling or unable to provide the child or young
- 20 person with adequate care and protection (whether temporarily
- 21 or permanently)—it is the responsibility of the government to
- 22 share or take over their responsibility;
- 23 (e) if the child or young person does not live with the child's or
- 24 young person's parents because of the operation of this Act—
- 25 the safety and wellbeing of the child are more important than
- 26 the interests of the parents;
- 27 (f) a court should make an order for a child or young person only
- 28 if the court considers that making the order would be better for
- 29 the child or young person than making no order at all.

- (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 677).

350 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 chief executive 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)).

(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)).

351 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.

- 1 (2) A decision-maker may find out the views and wishes of a child or
2 young person—
3 (a) by having regard to—
4 (i) anything said personally by the child or young person to
5 the decision-maker; or
6 (ii) anything said by a representative of the child or young
7 person about the child's or young person's views or
8 wishes; or
9 *Note* Representation of children and young people is dealt with
10 in the *Court Procedures Act 2004*, pt 7A (Procedural
11 provisions—proceedings involving children).
12 (iii) anything about the child's or young person's views or
13 wishes contained in a report given to the decision-maker;
14 or
15 (b) in any other way the decision-maker considers appropriate.
16 (3) A decision-maker must not require a child or young person to
17 express the child's or young person's views or wishes about
18 anything.

1	Chapter 11	Care and protection—
2		reporting, investigating and
3		appraising abuse and neglect
4	Part 11.1	Care and protection—reporting
5		abuse and neglect
6	Division 11.1.1	Definitions
7	352	Definitions—Act
8		In this Act:
9		<i>child concern report</i> means a voluntary report or a mandatory
10		report.
11		<i>mandatory report</i> —see section 355.
12		<i>prenatal report</i> —see section 361.
13		<i>voluntary report</i> —see section 353.
14	Division 11.1.2	Reporting abuse and neglect of
15		children and young people
16	353	Voluntary reporting of abuse and neglect
17	(1)	This section applies if a person believes or suspects that a child or
18		young person—
19	(a)	is being abused; or
20	(b)	is being neglected; or
21	(c)	is at risk of abuse or neglect.

- (2) The person may report (a ***voluntary report***) the belief or suspicion, and the reasons for the belief or suspicion, to the chief executive.

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 873).

Note 2 Giving false or misleading information to the chief executive is an offence (see Criminal Code, s 338).

354 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.

355 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

- 1 (d) the person's reasons for the belief arise from information
2 obtained by the person during the course of, or because of, the
3 person's work (whether paid or unpaid); and
- 4 (e) the person does not, as soon as practicable after forming the
5 belief, report (a ***mandatory report***) to the chief executive—
- 6 (i) the child's or young person's name or description; and
7 (ii) the reasons for the person's belief.
- 8 Maximum penalty: 50 penalty units, imprisonment for 6 months or
9 both.
- 10 *Note 1* A person who gives information honestly and without recklessness
11 under this section does not breach professional ethics and is protected
12 from civil liability (see s 873).
- 13 *Note 2* Giving false or misleading information to the chief executive is an
14 offence (see Criminal Code, s 338).
- 15 (2) In this section:
- 16 ***mandated reporter***—each of the following people is a ***mandated***
17 ***reporter***:
- 18 (a) a doctor;
19 (b) a dentist;
20 (c) a nurse;
21 (d) an enrolled nurse;
22 (e) a midwife;
- 23 *Note* ***Doctor, dentist, nurse, enrolled nurse*** and ***midwife*** are defined in
24 the Legislation Act, dict, pt 1.
- 25 (f) a teacher at a school;
26 (g) a person providing education to a child or young person who is
27 registered, or provisionally registered, for home education
28 under the *Education Act 2004*;

- 1 (h) a police officer;
2 (i) a person employed to counsel children or young people at a
3 school;
4 (j) a person caring for a child at a childcare centre;
5 (k) a person coordinating or monitoring home-based care for a
6 family day care scheme proprietor;
7 (l) a public servant who, in the course of employment as a public
8 servant, works with, or provides services personally to,
9 children and young people or families;
10 (m) the public advocate;
11 (n) an official visitor;
12 (o) a person who, in the course of the person's employment, has
13 contact with or provides services to children, young people and
14 their families and is prescribed by regulation.

15 *person caring for a child at a childcare centre* includes a childcare
16 assistant or aide caring for a child at the childcare centre if the
17 assistant or aide is in paid employment at the childcare centre, but
18 does not include anyone caring for a child as an unpaid volunteer.

19 *teacher*, at a school, includes a teacher's assistant or aide if the
20 assistant or aide is in paid employment at the school.

21 **356 Mandatory reporting—exceptions**

- 22 (1) Section 355 does not apply to a person if the person believes on
23 reasonable grounds that—
24 (a) someone else has made a report to the chief executive about
25 the same child or young person in relation to the same abuse or
26 neglect; and
27 (b) the other person has reported the same reasons for their belief
28 as the person has for their belief.

(2) Section 355 (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.

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

357 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.

- 1 **358 Reports made to public advocate**
- 2 (1) This section applies if—
- 3 (a) a person believes or suspects that a child or young person—
- 4 (i) is being abused; or
- 5 (ii) is being neglected; or
- 6 (iii) is at risk of abuse or neglect; and
- 7 (b) the person reports the belief or suspicion, and the reasons for
- 8 the belief or suspicion, to the public advocate.
- 9 (2) The public advocate must give the chief executive a copy of the
- 10 report.
- 11 (3) The report is taken to be a voluntary report.
- 12 (4) The person who made the report to the public advocate is taken to
- 13 have made a voluntary report.
- 14 *Note 1* There are limits on how the report may be used in evidence
- 15 (see pt 25.5).
- 16 *Note 2* If a person gives information honestly and without recklessness to the
- 17 public advocate, the giving of the information is not a breach of
- 18 confidence or a breach of professional etiquette or ethics or a breach of
- 19 a rule of professional conduct. Also, civil or criminal liability is not
- 20 incurred only because of the giving of the information (see *Public*
- 21 *Advocate Act 2005*, s 15).
- 22 *Note 3* Giving false or misleading information to the public advocate is an
- 23 offence (see *Criminal Code*, s 338).
- 24 **359 Chief executive to act on child concern report**
- 25 (1) This section applies if the chief executive receives a child concern
- 26 report about a child or young person.
- 27 (2) The chief executive must—
- 28 (a) consider the report; and

- 1 (b) carry out an initial assessment of the matters raised in the
2 report to decide if the child or young person may be in need of
3 care and protection; and
- 4 (c) take the action that the chief executive considers appropriate in
5 relation to the initial assessment.
- 6 (3) To carry out an initial assessment of the matters raised in the report,
7 the chief executive may take reasonable steps to obtain further
8 information about the matters.
- 9 **Example—reasonable steps**
10 a home visit to interview family members
- 11 *Note* An example is part of the Act, is not exhaustive and may extend, but
12 does not limit, the meaning of the provision in which it appears (see
13 Legislation Act, s 126 and s 132).
- 14 (4) Without limiting subsection (2) (c), the chief executive may do any
15 of the following:
- 16 (a) give advice to the person who made the child concern report
17 about appropriate assistance that the person may consider to
18 protect the child or young person;
- 19 **Example—par (a)**
20 contact details for support services
- 21 (b) seek information from an information sharing entity to decide
22 the most appropriate response to the child concern report;
- 23 (c) refer a matter raised in the report to the chief police officer if
24 the chief executive suspects on reasonable grounds that it
25 relates to a criminal offence;
- 26 (d) refer the matters raised in the report to a government or
27 community-based service for advice and support services for
28 the child or young person and, if appropriate, the child's or
29 young person's family members;

- 1 (e) provide or arrange support services for the child or young
2 person and, if appropriate, the child's or young person's family
3 members;
- 4 (f) arrange a family group conference in relation to the child or
5 young person;
- 6 *Note* Family group conferences are dealt with in ch 3 and ch 12.
- 7 (g) assist a family member or a significant person to care for the
8 child or young person;
- 9 *Note* Care and protection orders are dealt with in ch 14.
- 10 (h) take no action.
- 11 (5) However, if the chief executive suspects on reasonable grounds that
12 the child or young person may be in need of care and protection the
13 chief executive must decide that the child concern report is a child
14 protection report.
- 15 (6) In this section:
- 16 *information sharing entity*—see section 858.
- 17 **360 Chief executive action on child protection report**
- 18 (1) This section applies if the chief executive decides that a child
19 concern report is a child protection report.
- 20 (2) The chief executive must take the action that the chief executive
21 considers appropriate in relation to the report.
- 22 (3) Without limiting subsection (2), the chief executive may do any of
23 the following:
- 24 (a) seek information from anyone to decide the most appropriate
25 response to the report;

- 1 (b) give advice to the person who made the report about
2 appropriate assistance that the person may consider to protect
3 the child or young person;
- 4 **Example—par (b)**
5 contact details for support services
- 6 *Note* An example is part of the Act, is not exhaustive and may extend,
7 but does not limit, the meaning of the provision in which it
8 appears (see Legislation Act, s 126 and s 132).
- 9 (c) refer a matter raised in the report to the chief police officer if
10 the chief executive suspects on reasonable grounds that it
11 relates to a criminal offence;
- 12 (d) refer the matters raised in the report to a government or
13 community-based service for advice and support services for
14 the child or young person and, if appropriate, the child's or
15 young person's family members;
- 16 (e) provide or arrange support services for the child or young
17 person and, if appropriate, the child's or young person's family
18 members;
- 19 (f) arrange a family group conference in relation to the child or
20 young person;
- 21 *Note* Family group conferences are dealt with in ch 3 and ch 12.
- 22 (g) assist a family member or a significant person to care for the
23 child or young person;
- 24 (h) enter into a voluntary care agreement for the child or young
25 person;
- 26 (i) take no action.
- 27 (4) This section does not affect the chief executive's capacity to—
- 28 (a) carry out a care and protection appraisal of the child or young
29 person under section 367 (Care and protection appraisal—only
30 with agreement or appraisal order); or

- 1 (b) take action under section 370 (Visual examination etc without
2 agreement); or
- 3 (c) take emergency action in relation to the child or young person
4 under section 405 (Emergency action—criteria for taking
5 emergency action); or
- 6 (d) apply to the Childrens Court for a care and protection order
7 under section 423 (Care and protection order—application by
8 chief executive).

9 **Division 11.1.3 Prenatal reporting of anticipated**
10 **abuse and neglect**

11 **361 Prenatal reporting—anticipated abuse and neglect**

- 12 (1) This section applies if, during a pregnancy, a person believes or
13 suspects that a child who may be born as a result of the pregnancy
14 may be in need of care and protection.
- 15 (2) The person may report (a *prenatal report*) the belief or suspicion,
16 and the reasons for the belief or suspicion, to the chief executive.
- 17 (3) The chief executive may, with the consent of the pregnant woman,
18 take the action the chief executive considers appropriate in relation
19 to the report.
- 20 (4) Without limiting subsection (3), the chief executive may do any of
21 the following with the consent of the pregnant woman:
 - 22 (a) provide a voluntary assessment of whether the child is likely to
23 be in need of care and protection after the child is born;
 - 24 (b) provide or arrange voluntary support services for the pregnant
25 woman, and any family member who may be involved in
26 caring for the child;

- 1 (c) refer the matters raised in the report to a government or
2 community-based service for advice and support services for
3 the pregnant woman and any family member who may be
4 involved in caring for the child.
- 5 (5) The chief executive may also, without the consent of the pregnant
6 woman, give advice to the person who made the report about
7 appropriate assistance for the pregnant woman that the person may
8 consider.
- 9 **Example**
10 contact details for support services
- 11 *Note* An example is part of the Act, is not exhaustive and may extend, but
12 does not limit, the meaning of the provision in which it appears (see
13 Legislation Act, s 126 and s 132).
- 14 (6) The chief executive may also ask the pregnant woman to consent to
15 the chief executive doing either or both of the following:
- 16 (a) giving prenatal information to a prenatal information sharing
17 entity;
- 18 (b) asking a prenatal information sharing entity for prenatal
19 information.
- 20 (7) If the pregnant woman does not consent under subsection (6), the
21 chief executive may give the prenatal information to the prenatal
22 information sharing entity, or ask the prenatal information sharing
23 entity for the prenatal information, only if the chief executive
24 suspects on reasonable grounds that the child may be in need of care
25 and protection after the child is born.
- 26 (8) The chief executive is not required to act in relation to a report
27 under this section.

- (9) The chief executive must ensure, as far as practicable, that any action taken because of this section is appropriate and consistent with the pregnant woman's human rights.

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 873).

Note 2 Giving false or misleading information to the chief executive 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

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

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;

- 1 (d) a police officer or a member of a police service or force of a
2 State;
- 3 (e) an entity established under a law of a State or the
4 Commonwealth;
- 5 (f) the holder of a position established under a law of a State or
6 the Commonwealth;
- 7 (g) any of the following entities that would, after the child's birth,
8 provide a service to, or have contact with, the child or a person
9 who would be involved in the care of the child:
- 10 (i) an administrative unit;
- 11 (ii) a territory authority (other than the legal aid commission);
- 12 (iii) a territory instrumentality;
- 13 (iv) a public employee (other than a judge or magistrate);
- 14 (v) a community-based service.

15 **362 Offence—false or misleading prenatal report**

16 A person commits an offence if—

- 17 (a) the person makes a prenatal report; and
- 18 (b) the report contains information or allegations that are false or
19 misleading in a material particular; and
- 20 (c) the person knows that the information or allegations—
- 21 (i) are false or misleading in a material particular; or
- 22 (ii) omit anything without which the information or
23 allegations are false or misleading in a material particular.

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

- 1 **363 How prenatal reports may be used in evidence**
- 2 (1) This section applies if a person honestly and without recklessness
- 3 makes a prenatal report.
- 4 (2) The report, or evidence of the contents of the report, is admissible in
- 5 evidence in a proceeding in a court only if—
- 6 (a) the report or evidence is given to the court by the person who
- 7 made the report; or
- 8 (b) the proceeding is before the Childrens Court, under chapter 11
- 9 (Care and protection—reporting, investigating and appraising
- 10 abuse and neglect) or chapter 14 (Care and protection—care
- 11 and protection orders), in relation to the child born as a result
- 12 of the pregnancy that is the subject of the report; or
- 13 (c) the proceeding is before a court hearing an appeal from a
- 14 decision of the Childrens Court in a proceeding mentioned in
- 15 paragraph (b); or
- 16 (d) the proceeding is about a charge or allegation made in a
- 17 proceeding against a person in relation to the person's
- 18 exercising a function under this Act.
- 19 **364 Prenatal report information is sensitive information**
- 20 (1) For the definition of *sensitive information* in section 844, prenatal
- 21 report information is also sensitive information.
- 22 (2) In this section:
- 23 *prenatal report information* means information—
- 24 (a) in a prenatal report; or
- 25 (b) that would allow the information in a prenatal report to be
- 26 worked out; or

- 1 (c) that identifies a person as a person who made a prenatal report;
2 or
3 (d) that would allow a person's identity as a person who made a
4 prenatal report to be worked out.

Part 11.2 Care and protection—appraisals

Division 11.2.1 Definitions

365 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 chief executive 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 chief executive;
 - (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;

- 1 (viii) asking the child or young person or someone else to
2 comply with any arrangement made by the chief
3 executive for the appraisal or a care and protection
4 assessment.

5 **366 What is a *care and protection assessment*?**

6 In the care and protection chapters:

7 *care and protection assessment* of a person—

8 (a) means any of the following carried out by an authorised
9 assessor for section 437 (Care and protection assessment—
10 authorisation of assessors):

- 11 (i) a medical examination or test of the person;
12 (ii) a dental examination or test of the person;
13 (iii) a social assessment of the person;
14 (iv) a paediatric or developmental assessment of the person;
15 (v) a psychological examination or test of the person;
16 (vi) a psychiatric examination or test of the person;
17 (vii) if the person is a parent or other person with parental
18 responsibility—an assessment of the person's parenting
19 capacity; but

20 (b) does not include an assessment, examination or test that—

- 21 (i) involves surgery; or
22 (ii) is prescribed by regulation.

23 *Note* A person authorised under s 437 (Care and protection assessment—
24 authorisation of assessors) must be suitably qualified for the assessment
25 (see s 437 (2)).

Division 11.2.2 Appraisal with agreement or order

367 Care and protection appraisal—only with agreement or appraisal order

- (1) This section applies if the chief executive decides that a child concern report about a child or young person is a child protection report under section 359 (5) (Chief executive to act on child concern report).

Example

The chief executive receives a voluntary report about 10 year old Sarah on the basis of which the chief executive suspects on reasonable grounds that she may be in need of care and protection. Under s 359 (5), the chief executive decides that the report is a child protection report.

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

- (2) The chief executive may carry out a care and protection appraisal of the child or young person if the chief executive suspects on reasonable grounds that the child or young person may be in need of care and protection.

- (3) However, the chief executive may carry out an appraisal only if—

- (a) 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 371.

- (b) the chief executive—

- (i) unless it is not practicable, or not in the best interests of the child or young person, to do so—has taken reasonable steps to obtain the agreement to the appraisal of each parent or each other person with daily care responsibility; and

- 1 (ii) has obtained the agreement to the appraisal of at least
2 1 parent or other person with daily care responsibility; or
- 3 (c) section 369 (Care and protection appraisal—agreement need
4 not be sought if risk etc) applies in relation to the child or
5 young person and the appraisal is an activity mentioned in
6 section 370 only (Visual examination etc without agreement).
- 7 **Examples—subpar (b) (i)—not practicable to obtain agreement**
- 8 1 the identity of the parent or other person cannot be established
9 2 the parent or other person cannot be found
- 10 **Examples—subpar (b) (i)—not in best interests of child or young**
11 **person to obtain agreement**
- 12 1 the parent or other person is the subject of an allegation of abuse or
13 neglect of the child or young person
- 14 2 the parent’s or other person’s contact with the child or young person is
15 not allowed, or is limited, under a court order (under this Act or
16 another law in force in the Territory
- 17 *Note* In certain other circumstances the chief executive need not seek
18 agreement (see s 369) and may visually examine or interview the child
19 or young person (see s 370).
- 20 (4) The agreement of a person under subsection (3) (b) may be given
21 orally.
- 22 (5) To avoid doubt, if the chief executive shares daily care
23 responsibility for the child or young person the agreement of
24 another person who has daily care responsibility is not required for
25 subsection (3) (b).
- 26 (6) The chief executive must keep a written record of an agreement
27 under subsection (3) (b) given orally.

368 Care and protection appraisal—acknowledgement of agreement

When seeking the agreement of a person under section 367 (3) (b), the chief executive 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; and
- (c) that the agreement may be refused.

369 Care and protection appraisal—agreement need not be sought if risk etc

- (1) This section applies if the chief executive proposes to carry out a care and protection appraisal of a child or young person and the chief executive suspects on reasonable grounds that seeking the agreement of a parent or other person who has daily care responsibility for the child or young person would be likely to—

- (a) put the child or young person at significant risk of abuse or neglect; or
- (b) jeopardise a criminal investigation.

Example

The chief executive receives a child concern report about Andrew and decides that the report is a child protection report. The person making the report states that Andrew has told his teacher that his father is sexually abusing him and has threatened to hurt him if he tells anyone. The chief executive suspects that seeking the agreement of a person who has daily care responsibility would be likely to put Andrew at significant risk of emotional and physical abuse.

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

- (2) The chief executive need not seek the agreement of a parent or other person who has daily care responsibility for the child or young person.

- 1 **370 Visual examination etc without agreement**
- 2 (1) If section 369 applies in relation to a child or young person, the
- 3 chief executive may, without the agreement of a parent or other
- 4 person who has daily care responsibility for the child or young
- 5 person—
- 6 (a) visually examine the child or young person; and
- 7 (b) interview the child or young person.
- 8 (2) If the child or young person is a student at a school, a patient at a
- 9 health facility or being cared for by a childcare service, the chief
- 10 executive—
- 11 (a) may enter the school, health facility or childcare service to
- 12 visually examine or interview the child or young person; and
- 13 (b) if entering the school, health facility or childcare service,
- 14 must—
- 15 (i) produce his or her identity card; and
- 16 (ii) tell the person in charge of the school, health facility or
- 17 childcare service the purpose of the entry.
- 18 (3) After the chief executive visually examines or interviews the child
- 19 or young person, the chief executive must take reasonable steps to
- 20 tell at least 1 parent or other person who has daily care
- 21 responsibility for the child or young person that the examination or
- 22 interview has been carried out.
- 23 *Note 1* The chief executive may carry out a care and protection appraisal, with
- 24 the agreement of a person who has daily care responsibility for the child
- 25 or young person, if the chief executive suspects on reasonable grounds
- 26 that the child or young person may be in need of care and protection
- 27 (see s 367).
- 28 *Note 2* The chief executive may carry out a care and protection appraisal if an
- 29 appraisal order is in force for the child or young person.

- 1 (4) However, the chief executive need not tell a person about the
2 examination or interview if satisfied that doing so would be likely
3 to—
- 4 (a) put the child or young person at significant risk of abuse or
5 neglect; or
- 6 (b) jeopardise a criminal investigation.
- 7 (5) This section does not affect the chief executive's capacity to—
- 8 (a) do anything mentioned in section 359 (4) (Chief executive to
9 act on child concern report) or section 360 (3) (Chief executive
10 action on child protection report); or
- 11 (b) take emergency action in relation to the child or young person
12 under section 405 (Emergency action—criteria for taking
13 emergency action); or
- 14 (c) apply to the Childrens Court for a care and protection order
15 under section 423 (Care and protection order—application by
16 chief executive); or
- 17 (d) give information under part 25.3 (Sharing protected
18 information).

Division 11.2.3 Appraisal orders

Note to div 11.2.3

The chief executive 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 chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 678).

371 What is an *appraisal order*?

In the care and protection chapters:

***appraisal order*—**

- (a) means an order authorising the chief executive 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 365).

- (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 chief executive 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 chief executive 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 chief executive or someone else;

- 1 (vi) that a person not have contact with the child or young
2 person, or not have contact with the child or young person
3 except if a stated person or a person of a stated class is
4 present; and

5 *Note* **Contact** includes indirect contact (see s 347).

- 6 (c) may, but need not, include a temporary parental responsibility
7 provision.

8 **372 What is a temporary parental responsibility provision?**

9 In the care and protection chapters:

10 **temporary parental responsibility provision—**

- 11 (a) means a provision in an appraisal order for a child or young
12 person that transfers daily care responsibility for the child or
13 young person to the chief executive; and
14 (b) may provide for the chief executive to enter and search any
15 place the chief executive believes on reasonable grounds the
16 child or young person is, to find the child or young person.

17 *Note 1* A temporary parental responsibility provision must not be longer than
18 4 weeks (see s 383).

19 *Note 2* The chief executive may ask the chief police officer for assistance in
20 carrying out a temporary parental responsibility provision in an
21 appraisal order. The chief police officer must, if asked, give assistance
22 to the chief executive by assigning police officers to assist the chief
23 executive in carrying out the action (see s 678).

24 **373 Offence—contravene appraisal order**

25 A person commits an offence if—

- 26 (a) an appraisal order is in force for a child or young person; and
27 (b) the person has been given a copy of the order; and

- 1 (c) the person—
2 (i) engages in conduct that contravenes a provision of the
3 order; or
4 (ii) fails to comply with a requirement made of the person
5 under the order.

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

8 **374 Appraisal orders—prevails over care and protection**
9 **orders**

10 If an appraisal order is made for a child or young person for whom a
11 care and protection order is already in force, the appraisal order
12 prevails to the extent of any inconsistency between the orders.

13 *Note* Care and protection orders are made under pt 14.4.

14 **375 Appraisal orders—application by chief executive**

15 The chief executive may apply for an appraisal order for a child or
16 young person if—

- 17 (a) the chief executive is satisfied that a care and protection
18 appraisal is necessary to assess whether the child or young
19 person is in need of care and protection; and
20 (b) for a parent or other person who has daily care responsibility
21 for the child or young person, the chief executive either—
22 (i) has, under section 367 (Care and protection appraisal—
23 only with agreement or appraisal order) (unless it was not
24 practicable, or not in the best interests of the child or
25 young person, to do so) taken reasonable steps to obtain
26 the agreement to the appraisal of a parent or each other
27 person with daily care responsibility and no parent or
28 other person with daily care responsibility has agreed to
29 the appraisal; or

- 1 (ii) need not, under section 369 (Care and protection
2 appraisal—agreement need not be sought if risk etc) seek
3 the agreement of the person to the appraisal.

4 *Note 1* Statements, documents and reports must be included in the application
5 (see s 695).

6 *Note 2* Oral applications may also be made (see s 697).

7 **376 Appraisal orders—urgent applications**

- 8 (1) An application for an appraisal order may be made by phone, fax or
9 another way if necessary because of urgent circumstances.
- 10 (2) An application made under subsection (1) must be given to the
11 following people before the application is heard by the court:
- 12 (a) the child or young person;
- 13 (b) each parent of the child or young person;
- 14 (c) each other person (if any) who has daily care responsibility, or
15 long-term care responsibility, for the child or young person;
- 16 (d) the public advocate.
- 17 (3) The Childrens Court must if practicable hear and decide the
18 application on the day it is filed.

19 **377 Appraisal orders—application to state grounds**

20 An application for an appraisal order must state—

- 21 (a) the grounds on which the order is sought; and

- 1 (b) if the application includes an application for a temporary
2 parental responsibility provision—the proposed arrangements
3 for the child’s or young person’s care during the period of
4 temporary parental responsibility.

5 **Example—ground on which order sought**

6 a person with parental responsibility does not agree to the appraisal

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

10 **378 Appraisal orders—who must be given application**

11 (1) The chief executive must give a copy of an application for an
12 appraisal order for a child or young person to the following people
13 at least 1 working day before the application is to be heard by the
14 court:

- 15 (a) the child or young person;
16 (b) each parent of the child or young person;
17 (c) each other person (if any) who has daily care responsibility, or
18 long-term care responsibility, for the child or young person;
19 (d) the public advocate.

20 (2) This section does not apply—

- 21 (a) to an application under section 376 (Appraisal orders—urgent
22 applications); or
23 (b) if the chief executive or a police officer has daily care
24 responsibility for a child or young person under part 13.1
25 (Emergency action).

26 *Note* In those cases, the chief executive need only give a copy of the
27 application to people before the application is heard by the court
28 (see s 376 and s 412).

1 **379 Appraisal orders—court to consider application promptly**

2 (1) The Childrens Court must hear and decide the application not later
3 than 5 working days after the day the application is filed.

4 (2) This section does not apply to an application under section 376
5 (Appraisal orders—urgent applications).

6 *Note* The court must if practicable hear and decide the application on the day
7 it is filed (see s 376).

8 **380 Appraisal orders—no interim orders**

9 The Childrens Court must not make an interim appraisal order.

10 **381 Appraisal orders—criteria for making**

11 The Childrens Court may make an appraisal order for a child or
12 young person only if satisfied that—

13 (a) a parent or other person who has daily care responsibility for
14 the child or young person either—

15 (i) does not agree to the appraisal; or

16 (ii) under section 367 (3) (b) was not asked to agree to the
17 appraisal because it was not practicable, or not in the best
18 interests of the child or young person, to do so; or

19 (iii) was not asked to agree to the appraisal because of
20 section 369 (2) (Care and protection appraisal—
21 agreement need not be sought if risk etc); and

22 (b) a care and protection appraisal is necessary to assess whether
23 the child or young person is in need of care and protection.

24 *Note 1* In a proceeding for an appraisal order, a fact is proved if it is proved on
25 the balance of probabilities (see s 710).

26 *Note 2* The court may make an order imposing an obligation on a person only if
27 the person agrees to it, has been given an opportunity to be heard about
28 it or cannot be found (see s 717).

382 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 chief executive for the appraisal; or
 - (iii) that a person or entity allow entry to a stated place for the appraisal;
 - (iv) a person or entity give the chief executive 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 chief executive 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 347).

- (b) a temporary parental responsibility provision.

383 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 372.

Note 2 The length of an appraisal order may be extended to a maximum of 8 weeks (see s 387).

384 Appraisal orders—extension application

(1) The chief executive 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 695).

Note 2 Oral applications may also be made (see s 697).

(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.

385 Appraisal orders—who must be given extension application?

The chief executive 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.

- 1 **386** **Appraisal orders—court to consider extension**
2 **application promptly**
- 3 (1) After initially considering an application for extension of an
4 appraisal order, the Childrens Court may adjourn further
5 consideration of the application only if the Childrens Court is
6 satisfied that the adjournment is appropriate considering the urgency
7 of the application.
- 8 (2) The Childrens Court must hear and decide the application not later
9 than 5 working days after the day the application is filed.
- 10 (3) If an appraisal order is in force on the day the application is filed,
11 but would end before the application is heard, the order continues in
12 force until the application is heard and decided (whether or not the
13 application is decided within the period required under this section).
- 14 **387** **Appraisal orders—criteria for extension**
- 15 The Childrens Court may, by order, extend an appraisal order only
16 if—
- 17 (a) the Childrens Court is satisfied that the appraisal cannot be
18 properly carried out unless the order is extended; and
- 19 (b) the total length of the order and the proposed extension will not
20 be longer than 8 weeks.
- 21 *Note 1* In a proceeding for an appraisal order, a fact is proved if it is proved on
22 the balance of probabilities (see s 710).
- 23 *Note 2* The court may make an order imposing an obligation on a person only if
24 the person agrees to it, has been given an opportunity to be heard about
25 it or cannot be found (see s 717).

1 **Chapter 12** **Care and protection—voluntary**
2 **agreements to transfer or**
3 **share parental responsibility**

4 **Part 12.1** **Definitions**

5 **388** **Definitions—Act and ch 12**

6 (1) In this Act:

7 *voluntary care agreement*—see section 393 (1).

8 (2) In this chapter:

9 *party*—see section 395 (1).

10 *registered*, for a family group conference agreement—means
11 registered under section 390.

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.

389 **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 chief executive); or

(b) shared with a person (other than the chief executive) 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 chief executive 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 chief executive parental responsibility for the child or young person (see s 76).

- 1 (2) The chief executive may apply to the Childrens Court to register the
2 family group conference agreement.
- 3 *Note* If a form is approved under s 885 for an agreement, the form must be
4 used.
- 5 (3) An application to register a family group conference agreement
6 must be accompanied by—
- 7 (a) a copy of the family group conference agreement; and
- 8 (b) a statement signed by each party to the agreement (other than
9 the chief executive) to the effect that the party has had an
10 opportunity to get legal advice about the meaning and effect of
11 the agreement.
- 12 (4) The chief executive must give the public advocate a copy of the
13 application.

14 **390 Registered family group conference agreement—**
15 **registration**

- 16 (1) This section applies if the chief executive applies to the Childrens
17 Court under section 389 (2) to register a family group conference
18 agreement.
- 19 (2) If the Childrens Court is satisfied that it could make a care and
20 protection order under this Act with the same effect as the family
21 group conference agreement, the Childrens Court must register the
22 agreement.
- 23 *Note* A family group conference agreement must not transfer to, or share
24 with, the chief executive parental responsibility for the child or young
25 person (see s 76).
- 26 (3) If the Childrens Court is not satisfied that it could make a care and
27 protection order under this Act with the same effect as the family
28 group conference agreement, the Childrens Court must refuse to
29 register the agreement.

- 1 (4) If the Childrens Court refuses to register a family group conference
2 agreement, the court must tell the chief executive about the refusal.

3 **391 Registered family group conference agreement—notice**

- 4 (1) If the Childrens Court registers a family group conference
5 agreement about a child or young person under section 390 (2), the
6 court must tell the chief executive and the public advocate, by
7 written notice (a *registration notice*) about the registration.

- 8 (2) If the chief executive is given a registration notice, the chief
9 executive must give a copy of the registration notice to each person
10 who was invited to attend the family group conference.

11 **392 Registered family group conference agreement—effect**
12 **and enforcement**

13 A registered family group conference agreement has effect as if it
14 were a care and protection order of the Childrens Court and may be
15 enforced accordingly.

16 *Note* Care and protection orders are dealt with in ch 14. It is an offence to
17 contravene a care and protection order (see s 422). See also provisions
18 about police assistance in Chapter 18 and enforcement generally in
19 ch 23.

Part 12.3 Voluntary agreement to share parental responsibility with chief executive

393 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 chief executive 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 chief executive 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 chief executive is 1 of the people, no-one else may discharge the responsibility in a way that would be incompatible with the chief executive'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 chief executive by way of contribution to the cost of the care of the child or young person.

1 (3) The contribution must not be more than the amount paid by the
2 Territory for the care of the child or young person.

3 (4) The contribution is a debt due and payable to the Territory.

4 **394 Voluntary care agreements—who may initiate?**

5 Negotiations for making or ending a voluntary care agreement may
6 be started by any of the following people:

7 (a) the chief executive;

8 (b) the child or young person (or a person acting for the child or
9 young person);

10 (c) a parent of the child or young person;

11 (d) someone else who has daily care responsibility, or long-term
12 care responsibility, for the child or young person.

13 **395 Voluntary care agreements—who are *parties*?**

14 (1) In this chapter:

15 *party*, for a voluntary care agreement, means the following people:

16 (a) the chief executive;

17 (b) a parent of the child or young person who entered the
18 agreement;

19 (c) someone else who entered the agreement and who has daily
20 care responsibility, or long-term care responsibility, for the
21 child or young person.

22 (2) A voluntary care agreement is not void or voidable because a party
23 to the agreement is not an adult.

396 Voluntary care agreements—chief executive's criteria

The chief executive may enter into a voluntary care agreement only if—

- (a) the chief executive 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

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

- (b) the chief executive 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 chief executive 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 chief executive 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 school-leaving age or older, the chief executive—
- (i) obtains the young person's agreement to the voluntary care agreement; or

- 1 (ii) is satisfied that the young person does not have sufficient
2 maturity or developmental capacity to understand and
3 agree to the proposed voluntary care agreement.

4 *Note* **School-leaving age** is 15 years old (see dict).

5 **397 Voluntary care agreements—start day**

6 If the chief executive has entered into a voluntary care agreement,
7 the chief executive starts sharing responsibility for the child or
8 young person under the voluntary care agreement—

- 9 (a) when the agreement is entered into; or
10 (b) if the agreement states a later day—on the later day.

11 **398 Voluntary care agreements—length**

12 (1) The length of a voluntary care agreement must be stated in the
13 agreement.

14 (2) A voluntary care agreement—

15 (a) for a voluntary care agreement in relation to a young person
16 who is school-leaving age or older—may be longer than
17 6 months if the young person agrees; and

18 (b) in any other case—must be not longer than 6 months.

19 **399 Voluntary care agreements—extension**

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

22 (a) the total length of the voluntary care agreement and the
23 proposed extension will be not longer than—

24 (i) 6 months; or

- 1 (ii) if the voluntary care agreement is in relation to a young
2 person who is school-leaving age or older and the young
3 person agrees to a period longer than 6 months—the
4 longer period; or
- 5 (b) at the end of the proposed extension, the child or young person
6 will not have been cared for under a voluntary care agreement
7 for more than—
- 8 (i) 6 months in the previous 12 months; or
- 9 (ii) if the voluntary care agreement is in relation to a young
10 person who is school-leaving age or older and the young
11 person agrees to a period longer than 6 months—the
12 longer period.
- 13 (2) However, the chief executive may agree to extend the voluntary care
14 agreement only if—
- 15 (a) the chief executive—
- 16 (i) has considered whether another form of assistance would
17 be preferable; and
- 18 (ii) is satisfied that the voluntary sharing of responsibility for
19 the child or young person under the voluntary care
20 agreement is appropriate; and
- 21 (iii) if satisfied that the child or young person has sufficient
22 developmental capacity to understand that it is proposed
23 that the child or young person will continue to be
24 temporarily cared for under a voluntary care agreement—
25 finds out and considers the child's or young person's
26 views and wishes; and
- 27 (b) for voluntary care agreement about a young person who is
28 school-leaving age or older—
- 29 (i) the young person agrees to the extension; or

1 (ii) the young person does not have sufficient maturity or
2 developmental capacity to understand and agree to the
3 proposed voluntary care agreement.

4 (3) A voluntary care agreement may be extended more than once.

5 **400 Voluntary care agreements—early ending**

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

8 **401 Voluntary care agreements—return of children and young**
9 **people**

10 (1) If a voluntary care agreement ends, the chief executive must return
11 the child or young person as soon as practicable after the day the
12 voluntary care agreement ends, to a former caregiver of the child or
13 young person or other person as agreed between the parties to the
14 agreement.

15 (2) The chief executive shares responsibility for the child or young
16 person under the voluntary care agreement until the child or young
17 person is returned.

18 (3) The chief executive's responsibility for the child or young person
19 under the voluntary care agreement ends when the child or young
20 person is returned.

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

23 (a) emergency action is being taken in relation to the child or
24 young person; or

25 *Note* Emergency action may be taken under ch 13.

1 (b) the chief executive has applied to the Childrens Court for a
2 care and protection order including a parental responsibility
3 provision that would give the chief executive daily care
4 responsibility or long-term care responsibility, or both, for the
5 child or young person.

6 *Note* Parental responsibility provisions are dealt with in div 1.3.2.
7 Care and protection orders are dealt with in ch 14.

8 (5) Subsection (4) does not allow the chief executive to keep
9 responsibility for the child or young person under the voluntary care
10 agreement if the Childrens Court refuses the chief executive's
11 application.

Chapter 13 **Care and protection and
therapeutic protection—
emergency situations**

Part 13.1 **Emergency action**

402 **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 344.

403 **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.

1 **404 What is *emergency action*?**

2 In this Act:

3 ***emergency action***, taken by the chief executive or a police officer,
4 for a child or young person—

5 (a) means transferring daily care responsibility for the child or
6 young person to the chief executive or police officer; and

7 (b) includes arranging for the child’s or young person’s care and
8 protection by keeping the child or young person at a place or
9 by moving the child or young person from a place to another
10 place.

11 *Note 1* If the chief executive has daily care responsibility for a child or young
12 person, the chief executive must place the child or young person with an
13 out-of-home carer (see pt 15.4) unless the child or young person is in
14 therapeutic protection.

15 *Note 2* An authorised person or police officer may at any time enter premises if
16 the authorised person or police officer believes on reasonable grounds
17 that a child or young person at the premises is in need of emergency
18 care and protection and the purpose of the entry is to take emergency
19 action for the child or young person (including using force that is
20 reasonable and necessary to obtain entry to safeguard the wellbeing of
21 the child or young person) (see s 813).

22 **405 Emergency action—criteria for taking emergency action**

23 (1) The chief executive or a police officer may take emergency action
24 for a child or young person if the chief executive or police officer
25 believes on reasonable grounds that the child or young person is in
26 need of emergency care and protection or emergency therapeutic
27 protection.

28 (2) To remove any doubt, the chief executive or police officer may take
29 emergency action for a child or young person if the child or young
30 person is in the care of—

31 (a) a parent of the child or young person; or

- 1 (b) someone else who has daily care responsibility for the child or
2 young person.

3 *Note* Daily care responsibility for a child or young person is dealt with in
4 s 19.

5 **406 Emergency action—assistance**

6 The chief executive or police officer may use whatever assistance is
7 necessary and reasonable to take emergency action.

8 *Note* The chief executive may ask the chief police officer for assistance in
9 carrying out emergency action and the chief police officer must assign
10 police officers to assist the chief executive (see pt 18.1).

11 **407 Emergency action—certain people must be told**

- 12 (1) If a police officer takes emergency action for a child or young
13 person, the police officer must—

14 (a) immediately tell the chief executive, in writing—

15 (i) the name of the child or young person; and

16 (ii) why the emergency action was taken; and

17 (b) if practicable—tell the following people about the emergency
18 action as soon as practicable:

19 (i) the parents of the child or young person;

20 (ii) each other person (if any) who has daily care
21 responsibility, or long-term care responsibility, for the
22 child or young person; and

23 (c) deliver the child or young person to the place or person advised
24 by the chief executive.

25 (2) However, if it is not practicable for the police officer to tell the chief
26 executive in writing immediately, the police officer may tell the
27 chief executive orally immediately and then in writing as soon as
28 practicable.

- 1 (3) If the chief executive takes emergency action for a child or young
2 person, or is told that a police officer has taken emergency action for
3 a child or young person, the chief executive must, as soon as
4 practicable, tell the following people that emergency action has been
5 taken for the child or young person:
- 6 (a) if not already told about the emergency action—
- 7 (i) the parents of the child or young person; and
- 8 (ii) each other person (if any) who has daily care
9 responsibility, or long-term care responsibility, for the
10 child or young person;
- 11 (b) the public advocate;
- 12 (c) the Childrens Court.

13 **408 Emergency action—daily care responsibility after action**

- 14 (1) If the chief executive takes emergency action for a child or young
15 person, the chief executive has daily care responsibility for the child
16 or young person.
- 17 (2) If a police officer takes emergency action for a child or young
18 person, the police officer has daily care responsibility for the child
19 or young person until the police officer tells the chief executive
20 about the emergency action under section 407.
- 21 *Note* The police officer must tell the chief executive immediately in writing,
22 or, if that is not practicable, immediately orally and as soon as
23 practicable in writing (see s 407 (1) and (2)).
- 24 (3) After the police officer tells the chief executive about the emergency
25 action, the chief executive has daily care responsibility for the child
26 or young person.

- 1 (4) The chief executive may authorise a police officer to exercise daily
2 care responsibility for a child or young person on behalf of the chief
3 executive.

4 *Note* If 2 or more people have parental responsibility for a child or young
5 person, either of them may discharge the responsibility. However, if the
6 chief executive is 1 of the people, no-one else may discharge the
7 responsibility in a way that would be incompatible with the chief
8 executive's discharge of the responsibility (see s 18 and s 474 (2)).

9 **409 Emergency action—length of daily care responsibility**

10 If the chief executive or a police officer takes emergency action for
11 a child or young person, the chief executive or police officer may
12 keep daily care responsibility for the child or young person without
13 an order of the Childrens Court—

- 14 (a) for not longer than 2 working days after the day the emergency
15 action was taken; or
16 (b) if the 2 working days are interrupted by a Saturday, a Sunday
17 and a public holiday—until the matter can be brought before
18 the court on the next sitting day of the court.

19 **410 Care and protection appraisal and placement**

20 If the chief executive has daily care responsibility for a child or
21 young person under this division, the chief executive may make
22 arrangements for the care and protection of the child or young
23 person including—

- 24 (a) arranging a care and protection appraisal that includes an
25 examination of the circumstance that led to the taking of the
26 emergency action; and

27 *Note* Care and protection appraisals are dealt with in pt 11.2.

- 28 (b) placing the child or young person with a person including—
29 (i) a parent of the child or young person; or

- 1 (ii) someone else who has daily care responsibility, or
2 long-term care responsibility, for the child or young
3 person; or
4 (iii) a former caregiver of the child or young person.

5 **411 Emergency action—contact with family**

- 6 (1) If the chief executive or a police officer has daily care responsibility
7 for a child or young person under this division, the chief executive
8 or police officer must, as far as practicable, allow reasonable contact
9 between the child or young person and his or her family members
10 and significant people.
11 (2) However, the chief executive or police officer is not required to
12 allow contact if the contact would create a risk of harm to the child
13 or young person.

14 **412 Emergency action—application for orders**

- 15 (1) This section applies if—
16 (a) the chief executive or a police officer has daily care
17 responsibility for a child or young person under this division;
18 and
19 (b) the chief executive applies for any of the following orders for
20 the child or young person:
21 (i) an appraisal order;
22 (ii) a care and protection order;
23 (iii) an assessment order;
24 (iv) a therapeutic protection order.

- 1 (2) The chief executive need only give a copy of the application to
2 people under the following sections before the application is heard
3 by the Childrens Court:
- 4 (a) section 378 (Appraisal orders—who must be given
5 application);
- 6 (b) section 426 (Care and protection orders—who must be given
7 application);
- 8 (c) section 444 (Assessment orders—who must be given
9 application);
- 10 (d) section 540 (Therapeutic protection orders—who must be
11 given application).
- 12 (3) The Childrens Court must give initial consideration to the
13 application on the day it is filed.

14 **413 Emergency action—end of daily care responsibility**

- 15 (1) This section applies if the chief executive or a police officer has
16 daily care responsibility for a child or young person under this
17 division.
- 18 (2) The chief executive or police officer stops having daily care
19 responsibility for the child or young person if—
- 20 (a) the child or young person is returned to someone mentioned in
21 section 414 (2); or
- 22 (b) the Childrens Court makes an order giving daily care
23 responsibility for the child or young person to someone else.

- 1 **414 Emergency action—return of child or young person**
- 2 (1) This section applies if the chief executive or a police officer has
- 3 daily care responsibility for a child or young person under this
- 4 division and, at the end of the period for which the chief executive
- 5 or police officer may keep responsibility—
- 6 (a) none of the following orders have been made for the child or
- 7 young person:
- 8 (i) an appraisal order with a temporary parental
- 9 responsibility provision;
- 10 (ii) an interim care and protection order with a parental
- 11 responsibility provision;
- 12 (iii) a care and protection order with a parental responsibility
- 13 provision;
- 14 (iv) an interim therapeutic protection order;
- 15 (v) a therapeutic protection order; and
- 16 (b) the chief executive or police officer still has daily care
- 17 responsibility for the child or young person.
- 18 (2) The chief executive or police officer must deliver the child or young
- 19 person into the care of 1 of the following people:
- 20 (a) a parent of the child or young person who has parental
- 21 responsibility for the child or young person;
- 22 (b) someone else who has daily care responsibility, or long-term
- 23 care responsibility, for the child or young person;
- 24 (c) a former caregiver of the child or young person.

Part 13.2 Emergency action release orders

415 What is an *emergency action release order*?

In this Act:

emergency action release order, for a child or young person for whom the chief executive 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.

416 Emergency action release order—application

- (1) This section applies if the chief executive 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 695).

Note 2 Oral applications may also be made (see s 697).

1 **417 Emergency action release order—application to state**
2 **grounds**

3 An application for an emergency action release order must state the
4 grounds on which the order is sought.

5 **418 Emergency action release order—who must be given**
6 **application**

7 The applicant must give a copy of the application for the emergency
8 action release order to the following people before the application is
9 heard by the court:

- 10 (a) the child or young person;
11 (b) each parent of the child or young person;
12 (c) each other person (if any) who had daily care responsibility, or
13 long-term care responsibility, for the child or young person
14 immediately before the emergency action was taken;
15 (d) the chief executive;
16 (e) the public advocate.

17 *Note* If the chief executive applies for an appraisal order, a care and
18 protection order, an assessment order or a therapeutic protection order
19 for the child or young person, the chief executive need only give a copy
20 of the application to people before the application is heard by the court
21 (see s 412).

- 1 **419 Emergency action release order—criteria for making**
- 2 The Childrens Court may make an emergency action release order
- 3 for a child or young person only if satisfied that the child or young
- 4 person is no longer in need of emergency care and protection or
- 5 emergency therapeutic protection.
- 6 *Note 1* In a proceeding for an emergency action release order, a fact is proved
- 7 if it is proved on the balance of probabilities (see s 710).
- 8 *Note 2* The court may make an order imposing an obligation on a person only if
- 9 the person agrees to it, has been given an opportunity to be heard about
- 10 it or cannot be found (see s 717).

Chapter 14 Care and protection—care and protection orders

Part 14.1 Preliminary

420 Definitions—ch 14

In this chapter:

authorised assessor—see section 437.

care and protection order—see section 421.

contact provision, in a care and protection order—see section 484.

drug use provision, in a care and protection order—see section 487.

DVPO protection order—see section 457.

enduring parental responsibility provision, in a care and protection order—see section 480.

interim care and protection order—see section 432.

mental health tribunal provision, in a care and protection order—see section 490.

parental responsibility provision, in a care and protection order—see section 473.

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) a mental health tribunal provision;

- 1 (e) a residence provision;
- 2 (f) a short-term parental responsibility provision;
- 3 (g) a long-term parental responsibility provision;
- 4 (h) a specific issues provision;
- 5 (i) a supervision provision.
- 6 *short-term parental responsibility provision*, in a care and
- 7 protection order—see section 475.
- 8 *specific issues provision*, in a care and protection order—see
- 9 section 491.
- 10 *supervision provision*, in a care and protection order—see
- 11 section 488.
- 12 **421 What is a *care and protection order*?**
- 13 In this Act:
- 14 *care and protection order*—
- 15 (a) means an order about the care and protection of a child or
- 16 young person; and
- 17 (b) may contain any of the following provisions:
- 18 (i) a contact provision;
- 19 (ii) a drug use provision;
- 20 (iii) an enduring parental responsibility provision;
- 21 (iv) a mental health tribunal provision;
- 22 (v) a residence provision;
- 23 (vi) a short-term parental responsibility provision;

- 1 (vii) a long-term parental responsibility provision;
2 (viii) a specific issues provision;
3 (ix) a supervision provision.

4 **422 Offence—contravene care and protection order**

5 A person commits an offence if—

- 6 (a) a care and protection order is in force for someone else who is
7 a child or young person; and
8 (b) the person has been given a copy of the order; and
9 (c) the person engages in conduct that contravenes a provision of
10 the order.

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

13 *Note 1* A registered family group conference agreement has effect as if it were
14 an order of the Childrens Court and may be enforced accordingly
15 (see s 392).

16 *Note 2* If a care and protection order is in force for a child or young person and
17 there are reasonable grounds for suspecting that someone has
18 contravened the order and because of the contravention, the child or
19 young person is in danger, the chief executive or police officer may
20 apply to the Childrens Court for a warrant to have the child or young
21 person taken into safe custody (see s 684).

Part 14.2 Applications for care and protection orders

423 Care and protection order—application by chief executive

The chief executive may apply to the Childrens Court for a care and protection order for a child or young person if the chief executive 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 695).

Note 2 Oral applications may also be made (see s 697).

424 Care and protection order—application by others

(1) Someone (the *other applicant*) other than the chief executive 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 chief executive has not applied for a care and protection order for the child or young person—the other applicant has consulted the chief executive 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 chief executive; and
- (b) may give the other applicant leave to make the application.

- 1 (3) If the other applicant applies for a care and protection order for a
2 child or young person, the chief executive and the public advocate
3 may each appear and be heard in the proceeding.

4 *Note 1* Statements, documents and reports must be included in the application
5 (see s 695).

6 *Note 2* Oral applications may also be made (see s 697).

7 **425 Care and protection order—application must state**
8 **provisions sought and grounds**

- 9 (1) An application for a care and protection order must state—
10 (a) the provisions proposed to be included in the order; and
11 (b) the grounds on which the care and protection order is sought.
12 (2) An application for a care and protection order with a parental
13 responsibility provision must also state—
14 (a) whether parental responsibility is proposed to be shared or
15 transferred; and
16 (b) each person who is to share parental responsibility; and
17 (c) each person to whom parental responsibility is to be
18 transferred.

19 *Note* The Childrens Court may also include a provision in a care and
20 protection order whether or not anyone applied, or cross-applied, for it
21 (see s 382).

22 **426 Care and protection orders—who must be given**
23 **application**

- 24 (1) The applicant for a care and protection order for a child or young
25 person must give a copy of the application to the following people at
26 least 3 working days before the application is to be heard by the
27 court:
28 (a) the child or young person;

- 1 (b) each parent of the child or young person;
- 2 (c) each other person (if any) who has daily care responsibility, or
- 3 long-term care responsibility, for the child or young person;
- 4 (d) if the applicant is not the chief executive—the chief executive;
- 5 (e) the public advocate.
- 6 (2) This section does not apply if the chief executive or a police officer
- 7 has daily care responsibility for a child or young person under
- 8 part 13.1 (Emergency action).
- 9 *Note* For s (2), the chief executive need only give a copy of the application to
- 10 people before the application is heard by the court (see s 412).

11 **427 Care and protection order—cross-application for different**

12 **provisions**

- 13 (1) A party to a proceeding for a care and protection order for a child or
- 14 young person may cross-apply for a different provision to be
- 15 included in the order, different terms in a provision in the order or a
- 16 different order, if the party—
- 17 (a) believes on reasonable grounds that the different provision,
- 18 terms or order is in the best interests of the child or young
- 19 person; and
- 20 (b) has leave of the Childrens Court to cross-apply.

21 **Example—different term in provision in order**

22 An order includes a residence provision about with whom the child must live. A

23 party may cross-apply for the residence provision to provide for the child to live

24 with a different person.

25 *Note* An example is part of the Act, is not exhaustive and may extend, but

26 does not limit, the meaning of the provision in which it appears (see

27 Legislation Act, s 126 and s 132).

- 1 (2) If a party seeks the leave of the Childrens Court to cross-apply, the
2 court may give leave only if satisfied that there are reasonable
3 grounds for believing that the different provision, terms or order is
4 in the best interests of the child or young person.

5 *Note 1* Statements, documents and reports must be included in the application
6 (see s 695).

7 *Note 2* Oral applications may also be made (see s 697).

8 **428 Care and protection order—cross-application must state**
9 **provisions sought and grounds**

- 10 (1) A cross-application for a care and protection order must state—
11 (a) the provisions that the applicant proposes to have included in
12 the order, the proposed different terms in the provisions in the
13 order or the proposed different order; and
14 (b) for a cross-application for a different provision, terms or order
15 in a care and protection order—
16 (i) the draft different provision, terms or order; and
17 (ii) why the different provision, terms or order would be in
18 the best interests of the child or young person.

19 *Note* The Childrens Court may also include a provision in a care and
20 protection order whether or not anyone applied, or cross-applied, for it
21 (see s 382).

- 22 (2) A cross-application for a care and protection order with a parental
23 responsibility provision must also state—
24 (a) whether parental responsibility is proposed to be shared or
25 transferred; and
26 (b) each person who is to share parental responsibility; and
27 (c) each person to whom parental responsibility is to be
28 transferred.

**429 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.
- (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 chief executive 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 412).

Part 14.3 Interim care and protection matters

Division 14.3.1 General

430 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

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

(2) 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 431.

(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 432.

(c) make an assessment order;

Note Assessment orders are dealt with in s 435.

- 1 (d) make a DVPO interim protection order for the child or young
2 person under section 458;
- 3 *Note* The Childrens Court may make a DVPO interim protection order
4 if satisfied that it is necessary to ensure the child's or young
5 person's safety until the application for the care and protection
6 order is decided.
- 7 (e) if an interim care and protection order is in force for the child
8 or young person—
- 9 (i) extend the length of the order and any provision so that
10 they remain in force until the end of the adjournment; or
- 11 (ii) revoke any provision or both the order and the provision.

12 **431 Interim matters—court-ordered meeting**

- 13 (1) A court-ordered meeting for a care and protection order for a child
14 or young person—
- 15 (a) must be attended by—
- 16 (i) the chief executive; and
- 17 (ii) someone who has daily care responsibility for the child or
18 young person; and
- 19 (iii) someone who has long-term care responsibility for the
20 child or young person; and
- 21 (b) may be attended by—
- 22 (i) any party to the proceeding; and
- 23 (ii) the representative of any party to the proceeding; and
- 24 *Note* Representation of children and young people is dealt with
25 in the *Court Procedures Act 2004*, pt 7A (Procedural
26 provisions—proceedings involving children).

(iii) anyone else who was given a copy of the application under section 426 (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.

(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

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

(3) However, 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

432 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

- 1 (b) the court believes on reasonable grounds that the child or
2 young person is in need of care and protection or would be in
3 need of care and protection if the interim care and protection
4 order was not made.
- 5 (2) The Childrens Court must include in an interim care and protection
6 order any of the following provisions that the Childrens Court is
7 satisfied is in the best interests of the child or young person:
- 8 (a) a contact provision;
9 (b) a drug use provision;
10 (c) a mental health tribunal provision;
11 (d) a residence provision;
12 (e) a supervision provision;
13 (f) a parental responsibility provision;
14 (g) a specific issues provision.
- 15 (3) The length of an interim care and protection order must be stated in
16 the order and the order must end on, or before, the day the
17 application or cross application is decided.
- 18 (4) Before making an interim care and protection order for a child or
19 young person, the Childrens Court may require the chief executive
20 to give the court a care plan for the child or young person for the
21 period of the interim order.

22 *Note* Care plans are dealt with in s 454.

23 **433 Offence—contravene interim care and protection order**

24 A person commits an offence if—

- 25 (a) an interim care and protection order is in force for someone
26 else who is a child or young person; and
27 (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.

434 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.

(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

- 1 (c) substitute a provision in the interim care and protection order
2 for a different provision; or
- 3 (d) dismiss the application.
- 4 (7) If the interim care and protection order is in force on the day the
5 application for revocation or amendment is filed, but would end
6 before the application is heard, the interim care and protection order
7 continues in force until the application is heard and decided
8 (whether or not the application is considered within the period
9 required under this section).

10 **Division 14.3.3 Assessment orders**

11 *Note to div 14.3.3*

12 The chief executive may ask the chief police officer for assistance in taking action
13 under an assessment order. The chief police officer must, if asked, give assistance
14 to the chief executive by assigning police officers to assist the chief executive in
15 carrying out the action (see s 678).

16 **435 What is an assessment order?**

17 In the care and protection chapters:

18 ***assessment order***—

- 19 (a) means an order authorising the chief executive to arrange for
20 the care and protection assessment of a person in relation to a
21 child or young person; and

22 *Note* ***Care and protection assessment*** is defined in s 366.

- 23 (b) may, but need not, include 1 or more of the following
24 requirements:

25 (i) that a person attend, alone or with someone else, at a
26 stated place at a stated time for the care and protection
27 assessment;

28 (ii) that a person or entity comply with arrangements made by
29 the chief executive 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.

436 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 chief executive 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

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

(b) may include any matter that the chief executive considers relevant.

(3) The chief executive 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 699.

(4) For subsection (5), the chief executive must—

(a) tell the parties about the proposed terms of reference or assessor; and

1 (b) give the parties at least 7 days to make submissions to the chief
2 executive about the proposed terms of reference or assessor;
3 and

4 (c) take into account any submissions made by a party.

5 **437 Care and protection assessment—authorisation of**
6 **assessors**

7 (1) The chief executive may authorise a person to carry out care and
8 protection assessments (an *authorised assessor*).

9 *Note* Power to make a statutory instrument includes power to make different
10 provision for different categories (see Legislation Act, s 48).

11 (2) The chief executive may authorise a person only if the chief
12 executive considers the person is suitably qualified to carry out care
13 and protection assessments.

14 **Examples—suitably qualified people**

15 1 a doctor or nurse to carry out medical examinations

16 2 a social worker or psychologist to carry out social assessments

17 3 an occupational therapist or other health professional to carry out
18 developmental assessments

19 4 another person with qualifications or expertise to carry out assessments

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

23 (3) An authorisation is a notifiable instrument.

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

25 **438 Care and protection assessment—report after making**

26 (1) An authorised assessor who carries out a care and protection
27 assessment must, as soon as practicable after the assessment is
28 completed, give the chief executive—

29 (a) a written report of the assessment; and

1 (b) any records made by the assessor in the course of carrying out
2 the assessment.

3 (2) The chief executive must file the report with the Childrens Court.

4 (3) A report filed under this section is taken to be a report to the
5 Childrens Court rather than evidence tendered by a party.

6 **439 Offence—contravene assessment order**

7 A person commits an offence if—

8 (a) an assessment order is in force for a child or young person; and

9 (b) the person has been given a copy of the order; and

10 (c) the person is not a child or young person who is to be assessed
11 under the order (other than in the capacity of a parent); and

12 (d) the person engages in conduct that contravenes a provision of
13 the order.

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

16 **440 Assessment orders—prevails over care and protection**
17 **order**

18 If an assessment order is made in relation to a child or young person
19 for whom a care and protection order is already in force, the
20 assessment order prevails to the extent of any inconsistency between
21 the orders.

22 *Note* Care and protection orders are made under pt 14.4.

- 1 **441** **Assessment orders—on application or court’s own**
2 **initiative**
- 3 In a proceeding for a care and protection order for a child or young
4 person, the Childrens Court may make an assessment order for a
5 person on application by a party to the proceeding or on its own
6 initiative.
- 7 **442** **Assessment orders—application by party**
- 8 (1) A party to a proceeding for a care and protection order for a child or
9 young person may apply for an assessment order if the party
10 believes on reasonable grounds that—
- 11 (a) a care and protection assessment is necessary to assess whether
12 the child or young person is in need of care and protection; and
- 13 (b) the care and protection assessment cannot be properly carried
14 out unless the order is made; and
- 15 (c) if the application is for an assessment order for the child or
16 young person and a care and protection assessment of the child
17 or young person has been carried out previously—the further
18 care and protection assessment of the child or young person is
19 not detrimental to the child or young person.
- 20 *Note 1* Statements, documents and reports must be included in the application
21 (see s 695).
- 22 *Note 2* Oral applications may also be made (see s 697).
- 23 *Note 3* Parties to proceedings are dealt with in pt 19.2.
- 24 (2) A party who applies for an assessment order must meet the costs of
25 the care and protection assessment.
- 26 **443** **Assessment orders—application to state grounds**
- 27 An application for an assessment order must state the grounds on
28 which the order is sought.

- 1 **444 Assessment orders—who must be given application**
- 2 (1) The applicant for an assessment order in relation to a child or young
- 3 person must give a copy of the application to the following people at
- 4 least 3 working days before the application is to be heard by the
- 5 court:
- 6 (a) the child or young person;
- 7 (b) each parent of the child or young person;
- 8 (c) each other person (if any) who has daily care responsibility, or
- 9 long-term care responsibility, for the child or young person;
- 10 (d) the public advocate.
- 11 (2) This section does not apply if the chief executive or a police officer
- 12 has daily care responsibility for a child or young person under
- 13 part 13.1 (Emergency action).
- 14 *Note* For s (2), the chief executive need only give a copy of the application to
- 15 people before the application is heard by the court (see s 412).
- 16 **445 Assessment orders—court to consider application**
- 17 **promptly**
- 18 The Childrens Court must give initial consideration to an application
- 19 for an assessment order not later than 5 working days after the day
- 20 the application is filed.
- 21 **446 Assessment orders—no interim order**
- 22 The Childrens Court must not make an interim assessment order.
- 23 **447 Assessment orders—criteria for making**
- 24 The Childrens Court may make an assessment order in relation to a
- 25 child or young person only if satisfied that—
- 26 (a) a care and protection assessment is necessary to assess whether
- 27 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 In a proceeding for an assessment order, a fact is proved if it is proved on the balance of probabilities (see s 710).

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 717).

448 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 453).

449 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 695).

Note 2 Oral applications may also be made (see s 697).

- 1 **450 Assessment orders—extension application must state**
2 **grounds**
- 3 An application for extension of an assessment order must state the
4 grounds for the proposed extension.
- 5 **451 Assessment orders—who must be given extension**
6 **application?**
- 7 The applicant for extension of an assessment order must give a copy
8 of the application to the following people at least 3 working days
9 before the application is to be heard by the court:
- 10 (a) each party to the proceeding in which the order was made;
- 11 (b) anyone else who was required to be given a copy of the
12 application for the assessment order;
- 13 (c) the public advocate.
- 14 *Note* Parties to proceedings are dealt with in pt 19.2.
- 15 **452 Assessment orders—court to consider extension**
16 **application promptly**
- 17 (1) The Childrens Court must give initial consideration to an application
18 for extension of an assessment order not later than 5 working days
19 after the day the application is filed.
- 20 (2) After initially considering the application, the Childrens Court may
21 adjourn further consideration of the application only if satisfied that
22 the adjournment is appropriate considering the urgency of the
23 application.
- 24 (3) If the assessment order is in force on the day the application is filed,
25 but would end before the application is heard, the order continues in
26 force until the application is heard and decided (whether or not the
27 application is considered within the period required under this
28 section).

- 1 **453 Assessment orders—criteria for extension**
- 2 (1) The Childrens Court may, by order, extend an assessment order—
- 3 (a) only if satisfied that the care and protection assessment cannot
- 4 be properly carried out unless the order is extended; and
- 5 (b) only if the total length of the order and the proposed extension
- 6 will not be longer than 18 weeks.
- 7 (2) However the Childrens Court may extend the assessment order so
- 8 that the total length of the order and the proposed extension is
- 9 longer than 18 weeks if—
- 10 (a) the total length of the order and the proposed extension will not
- 11 be longer than 26 weeks; and
- 12 (b) the court is satisfied that because of special and exceptional
- 13 circumstances the extension is necessary for the assessment to
- 14 be properly completed.
- 15 *Note 1* In a proceeding for an assessment order, a fact is proved if it is proved
- 16 on the balance of probabilities (see s 710).
- 17 *Note 2* The court may make an order imposing an obligation on a person only if
- 18 the person agrees to it, has been given an opportunity to be heard about
- 19 it or cannot be found (see s 717).

20 **Division 14.3.4 Care plans**

21 **454 What is a *care plan*?**

22 In this Act:

23 *care plan*, for a child or young person who is, or is proposed to be,

24 subject to a care and protection order or interim care and protection

25 order—

- 26 (a) means a written plan for meeting the child's or young person's
- 27 protection or care needs; and

(b) may include proposals for the purposes of case planning about the following:

(i) who the chief executive considers would be the best person to have a stated aspect of parental responsibility for the child or young person;

(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 chief executive 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 chief executive 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;

(vii) if the child or young person is or is proposed to be placed in out-of-home care—planning and services to be provided for the child or young person when leaving out of home care.

455 Care plans—stability proposals

(1) This section applies if a care plan includes a proposal mentioned in section 454 (b) (iii) in relation to a child or young person's living arrangements.

- 1 (2) The chief executive must prepare a proposal (a *stability proposal*)
2 that outlines how the chief executive proposes to ensure long-term
3 placement in a safe, nurturing and secure environment.
- 4 (3) A stability proposal may include—
- 5 (a) for a child or young person who lives with his or her parents—
6 strategies to ensure stable and long-term living arrangements;
7 and
- 8 (b) for a child or young person who does not live with his or her
9 parents—
- 10 (i) an assessment of whether restoration of the child or young
11 person to his or her parents is a realistic possibility; or
- 12 (ii) a proposal for restoration that includes changes at the
13 home or by the parents that the chief executive believes
14 would need to occur before the chief executive would
15 consider it safe for the child or young person to return to
16 his or her parents; or
- 17 (iii) a proposal for long-term placement that the chief
18 executive considers to be in the best interests of the child
19 or young person.
- 20 (c) anything else the chief executive considers necessary to ensure
21 a long-term placement in a safe, nurturing and secure
22 environment.
- 23 (4) A proposal for long-term placement may include—
- 24 (a) placement under a care and protection order with a long-term
25 parental responsibility provision; or
- 26 (b) placement under a care and protection order with an enduring
27 parental responsibility provision; or
- 28 (c) placement under a parenting order under the *Family Law*
29 *Act 1975* (Cwlth); or

- 1 (d) adoption under the *Adoption Act 1993*.
- 2 (5) The chief executive must not include adoption in a proposal for
3 long-term placement for an Aboriginal or Torres Strait Islander
4 child or young person under subsection (4) unless the chief
5 executive has considered the *Adoption Act 1993*, section 21.

6 **456 Care plans—who must be consulted**

- 7 (1) If the chief executive is preparing a care plan for a child or young
8 person, the chief executive must—
- 9 (a) tell the following people about the proposals the chief
10 executive intends to include in the care plan:
- 11 (i) the child or young person;
- 12 (ii) each person who has daily care responsibility for the child
13 or young person;
- 14 (iii) anyone else who would be involved in implementing a
15 proposal;

16 **Examples—people who would be involved**

- 17 1 an out-of-home carer for the child or young person
- 18 2 a community-based service that is providing services to the
19 child or young person

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

- 23 (iv) for a proposal prepared under section 454 (b) (ii)—
- 24 (A) Aboriginal or Torres Strait Islander people who have
25 an interest in the wellbeing of the child or young
26 person through family, kinship and cultural ties; and

- 1 (B) any Aboriginal or Torres Strait Islander people or
2 organisation identified by the chief executive as
3 providing ongoing support services to the child or
4 young person or the child's or young person's
5 family; and
- 6 (b) give the people opportunity to make submissions to the chief
7 executive about the proposals.
- 8 (2) If a person makes a submission to the chief executive about a
9 proposal, the chief executive must consider the submission.

10 **Division 14.3.5 Orders under Domestic Violence and**
11 **Protection Orders Act**

12 **457 Definitions—div 14.3.5**

13 In this division:

14 *domestic violence*—

15 (a) see the *Domestic Violence and Protection Orders Act 2001*,
16 section 9 (1); and

17 (b) includes psychological abuse of a child or young person.

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

20 *DVPO interim protection order*—see the *Domestic Violence and*
21 *Protection Orders Act 2001*, dictionary, definition of *interim order*.

22 *DVPO protection order* means a DVPO interim protection order or
23 a DVPO final protection order.

1 **458 DVPO interim protection orders**

2 (1) The Childrens Court may make a DVPO interim protection order for
3 a child or young person—

4 (a) if an application for a care and protection order for the child or
5 young person has been made but not yet finally decided; and

6 (b) if satisfied that it is necessary to make the DVPO interim
7 protection order to ensure the child's or young person's safety
8 until the application for the care and protection order is
9 decided.

10 *Note* The Childrens Court may make a DVPO interim protection order
11 before adjourning an application or cross-application under s 430
12 (Interim matters—Court action before adjournment).

13 (2) In considering whether it is necessary to make the DVPO interim
14 protection order to ensure the child's or young person's safety until
15 the application is decided, the Childrens Court may have regard to
16 the need to ensure the person against whom the order is made will
17 not engage in domestic violence in relation to the child or young
18 person.

19 (3) The Childrens Court may make the DVPO interim protection
20 order—

21 (a) on its own initiative; or

22 (b) on application by a party to the proceeding for the care and
23 protection order; or

- 1 (c) on application by the public advocate.
- 2 *Note 1* Statements, documents and reports must be included in the application
- 3 (see s 695).
- 4 *Note 2* Oral applications may also be made (see s 697).
- 5 *Note 3* In the proceeding, a fact is proved if it is proved on the balance of
- 6 probabilities (see s 710).
- 7 *Note 4* The court may make an order imposing an obligation on a person only if
- 8 the person agrees to it, has been given an opportunity to be heard about
- 9 it or cannot be found (see s 717).
- 10 (4) To remove any doubt, if the Childrens Court makes a DVPO interim
- 11 protection order the order must be consistent with this division and
- 12 the *Domestic Violence and Protection Orders Act 2001*.
- 13 **Example**
- 14 The Childrens Court could not make a DVPO interim protection order for a period
- 15 longer than that allowed for DVPO interim protection orders under the *Domestic*
- 16 *Violence and Protection Orders Act 2001*.
- 17 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 18 does not limit, the meaning of the provision in which it appears (see
- 19 Legislation Act, s 126 and s 132).

20 **459 DVPO final protection orders**

- 21 (1) The Childrens Court may make a DVPO final protection order for a
- 22 child or young person—
- 23 (a) if an application for a care and protection order for the child or
- 24 young person has been made but not yet finally decided; and
- 25 (b) if satisfied that the person against whom the DVPO final
- 26 protection order is proposed to be made—
- 27 (i) has engaged in domestic violence in relation to the child
- 28 or young person; or

- 1 (ii) has engaged in personal violence towards the child or
2 young person and may engage in personal violence
3 towards the child or young person during the time for
4 which the order is proposed to be made if the order is not
5 made.

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

9 (2) The Childrens Court may make the DVPO final protection order—

- 10 (a) on its own initiative; or
11 (b) on application by a party to the proceeding for the care and
12 protection order; or
13 (c) on application by the public advocate.

14 *Note 1* Statements, documents and reports must be included in the application
15 (see s 695).

16 *Note 2* Oral applications may also be made (see s 697).

17 *Note 3* In the proceeding, a fact is proved if it is proved on the balance of
18 probabilities (see s 710).

19 *Note 4* The court may make an order imposing an obligation on a person only if
20 the person agrees to it, has been given an opportunity to be heard about
21 it or cannot be found (see s 717).

22 (3) To remove any doubt, if the Childrens Court makes a DVPO final
23 protection order the order must be consistent with this division and
24 the *Domestic Violence and Protection Orders Act 2001*.

25 (4) In this section:

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

- 1 **460** **What is *psychological abuse* of a child or young person?**
- 2 (1) For this division, a person *psychologically abuses* a child or young
- 3 person if the person—
- 4 (a) causes or allows the child or young person to see or hear the
- 5 physical, sexual, or psychological abuse of a person with
- 6 whom the child or young person lives; or
- 7 (b) puts the child or young person, or allows the child or young
- 8 person to be put, at risk of seeing or hearing that abuse
- 9 occurring.
- 10 (2) For subsection (1), the person who suffers the abuse is not regarded
- 11 as having caused or allowed the child to see or hear the abuse, or, as
- 12 the case may be, as having put the child, or allowed the child to be
- 13 put, at risk of seeing or hearing the abuse.
- 14 (3) To remove any doubt—
- 15 (a) a single act may amount to psychological abuse of a child or
- 16 young person; and
- 17 (b) a number of acts that form part of a pattern of behaviour may
- 18 amount to psychological abuse of a child or young person,
- 19 even though some or all of the acts, when viewed in isolation,
- 20 may appear to be minor or trivial.
- 21 **461** **No DVPO protection order if no proceeding under care**
- 22 **and protection chapters**
- 23 (1) This section applies if—
- 24 (a) someone wants to apply for a DVPO protection order for a
- 25 child or young person; and
- 26 (b) no application for a care and protection order for the child or
- 27 young person has been made.
- 28 (2) The person must not apply for a DVPO protection order under this
- 29 Act.

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

462 Effect of making DVPO protection order under this Act

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

Examples

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

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

- (2) The making of the DVPO protection order on an application for a care and protection order does not affect the validity of the protection order.
- (3) In applying the *Domestic Violence and Protection Orders Act 2001*, section 13 (Who may apply to amend or revoke a protection order?) to the DVPO protection order, the public advocate is taken to have been a party to the application for the DVPO protection order.
- (4) In applying the *Domestic Violence and Protection Orders Act 2001* to a DVPO protection order, a reference in that Act to domestic violence is taken to have the meaning given in section 457, definition of **domestic violence**.
- (5) In applying the *Domestic Violence and Protection Orders Act 2001* to a DVPO interim protection order made under this Act—
- (a) a reference in that Act to a final order is taken to be a reference to a care and protection order; and

- 1 (b) a reference in that Act to the application or proceeding is taken
2 to be a reference to the application or proceeding under this
3 Act for which the DVPO interim protection order was made.

4 **Example—par (a)**

5 The *Domestic Violence and Protection Orders Act 2001*, s 53 (c) provides
6 that an interim order ends in certain circumstances when the final order is
7 made. Applying par (a), the DVPO interim protection order ends when the
8 care and protection order is made in those circumstances.

**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 374).

An assessment order prevails over a care and protection order (see s 440).

463 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 chief executive 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;

- 1 (d) a mental health tribunal provision;
2 (e) a residence provision;
3 (f) a short-term parental responsibility provision;
4 (g) a long-term parental responsibility provision;
5 (h) a specific issues provision;
6 (i) a supervision provision.
- 7 (3) However, the Childrens Court must not include in a care and
8 protection order an enduring parental responsibility provision unless
9 satisfied that the criteria mentioned in section 481 (Enduring
10 parental responsibility provision—criteria for making) are met.
- 11 (4) Unless the Childrens Court orders otherwise, the chief executive
12 must give a copy of a care plan provided for a proceeding to each
13 other party to the proceeding.
- 14 (5) The Childrens Court—
15 (a) must not merely accept the admission of the parties to the
16 proceeding that the child or young person is in need of care and
17 protection; but
18 (b) must satisfy itself that the child or young person is in need of
19 care and protection.
- 20 *Note 1* In a proceeding for a care and protection order, a fact is proved if it is
21 proved on the balance of probabilities (see s 710).
- 22 *Note 2* The court may make an order imposing an obligation on a person only if
23 the person agrees to it, has been given an opportunity to be heard about
24 it or cannot be found (see s 717).
- 25 (6) The Childrens Court may include a provision in a care and
26 protection order on application by a party to the proceeding or on its
27 own initiative.

- 1 (7) If the Childrens Court intends someone to make decisions about
2 where the child or young person lives, the court must include a
3 residence provision in the care and protection order.

4 **464 Care and protection order—length**

- 5 (1) The Childrens Court must state the length of each provision
6 included in a care and protection order.

- 7 (2) The length of a care and protection order is the length of the longest
8 provision in the order.

9 *Note 1* The length of parental responsibility provisions is dealt with in—

- 10 (a) for short-term parental responsibility provision—s 475 (not
11 longer than 2 years); and
12 (b) for enduring parental responsibility provision—s 480 (until the
13 child or young person is 18 years old).

14 *Note 2* The length of a care and protection order may be extended (see s 470).

Part 14.5 **Extending, amending and
revoking care and protection
orders**

465 **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 695).

Note 2 Oral applications may also be made (see s 697).

- 1 **466 Care and protection order—revocation applications**
- 2 (1) A person may apply to the Childrens Court for revocation of a care
- 3 and protection order, or a provision in a care and protection order if
- 4 the person—
- 5 (a) believes on reasonable grounds that—
- 6 (i) the child or young person would not be in need of care
- 7 and protection if the order or provision were revoked; or
- 8 (ii) the order cannot be administered effectively because of
- 9 the child or young person’s persistent refusal to comply
- 10 with the residence provision of the order; or
- 11 (iii) it is otherwise in the best interests of the child or young
- 12 person to revoke the order or provision; and
- 13 (b) has the leave of the Childrens Court to make the application.
- 14 (2) The Childrens Court must give leave to someone who was a party to
- 15 the proceeding in which the care and protection order was made.
- 16 (3) However, the Childrens Court may give leave to someone to apply
- 17 more than once in a 12 month period only if satisfied that there has
- 18 been a significant change in any relevant circumstances since the
- 19 care and protection order was made or last extended or amended.
- 20 *Note 1* Statements, documents and reports must be included in the application
- 21 (see s 695).
- 22 *Note 2* Oral applications may also be made (see s 697).
- 23 **467 Care and protection order—application to state what**
- 24 **sought and grounds**
- 25 An application for extension, amendment or revocation of a care and
- 26 protection order, or a provision in a care and protection order, must
- 27 state—
- 28 (a) the order or provision proposed to be extended, amended or
- 29 revoked; and

- 1 (b) how the order or provision is proposed to be extended or
2 amended; and
- 3 (c) the grounds on which the extension, amendment or revocation
4 is proposed.

5 **468 Care and protection order—who must be given extension,
6 amendment or revocation**

7 The applicant for extension, amendment or revocation of a care and
8 protection order, or a provision in a care and protection order, must
9 give a copy of the application to the following people at least
10 3 working days before the application is to be heard by the court:

- 11 (a) each party to the proceeding in which the order was made;
- 12 (b) anyone else who was required to be given a copy of the
13 application for the care and protection order;
- 14 (c) the public advocate.

15 *Note* Parties to proceedings are dealt with in pt 19.2.

16 **469 Care and protection order—court to consider extension,
17 amendment and revocation applications promptly**

- 18 (1) The Childrens Court must give initial consideration to an application
19 for extension, amendment or revocation of a care and protection
20 order, or a provision in a care and protection order not later than
21 5 working days after the day the application is filed.
- 22 (2) The Childrens Court must give directions about the conduct of the
23 proceeding (including the hearing of the application) at the time the
24 application is initially considered.
- 25 (3) If the care and protection order is in force on the day the application
26 is filed, but would end before the application is heard, the order
27 continues in force until the application is heard and decided
28 (whether or not the application is considered within the period
29 required under this section).

470 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 710).

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 717).

- (4) This section is subject to section 476 (Short-term parental responsibility provision—extension).

471 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

- 1 (b) the order cannot be administered effectively because of the
2 child or young person's persistent refusal to comply with the
3 residence provision of the order; or
- 4 (c) it is otherwise in the best interests of the child or young person
5 to revoke the order or the provision in the order.
- 6 *Note* In a proceeding for a care and protection order, a fact is proved if it is
7 proved on the balance of probabilities (see s 710).
- 8 (2) Before revoking a care and protection order, or a provision in a care
9 and protection order, the Childrens Court must consider the
10 following matters:
- 11 (a) the age and maturity of the child or young person;
- 12 (b) the views and wishes of the child or young person;
- 13 (c) the living arrangements of the child or young person;
- 14 (d) the risk to the child or young person of harm if the order, or the
15 provision of the order, is revoked.

16 **472 Care and protection orders—financial burdens**

17 Unless the Childrens Court orders otherwise, if the court makes a
18 care and protection order involving a financial cost to a person, the
19 person is responsible for the cost.

Part 14.6 Parental responsibility provisions

Division 14.6.1 General

473 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. The person who has daily care responsibility for the child or young person has responsibility for the following:

- (a) deciding where and with whom the child or young person is to live;
- (b) care of the child or young person, including, for example, personal appearance;
- (c) temporary care of the child or young person by someone else (whether in the ACT or elsewhere);
- (d) the people with whom the child or young person may, or must not, have contact (however, this is subject to a contact provision in the care and protection order);
- (e) daily care about education, training and employment.

- 1 (ii) that a stated person has long-term care responsibility for
2 the child or young person;

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

- 4 (iii) that parental responsibility for the child or young person
5 is shared between stated people;

- 6 (iv) that a stated person (including the chief executive) who
7 has long-term care responsibility for the child or young
8 person must consult with each other person who shares
9 long-term care responsibility for the child or young
10 person in making a decision about a long-term matter for
11 the child or young person;

12 **Examples—decisions about long-term matters**

13 1 a decision about management of the child or young person's
14 property

15 2 long-term decisions about education

- 16 (v) that a stated person who has parental responsibility for the
17 child or young person must exercise the responsibility in a
18 stated way.

19 *Note 1* If a care and protection order is in force for a child or young person and
20 the chief executive or a police officer believes on reasonable grounds
21 that someone has contravened the order and because of the
22 contravention, the child or young person is in danger, the chief
23 executive or police officer may apply to the Childrens Court for a
24 warrant to have the child or young person taken into safe custody
25 (see s 684).

26 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 Legislation Act, s 126 and s 132).

29 **474 Chief executive sharing daily care responsibility**

- 30 (1) This section applies if the chief executive shares with another
31 person daily care responsibility for a child or young person.

- 1 (2) No other person with daily care responsibility for the child or young
2 person may discharge the responsibility in a way that would be
3 incompatible with the chief executive's discharge of the
4 responsibility.

5 *Note* Usually, if parental responsibility is shared between 2 or more people,
6 either of them may discharge the responsibility (see s 18).

7 **Division 14.6.2 Short-term parental responsibility**
8 **provisions**

9 **475 What is a *short-term parental responsibility provision*?**

10 In the care and protection chapters:

11 *short-term parental responsibility provision* means a parental
12 responsibility provision in a care and protection order that is not
13 longer than 2 years.

14 *Note* The length of a care and protection order is dealt with in s 464.

15 **476 Short-term parental responsibility provision—extension**

- 16 (1) The Childrens Court may extend a short-term parental responsibility
17 provision in a care and protection order if satisfied that extending
18 the provision is in the best interests of the child or young person.

- 19 (2) However, for subsection (1) it is a rebuttable presumption that it is
20 in the best interests of the child or young person for the child or
21 young person to be subject to a long-term parental responsibility
22 provision if—

- 23 (a) the chief executive has had an aspect of daily care
24 responsibility or long-term parental responsibility for—

- 25 (i) the 2 years immediately before the decision under
26 subsection (1) is made; or

- 27 (ii) a total of more than 2 years in the 3 years immediately
28 before the decision under subsection (1) is made; and

- 1 (b) the child or young person has been living with a stated person
2 under a care and protection order for—
- 3 (i) the 2 years immediately before the decision under
4 subsection (1) is made; or
- 5 (ii) a total of more than 2 years in the 3 years immediately
6 before the decision under subsection (1) is made.
- 7 (3) To rebut the presumption, a person who is a parent of the child or
8 young person, or someone else who has had parental responsibility
9 for the child or young person during the term of the order, must
10 satisfy the Childrens Court that—
- 11 (a) the person is likely to be able to resume care of the child or
12 young person during the period of extension; and
- 13 (b) it is in the best interests of the child or young person for the
14 person to resume care of the child or young person during the
15 period of extension.
- 16 (4) In subsection (2):
- 17 ***stated person*** means—
- 18 (a) the carer under the care and protection order; or
- 19 (b) one parent to the exclusion of another parent; or
- 20 (c) a family member who is not a parent.
- 21 *Note 1* A short-term parental responsibility provision may be extended,
22 amended or revoked under pt 14.5.
- 23 *Note 2* If an application has been made to the Childrens Court for a care and
24 protection order and the application is adjourned, any parental
25 responsibility provision that is in force at the time of the adjournment
26 may be extended until the end of the adjournment or revoked
27 (see s 430).

1 **477 Short-term parental responsibility provision—financial**
2 **contribution**

3 (1) This section applies if the Childrens Court includes a short-term
4 parental responsibility provision in a care and protection order for a
5 child or young person and the provision—

6 (a) transfers parental responsibility for the child or young person
7 to the chief executive; or

8 (b) shares parental responsibility for the child or young person
9 with the chief executive.

10 (2) The court may order a parent of the child or young person to pay an
11 amount (the *contribution*) to the chief executive as a contribution to
12 the cost of the care of the child or young person.

13 (3) In deciding the amount of the contribution, the court must have
14 regard to the financial circumstances of the parent.

15 (4) The contribution is a debt due and payable to the Territory.

16 **Division 14.6.3 Long-term parental responsibility**
17 **provisions**

18 **478 What is a *long-term parental responsibility provision*?**

19 In the care and protection chapters:

20 *long-term parental responsibility provision* means a parental
21 responsibility provision in a care and protection order that—

22 (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 chief executive 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 chief executive until the child or young person is 18 years old but does not transfer long-term care responsibility to the chief executive.

Note 1 The length of a care and protection order is dealt with in s 464.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

479 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 chief executive; or

(b) shares parental responsibility for the child or young person with the chief executive.

(2) The Childrens Court may order a parent of the child or young person to pay an amount (the *contribution*) to the chief executive 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 due and payable to the Territory.

Division 14.6.4 Enduring parental responsibility provisions

480 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 chief executive; and
- (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 464.

- (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.

481 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 2 years immediately before the order is made, or
 - (ii) a total of at least 2 years in the 3 years immediately before the order is made; and

- 1 (b) the child or young person has been living with a stated person
2 under a care and protection order for—
- 3 (i) the 2 years immediately before the order is made, or
4 (ii) a total of more than 2 years in the 3 years immediately
5 before the order is made; and
- 6 (c) the court is satisfied that—
- 7 (i) no-one with parental responsibility for the child or young
8 person (other than under a care and protection order)
9 (a *previous carer*) is willing or able to exercise daily care
10 responsibility or long-term care responsibility for the
11 child or young person; or
- 12 (ii) it is not in the best interests of the child or young person
13 for a previous carer to exercise those responsibilities for
14 the child or young person; and
- 15 (d) the court is satisfied that—
- 16 (i) it is unlikely that a previous carer of the child or young
17 person will be willing or able to exercise daily care
18 responsibility or long-term care responsibility for the
19 child or young person before the child or young person is
20 18 years old; or
- 21 (ii) it is unlikely that it would be in the best interests of the
22 child or young person for a previous carer to exercise
23 those responsibilities for the child or young person before
24 the child or young person is 18 years old; and
- 25 (e) the court is satisfied that the stated person is willing and able to
26 exercise daily care responsibility or long-term care
27 responsibility for the child or young person; and
- 28 (f) the court is satisfied that including the provision is the best
29 way to meet the child's or young person's need for emotional
30 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.

(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 710).

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 717).

482 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 chief executive had daily care responsibility for the child or young person.

(2) The chief executive may provide financial or other assistance to the person to whom the provision transfers parental responsibility for the child or young person.

Part 14.7 Residence provisions

483 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

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

Part 14.8 Contact provisions

484 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 chief executive 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 chief executive
- 3 that a child may have contact with a stated person in accordance with a care plan

Note 1 **Contact**, with a person, is defined in s 347.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

485 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.

- 1 (2) There is a rebuttable presumption that it is in the best interests of the
2 child or young person for the child or young person to have contact
3 with a person with parental responsibility for the child or young
4 person or his or her siblings.
- 5 **486 Contact provision—sibling may join proceeding without**
6 **leave**
- 7 If someone applies for a contact provision to be included in a care
8 and protection order for a child or young person, a sibling of the
9 child or young person does not need the leave of the Childrens
10 Court to be joined as a party to the proceeding on the application.

1 **Part 14.9 Drug use provisions**

2 **487 What is a *drug use provision*?**

3 In the care and protection chapters:

4 *drug use provision*, for a stated person, in a care and protection
5 order, or an interim care and protection order, for a child or young
6 person means a provision about usage of drugs by the stated person
7 that includes 1 or more of the following directions:

- 8 (a) that the stated person must not use a stated drug;
- 9 (b) that the stated person may use a stated drug only in accordance
10 with the conditions in the provision;
- 11 (c) that the stated person undergo drug testing as directed by the
12 chief executive in accordance with the drug testing standards.

13 *Note* The Minister may make drug testing standards under s 886.

Part 14.10 Supervision provisions

488 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 chief executive.

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 chief executive 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 chief executive at the reasonable times and places stated by the chief executive:

(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 chief executive 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;

- 1 (iii) someone else who has daily care responsibility, or
2 long-term care responsibility, for the child or young
3 person;

4 **Example—discussion about care, wellbeing or development**

5 a discussion about whether the child or young person should undertake
6 some form of education, vocational or recreational activity

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

- 10 (c) that a person with parental responsibility for the child or young
11 person allow the chief executive entry to stated premises for
12 the purpose of supervising the care and protection of the child
13 or young person.

- 14 (3) Subsection (2) does not limit the matters for which the Childrens
15 Court may make a supervision provision.

16 **489 Supervision provision—meetings with chief executive**

17 If a care and protection order including a supervision provision is in
18 force for a child or young person, the chief executive may meet and
19 talk with the child or young person alone or otherwise.

Part 14.11 Mental health tribunal provisions

490 What is a *mental health tribunal provision*?

In this Act:

mental health tribunal 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 mental health tribunal to allow the tribunal—

- (a) to decide whether the child or young person has a mental illness or mental dysfunction; and
- (b) if the tribunal decides that the child or young person has a mental illness or mental dysfunction—to make recommendations to the Childrens Court about how the child or young person should be dealt with.

Part 14.12 Specific issues provisions

491 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 chief executive stated oral or written information about the care, wellbeing or development of a child or young person

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

Part 14.13 **Annual review reports—parental responsibility provisions and supervision provisions**

492 **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 chief executive; 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.

493 **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 chief executive considers the existing arrangements for the care and protection of the child or young person are in the best interests of the child or young person.

1 **494 Annual review report—prepared at least annually**

2 The chief executive must prepare an annual review report for a
3 reviewable care and protection order for a child or young person—

- 4 (a) each year; or
5 (b) if the order is in force for less than 1 year—at least 1 month,
6 but not earlier than 2 months, before the order expires.

7 **495 Annual review report—consultation**

8 (1) This section applies if the chief executive is preparing an annual
9 review report for a child or young person.

10 (2) Before the chief executive finalises the report, the chief executive
11 must, as far as is practicable and if the chief executive considers it is
12 in the child's or young person's best interests, arrange a meeting
13 with the following people to discuss the matters that the chief
14 executive proposes to include in the report:

- 15 (a) if the chief executive is satisfied that the child or young person
16 can understand and take part in the meeting—the child or
17 young person;
18 (b) each person who has daily care responsibility or long-term care
19 responsibility for the child or young person;
20 (c) if the child is placed in out-of-home care—the out-of-home
21 carers for the child or young person;
22 (d) if the child or young person is placed with a foster carer—the
23 foster care service for the foster carer;
24 (e) anyone else the chief executive considers appropriate.

25 **Example—par (2) (e)**

26 The public advocate

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

- 1 (3) The matters discussed at the meeting may include sensitive
2 information.

3 *Note* *Sensitive information* is defined in s 844.

4 **496 Annual review report—must be given to certain people**

- 5 (1) The chief executive must give an annual review report for a care and
6 protection order for a child or young person to each of the following
7 people:

- 8 (a) the child or young person;
9 (b) each person who has daily care responsibility, or long-term
10 care responsibility, for the child or young person;
11 (c) each kinship carer or foster carer caring for the child or young
12 person;
13 (d) the public advocate;
14 (e) the Childrens Court.

15 *Note* If a provision requires a person to act in relation to a parent of a child or
16 young person, the person is not required to act in relation to the parent if
17 the person cannot after reasonable inquiry find the parent (see s 21).

- 18 (2) The chief executive may also give the annual review report to
19 someone else so that the other person can give the report to a person
20 mentioned in subsection (1).

- 21 (3) Before giving an annual review report to someone mentioned in
22 subsection (1) (a), (b) or (c) or subsection (2), the chief executive
23 may make minor alterations to the report to protect the privacy and
24 confidentiality of a person named in the report.

- 1 **497 Annual review report—application for waiver of obligation**
2 **to give report to someone**
- 3 (1) The chief executive may apply to the Childrens Court for an order
4 waiving the need to give an annual review report about a child or
5 young person to someone mentioned in section 496 (1) (a), (b) or (c)
6 (a ***waiver order***) if the chief executive considers that giving the
7 report to the person would not be in the best interests of the child or
8 young person.
- 9 (2) The chief executive must give a copy of the application to each
10 person mentioned in section 496 (1).
- 11 **498 Annual review report—waiver of obligation to give annual**
12 **review report to someone**
- 13 (1) This section applies if the Childrens Court has received an
14 application for a waiver order.
- 15 (2) The application may be heard in the absence of a party.
- 16 (3) The Childrens Court must make the waiver order if satisfied that
17 giving the annual review report to the person mentioned in the
18 application would not be in the best interests of the child or young
19 person.
- 20 (4) If the court is not satisfied under subsection (3), the court—
- 21 (a) must order the chief executive to give the person mentioned in
22 the application with a copy of the annual review report, either
23 in full or in part; and
- 24 (b) may make any other order about the provision of the annual
25 review report that the court considers appropriate.

499 Annual review report—public advocate may require chief executive to give annual review report to someone

- (1) This section applies if the chief executive—
- (a) must give an annual review report to someone under section 496 (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 chief executive to give the annual review report to the person (an *annual review report order*).
- (3) The public advocate must give the chief executive 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 chief executive must give the annual review report to the person not later than 14 days after the day the court makes the order.

500 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.

Chapter 15 Care and protection—chief executive 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 chief executive under any of the following (see s 17 and s 18):

- an appraisal order including a temporary parental responsibility provision (see s 372)
- 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 682)
- 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

501 Definitions—Act

In this Act:

foster carer—see section 509.

foster care service—see section 514.

general parental authority—see section 514.

in therapeutic protection—see section 571.

kinship carer—see section 508.

out-of-home carer—see section 507.

out-of-home carer authorisation—see section 514.

1 *residential care service*—see section 510.

2 *specific parental authority*—see section 514.

3 **502 Chief executive may provide assistance**

4 (1) If the chief executive has parental responsibility for a child or young
5 person, the chief executive may provide any of the following for the
6 child or young person:

7 (a) placement with an out-of-home carer;

8 (b) financial support;

9 (c) counselling;

10 (d) appropriate education, training and employment opportunities;

11 (e) health care treatment;

12 (f) recreational opportunities;

13 (g) a care plan;

14 (h) an explanation, in a way the child or young person can
15 understand, of the aim of care plans.

16 (2) If the chief executive stops having parental responsibility for a child
17 or young person (for any reason), the chief executive may arrange
18 for financial or other assistance to be provided to, or for, the child or
19 young person on the conditions the chief executive considers
20 appropriate.

**Part 15.2 Chief executive has long-term
care responsibility**

503 Chief executive sharing long-term care responsibility

(1) This section applies if the chief executive—

(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 chief executive's proposed decision about a long-term matter for the child or young person—

(a) the person or the chief executive may apply to the Childrens Court for an order about the matter; and

(b) the chief executive 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).

- 1 **504 Chief executive must consult about long-term care**
- 2 If the chief executive has long-term care responsibility for a child or
- 3 young person, the chief executive must, as far as practicable, have
- 4 regard to the views and wishes of any person who previously had
- 5 long-term care responsibility for the child or young person.
- 6 *Note* Under s 20, long-term care responsibility includes responsibility for
- 7 making decisions about the following matters for the child or young
- 8 person:
- 9 (a) the administration, management and control of the child's or
- 10 young person's property;
- 11 (b) religion and observance of racial, ethnic, religious or cultural
- 12 traditions;
- 13 (c) the issuing (and opposing the issuing) of a passport for the child
- 14 or young person;
- 15 (d) long-term care about education, training and employment.

Part 15.3 Chief executive has daily care responsibility

505 Pt 15.3 applies to care and protection chapters

- (1) This part applies if the chief executive 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 chief executive under the following provisions (see s 17 and s 18):

- an appraisal order including a temporary parental responsibility provision (see s 372)
- 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 682)
- 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 chief executive—

(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 s 530 (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.

506 Public advocate to be told about action following appraisals

(1) This section applies if—

- (a) the chief executive decides that a child concern report about a child or young person is a child protection report; and
- (b) because of the report, the chief executive 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 chief executive 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 1 The chief executive 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 372);
- (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).

Note 2 If the chief executive has daily care responsibility for a child or young person, the chief executive must place the child or young person with an out-of-home carer (see pt 15.4).

(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 chief executive.

- 1 (2) The chief executive must give the public advocate a report about—
2 (a) the incident; and
3 (b) what action (if any) the chief executive has taken because of
4 the appraisal.

Part 15.4 Out-of-home carers

Division 15.4.1 Placement with out-of-home carer

507 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.

508 Who is a *kinship carer*?

In this Act:

kinship carer, for a child or young person, means a person—

- (a) authorised by the chief executive under section 515 (Authorisation of kinship carer—specific parental authority) for the child or young person; and
- (b) with whom the chief executive has placed the child or young person under section 511 (Chief executive may place child or young person with out-of-home carer).

509 Who is a *foster carer*?

In this Act:

foster carer, for a child or young person, means a person authorised by the chief executive under—

- (a) section 517 (Authorisation of foster carer—specific parental authority); or

- 1 (b) section 518 (Authorisation of foster carer—general parental
2 authority).

3 **510 What is a *residential care service*?**

4 In this Act:

5 *residential care service*, for a child or young person, means an
6 entity authorised by the chief executive under section 519
7 (Authorisation of residential care service—general parental
8 authority).

9 **511 Chief executive may place child or young person with**
10 **out-of-home carer**

- 11 (1) If the chief executive has daily care responsibility for a child or
12 young person, the chief executive may place the child or young
13 person with an out-of-home carer.
- 14 (2) If the chief executive is placing an Aboriginal or Torres Strait
15 Islander child or young person with an out-of-home carer, the
16 placement must be in accordance with section 512.

17 *Note* An authorised person may, at any reasonable time, enter premises where
18 a child or young person is living if the chief executive has placed the
19 child or young person with an out-of-home carer under this section and
20 the purpose of the entry is to ensure that the child or young person is
21 being properly cared for (see s 814).

22 **512 Priorities for placement with out-of-home carer—**
23 **Aboriginal or Torres Strait Islander child or young person**

- 24 (1) If the chief executive is placing an Aboriginal or Torres Strait
25 Islander child or young person with an out-of-home carer under
26 section 511, the chief executive must place the child or young
27 person with the first of the options mentioned in subsection (2)
28 that—

- 29 (a) is available; and

- 1 (b) to which the child or young person does not object; and
- 2 (c) is consistent with any Aboriginal or Torres Strait Islander
- 3 cultural plan in force for the child or young person.
- 4 (2) The chief executive may place an Aboriginal or Torres Strait
- 5 Islander child or young person with any of the following
- 6 out-of-home carers:
- 7 (a) a kinship carer;
- 8 (b) a foster carer who is a member of the child's or young person's
- 9 Aboriginal or Torres Strait Islander community in a
- 10 relationship of responsibility for the child or young person
- 11 according to local custom and practice;
- 12 (c) a foster carer who is a member of the child's or young person's
- 13 community;
- 14 (d) an Aboriginal or Torres Strait Islander foster carer;
- 15 (e) a non-Aboriginal or Torres Strait Islander foster carer who—
- 16 (i) the chief executive believes on reasonable grounds is
- 17 sensitive to the child's or young person's needs; and
- 18 (ii) the chief executive believes on reasonable grounds is
- 19 capable of promoting the child's or young person's
- 20 ongoing contact with the child's or young person's
- 21 Aboriginal or Torres Strait Islander family, community
- 22 and culture; and
- 23 (iii) if family reunion or continuing contact with the child's or
- 24 young person's Aboriginal or Torres Strait Islander
- 25 family, community or culture is a consideration in the
- 26 placement—lives near the child's or young person's
- 27 Aboriginal or Torres Strait Islander family or community.

1 (3) In this section:

2 *Aboriginal or Torres Strait Islander cultural plan*, for an
3 Aboriginal or Torres Strait Islander child or young person, means a
4 care plan developed for the child or young person by the chief
5 executive under section 454 (What is a *care plan*?) that includes
6 proposals for the preservation and enhancement of the identity of
7 the child or young person.

8 **513 Residential care service may accommodate child or**
9 **young person at place of care**

10 A residential care service may, but need not, accommodate a child
11 or young person at a place of care.

12 *Note 1* The Minister may approve a place as a place of care for this Act under
13 s 524.

14 *Note 2* An authorised person may, at any reasonable time, enter premises where
15 a child or young person is living if the chief executive has placed the
16 child or young person with an out-of-home carer under s 511 (Chief
17 executive may place child or young person with out-of-home carer) and
18 the purpose of the entry is to ensure that the child or young person is
19 being properly cared for (see s 814).

20 *Note 3* An official visitor also inspects places of care and handles complaints
21 made by children and young people who are placed with a residential
22 care service and accommodated at a place of care (see pt 2.3).

23 **Division 15.4.2 Authorisation of out-of-home carers**
24 **and approval of places of care**

25 **514 Definitions—Act**

26 In this Act:

27 *foster care service* means an entity that—

- 28 (a) recruits people to become foster carers; and
29 (b) provides support for foster carers; and

1 (c) is authorised by the chief executive under section 516
2 (Authorisation of foster care service).

3 ***general parental authority*** means—

4 (a) for a foster carer—an authorisation under section 518
5 (Authorisation of foster carer—general parental authority); or

6 (b) for a residential care service—an authorisation under
7 section 519 (Authorisation of residential care service—general
8 parental authority).

9 ***out-of-home carer authorisation*** means an authorisation of—

10 (a) a person as a kinship carer under section 515; or

11 (b) a person as a foster carer under—

12 (i) section 517 (Authorisation of foster carer—specific
13 parental authority); or

14 (ii) section 518 (Authorisation of foster carer—general
15 parental authority); or

16 (c) an entity as a residential care service under section 519
17 (Authorisation of residential care service—general parental
18 authority).

19 ***specific parental authority*** means—

20 (a) for a kinship carer—an authorisation under section 515; or

21 (b) for a foster carer—an authorisation under section 517
22 (Authorisation of foster carer—specific parental authority).

23 **515 Authorisation of kinship carer—specific parental**
24 **authority**

25 (1) This section applies if the chief executive has daily care
26 responsibility or long-term care responsibility for a child or young
27 person.

- 1 (2) The chief executive may authorise, orally or in writing, a family
2 member, or significant person, of the child or young person to
3 exercise the daily care or long-term care responsibility for the chief
4 executive.
- 5 (3) However, the chief executive may authorise a family member, or
6 significant person, only if satisfied that the family member or
7 significant person—
- 8 (a) is a suitable entity to exercise the responsibility for the child or
9 young person; and
- 10 *Note* Suitable entities are dealt with in s 61.
- 11 (b) agrees to exercise the responsibility for the chief executive.
- 12 (4) The family member or significant person must exercise the
13 responsibility subject to any directions of the chief executive.
- 14 (5) An authorisation under this section has effect only during a
15 placement of the child or young person with the family member or
16 significant person under section 511 (Chief executive may place
17 child or young person with out-of-home carer).
- 18 *Note 1* Under the Legislation Act, s 180, power given by a law to make a
19 decision includes power to reverse or change the decision. The power
20 to reverse or change the decision is exercisable in the same way, and
21 subject to the same conditions, as the power to make the decision.
- 22 *Note 2* A decision under this section is a reviewable decision (see s 838).

23 **516 Authorisation of foster care service**

- 24 The chief executive may authorise an entity to be a foster care
25 service if satisfied that the entity—
- 26 (a) is a suitable entity to facilitate foster care services; and

1 (b) complies with, and is likely to continue to comply with, the
2 out-of-home care standards.

3 *Note 1* Suitable entities are dealt with in s 61.

4 *Note 2* The Minister may make out-of-home care standards under s 886.

5 *Note 3* A decision under this section is a reviewable decision (see s 838).

6 **517 Authorisation of foster carer—specific parental authority**

7 (1) This section applies if the chief executive has daily care
8 responsibility or long-term care responsibility for a child or young
9 person.

10 (2) The chief executive may authorise, orally or in writing, a person to
11 exercise the daily care or long-term care responsibility for the chief
12 executive.

13 (3) However, the chief executive may authorise a person only if
14 satisfied that the person agrees to exercise the responsibility for the
15 chief executive.

16 (4) The person must exercise the responsibility subject to any directions
17 of the chief executive.

18 (5) An authorisation under this section has effect only during a
19 placement of the child or young person with the foster carer under
20 section 511 (Chief executive may place child or young person with
21 out-of-home carer).

22 *Note 1* Under the Legislation Act, s 180, power given by a law to make a
23 decision includes power to reverse or change the decision. The power
24 to reverse or change the decision is exercisable in the same way, and
25 subject to the same conditions, as the power to make the decision.

26 *Note 2* A decision under this section is a reviewable decision (see s 838).

- 1 **518 Authorisation of foster carer—general parental authority**
- 2 (1) The chief executive may authorise, orally or in writing, a person—
- 3 (a) to exercise daily care responsibility for any child or young
- 4 person for whom the chief executive has daily care
- 5 responsibility; or
- 6 (b) to exercise long-term care responsibility for any child or young
- 7 person for whom the chief executive has long-term care
- 8 responsibility.
- 9 (2) However, the chief executive may authorise a person only if
- 10 satisfied that the person—
- 11 (a) is a suitable entity to exercise the responsibility for any child or
- 12 young person; and
- 13 *Note* Suitable entities are dealt with in s 61.
- 14 (b) has given the chief executive suitability information required
- 15 by the chief executive about each other adult member of the
- 16 person's household.
- 17 (3) The person must exercise the responsibility subject to any directions
- 18 of the chief executive.
- 19 *Note 1* Under the Legislation Act, s 180, power given by a law to make a
- 20 decision includes power to reverse or change the decision. The power
- 21 to reverse or change the decision is exercisable in the same way, and
- 22 subject to the same conditions, as the power to make the decision.
- 23 *Note 2* A decision under this section is a reviewable decision (see s 838).
- 24 **519 Authorisation of residential care service—general**
- 25 **parental authority**
- 26 (1) The chief executive may authorise, in writing, an entity to
- 27 exercise—
- 28 (a) daily care responsibility for any child or young person for
- 29 whom the chief executive has daily care responsibility; or

- 1 (b) long-term care responsibility for any child or young person for
2 whom the chief executive has long-term care responsibility.
- 3 (2) However, the chief executive may authorise an entity only if
4 satisfied that the entity—
- 5 (a) is a suitable entity to exercise the responsibility for any child or
6 young person; and
- 7 *Note* Suitable entities are dealt with in s 61.
- 8 (b) complies with, and is likely to continue to comply with, the
9 out-of-home care standards; and
- 10 *Note* The Minister may make out-of-home care standards under s 886.
- 11 (c) agrees to exercise the responsibility for the chief executive for
12 any child or young person.
- 13 (3) The entity must exercise the responsibility subject to any directions
14 of the chief executive.
- 15 *Note 1* Under the Legislation Act, s 180, power given by a law to make a
16 decision includes power to reverse or change the decision. The power
17 to reverse or change the decision is exercisable in the same way, and
18 subject to the same conditions, as the power to make the decision.
- 19 *Note 2* A decision under this section is a reviewable decision (see s 838).

20 **520 Out-of-home carer must be given copy of authorisation**
21 **and any relevant court orders**

- 22 (1) If the chief executive orally authorises a person or entity as an
23 out-of-home carer, the chief executive must also, as soon as
24 practicable, authorise the person or entity in writing.
- 25 (2) If the chief executive authorises, in writing, a person or entity as an
26 out-of-home carer, the chief executive must give the person or entity
27 a copy of—
- 28 (a) the authorisation; and
- 29 (b) any relevant court order about the child or young person.

521 Revocation of foster care service's authorisation

(1) The chief executive may revoke an entity's authorisation under section 516 as a foster care service if the chief executive is satisfied that the entity—

- (a) is not a suitable entity to facilitate foster care services; or
- (b) has not complied with, or continued to comply with, the out-of-home care standards.

(2) The chief executive may also revoke an entity's authorisation if the entity asks the chief executive to revoke the authorisation.

(3) Before revoking an entity's authorisation under subsection (1), the chief executive must—

- (a) give the entity written notice of the chief executive's intention to revoke the authorisation, including the chief executive's reasons; and
- (b) tell the entity that the person may make a submission, in writing, to the chief executive 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) After considering any submission, the chief executive 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 838).

- (b) revoke the notice of intention to revoke.

- 1 (5) This section is in addition to the Legislation Act, section 180 (Power
2 to make decision includes power to reverse or change).

3 *Note* Under the Legislation Act, s 180, power given by a law to make a
4 decision includes power to reverse or change the decision. The power
5 to reverse or change the decision is exercisable in the same way, and
6 subject to the same conditions, as the power to make the decision.

7 **522 Revocation of foster carer's authorisation**

- 8 (1) The chief executive may revoke a person's authorisation under
9 section 518 as a foster carer if satisfied that the person—

10 (a) is not a suitable entity to have responsibility for any child or
11 young person; or

12 (b) has not adequately cared for or protected the child or young
13 person; or

14 (c) has failed to comply with a direction of the chief executive in
15 exercising daily care or long-term care responsibility for any
16 child or young person.

17 *Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- 18 (2) The chief executive may also revoke a person's authorisation if the
19 person asks the chief executive to revoke the authorisation.

- 20 (3) Before revoking a person's authorisation under subsection (1), the
21 chief executive must—

22 (a) give the person written notice of the chief executive's intention
23 to revoke the authorisation, including the chief executive's
24 reasons; and

25 (b) tell the person that the person may make a submission, in
26 writing, to the chief executive about the notice not later than
27 14 days after the day the notice is given to the person; and

28 (c) if the entity makes a submission—consider the submission.

(4) After considering any submission, the chief executive 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 838).

(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 chief executive has placed the child or young person with an out-of-home carer under s 511 (Chief executive may place child or young person with out-of-home carer) and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 814).

523 Revocation of residential care service's authorisation

(1) The chief executive may revoke an entity's authorisation under section 519 as a residential care service if satisfied that the entity—

(a) is not a suitable entity to have daily care responsibility for any child or young person; or

(b) has not adequately cared for or protected the child; or

(c) has not complied with the out-of-home care standards.

Note The Minister may make out-of-home care standards under s 886.

(2) The chief executive may also revoke an entity's authorisation if the entity asks the chief executive to revoke the authorisation.

- 1 (3) Before revoking an entity's authorisation under subsection (1), the
2 chief executive must—
- 3 (a) give the entity written notice of the chief executive's intention
4 to revoke the authorisation, including the chief executive's
5 reasons; and
- 6 (b) tell the entity that the entity may make a submission, in
7 writing, to the chief executive about the notice not later than
8 14 days after the day the notice is given to the entity; and
- 9 (c) if the entity makes a submission—consider the submission.
- 10 (4) After considering any submission, the chief executive may consider
11 any other relevant matter and must decide to either—
- 12 (a) revoke the authorisation; or
- 13 *Note* A decision under this paragraph is a reviewable decision
14 (see s 838).
- 15 (b) revoke the notice of intention to revoke.
- 16 (5) This section is in addition to the Legislation Act, section 180 (Power
17 to make decision includes power to reverse or change).
- 18 *Note 1* Under the Legislation Act, s 180, power given by a law to make a
19 decision includes power to reverse or change the decision. The power
20 to reverse or change the decision is exercisable in the same way, and
21 subject to the same conditions, as the power to make the decision.
- 22 *Note 2* An authorised person may, at any reasonable time, enter premises where
23 a child or young person is living if the chief executive has placed the
24 child or young person with an out-of-home carer under s 511 (Chief
25 executive may place child or young person with out-of-home carer) and
26 the purpose of the entry is to ensure that the child or young person is
27 being properly cared for (see s 814).
- 28 *Note 3* An official visitor also inspects places of care and handles complaints
29 made by children and young people who are placed with a residential
30 care service and accommodated at a place of care (see pt 2.3).

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- 1 **524 Approval of places of care**
- 2 (1) The Minister may approve a place operated by a residential care
- 3 service as a place of care for this Act if satisfied that—
- 4 (a) the residential care service complies with, and is likely to
- 5 continue to comply with, the out-of-home care standards; and
- 6 (b) the place complies with, and is likely to continue to comply
- 7 with, the out-of-home care standards.
- 8 *Note 1* The Minister may make out-of-home care standards under s 886.
- 9 *Note 2* Under the Legislation Act, s 180, power given by a law to make a
- 10 decision includes power to reverse or change the decision. The power
- 11 to reverse or change the decision is exercisable in the same way, and
- 12 subject to the same conditions, as the power to make the decision.
- 13 *Note 3* A decision under this section is a reviewable decision (see s 838).
- 14 (2) The Minister may ask the residential care service to allow the chief
- 15 executive to inspect the place where the residential care service
- 16 proposes to operate the place of care.
- 17 *Note* An authorised person may, at any reasonable time, enter a place
- 18 operated by a residential care service if the Minister is deciding whether
- 19 to approve the place as a place of care under this section and has asked
- 20 the residential care service to allow the chief executive to inspect the
- 21 place and the residential care service has agreed to allow the chief
- 22 executive to inspect the place (see s 816).
- 23 (3) If the Minister asks the residential care service to allow the chief
- 24 executive to inspect the place but the residential care service does
- 25 not allow the chief executive to inspect the place, the Minister need
- 26 not decide whether to approve the place as a place of care.
- 27 (4) An approval remains in force until revoked by the Minister.
- 28 (5) If the Minister approves a place operated by a residential care
- 29 service as a place of care, the residential care service may care for
- 30 and accommodate children and young people at the place.

1 (6) An approval is a notifiable instrument.

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

3 *Note 2* An authorised person may, at any reasonable time, enter premises where
4 a child or young person is living if the chief executive has placed the
5 child or young person with an out-of-home carer under s 511 (Chief
6 executive may place child or young person with out-of-home carer) and
7 the purpose of the entry is to ensure that the child or young person is
8 being properly cared for (see s 814).

9 *Note 3* An official visitor also inspects places of care and handles complaints
10 made by children and young people who are placed with a residential
11 care service and accommodated at a place of care (see pt 2.3).

12 **Division 15.4.3 Information to be kept by foster** 13 **carers and residential care services**

14 **525 Definitions—div 15.4.3**

15 In this division:

16 ***care entities***, for a child or young person for a placement, means the
17 following entities:

18 (a) for a child or young person placed with a foster carer—

19 (i) the foster carer; and

20 (ii) the foster care service supporting the foster carer;

21 (b) for a child or young person placed with a residential care
22 service—the residential care service.

23 ***personal information***, about a child or young person—

24 (a) means all protected information about the child or young
25 person; and

26 (b) includes the following items:

27 (i) the birth certificate for the child or young person;

28 (ii) school reports about the child or young person;

1 (iii) medical reports about the child or young person;

2 (iv) photographs of the child or young person.

3 **placement**, for a child or young person, means placement of the
4 child or young person by the chief executive with a foster carer or a
5 residential care service under section 511 (Chief executive may
6 place child or young person with out-of-home carer).

7 **526 Information must be kept during placement**

8 (1) This section applies if the chief executive places a child or young
9 person with a foster carer or a residential care service under
10 section 511 (Chief executive may place child or young person with
11 out-of-home carer).

12 (2) Each care entity for the child or young person for the placement,
13 must keep the following things during the placement:

14 (a) personal information about the child or young person that the
15 care entity possesses because of the placement;

16 (b) records made by the care entity about the child or young
17 person because of the placement.

18 **527 Information must be kept after placement ends**

19 (1) This section applies if a care entity for a child or young person for a
20 placement keeps personal information or records under section 526.

21 (2) The care entity must keep the personal information or records until
22 the care entity gives the personal information or records to the chief
23 executive under subsection (3).

24 (3) The care entity must give the personal information or records to the
25 chief executive if—

26 (a) the chief executive asks the care entity to give the personal
27 information or records to the chief executive; or

28 (b) the care entity stops being a care entity for this Act; or

- 1 (c) 2 years have elapsed since the placement ended; or
2 (d) the person to whom the personal information or records relate
3 becomes an adult.
- 4 (4) If personal information or records are given to the chief executive
5 under subsection (3), the personal information or records are a
6 record of an agency.
- 7 (5) In this section:
8 *record*, of an agency—see the *Territory Records Act 2002*, section 9
9 (Meaning of *record* of an agency).

10 **528 Child or young person must have access to information**

- 11 (1) This section applies if—
12 (a) a care entity for a child or young person for a placement keeps
13 personal information or records under section 526; and
14 (b) the care entity has not given the personal information or
15 records to the chief executive under section 527.
- 16 (2) The chief executive may authorise the care entity to give the child or
17 young person access to the personal information and records if the
18 chief executive considers it to be in the child's or young person's
19 best interests.
- 20 (3) If the chief executive authorises the care entity to give the child or
21 young person access to the personal information and records, the
22 care entity must give the child or young person access.
- 23 (4) If the chief executive's authorisation is subject to a condition about
24 the access to be given, the care entity must comply with the
25 condition.

Chapter 16 Care and protection— therapeutic protection of children and young people

Part 16.1 Preliminary

529 Definitions—Act and ch 16

(1) In this Act:

harmful conduct—see section 532.

interim therapeutic protection order—see section 542.

mental dysfunction—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

Note The *Mental Health (Treatment and Care) Act 1994*, dictionary defines *mental dysfunction* as a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion.

mental illness—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

Note The *Mental Health (Treatment and Care) Act 1994*, dictionary defines *mental illness* as a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d).

therapeutic protection history—see section 536.

- 1 *therapeutic protection order*—see section 531.
- 2 *therapeutic protection place*—see section 534.
- 3 *therapeutic protection plan*—see section 535.
- 4 (2) In this chapter:
- 5 *non-treating doctor* means a doctor authorised under section 631
- 6 (Health professionals—non-treating functions).
- 7 *non-treating health professional* means a health professional
- 8 authorised under section 631 (Health professionals—non-treating
- 9 functions).
- 10 *non-treating nurse* means a nurse authorised under section 631
- 11 (Health professionals—non-treating functions).
- 12 *risk assessment*—see section 533.
- 13 *therapeutic protection person* means—
- 14 (a) for a therapeutic protection place for which the chief executive
- 15 is the operating entity—an authorised person to whom the
- 16 chief executive has delegated functions of a therapeutic
- 17 protection person under this chapter; and
- 18 (b) for any other therapeutic protection place—a person that the
- 19 operating entity has authorised to exercise the functions of a
- 20 therapeutic protection person under this chapter for the
- 21 therapeutic protection place.
- 22 *transition plan*—see section 537.
- 23 **530 Therapeutic protection only under therapeutic protection**
- 24 **order or for emergency protection**
- 25 The chief executive may confine a child or young person at a
- 26 therapeutic protection place only—
- 27 (a) under a therapeutic protection order; or

- 1 (b) under an interim therapeutic protection order; or
- 2 (c) if the chief executive believes on reasonable grounds the child
- 3 or young person is in need of emergency therapeutic
- 4 protection.

5 *Note* For when a child or young person is in need of emergency therapeutic

6 protection, see s 403.

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

531 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 chief executive for the period of confinement; and

Note Part 15.3 (Chief executive has daily care responsibility) does not apply if daily care responsibility for a child or young person is transferred to the chief executive under a therapeutic protection order (see s 505).

1 (c) includes any conditions the Childrens Court considers
2 necessary to prevent the child or young person from engaging
3 in harmful conduct.

4 *Note* The chief executive or a police officer may apply to a magistrate for a
5 safe custody warrant if a therapeutic protection order or interim
6 therapeutic protection order is in force for a child or young person and
7 the chief executive or police officer believes on reasonable grounds
8 that—

9 (a) someone has contravened the order and, because of the
10 contravention, the child or young person is in danger; or

11 (b) the child or young person is absent without lawful authority or
12 excuse from the therapeutic protection place where the child or
13 young person has been directed to be confined under the
14 therapeutic protection order (see s 684).

15 **532 What is *harmful conduct*?**

16 In this Act:

17 *harmful conduct*, engaged in by a child or young person, means
18 conduct which leads to a significant risk of significant harm to the
19 child or young person or someone else.

20 **533 What is a *risk assessment*?**

21 (1) For this chapter:

22 *risk assessment*, for a child or young person, means an assessment
23 by the chief executive about whether—

24 (a) there will be a significant risk of significant harm to—

25 (i) the child or young person; or

26 (ii) someone else; and

27 (b) the risk of harm arises from the child's or young person's
28 conduct; and

29 (c) the risk of harm will be imminent.

- 1 (2) The chief executive may make risk assessment guidelines.
2 (3) A risk assessment guideline is a notifiable instrument.
3 *Note* A notifiable instrument must be notified under the Legislation Act.
4 (4) A risk assessment must be carried out in accordance with the risk
5 assessment guidelines.

6 **534 What is a *therapeutic protection place*?**

7 In this Act:

8 *therapeutic protection place*, means a place declared by the
9 Minister under section 624 to be a therapeutic protection place.

10 *Note* Therapeutic protection places are further dealt with in div 16.4.1.

11 **535 What is a *therapeutic protection plan*?**

12 In this Act:

13 *therapeutic protection plan*, for a child or young person for whom
14 the chief executive has applied for a therapeutic protection order—

15 (a) means a plan to reduce the likelihood of the child or young
16 person engaging in harmful conduct in the future arranged by
17 the chief executive in consultation, as far as is practicable,
18 with—

19 (i) the child or young person; and

20 (ii) the parents of the child or young person; and

21 (iii) each other person (if any) who has daily care
22 responsibility for the child or young person; and

- 1 (iv) anyone else who is proposed to be involved in
2 implementing the plan; and
- 3 (b) includes written details of the following for the proposed
4 period of confinement:
- 5 (i) when the period of confinement is to start and end;
- 6 (ii) the therapy, counselling or other service that is proposed
7 for the child or young person;
- 8 (iii) the expected results of the therapy, counselling or other
9 service;
- 10 (iv) the education that is proposed for the child or young
11 person;
- 12 (v) the supervision that is proposed for the child or young
13 person;
- 14 (vi) the proposed arrangements for the child's or young
15 person's contact with—
- 16 (A) family members; and
- 17 (B) significant people for the child or young person; and
- 18 (C) other people;
- 19 (vii) for an Aboriginal or Torres Strait Islander child or young
20 person—the proposed arrangements for the preservation
21 and enhancement of the identity of the child or young
22 person as an Aboriginal or Torres Strait Islander person.
- 23 *Note* If the public advocate or an official visitor asks the chief executive for a
24 therapeutic protection plan for a child or young person, the chief
25 executive must provide a copy promptly (see s 630).

- 1 **536** **What is *therapeutic protection history*?**
- 2 In this Act:
- 3 *therapeutic protection history*, for a child or young person who has
- 4 been confined under a therapeutic protection order, means written
- 5 details of the following for each period of confinement:
- 6 (a) when the period of confinement started and ended;
- 7 (b) where the child or young person was confined;
- 8 (c) the therapy, counselling or other service that was provided to
- 9 the child or young person;
- 10 (d) the review of the progress of the therapy, counselling or other
- 11 service;
- 12 (e) the education that was provided to the child or young person;
- 13 (f) the supervision that was provided to the child or young person;
- 14 (g) the arrangements for the child's or young person's contact
- 15 with, and the child's or young person's contact with—
- 16 (i) family members; and
- 17 (ii) significant people for the child or young person; and
- 18 (iii) other people.
- 19 **537** **What is a *transition plan*?**
- 20 In this chapter:
- 21 *transition plan*, for a child or young person—
- 22 (a) means a plan developed by the chief executive for when the
- 23 child or young person is no longer subject to a therapeutic
- 24 protection order; and

- 1 (b) may include proposals for ongoing therapy, counselling or
2 other services to assist the child's or young person's transition
3 from therapeutic protection.

4 **Division 16.2.2 Applications for therapeutic**
5 **protection orders**

6 **538 Therapeutic protection order—application by chief**
7 **executive**

- 8 (1) Only the chief executive may apply for a therapeutic protection
9 order.
10 (2) The chief executive may apply to the Childrens Court for a
11 therapeutic protection order for a child or young person if satisfied
12 that the criteria for making the order are met.

13 *Note 1* Criteria for making a therapeutic protection order are in s 548.

14 *Note 2* Oral applications may also be made (see s 697).

15 **539 Therapeutic protection order—application to state**
16 **grounds etc**

17 An application for a therapeutic protection order for a child or
18 young person must—

- 19 (a) state the grounds on which the order is sought; and
20 (b) include—
21 (i) a risk assessment for the child or young person; and
22 (ii) a copy of previous therapeutic protection orders for the
23 child or young person (if any); and
24 (iii) the therapeutic protection history for the child or young
25 person (if any); and

- 1 (c) state the less restrictive ways that the chief executive has—
2 (i) tried to prevent the child or young person from engaging
3 in harmful conduct and how the less restrictive ways were
4 not successful (if any); and
5 (ii) considered to prevent the child or young person from
6 engaging in harmful conduct and how the less restrictive
7 ways were not appropriate (if any); and
8 (d) include—
9 (i) a therapeutic protection plan for the child or young
10 person; and
11 (ii) a transition plan for the child or young person; and
12 (iii) information about how the therapeutic protection order is
13 part of the overall care plan for the child or young person.
14 *Note* Statements, documents and reports must be included in the application
15 (see s 695).

16 **540 Therapeutic protection orders—who must be given**
17 **application**

- 18 (1) The chief executive must give a copy of the application for the
19 therapeutic protection order for the child or young person to the
20 following people at least 1 working day before the application is to
21 be heard by the Childrens Court:
22 (a) the child or young person;
23 (b) each parent of the child or young person;
24 (c) each other person (if any) who has daily care responsibility, or
25 long-term care responsibility, for the child or young person;
26 (d) the public advocate.

- (2) This section does not apply if the chief executive 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 chief executive need only give a copy of the application to people before the application is heard by the Childrens Court (see s 412).

541 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 chief executive 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 412).

Division 16.2.3 Interim therapeutic protection orders

542 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 chief executive 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 chief executive 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 684).

543 Interim therapeutic protection order—criteria for making

The Childrens Court may, on application by the chief executive, 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 548.

544 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 is suffering from a mental illness or mental dysfunction.
- (2) The order must contain a provision directing the child or young person to submit to the jurisdiction of the mental health tribunal to allow the tribunal—
- (a) to decide whether the child or young person is suffering from a mental illness or mental dysfunction; and
 - (b) if the tribunal decides that the child or young person is suffering from a mental illness or mental dysfunction—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 is not suffering from a mental illness or mental dysfunction (see s 548).

545 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.

- 1 (3) An interim therapeutic protection order must end on, or before, the
2 day the application for the therapeutic protection order is decided.

3 **546 Interim therapeutic protection order—no extension,**
4 **amendment, revocation**

5 An interim therapeutic protection order must not be extended,
6 amended or revoked.

7 **547 Offence—interim therapeutic protection order**

8 A person commits an offence if—

- 9 (a) an interim therapeutic protection order is in force for a child or
10 young person; and
11 (b) the person has been given a copy of the order; and
12 (c) the person is not the child or young person who is the subject
13 of the interim therapeutic protection order; and
14 (d) the person engages in conduct that contravenes a provision of
15 the order.

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

18 **Division 16.2.4 Making a therapeutic protection order**

19 **548 Therapeutic protection order—criteria for making**

20 The Childrens Court may, on the application of the chief executive,
21 make a therapeutic protection order for a child or young person only
22 if satisfied that—

- 23 (a) if the order is not made—
24 (i) there will be a significant risk of significant harm to—
25 (A) the child or young person; or

- 1 (B) someone else; and
- 2 (ii) the risk of harm arises from the child's or young person's
- 3 conduct; and
- 4 (iii) the risk of harm will be imminent; and
- 5 (b) the chief executive has—
- 6 (i) tried less restrictive ways to prevent the child or young
- 7 person from engaging in harmful conduct but the less
- 8 restrictive ways have not been successful; or
- 9 (ii) considered less restrictive ways to prevent the child or
- 10 young person from engaging in harmful conduct but the
- 11 less restrictive ways were not appropriate; and
- 12 (c) there are no less restrictive ways for the chief executive to
- 13 prevent the child or young person from engaging in harmful
- 14 conduct; and
- 15 (d) the child or young person is at least 10 years old; or
- 16 (e) the child or young person—
- 17 (i) is not suffering from a mental illness or mental
- 18 dysfunction; or

- 1 (ii) in addition to any other behaviours or dysfunction giving
2 rise to the risk of harm is suffering from a mental illness
3 or mental dysfunction but the Childrens Court is satisfied
4 that making a therapeutic protection order for the child or
5 young person is the best way to support the child or
6 young person; and

7 *Note* The Childrens Court must make an interim therapeutic protection
8 order for a child or young person if an application for a
9 therapeutic protection order for the child or young person has
10 been made but not finally decided and the court suspects on
11 reasonable grounds that the child or young person is suffering
12 from a mental illness or mental dysfunction. The order must
13 direct the child or young person to submit to the jurisdiction of
14 the mental health tribunal (see s 544).

- 15 (f) no-one who has parental responsibility for the child or young
16 person (other than the chief executive) is willing and able to
17 prevent the child or young person from engaging in harmful
18 conduct; and

19 *Note* Parental responsibility is dealt with in div 1.3.2.

- 20 (g) confinement of the child or young person is necessary to
21 prevent the child or young person from engaging in harmful
22 conduct; and

- 23 (h) the chief executive has developed a therapeutic protection plan
24 for the child or young person; and

- 25 (i) the therapeutic protection plan is more likely than not to reduce
26 the likelihood of the child or young person engaging in harmful
27 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 chief executive provided Alex’s family with intensive family support services.
- 2 The chief executive 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 chief executive 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 710).

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 717).

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

549 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).

550 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 A party may ask for the statement of reasons (see s 721 (2)).

- 1 **551 Offence—therapeutic protection order**
- 2 A person commits an offence if—
- 3 (a) a therapeutic protection order is in force for a child or young
- 4 person; and
- 5 (b) the person has been given a copy of the order; and
- 6 (c) the person is not the child or young person who is the subject
- 7 of the therapeutic protection order; and
- 8 (d) the person engages in conduct that contravenes a provision of
- 9 the order.
- 10 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 11 both.

12 **Division 16.2.5 Review of therapeutic protection**

13 **orders**

14 **552 Initial review within 4 weeks**

- 15 (1) This section applies if a therapeutic protection order is in force for a
- 16 child or young person.
- 17 (2) The chief executive must review the operation of the order (the
- 18 *initial review*) not later than 4 weeks after the order is made.

19 **553 Ongoing review at least each 4 weeks**

- 20 (1) This section applies if a therapeutic protection order is in force for a
- 21 child or young person.
- 22 (2) The chief executive must review the operation of the order (an
- 23 *ongoing review*) not later than 4 weeks after—
- 24 (a) the initial review; and
- 25 (b) each ongoing review.

1 **554 Review—views to be considered**

2 (1) This section applies if the chief executive is carrying out an initial
3 review, or ongoing review, of the operation of a therapeutic
4 protection order.

5 (2) In carrying out the review, the chief executive must consider the
6 views of the following people:

7 (a) the child or young person;

8 (b) each person who has parental responsibility for the child or
9 young person (other than the chief executive);

10 *Note* Parental responsibility is dealt with in div 1.3.2.

11 (c) each person who had daily care responsibility for the child or
12 young person immediately before the order was made;

13 *Note* Daily care responsibility is dealt with in s 19 (b).

14 (d) each official visitor who has visited the child or young person;

15 (e) the public advocate;

16 (f) any other person the chief executive considers appropriate.

17 **555 Review report**

18 (1) This section applies if the chief executive has carried out an initial
19 review, or ongoing review, of the operation of a therapeutic
20 protection order.

21 (2) The chief executive must prepare a report (a ***review report***) about
22 the operation of the therapeutic protection order.

23 (3) The chief executive must give a copy of the review report to the
24 following people:

25 (a) the child or young person;

26 (b) each person who has parental responsibility for the child or
27 young person (other than the chief executive);

- 1 (c) each person who had daily care responsibility for the child or
2 young person immediately before the order was made;
3 (d) each official visitor who has visited the child or young person;
4 (e) the public advocate.

5 **556 Chief executive's action after review**

- 6 (1) This section applies if the chief executive has carried out an initial
7 review, or ongoing review, of the operation of a therapeutic
8 protection order.
9 (2) If the chief executive decides that the order should be extended, the
10 chief executive must apply to the Childrens Court for the order to be
11 extended.

12 *Note* The Childrens Court may extend the order under div 16.2.6.

- 13 (3) If the chief executive decides that the order should be amended, the
14 chief executive must apply to the Childrens Court for the order to be
15 amended.

16 *Note* Amending a therapeutic protection order is dealt with in div 16.2.7.

- 17 (4) If the chief executive decides that the order should be revoked, the
18 chief executive must apply to the Childrens Court for the order to be
19 revoked.

20 *Note* Revoking a therapeutic protection order is dealt with in div 16.2.7.

Division 16.2.6 Extending a therapeutic protection order

557 Therapeutic protection order—extension application

The chief executive may apply to the Childrens Court for extension of a therapeutic protection order only if the chief executive believes on reasonable grounds that the criteria for extending the order are met.

Note 1 Criteria for extending the order is in s 561.

Note 2 Statements, documents and reports must be included in the application (see s 695).

Note 3 Oral applications may also be made (see s 697).

558 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

(iii) a further risk assessment for the child or young person.

559 Therapeutic protection order—who must be given extension application

The chief executive 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.

560 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).

561 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 chief executive 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 chief executive 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 is suffering from a mental illness or mental dysfunction—extending the order is the best way to support the child or young person; and

- 1 (e) no-one who has parental responsibility for the child or young
2 person (other than the chief executive) is willing and able to
3 prevent the child or young person from engaging in harmful
4 conduct; and
- 5 *Note* Parental responsibility is dealt with in div 1.3.2.
- 6 (f) further confinement of the child or young person is necessary
7 to prevent the child or young person from engaging in harmful
8 conduct; and
- 9 (g) the chief executive has developed a further therapeutic
10 protection plan for the child or young person; and
- 11 (h) the further therapeutic protection plan is more likely than not to
12 reduce the likelihood of the child or young person engaging in
13 harmful conduct in the future; and
- 14 (i) extending the order is in the best interests of the child or young
15 person.
- 16 *Note 1* In a proceeding for a care and protection order, a fact is proved if it is
17 proved on the balance of probabilities (see s 710).
- 18 *Note 2* The Childrens Court may make an order imposing an obligation on a
19 person only if the person agrees to it, has been given an opportunity to
20 be heard about it or cannot be found (see s 717).
- 21 (2) The Childrens Court may extend a therapeutic protection order for
22 as long as a further 8 weeks.
- 23 (3) However, the Childrens Court must not extend a therapeutic
24 protection order if the total length of the order and the proposed
25 extension will be longer than 6 months.

562 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 A party may ask for the statement of reasons (see s 721 (2)).

Division 16.2.7 Amending or revoking a therapeutic protection order

563 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 chief executive;
- (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 568.
Criteria for revoking the order are in s 569.

- 1 **564 Therapeutic protection order—application for amendment**
2 **must state grounds etc**
- 3 (1) An application for amendment of a therapeutic protection order
4 must—
- 5 (a) state—
- 6 (i) how the provision is proposed to be amended; and
7 (ii) the grounds for the proposed amendment; and
- 8 (b) if the applicant is the chief executive, include—
- 9 (i) the therapeutic protection history for the child or young
10 person; and
- 11 (ii) a revised therapeutic protection plan for the child or
12 young person that takes into account the proposed
13 amendment; and
- 14 (iii) a further risk assessment for the child or young person.
- 15 (2) If the applicant is not the chief executive, after the chief executive
16 receives a copy of the application, the chief executive must file with
17 the Childrens Court—
- 18 (a) the therapeutic protection history for the child or young person;
19 and
- 20 (b) a revised therapeutic protection plan for the child or young
21 person that takes into account the proposed amendment; and
- 22 (c) a risk assessment for the child or young person.
- 23 **565 Therapeutic protection order—application for revocation**
24 **must state grounds etc**
- 25 (1) An application for revocation of a therapeutic protection order
26 must—
- 27 (a) state the grounds for the proposed revocation; and

- 1 (b) if the applicant is the chief executive, include—
2 (i) the therapeutic protection history for the child or young
3 person; and
4 (ii) a further risk assessment for the child or young person.
5 (2) If the applicant is not the chief executive, after the chief executive
6 receives a copy of the application, the chief executive must file with
7 the Childrens Court—
8 (a) the therapeutic protection history for the child or young person;
9 and
10 (b) a further risk assessment for the child or young person.

11 **566 Therapeutic protection order—who must be given**
12 **application for amendment or revocation**

13 The applicant for amendment or revocation of a therapeutic
14 protection order must give a copy of the application to the following
15 people at least 1 working day before the application is to be heard
16 by the Childrens Court:

- 17 (a) each party to the proceeding in which the order was made;
18 (b) anyone else who was required to be given a copy of the
19 application for the therapeutic protection order;
20 (c) the public advocate.

21 *Note* Parties to proceedings are dealt with in pt 19.2.

22 **567 Therapeutic protection order—Childrens Court to**
23 **consider application for amendment or revocation**
24 **promptly**

- 25 (1) The Childrens Court must give initial consideration to an application
26 for amendment or revocation of a therapeutic protection order not
27 later than 5 working days after the day the application is filed.

- 1 (2) The Childrens Court must give directions about the conduct of the
2 proceeding (including the hearing of the application) at the time the
3 application is initially considered.
- 4 (3) If the therapeutic protection order is in force on the day the
5 application is filed, but would end before the application is heard,
6 the order continues in force until the application is heard and
7 decided (whether or not the application is considered within the
8 period required under this section).

9 **568 Therapeutic protection order—criteria for amendment**

10 The Childrens Court may, by order, amend a therapeutic protection
11 order only if satisfied that—

- 12 (a) if the order is not amended—
- 13 (i) there will be a significant risk of significant harm to—
- 14 (A) the child or young person; or
- 15 (B) someone else; and
- 16 (ii) the risk of harm arises from the child's or young person's
17 conduct; and
- 18 (iii) the risk of harm will be imminent; and
- 19 (b) the chief executive has developed a further therapeutic
20 protection plan for the child or young person; and
- 21 (c) the further therapeutic protection plan is more likely than not to
22 reduce the likelihood of the child or young person engaging in
23 harmful conduct in the future; and

- 1 (d) amending the order is in the best interests of the child or young
2 person.

3 *Note 1* In a proceeding for a care and protection order, a fact is proved if it is
4 proved on the balance of probabilities (see s 710).

5 *Note 2* The Childrens Court may make an order imposing an obligation on a
6 person only if the person agrees to it, has been given an opportunity to
7 be heard about it or cannot be found (see s 717).

8 **569 Therapeutic protection order—criteria for revocation**

9 The Childrens Court may, by order, revoke a therapeutic protection
10 order only if satisfied that—

11 (a) if the order is revoked, there will be no imminent, significant
12 risk of significant harm to the child or young person or
13 someone else arising from the child's or young person's
14 conduct; and

15 (b) revoking the order is in the best interests of the child or young
16 person.

17 *Note 1* In a proceeding for a care and protection order, a fact is proved if it is
18 proved on the balance of probabilities (see s 710).

19 *Note 2* The Childrens Court may make an order imposing an obligation on a
20 person only if the person agrees to it, has been given an opportunity to
21 be heard about it or cannot be found (see s 717).

22 **570 Therapeutic protection order amendment or revocation—**
23 **statement of reasons**

24 If the Childrens Court hears and decides an application for
25 amendment or revocation of a therapeutic protection order, the court
26 must record a written statement of reasons for the decision.

27 *Note* A party may ask for the statement of reasons (see s 721 (2)).

Part 16.3 Children and young people in therapeutic protection

Division 16.3.1 Preliminary

571 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 530 (b) (Therapeutic protection only under therapeutic protection order or for emergency protection).

572 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.

- 1 (3) The operating entity for the therapeutic protection place may, on
2 application by the child or young person, approve a change in the
3 sex the child or young person chooses to be identified with, having
4 regard to any report obtained under subsection (4) or (5).
- 5 (4) Before making a decision under subsection (2) (b) or (3), the
6 operating entity for the therapeutic protection place must obtain a
7 report by a non-treating doctor or other non-treating health
8 professional about the child's or young person's sexual identity.
- 9 (5) The operating entity for the therapeutic protection place may also
10 obtain a report by a non-treating doctor or other non-treating health
11 professional about the child's or young person's sexual identity
12 chosen under subsection (2) (a) if the operating entity believes on
13 reasonable grounds that obtaining the report—
- 14 (a) is in the best interests of the child or young person; and
- 15 (b) is necessary to make a decision in relation to the child's or
16 young person's placement, supervision or management at the
17 therapeutic protection place.
- 18 (6) The operating entity for the therapeutic protection place must—
- 19 (a) give the child or young person written notice of a decision
20 under subsection (2) or (3); and
- 21 (b) ensure that the child's or young person's sex chosen under this
22 section is entered in the therapeutic protection register kept by
23 the operating entity.

- (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 1 The child or young person may require that either a male or a female conduct a search (see s 591 (2) (Searches—transgender or intersex child or young person)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 16.3.2 Supervision

573 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 815).

574 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.

Division 16.3.3 Visits by accredited people

575 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 chief executive;
- (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 public advocate;
- (g) the ombudsman;
- (h) a person prescribed by regulation.

576 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.

577 Therapeutic protection—visits by accredited people

An accredited person may visit a child or young person in therapeutic protection.

Division 16.3.4 Use of force

578 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 886.

(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.

-
- 1 **579 Therapeutic protection—authorised use of force**
- 2 A therapeutic protection person may use force that is necessary and
- 3 reasonable—
- 4 (a) to prevent a child or young person in therapeutic protection
- 5 from inflicting self-harm or harming someone else; or
- 6 (b) to prevent unlawful damage, destruction or interference with
- 7 property.
- 8 **580 Therapeutic protection—application of force**
- 9 (1) A therapeutic protection person may use force under this division
- 10 only if the operating entity—
- 11 (a) gives a clear warning of the intended use of force; and
- 12 (b) allows enough time for the warning to be observed; and
- 13 (c) uses force, as far as practicable, in a way that reduces the risk
- 14 of causing injury.
- 15 (2) However, the therapeutic protection person need not comply with
- 16 subsection (1) (b) or (c) if, in urgent circumstances, the person
- 17 believes on reasonable grounds that doing so would create a risk of
- 18 injury to the child or young person in therapeutic protection or
- 19 anyone else.
- 20 **Example—urgent circumstances**
- 21 the child or young person is assaulting someone or engaging in self-harm
- 22 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 23 does not limit, the meaning of the provision in which it appears (see
- 24 Legislation Act, s 126 and s 132).
- 25 (3) In applying force under section 579, the therapeutic protection
- 26 person may use body contact.

1 **581** **Therapeutic protection—medical examination after use of**
2 **force**

3 (1) The operating entity for a therapeutic protection place must ensure
4 that any child or young person in therapeutic protection injured by
5 the use of force under this division is examined as soon as
6 practicable by a doctor (other than a non-treating doctor) and that
7 appropriate health care is available to the child or young person.

8 (2) Without limiting subsection (1), the operating entity for a
9 therapeutic protection place must give a child or young person in
10 therapeutic protection the opportunity to be examined by a doctor or
11 nurse (other than a non-treating doctor or non-treating nurse) after
12 the use of force in relation to the child or young person.

13 **582** **Therapeutic protection—monthly reports about use of**
14 **force**

15 The operating entity for a therapeutic protection place must, as soon
16 as practicable after the end of each month, give the chief executive a
17 report summarising the incidents (if any) during the month that
18 involved the use of force in relation to a child or young person in
19 therapeutic protection.

20 **Division 16.3.5** **Searches**

21 **Subdivision 16.3.5.1 Application and definitions—div 16.3.5**

22 **583** **Application—div 16.3.5**

23 This division applies to a child or young person who is in
24 therapeutic protection.

1 **584** **What is a *scanning search*?**

2 In this part:

3 *scanning search*, of a child or young person, means a search of the
4 child or young person by electronic or other means that does not
5 require the child or young person to remove the child's or young
6 person's clothing or be touched by someone else.

7 **Examples—scanning searches**

- 8 1 passing a portable electronic or other device over or close to a child or young
9 person
10 2 requiring a child or young person to pass by or through an electronic or other
11 device

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

15 **585** **What is a *frisk search*?**

16 In this part:

17 *frisk search*, of a child or young person, means—

- 18 (a) a search of the child or young person conducted by quickly
19 running the hands over the child's or young person's outer
20 clothing; and
21 (b) an examination of anything worn or carried by the child or
22 young person that is conveniently and voluntarily removed by
23 the child or young person.

1 **586** **What is an *ordinary search*?**

2 In this part:

3 *ordinary search*, of a child or young person, means a search of the
4 child or young person or of anything in the child's or young
5 person's possession, and may include—

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

10 **587** **What is a *body search*?**

11 In this part:

12 *body search*, of a child or young person, means a search of the
13 child's or young person's body, including an examination of an
14 orifice or cavity of the child's or young person's body.

15 **588** **What is a *strip search*?**

16 In this part:

17 *strip search*, of a child or young person, means a search of the child
18 or young person, or of articles in the child's or young person's
19 possession, under section 597 (Strip searches—authorisation) that
20 may include—

- 21 (a) requiring the child or young person to remove all of the child's
22 or young person's clothing; and
23 (b) an examination of—
24 (i) the child's or young person's body (but not the child's or
25 young person's body orifices or cavities); and
26 (ii) the child's or young person's clothing.

1 **589** **What is a *dangerous thing*?**

2 In this part:

3 *dangerous thing* means a thing that, if used by, or allowed to
4 remain with, a child or young person, may—

5 (a) cause serious damage to the health of the child or young person
6 or someone else; or

7 (b) threaten the life of the child or young person or someone else.

8 **Subdivision 16.3.5.2 Searches generally**

9 **590** **Searches—intrusiveness**

10 A person conducting a search of a child or young person under this
11 division must ensure, as far as practicable, that the search—

12 (a) is the least intrusive kind of search that is necessary and
13 reasonable in the circumstances; and

14 (b) is conducted in the least intrusive way that is necessary and
15 reasonable in the circumstances.

16 **Example**

17 searching for a dangerous thing by a scanning search rather than a frisk
18 search

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

22 **591** **Searches—transgender or intersex child or young person**

23 (1) This section applies if a transgender or intersex child or young
24 person is to be searched under this division.

- 1 (2) For a child or young person who fails to make a choice under
2 section 572 (2) (a) (Transgender and intersex children and young
3 people—sexual identity)—
- 4 (a) if the child or young person requires that a male conduct the
5 search, the child or young person is taken, for this part, to be
6 male; and
- 7 (b) if the child or young person requires that a female conduct the
8 search, the child or young person is taken, for this part, to be
9 female.
- 10 *Note 1* For the Act generally, the sex of a child or young person is taken to be
11 the child's or young person's sex entered in the therapeutic protection
12 register under s 572 (7).
- 13 *Note 2* For the meaning of *intersex person* and *transgender person*, see the
14 Legislation Act, s 169A and s 169B.

15 **592 Searches—use of force**

- 16 (1) A therapeutic protection person may use force that is necessary and
17 reasonable—
- 18 (a) to conduct or assist at a search under this division; or
- 19 (b) to prevent the loss, destruction or contamination of anything
20 seized, or that may be seized, during the search.
- 21 (2) However, the therapeutic protection person may use force only in
22 accordance with division 16.3.4.

Subdivision 16.3.5.3 Scanning, frisk and ordinary searches

593 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.

594 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

- 1 (b) the reasons for the search.
- 2 (3) If the child or young person asks why the search is to be conducted
3 in a particular way, the therapeutic protection person must tell the
4 child or young person the reasons.
- 5 (4) The therapeutic protection person must ask for the child's or young
6 person's cooperation for the search.
- 7 **595 Frisk and ordinary searches—privacy**
- 8 (1) A frisk search or ordinary search of a child or young person may
9 only be conducted in—
- 10 (a) a private area; or
- 11 (b) an area that provides reasonable privacy for the child or young
12 person.
- 13 (2) A frisk search or ordinary search of a child or young person must
14 not be conducted in the presence or sight of—
- 15 (a) another child or young person; or
- 16 (b) someone whose presence is not necessary for the search or for
17 the safety of anyone present.
- 18 (3) A frisk search of a child or young person must be conducted by a
19 therapeutic protection person of the same sex as the child or young
20 person.
- 21 (4) Subsection (3) does not apply if the operating entity for the
22 therapeutic protection place believes on reasonable grounds that—
- 23 (a) there is an imminent and serious threat to the personal safety of
24 the child or young person or someone else; and
- 25 (b) compliance with subsection (3) would exacerbate the threat.

596 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

597 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.

598 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

- 1 (c) whether the child or young person will be required to remove
2 clothing during the search; and
- 3 (d) if the child or young person will be required to remove
4 clothing—why the removal is necessary.
- 5 (3) If the child or young person asks why the search is being conducted
6 in a particular way, the therapeutic protection person must tell the
7 child or young person the reasons.
- 8 (4) The therapeutic protection person must ask for the child's or young
9 person's cooperation for the search.

10 **599 Strip searches—second therapeutic protection person**
11 **must be present**

- 12 (1) A strip search of a child or young person must be conducted—
- 13 (a) by a therapeutic protection person of the same sex as the child
14 or young person; and
- 15 (b) in the presence of 1 or more other therapeutic protection
16 people, each of whom must be the same sex as the child or
17 young person.
- 18 (2) However, the number of therapeutic protection people present
19 during the search must be no more than is necessary and reasonable
20 to ensure the search is conducted as safely and effectively as
21 possible.
- 22 (3) The person conducting the search may direct someone else
23 mentioned in subsection (1) (b) to provide the assistance that the
24 person believes on reasonable grounds is necessary and reasonable
25 for the search.

1 (4) The requirement in subsection (1) (b) that a person be the same sex
2 as the child or young person does not apply if the operating entity
3 for the therapeutic protection place believes on reasonable grounds
4 that—

5 (a) there is an imminent and serious threat to the personal safety of
6 the child or young person; and

7 (b) compliance with the requirement would exacerbate the threat.

8 **600 Strip searches—support person must be present**

9 (1) The operating entity for a therapeutic protection place must ensure
10 that the strip search is conducted in the presence of someone
11 (a *support person*) who—

12 (a) the operating entity believes on reasonable grounds can support
13 and represent the interests of the child or young person; and

14 (b) the child or young person agrees should be present at the
15 search.

16 (2) However, the search may continue in the absence of a support
17 person if—

18 (a) the child or young person does not agree to a support person
19 being present; or

20 (b) the operating entity directs the support person to leave under
21 section 601.

22 **601 Strip searches—directing support person to leave**

23 (1) This section applies if a child or young person is being strip
24 searched in the presence of a support person under section 600.

25 (2) The operating entity for the therapeutic protection place may direct
26 the support person to leave if the operating entity believes on
27 reasonable grounds that the support person is preventing or
28 hindering the search.

- 1 (3) If the support person leaves, the search may continue in the absence
2 of the support person.

3 **602 Strip searches—enforcing direction to leave**

- 4 (1) The operating entity for a therapeutic protection place may direct a
5 therapeutic protection person to enforce a direction under
6 section 601 (2) if the person given the direction contravenes the
7 direction.

- 8 (2) The therapeutic protection person may use force that is necessary
9 and reasonable to enforce the direction.

10 **603 Strip searches—general rules**

11 If a therapeutic protection person is strip searching a child or young
12 person, the person must conduct the search—

- 13 (a) in a way that is appropriate, having regard as far as practicable,
14 to the child's or young person's sexuality and any known
15 impairment, condition or history; and
16 (b) as quickly as practicable.

17 **604 Strip searches—privacy**

- 18 (1) A strip search of a child or young person may only be conducted
19 in—

- 20 (a) a private area; or
21 (b) an area that provides reasonable privacy for the child or young
22 person.

- 23 (2) If a therapeutic protection person is strip searching a child or young
24 person, the person must conduct the search in a way that provides
25 reasonable privacy for the child or young person.

- 1 (3) A strip search of a child or young person must not be conducted—
2 (a) in the presence of anyone of the opposite sex to the child or
3 young person, other than—
4 (i) a person present under section 599 (Strip searches—
5 second therapeutic protection person must be present); or
6 (ii) a support person present under section 600 (Strip
7 searches—support person must be present); or
8 (b) in the presence or sight of someone whose presence is not
9 necessary for the search or for the safety of anyone present.

10 **605 Strip searches—no touching body**

11 Subject to division 16.3.4 (Use of force), a strip search must not
12 involve touching the child's or young person's body.

13 **606 Strip searches—visual inspection of body**

- 14 (1) If a therapeutic protection person is strip searching a child or young
15 person, the person must not visually inspect the following areas of
16 the child or young person unless the officer suspects on reasonable
17 grounds that it is necessary to do so for the search:
18 (a) the genital area;
19 (b) for a female child or young person—the breasts.
20 (2) A strip search of a child or young person must not involve more
21 visual inspection of the child's or young person's body than is
22 necessary and reasonable for the search.
23 (3) Without limiting subsection (2), during the strip search of the child
24 or young person, any visual inspection of the following areas of the
25 child or young person must be kept to a minimum:
26 (a) the genital area;
27 (b) the anal area;

- 1 (c) the buttocks;
2 (d) for a female child or young person—the breasts.

3 **607 Strip searches—clothing**

- 4 (1) A strip search of a child or young person must not involve—
5 (a) the removal from the child or young person of more clothes
6 than is necessary and reasonable for the search; or
7 (b) the removal from the child or young person of more clothes at
8 any time than is necessary and reasonable for the search; or
9 (c) without limiting paragraph (b), both the upper and lower parts
10 of the child's or young person's body being uncovered at the
11 same time.
12 (2) After a strip search of a child or young person is finished, the child
13 or young person must be allowed to dress in private.
14 (3) If clothing from a child or young person is seized during a strip
15 search, the therapeutic protection person conducting the search must
16 ensure that the child or young person is left with, or given,
17 reasonably appropriate clothing to wear.

18 *Note* Seizure of things found during the search is dealt with in div 16.3.6.

19 **Subdivision 16.3.5.5 Body searches**

20 **608 Body searches—directions**

- 21 (1) The operating entity for a therapeutic protection place may direct a
22 non-treating doctor to conduct a body search of a child or young
23 person only if the operating entity suspects on reasonable grounds
24 that the child or young person has ingested or inserted something
25 that may jeopardise the child's or young person's health or
26 wellbeing.

- 1 (2) In making a decision under subsection (1), the operating entity must
2 have regard to the child's or young person's age, maturity,
3 developmental capacity and any known history.

4 **609 Body searches—requirements before search**

- 5 (1) This section applies if the operating entity for a therapeutic
6 protection place has directed a non-treating doctor to conduct a body
7 search of a child or young person.
- 8 (2) Before the search is conducted, the operating entity must tell the
9 child or young person—
- 10 (a) about the search; and
- 11 (b) the reasons for the search; and
- 12 (c) whether the child or young person will be required to remove
13 clothing during the search; and
- 14 (d) if the child or young person will be required to remove
15 clothing—why the removal is necessary.
- 16 (3) If the child or young person asks why the search is to be conducted
17 in a particular way, the operating entity must tell the child or young
18 person the reasons.
- 19 (4) The operating entity must ask for the child's or young person's
20 cooperation for the search.

21 **610 Body searches—non-treating nurse must be present**

- 22 (1) A non-treating nurse must be present during the body search of a
23 child or young person.
- 24 (2) If the non-treating doctor conducting the body search is not the same
25 sex as the child or young person, the non-treating nurse present must
26 be the same sex as the child or young person.

- 1 **611 Body searches—another person may be present**
- 2 (1) The operating entity for a therapeutic protection place may direct a
- 3 therapeutic protection person to be present during the body search of
- 4 a child or young person.
- 5 (2) However, the number of people present during the search must be
- 6 no more than is necessary and reasonable to ensure the search is
- 7 conducted as safely and effectively as possible.
- 8 (3) The operating entity may direct more than 1 therapeutic protection
- 9 person to be present during the search, each of whom must be the
- 10 same sex as the child or young person.
- 11 (4) However, the requirement in subsection (3) does not apply if the
- 12 operating entity believes on reasonable grounds that—
- 13 (a) there is an imminent and serious threat to the personal safety of
- 14 the child or young person; and
- 15 (b) compliance with the requirement would exacerbate the threat.
- 16 **612 Body searches—support person must be present**
- 17 (1) The operating entity for the therapeutic protection place must ensure
- 18 that the body search is conducted in the presence of someone
- 19 (a *support person*) who—
- 20 (a) the operating entity believes on reasonable grounds can support
- 21 and represent the interests of the child or young person; and
- 22 (b) the child or young person agrees should be present at the
- 23 search.
- 24 (2) However, the body search may continue in the absence of a support
- 25 person if the child or young person does not agree to a support
- 26 person being present.

1 **613 Body searches—directing support person to leave**

- 2 (1) This section applies if a child or young person is being body
3 searched in the presence of a support person under section 612.
- 4 (2) The operating entity for the therapeutic protection place may direct
5 the support person to leave if the operating entity believes on
6 reasonable grounds that the support person is preventing or
7 hindering the search.
- 8 (3) If the support person leaves, the search may continue in the absence
9 of the support person.

10 **614 Body searches—touching body**

- 11 (1) This section applies to—
- 12 (a) a non-treating doctor who is—
- 13 (i) conducting a body search of a child or young person; and
- 14 (ii) the same sex as the child or young person; and
- 15 (b) a non-treating nurse who is—
- 16 (i) present at a body search of a child or young person; and
- 17 (ii) the same sex as the child or young person.
- 18 (2) The non-treating doctor or non-treating nurse may touch the child or
19 young person and examine the child's or young person's body
20 orifices and cavities for the search.

21 **615 Body searches—clothing**

- 22 (1) A body search of a child or young person must not involve—
- 23 (a) the removal from the child or young person of more clothes
24 than is necessary and reasonable for the search; or
- 25 (b) the removal from the child or young person of more clothes at
26 any time than is necessary and reasonable for the search; or

- 1 (c) without limiting paragraph (b), both the upper and lower parts
2 of the child's or young person's body being uncovered at the
3 same time.
- 4 (2) Immediately after a body search of a child or young person is
5 finished, the child or young person must be allowed to dress in
6 private.
- 7 (3) If clothing from a child or young person is seized during a body
8 search, the operating entity for the therapeutic protection place must
9 ensure that the child or young person is left with, or given,
10 reasonably appropriate clothing to wear.
- 11 *Note* Seizure of things found during the search is dealt with in div 16.3.6.

12 **616 Body searches—assistance**

- 13 (1) This section applies if a non-treating doctor who is conducting a
14 body search of a child or young person asks the operating entity for
15 the assistance that the doctor believes on reasonable grounds is
16 necessary and reasonable for the search.
- 17 (2) The operating entity may direct or authorise someone else present at
18 the search (the *assistant*) to assist in the search.
- 19 (3) The assistant must be the same sex as the child or young person.
- 20 (4) However, subsection (3) does not apply if the operating entity
21 believes on reasonable grounds that—
- 22 (a) there is an imminent and serious threat to the personal safety of
23 the child or young person, or someone else; and
- 24 (b) compliance with subsection (3) would exacerbate the threat.

25 **617 Body searches—non-treating doctor may seize things**

- 26 (1) A non-treating doctor who is conducting a body search of a child or
27 young person may seize anything that the child or young person has
28 ingested or inserted that may jeopardise the child's or young
29 person's health or wellbeing that is discovered during the search.

1 (2) However, the non-treating doctor may seize the thing only if seizing
2 the thing would not be likely to cause injury to the child or young
3 person or someone else.

4 (3) The non-treating doctor must give the thing seized to the operating
5 entity as soon as practicable.

6 *Note* Seizure of things found during the search is further dealt with in
7 div 16.3.6.

8 **Division 16.3.6 Seizing dangerous things**

9 **618 Application—div 16.3.6**

10 This division applies to a child or young person who is in
11 therapeutic protection.

12 **619 Seizing property—who is the owner?**

13 In this division:

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

16 **620 Seizing property—dangerous things may be seized**

17 (1) The operating entity for a therapeutic protection place may seize a
18 dangerous thing found on a child or young person or in a child's or
19 young person's custody or possession, unless the child or young
20 person has the written approval of the operating entity to possess the
21 thing.

22 (2) To remove any doubt, this section applies to any dangerous thing
23 found in a search under this part.

- 1 **621 Seized property—must tell owner**
- 2 (1) As soon as practicable, but not later than 7 days, after the day a
- 3 thing is seized under section 620, the operating entity for the
- 4 therapeutic protection place must tell the following people, in
- 5 writing (a *seizure notice*), about the seizure:
- 6 (a) the owner of the thing seized; or
- 7 (b) if the owner cannot be identified after reasonable efforts (given
- 8 the thing's apparent value)—the person from whom the thing
- 9 was seized.
- 10 (2) The seizure notice must—
- 11 (a) identify the thing seized; and
- 12 (b) outline the grounds for the seizure; and
- 13 (c) include a statement about the effect of section 622; and
- 14 (d) include anything else prescribed by regulation.
- 15 **622 Seized property—forfeiture**
- 16 (1) A thing seized under section 620 (Seizing property—dangerous
- 17 things may be seized) is forfeited to the Territory if—
- 18 (a) after making reasonable efforts (given the thing's apparent
- 19 value), the operating entity for the therapeutic protection place
- 20 is satisfied that—
- 21 (i) the owner of the thing cannot be found; or
- 22 (ii) the thing cannot be returned to the owner; or
- 23 (b) the operating entity for the therapeutic protection place is
- 24 satisfied that—
- 25 (i) possession of the thing by the child or young person is an
- 26 offence; or

- 1 (ii) it is necessary to keep the thing to stop it being used for
2 the commission of an offence; or
- 3 (iii) the thing is inherently unsafe.
- 4 (2) The operating entity may deal with a thing forfeited to the Territory
5 under this section, or dispose of it, as the operating entity considers
6 appropriate.
- 7 **Examples**
- 8 1 giving a forfeited weapon to the chief executive
9 2 dumping a forfeited thing of little value
- 10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).
- 13 (3) However, subsection (2) is subject to any order under the *Crimes*
14 *Act 1900*, section 249 (Seizure of forfeited articles).
- 15 *Note 1* The *Crimes Act 1900* also provides for articles forfeited under any law
16 in force in the Territory to be seized by a member of the police force,
17 taken before the Magistrates Court and for the court to order disposal of
18 the article by the public trustee (see s 249 and s 250).
- 19 *Note 2* The *Uncollected Goods Act 1996* provides generally for the disposal of
20 uncollected goods, including goods abandoned on premises controlled
21 by the Territory.

22 **623 Seized property—return**

- 23 (1) If a thing seized under section 620 (Seizing property—dangerous
24 things may be seized) is not forfeited to the Territory, the operating
25 entity for the therapeutic protection place must return the thing to its
26 owner—
- 27 (a) at the end of the 6 months after the day the thing was seized; or
- 28 (b) if a proceeding for an offence involving the thing is started not
29 later than the 6 months—at the end of the proceeding and any
30 appeal from the proceeding.

- 1 (2) However, if the thing was being kept as evidence of an offence and
2 the operating entity believes on reasonable grounds that keeping the
3 thing as evidence is no longer necessary, the operating entity must
4 return the thing immediately to its owner.

Part 16.4 Therapeutic protection— administration

Division 16.4.1 Therapeutic protection places

624 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 886.

(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 chief executive is deciding whether to declare the place as a therapeutic protection place under this section (see s 815).

625 Therapeutic protection place—exclusion of matters from declaration etc

(1) The chief executive may exclude from a therapeutic protection place declaration any matter that the chief executive believes on reasonable grounds would be likely to disclose the location of a therapeutic protection place.

(2) However, the chief executive must disclose the location of a therapeutic protection place to the people entitled under section 633 (1) to have access to the therapeutic protection register.

626 Therapeutic protection place—policies and procedures

- (1) The chief executive 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 chief executive 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 578).

Note 4 An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 815).

627 Authorisation of operating entity for therapeutic protection place

The chief executive 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 886.

- 1 **628 Suspension of operating entity's authorisation**
- 2 (1) The chief executive may suspend an entity's authorisation under
- 3 section 627 as an operating entity for a therapeutic protection place
- 4 if the chief executive suspects on reasonable grounds that the
- 5 entity—
- 6 (a) is not a suitable entity to operate a therapeutic protection place;
- 7 or
- 8 (b) has not complied with, or continued to comply with, the
- 9 therapeutic protection standards.
- 10 (2) The chief executive may suspend the authorisation by—
- 11 (a) giving the entity written notice of the suspension, including the
- 12 chief executive's reasons for suspending the authorisation; and
- 13 (b) telling the entity that the entity may make a submission, in
- 14 writing, to the chief executive about the suspension not later
- 15 than 14 days after the day the notice is given to the entity.
- 16 (3) A suspension takes effect immediately.
- 17 (4) After the end of 28 days after the chief executive gives notice of the
- 18 suspension of an entity's authorisation under subsection (2) (b), the
- 19 chief executive must—
- 20 (a) consider any submission made by the entity; and
- 21 (b) either—
- 22 (i) revoke the suspension; or
- 23 (ii) give the entity notice of the chief executive's intention to
- 24 revoke the authorisation under section 629.

- 1 **629 Revocation of operating entity’s authorisation**
- 2 (1) The chief executive may revoke an entity’s authorisation under
- 3 section 627 as an operating entity for a therapeutic protection place
- 4 if the chief executive is satisfied that the entity—
- 5 (a) is not a suitable entity to operate a therapeutic protection place;
- 6 or
- 7 (b) has not complied with, or continued to comply with, the
- 8 therapeutic protection standards.
- 9 (2) The chief executive may also revoke an entity’s authorisation if the
- 10 entity asks the chief executive to revoke the authorisation.
- 11 (3) Before revoking an entity’s authorisation under subsection (1), the
- 12 chief executive must—
- 13 (a) give the entity written notice of the chief executive’s intention
- 14 to revoke the authorisation, including the chief executive’s
- 15 reasons; and
- 16 (b) tell the entity that the person may make a submission, in
- 17 writing, to the chief executive about the notice not later than
- 18 14 days after the day the notice is given to the person; and
- 19 (c) if the entity makes a submission—consider the submission.
- 20 (4) This section is in addition to the Legislation Act, section 180 (Power
- 21 to make decision includes power to reverse or change).
- 22 *Note 1* Under the Legislation Act, s 180, power given by a law to make a
- 23 decision includes power to reverse or change the decision. The power
- 24 to reverse or change the decision is exercisable in the same way, and
- 25 subject to the same conditions, as the power to make the decision.
- 26 *Note 2* A decision under this section is a reviewable decision (see s 838).

Division 16.4.2 Therapeutic protection plan

630 Public advocate and official visitor may be given therapeutic protection plan

If the public advocate or an official visitor asks the chief executive for a therapeutic protection plan for a child or young person, the chief executive 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 professionals

631 Health professionals—non-treating functions

- (1) An operating entity for a therapeutic protection place may, orally or in writing, authorise a health professional (a ***non-treating health professional***) to exercise non-treating functions under this chapter for children and young people at the therapeutic protection place.

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

- (2) An operating entity must ensure, as far as practicable, that a child's or young person's treating health professional is not asked to exercise a function as a non-treating health professional 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.

- 1 (4) In this section:
- 2 *treating health professional*, in relation to a child or young person,
- 3 means a health professional who has a professional relationship with
- 4 the child or young person for the provision of health services.

5 **Division 16.4.4 Therapeutic protection register**

6 **632 Therapeutic protection register**

- 7 (1) The operating entity for a therapeutic protection place must keep a
- 8 register (a *therapeutic protection register*) of children and young
- 9 people for whom the Childrens Court makes an interim therapeutic
- 10 protection order or a therapeutic protection order and who are
- 11 confined at the therapeutic protection place.
- 12 (2) The therapeutic protection register must include the following
- 13 details for each child or young person for whom the Childrens Court
- 14 makes an interim therapeutic protection order or a therapeutic
- 15 protection order:
- 16 (a) name, sex and date of birth;
- 17 (b) details of the therapeutic protection order;
- 18 (c) the therapeutic protection plan for each proposed period of
- 19 confinement;
- 20 (d) the therapeutic protection history for each period of
- 21 confinement;
- 22 (e) if the child or young person is strip searched or body searched
- 23 during a period of confinement—
- 24 (i) the reason for the search; and
- 25 (ii) when and where the search was conducted; and
- 26 (iii) the name of each person present at any time during the
- 27 search; and

- 1 (iv) if, under section 599 (4), section 611 (4) or
2 section 616 (4), a requirement for a person present at the
3 search to be the same sex as the child or young person
4 was not complied with—the operating entity’s reasons for
5 believing the requirement did not apply; and
6 (v) details of anything seized during the search; and
7 (vi) details of any force used for conducting the search, and
8 why force was used;
9 *Note* Strip searches are authorised under s 597. Body searches are
10 authorised under s 608.
11 (f) if force was used on the child or young person during the
12 period of confinement—the reason why force was used;
13 (g) where and with whom the child or young person lived before
14 the period of confinement;
15 (h) anything else prescribed by regulation.
16 *Note* Information in the therapeutic protection register is protected
17 information (see ch 25).
18 (3) The register may contain anything else the operating entity for the
19 therapeutic protection place considers relevant.

20 **633 Therapeutic protection register—who may have access?**

- 21 (1) The following people may have access to a therapeutic protection
22 register:
23 (a) the chief executive or a person authorised by the chief
24 executive;
25 (b) a magistrate;
26 (c) a judge;
27 (d) the ombudsman;
28 (e) an official visitor;

- 1 (f) a commissioner exercising functions under the *Human Rights*
2 *Commission Act 2005*;
- 3 (g) the public advocate;
- 4 (h) a person prescribed by regulation.

- 5 (2) The operating entity for a therapeutic protection place must ensure
6 that the therapeutic protection register kept by the operating entity is
7 only accessed by the people mentioned in subsection (1).

8 *Note* An authorised person may, at any reasonable time, enter a therapeutic
9 protection place (see s 815).

10 **634 Therapeutic protection register—public advocate to**
11 **inspect**

12 The public advocate must inspect the therapeutic protection register
13 at least once every 3 months.

1 **Chapter 17** **Care and protection—interstate**
2 **transfer of orders and**
3 **proceedings**

4 **Part 17.1** **Preliminary**

5 **635** **Object of ch 17**

6 The object of this chapter is to provide for the transfer of care and
7 protection orders and proceedings between the ACT and a State or
8 between the ACT and New Zealand—

- 9 (a) so that children and young people who are in need of
10 protection may be protected despite moving from one
11 jurisdiction to another; and
12 (b) to facilitate the timely and expeditious finalisation of court
13 proceedings for the protection of a child or young person; and
14 (c) to recognise the desirability of orders relating to the care and
15 protection of a child or young person having effect, and being
16 enforced, in the jurisdiction where the child or young person
17 lives.

18 **636** **Definitions—ch 17**

19 In this chapter:

20 *child welfare law*—see section 639.

21 *child welfare order*, for a child or young person—see section 637.

22 *child welfare proceeding*—see section 638.

23 *government agency* means a government department (however
24 described) or statutory authority of the State.

- 1 *interim child welfare order*—see section 660.
- 2 *interstate law*—see section 640.
- 3 *interstate officer*—see section 641.
- 4 *participating State* means a State where an interstate law is in force.
- 5 *sending State*, for a child welfare order or child welfare proceeding,
- 6 means the State from which the order or proceeding is transferred
- 7 under this chapter or an interstate law.
- 8 *State* includes New Zealand.
- 9 *State Childrens Court*, of a State, means the court with jurisdiction
- 10 to hear and decide a child welfare proceeding in the State at first
- 11 instance.
- 12 *welfare body*, for a State, means—
- 13 (a) a Minister of the State; or
- 14 (b) a government agency of the State; or
- 15 (c) the chief executive (however described) of a government
- 16 agency of the State; or
- 17 (d) a person who holds another position in, or is employed by, a
- 18 government agency of the State; or
- 19 (e) a statutory office holder; or
- 20 (f) an organisation, or the chief executive (however described) of
- 21 an organisation, in the State.

1 **637 What is a *child welfare order*?**

2 In this chapter:

3 *child welfare order* means an order under a child welfare law (other
4 than an interim child welfare order) made in favour of, or giving
5 responsibility to, a welfare body, that—

- 6 (a) provides for the parental responsibility, guardianship or
7 custody of a child or young person; or
8 (b) provides for supervision of a child or young person; or
9 (c) provides for contact with a child or young person; or
10 (d) relates to specific things that a person must do or not do that
11 are directly related to a child or young person's care or
12 protection.

13 **638 What is a *child welfare proceeding*?**

14 In this chapter:

15 *child welfare proceeding* means a proceeding brought in a court
16 under a child welfare law for—

- 17 (a) the making of a child welfare order or an interim child welfare
18 order; or
19 (b) the amendment, extension or revocation of a child welfare
20 order or an interim child welfare order.

21 **639 What is a *child welfare law*?**

22 (1) In this Act:

23 *child welfare law* means—

- 24 (a) the care and protection chapters; or
25 (b) a law of a State that corresponds to the care and protection
26 chapters; or

1 (c) a law of a State declared by the Minister under subsection (2)
2 to be a child welfare law for this chapter.

3 (2) The Minister may, in writing, declare a law of a State to be a child
4 welfare law for this chapter if satisfied that the law corresponds, or
5 substantially corresponds, to the care and protection chapters.

6 (3) A declaration is a notifiable instrument.

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

8 **640 What is an *interstate law*?**

9 (1) In this chapter:

10 *interstate law* means—

11 (a) a law of a State that corresponds to this chapter; or

12 (b) a law declared by the Minister under subsection (2) to be an
13 interstate law for this chapter.

14 (2) The Minister may, in writing, declare a law of a State to be an
15 interstate law for this chapter if satisfied that the law corresponds or
16 substantially corresponds to this chapter.

17 (3) A declaration is a notifiable instrument.

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

19 **641 Who is an *interstate officer*?**

20 (1) In this chapter:

21 *interstate officer*, for a State, means—

22 (a) the person holding the position that has the main responsibility,
23 under the child welfare law of the State, for the protection of
24 children and young people in the State; or

25 (b) the holder of a position in the State that is declared by the
26 Minister under subsection (2) to be an interstate officer
27 position for the State for this chapter.

1 (2) The Minister may, in writing, declare a position in a State to be an
2 interstate officer position for the State for this chapter.

3 (3) A declaration is a notifiable instrument.

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

Part 17.2 Interstate transfer of ACT child welfare orders

Division 17.2.1 Transfers of orders by chief executive

642 Chief executive may transfer child welfare order

- (1) The chief executive may transfer a child welfare order (the *home order*) for a child or young person to a participating State if—
- (a) in the chief executive’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 chief executive is satisfied that the child or young person is able to understand the proposal to transfer the order—the chief executive 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 644 has agreed.
- (2) The chief executive 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 chief executive must not take into account the period for which it is possible to make a child welfare order of that kind in the State.

1 (4) The period for which an interstate order is to remain in force must
2 be decided by the chief executive and stated in the interstate order.

3 (5) The period must be—

4 (a) if the remaining period of the home order at the date of
5 registration of the interstate order in the participating State is a
6 period for which an order may be made under the child welfare
7 law of the State—the remaining period; or

8 (b) in any other case—as similar a period as may be made under
9 that law but not longer than the period of the home order.

10 **643 Chief executive transfer—considerations**

11 In deciding whether to transfer a child welfare order for a child or
12 young person to a participating State, the chief executive must have
13 regard to—

14 (a) the matters mentioned in section 8 (Best interests of children
15 and young people paramount consideration); and

16 (b) the principles set out in section 9 (Principles applying to Act)
17 and section 10 (Aboriginal and Torres Strait Islander children
18 and young people principle); and

19 (c) the care and protection principles; and

20 (d) whether the chief executive or an interstate officer is in the
21 better position to exercise powers and responsibilities under a
22 child welfare order for the child or young person; and

23 (e) the desirability of a child welfare order being an order under
24 the child welfare law of the State where the child or young
25 person lives; and

26 (f) the desirability of orders relating to the care and protection of a
27 child or young person having effect, and being enforced, in the
28 jurisdiction where the child or young person lives; and

- 1 (g) any sentencing order (other than a fine) in force in relation to
2 the child or young person or any criminal proceedings pending
3 against the child or young person in any court.

4 **644 Chief executive transfer—certain people must agree**

- 5 (1) For section 642 (1) (e), agreement to the transfer of the order for the
6 child or young person is required from—

- 7 (a) for a young person who is school-leaving age or older—the
8 young person; and

9 *Note* School-leaving age is 15 years old (see dict).

- 10 (b) each person who has daily care responsibility or long-term care
11 responsibility for the child or young person; and

12 *Note* Parental responsibility provisions are dealt with in pt 14.6.

- 13 (c) each person who is authorised to decide where or with whom
14 the child or young person must live under a residence provision
15 in a care and protection order; and

- 16 (d) each person who is allowed contact with the child or young
17 person under a contact provision in a care and protection order
18 for the child or young person.

19 *Note* Contact provisions are dealt with in pt 14.8.

- 20 (2) If the child or young person lives in a State with a person who has
21 daily care responsibility for the child or young person under a
22 parental responsibility provision in a care and protection order in
23 force for the child or young person—

- 24 (a) it is sufficient if each person required to agree agrees to the
25 child or young person living in the State; and

- 26 (b) their agreement to the transfer is not required.

- 1 (3) If a relevant person lives in or is intending to live in the relevant
2 participating State—
- 3 (a) it is sufficient if each other relevant person agrees to the child
4 or young person living in the State; and
- 5 (b) the agreement of the person to the transfer is not required.
- 6 (4) Also, a person's agreement is not required if—
- 7 (a) the person cannot be found after reasonable inquiry; or
- 8 (b) the person does not have the capacity to agree to the transfer;
9 or
- 10 (c) for agreement required from the young person—the young
11 person does not have sufficient maturity or developmental
12 capacity to agree to the transfer.
- 13 (5) In this section:
- 14 *relevant person*, for a child or young person, means—
- 15 (a) a parent of the child or young person; and
- 16 (b) a person who is authorised to decide where or with whom the
17 child or young person must live under a residence provision in
18 a care and protection order; and
- 19 (c) someone else who has daily care responsibility, or long-term
20 care responsibility, for the child or young person (under a
21 parental responsibility provision in a care and protection order
22 or otherwise).

23 **645 Chief executive transfer—certain people must be told**

- 24 (1) This section applies if the chief executive decides to transfer a child
25 welfare order for a child or young person to a participating State
26 under this division.

- 1 (2) As soon as practicable, but not later than 3 working days, after the
2 day the chief executive makes the decision, the chief executive must
3 give written notice to the following people about the decision:
4 (a) for a decision about a young person—the young person;
5 (b) the parents of the child or young person;
6 (c) each other person who has daily care responsibility, or
7 long-term care responsibility, for the child or young person;
8 (d) the public advocate.

9 **646 Chief executive transfer—limited time for review**

- 10 (1) A proceeding for judicial review of a decision of the chief executive
11 to transfer a child welfare order to a participating State must be
12 started, and originating process given to the chief executive, not
13 later than 10 working days after the day the chief executive decided
14 to transfer the order.
15 (2) A proceeding for judicial review must comply with the relevant
16 rules of court.
17 (3) However, the Supreme Court must not extend the 10 working days
18 mentioned in subsection (1).
19 (4) The lodging (or filing) and service on the chief executive of an
20 originating process mentioned in subsection (1) stays the operation
21 of the decision until the proceeding is determined.

Division 17.2.2 Transfer of orders by Childrens Court

647 Childrens Court transfer—application

- (1) The chief executive may apply to the Childrens Court for an order transferring a child welfare order to a participating State.
- (2) The chief executive 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.

648 Childrens Court transfer—criteria

The Childrens Court may, on application by the chief executive, 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.

649 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
 - (b) the court believes to be—
 - (i) to the same or a similar effect as the home order; or

- 1 (ii) otherwise in the best interests of the child or young
2 person.
- 3 (2) The Childrens Court may include in the interstate order any
4 condition that could be included in a child welfare order of that kind
5 made in the relevant participating State.
- 6 (3) In deciding under subsection (1) whether an order to the same or a
7 similar effect as the home order could be made under the child
8 welfare law of a participating State, the Childrens Court must not
9 take into account the period for which it is possible to make a child
10 welfare order of that kind in the State.
- 11 (4) The period for which an interstate order is to remain in force must
12 be decided by the Childrens Court and stated in the interstate order.
- 13 (5) The period must be a period—
- 14 (a) for which a child welfare order of the kind of the interstate
15 order may be made under the child welfare law of the
16 participating State; and
- 17 (b) that the Childrens Court considers appropriate.
- 18 **650 Childrens Court transfer—considerations**
- 19 (1) In deciding what order to make on an application under this
20 division, the Childrens Court must have regard to—
- 21 (a) the matters mentioned in section 8 (Best interests of children
22 and young people paramount consideration); and
- 23 (b) the principles set out in section 9 (Principles applying to Act)
24 and section 10 (Aboriginal and Torres Strait Islander children
25 and young people principle); and
- 26 (c) the care and protection principles; and
- 27 (d) whether the chief executive or an interstate officer is in the
28 better position to exercise powers and responsibilities under a
29 child welfare order for the child or young person; and

- 1 (e) the desirability of a child welfare order being an order under
2 the child welfare law of the State where the child or young
3 person lives; and
- 4 (f) the desirability of orders relating to the care and protection of a
5 child or young person having effect, and being enforced, in the
6 jurisdiction where the child or young person lives; and
- 7 (g) any information given to the Childrens Court by the chief
8 executive or anyone else about any sentencing order (other
9 than a fine) in force in relation to the child or young person or
10 any criminal proceedings pending against the child or young
11 person in any court.
- 12 (2) The Childrens Court may also consider any report prepared by the
13 chief executive relevant to the proposed transfer.

14 **651 Childrens Court transfer—care plans**

- 15 (1) The Childrens Court may make an order transferring a child welfare
16 order to a participating State only if it has received and considered a
17 care plan prepared by the chief executive for the child or young
18 person.
- 19 (2) Unless the Childrens Court orders otherwise, the chief executive
20 must provide a copy of the care plan to each person who was a party
21 to the proceeding in which the original order was made.

22 **652 Childrens Court transfer—appeal applications**

- 23 (1) This section applies if the Childrens Court has made a final order
24 transferring a child welfare order to a participating State (the *final*
25 *order*).
- 26 (2) A party to the application for the order may appeal on a question of
27 law to the Supreme Court.

- 1 (3) The appeal must be started, and originating process must be given to
2 the chief executive, not later than 10 working days after the day the
3 final order was made.
- 4 (4) The appeal operates as stay of the final order.
- 5 (5) The appeal must comply with the relevant rules of court.
- 6 (6) However, the Supreme Court must not extend the 10 working days
7 mentioned in subsection (3).

8 **653 Childrens Court transfer—appeals**

- 9 (1) The Supreme Court must hear and decide the appeal as quickly as
10 possible.
- 11 (2) After deciding the appeal, the Supreme Court may make any order it
12 considers appropriate, including an order remitting the case for
13 rehearing to the Childrens Court with or without a direction in law.
- 14 (3) An order, other than an order remitting the case for rehearing to the
15 Childrens Court, may be enforced as an order of the Supreme Court.
- 16 (4) The Supreme Court may make any interim care and protection order
17 pending the hearing of the appeal that the Childrens Court has
18 jurisdiction to make.

19 *Note* Interim care and protection orders are dealt with in div 14.3.2.

20 **Division 17.2.3 Interstate registration of ACT orders**

21 **654 Interstate registration of ACT orders—effect**

- 22 (1) A child welfare order made by the Childrens Court under the care
23 and protection chapters for a child or young person ceases to have
24 effect when an order for the child or young person is registered in a
25 participating State under an interstate law.
- 26 (2) However, if the registration is revoked in the participating State
27 under the interstate law, the order that ceased to have effect is
28 revived and has effect in accordance with its terms.

- 1 **655** **Interstate registration of ACT orders—revocation**
- 2 (1) This section applies if the registrar of the Childrens Court is told
- 3 under a provision of an interstate law equivalent to section 670 that
- 4 the registration of an order transferring a child welfare order to a
- 5 participating State has been revoked.
- 6 (2) The registrar must tell the chief executive about the revocation.
- 7 (3) The chief executive must tell the following people about the
- 8 revocation:
- 9 (a) the child or young person who is the subject of the transferred
- 10 order or proceeding;
- 11 (b) the parents of the child or young person;
- 12 (c) each other person who has daily care responsibility, or
- 13 long-term care responsibility, for the child or young person;
- 14 (d) the parties to the proceeding in which the decision to transfer
- 15 the order or proceeding was made.
- 16 **656** **Interstate registration of ACT orders—Childrens Court file**
- 17 (1) This section applies if, under this division—
- 18 (a) a child welfare order is transferred to a State Childrens Court—
- 19 (i) by the chief executive under division 17.2.1; or
- 20 (ii) by the Childrens Court under division 17.2.2; and
- 21 (b) the transfer decision or an order transferring a child welfare
- 22 order to a participating State is not subject to appeal or review
- 23 or a stay; and
- 24 (c) the time for starting an appeal or seeking a review has ended.

- 1 (2) The registrar of the Childrens Court must give the following things
2 to the State Childrens Court of the participating State:
- 3 (a) all documents filed in the Childrens Court for the child welfare
4 proceeding for the child welfare order;
- 5 (b) an extract from any part of the register that relates to the child
6 welfare proceeding for the child welfare order.

Part 17.3 **Interstate transfer of ACT child
welfare proceedings**

657 **Transfer of ACT proceedings—applications**

- (1) The chief executive 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 chief executive 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.

658 **Transfer of ACT proceedings—criteria**

- (1) The Childrens Court may, on application by the chief executive, 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.

- 1 **659 Transfer of ACT proceedings—considerations**
- 2 In deciding whether to make an order transferring a child welfare
- 3 proceeding pending in the court to the State Childrens Court of a
- 4 participating State, the Childrens Court must have regard to—
- 5 (a) whether another proceeding for the child or young person is
- 6 pending, or has previously been heard and decided, under the
- 7 child welfare law in the participating State; and
- 8 (b) where any matter giving rise to the proceeding in the court
- 9 happened; and
- 10 (c) where any of the following people lives or is likely to live:
- 11 (i) the child or young person;
- 12 (ii) the parents of the child or young person;
- 13 (iii) each other person who has daily care responsibility, or
- 14 long-term care responsibility, for the child or young
- 15 person;
- 16 (iv) any other significant people for the child or young person.
- 17 **660 Transfer of ACT proceedings—interim orders**
- 18 (1) If the Childrens Court makes an order transferring a child welfare
- 19 proceeding pending in the court to the State Childrens Court of a
- 20 participating State, the court must also make an interim order (an
- 21 ***interim child welfare order***) for the care, welfare or development of
- 22 the child or young person.
- 23 (2) An interim child welfare order may do any of the following:
- 24 (a) give parental responsibility for the child or young person to
- 25 someone;
- 26 (b) allow contact between the child or young person and someone
- 27 else;

- 1 (c) give responsibility for the supervision of the child or young
2 person to—
- 3 (i) the interstate officer in the participating State; or
- 4 (ii) someone else in that State to whom responsibility for the
5 supervision of a child or young person could be given
6 under the child welfare law of that State.
- 7 (3) The length of an interim child welfare order—
- 8 (a) must be stated in the order; and
- 9 (b) must not be longer than 30 days.
- 10 (4) The State Childrens Court of the participating State may amend,
11 extend or revoke the interim child welfare order.

12 **661 Transfer of ACT proceedings—appeal applications**

- 13 (1) This section applies if the Childrens Court has made a final order
14 transferring a child welfare proceeding pending in the court to the
15 State Childrens Court of a participating State (the *final order*).
- 16 (2) A party to the application for the order may appeal on a question of
17 law to the Supreme Court.
- 18 (3) The appeal must be started, and originating process must be given to
19 the chief executive, not later than 10 working days after the day the
20 final order was made.
- 21 (4) The appeal operates as stay of the final order but not of any interim
22 child welfare order made at the same time as the final order.
- 23 (5) The appeal must comply with the relevant rules of court.
- 24 (6) However, the Supreme Court must not extend the 10 working days
25 mentioned in subsection (3).

662 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.

663 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 672 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 chief executive about the revocation.
- (3) The chief executive must tell the following people about the revocation:
 - (a) the child or young person who is the subject of the transferred order or proceeding;

- 1 (b) the parents of the child or young person;
- 2 (c) each other person who has daily care responsibility, or
- 3 long-term care responsibility, for the child or young person;
- 4 (d) the parties to the proceeding in which the decision to transfer
- 5 the order or proceeding was made.

6 **664 Transfer of ACT proceedings—Childrens Court file**

- 7 (1) This section applies if, under this division—
 - 8 (a) a child welfare proceeding is transferred to a State Childrens
 - 9 Court by the Childrens Court under part 17.3 (Interstate
 - 10 transfer of ACT child welfare proceedings); and
 - 11 (b) the order transferring a child welfare proceeding pending in the
 - 12 court to the State Childrens Court of a participating State is not
 - 13 subject to appeal or review or a stay; and
 - 14 (c) the time for starting an appeal or seeking a review has ended.
- 15 (2) The registrar of the Childrens Court must give the following things
- 16 to the State Childrens Court of the participating State:
 - 17 (a) all documents filed in the Childrens Court for the child welfare
 - 18 proceeding;
 - 19 (b) an extract from any part of the register that relates to the child
 - 20 welfare proceeding.

Part 17.4 **ACT registration of interstate
child welfare orders**

665 **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 chief executive must file a copy of the interstate child welfare order in the Childrens Court for registration.
- (2) The chief executive 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 chief executive files an interstate child welfare order for registration in the court, the court must register the interstate child welfare order.

666 **ACT registration of interstate orders—interstate registrar**

If an interstate child welfare order is registered in the Childrens Court under section 665, 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.

- 1 **667 ACT registration of interstate orders—effect**
- 2 (1) If an interstate child welfare order is registered in the Childrens
3 Court under section 665—
- 4 (a) the order is for all purposes (except for appeal) a care and
5 protection order of the relevant kind made by the court on the
6 day it is registered; and
- 7 *Note* Care and protection orders are dealt with in ch 14.
- 8 (b) the order may be amended, extended or revoked under this
9 Act; and
- 10 (c) a contravention of the order may be dealt with under this Act.
- 11 (2) If an interstate interim child welfare order is registered in the
12 Childrens Court under section 665—
- 13 (a) the order is for all purposes (except for appeal) an interim care
14 and protection order made by the court on the day it is
15 registered; and
- 16 *Note* Interim care and protection orders are dealt with in div 14.3.2.
- 17 (b) the order may be amended, extended or revoked under this
18 Act; and
- 19 (c) a contravention of the order may be dealt with under this Act.
- 20 **668 ACT registration of interstate orders—application for**
21 **revocation**
- 22 (1) This section applies if an interstate child welfare order for a child is
23 registered in the Childrens Court under section 665.
- 24 (2) Any of the following people may apply to the court for revocation
25 of the registration of the order:
- 26 (a) the chief executive;
- 27 (b) the child or young person;

- 1 (c) a parent of the child or young person;
- 2 (d) someone else who has daily care responsibility, or long-term
- 3 care responsibility, for the child or young person;
- 4 (e) a party to the proceeding in the State Childrens Court in the
- 5 sending State in which the decision to transfer the child welfare
- 6 order was made.
- 7 (3) If a person applies for revocation of registration of the order, the
- 8 registrar of the court must give a copy of the application to—
- 9 (a) the relevant interstate officer; and
- 10 (b) each person, other than the applicant, who could have made an
- 11 application.

12 **669 ACT registration of interstate orders—revocation**

- 13 (1) The Childrens Court may revoke the registration of an interstate
- 14 child welfare order registered under section 665 only if satisfied that
- 15 it was inappropriately registered because, under the interstate law—
- 16 (a) the decision of the interstate officer or the order of the State
- 17 Childrens Court of the sending State to transfer the order was
- 18 subject to appeal or review, or a stay, at the time of
- 19 registration; or
- 20 (b) the time for starting an appeal or seeking a review had not
- 21 ended.
- 22 (2) If the registration of an interstate child welfare order is revoked, the
- 23 registrar of the Childrens Court must give the interstate child
- 24 welfare order to the State Childrens Court of the sending State.
- 25 (3) The revocation of the registration of an interstate child welfare order
- 26 does not prevent the later re-registration of the order.

- 1 **670 ACT revocation of interstate orders—interstate registrar**
- 2 If the registration of an interstate child welfare order is revoked
- 3 under section 669, the registrar of the court must tell the following
- 4 people about the revocation:
- 5 (a) the appropriate officer of the State Childrens Court of the
- 6 sending State;
- 7 (b) the interstate officer in that State.

Part 17.5 ACT registration of interstate child welfare proceedings

671 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 chief executive 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 chief executive 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 chief executive 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.

672 ACT registration of interstate proceedings—interstate registrar

If an interstate proceedings transfer order or interim order is registered in the Childrens Court under section 671, 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;

1 (b) the interstate officer in that State.

2 **673 ACT registration of interstate proceedings—effect**

3 (1) If an interstate proceedings transfer order for a proceeding is
4 registered in the Childrens Court under section 671, the proceeding
5 is taken to have been started in the Childrens Court on the day the
6 order is registered.

7 (2) However, in deciding the proceeding, the court—

8 (a) is not bound by a finding of fact made in the proceeding in the
9 State Childrens Court of the sending State before its transfer;
10 and

11 (b) may have regard to the transcript of, or evidence presented in,
12 the proceeding in the State Childrens Court of the sending
13 State before its transfer.

14 **674 ACT registration of interstate proceedings—application**
15 **for revocation**

16 (1) This section applies if an interstate proceedings transfer order or
17 interim order for a child is registered in the Childrens Court under
18 section 671.

19 (2) Any of the following people may apply to the court for revocation
20 of the registration of the order:

21 (a) the chief executive;

22 (b) the child or young person;

23 (c) a parent of the child or young person;

24 (d) someone else who has daily care responsibility, or long-term
25 care responsibility, for the child or young person;

26 (e) a party to the proceeding in the State Childrens Court in the
27 sending State in which the decision to transfer the interstate
28 proceedings transfer order or interim order was made.

- 1 (3) If a person applies for revocation of registration of the order, the
2 registrar of the court must give a copy of the application to—
3 (a) the relevant interstate officer; and
4 (b) each person, other than the applicant, who could have made an
5 application.

6 **675 ACT registration of interstate proceedings—revocation**

- 7 (1) This section applies if an interstate proceedings transfer order or
8 interim order is registered in the Childrens Court under section 671.
9 (2) The Childrens Court may revoke the registration of the interstate
10 proceedings transfer order or interim order only if satisfied that the
11 order was inappropriately registered because, under the interstate
12 law—
13 (a) the order of the State Childrens Court of the sending State to
14 transfer the order was subject to appeal or review, or a stay, at
15 the time of registration; or
16 (b) the time for starting an appeal or seeking a review had not
17 ended.
18 (3) If the registration of an interstate proceedings transfer order or
19 interim order is revoked, the registrar of the Childrens Court must
20 give the interstate proceedings transfer order or interim order to the
21 State Childrens Court of the sending State.
22 (4) The revocation of the registration of an interstate proceedings
23 transfer order or interim order does not prevent the later
24 re-registration of the order.

1 **676** **ACT registration of interstate proceedings—interstate**
2 **registrar**

3 If the registration of an interstate proceedings transfer order or
4 interim order is revoked under section 675, the registrar of the court
5 must tell the following people about the revocation:

- 6 (a) the appropriate officer of the State Childrens Court of the
7 sending State;
- 8 (b) the interstate officer in that State.

- 1 **Part 17.6** **Interstate transfer of child**
2 **welfare orders and**
3 **proceedings—miscellaneous**
- 4 **677** **ACT registration of interstate orders and proceedings—**
5 **Maori children and young people**
- 6 (1) This section applies if—
- 7 (a) a child welfare order or child welfare proceeding for a child or
8 young person is transferred under an interstate law to the ACT
9 from New Zealand; and
- 10 (b) the child or young person is a Maori child or young person.
- 11 (2) In deciding what finding or order to make in a proceeding for the
12 child or young person under this Act, the Childrens Court must have
13 regard to the principle that, if practicable, the relationship between
14 the child or young person and his or her family, whanau, hapu, iwi,
15 family groups and community group must be maintained and
16 strengthened.

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 392).

Part 18.1 Assistance in carrying out orders etc

678 Police assistance

(1) The chief executive 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 371.

(b) a care and protection appraisal;

Note Care and protection appraisals are dealt with in s 365.

(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 366.

(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 421.

(h) a DVPO interim protection order;

Note DVPO interim protection orders are dealt with in s 458.

(i) a DVPO final protection order;

Note DVPO final protection orders are dealt with in s 459.

(j) an interim therapeutic protection order;

Note Interim therapeutic protection orders are dealt with in div 16.2.3.

(k) a therapeutic protection order.

Note Therapeutic protection orders are dealt with in s 531.

(2) The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action.

679 Police powers

(1) A police officer assisting the chief executive 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 selfincrimination 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.

- 1 (3) A police officer assisting the chief executive in carrying out an
2 action may be accompanied by other police officers or authorised
3 people if it is reasonable and necessary.

4 **680 Seized things may be kept until matter completed**

5 If something is seized under section 679 (1) (b), the chief police
6 officer or the chief executive may keep the thing until the action is
7 completed and any proceeding arising out of the action is finalised.

8 **681 Offence—failure to answer police questions**

9 A person commits an offence if—

10 (a) the person is required by a police officer under
11 section 679 (1) (d) to answer a question; and

12 (b) the person does not take reasonable steps to answer the
13 question.

14 Maximum penalty: 50 penalty units.

15 *Note 1* The Legislation Act, s 170 and s 171 deal with the application of the
16 privilege against selfincrimination and client legal privilege.

17 *Note 2* A person who gives information honestly and without recklessness does
18 not breach professional ethics etc and is protected from civil liability
19 (see s 873).

20 *Note 3* Giving false or misleading information to the police officer is an
21 offence (see Criminal Code, s 338).

Part 18.2 Safe custody

682 Safe custody—parental responsibility to chief executive

If a child or young person is taken into safe custody under a safe custody warrant, the chief executive 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 chief executive 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 693).

683 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.

684 Safe custody warrant—application

(1) The chief executive or a police officer may apply to a magistrate for a safe custody warrant if the chief executive 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 chief executive 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 695).

Note 2 Oral applications may also be made (see s 697).

1 **685 Safe custody warrant—criteria**

2 (1) The magistrate may issue a safe custody warrant for a child or
3 young person, for stated premises, if satisfied that—

4 (a) any of the following orders are in force for the child or young
5 person:

6 (i) an appraisal order;

7 *Note* Appraisal orders are dealt with in s 371.

8 (ii) an interim care and protection order;

9 *Note* Interim care and protection orders are dealt with in s 432.

10 (iii) an assessment order;

11 *Note* Assessment orders are dealt with in s 435.

12 (iv) a care and protection order;

13 *Note* Care and protection orders are dealt with in s 421.

14 (v) a DVPO interim protection order;

15 *Note* DVPO interim protection orders are dealt with in s 458.

16 (vi) a DVPO final protection order;

17 *Note* DVPO final protection orders are dealt with in s 459.

18 (vii) a therapeutic protection order;

19 *Note* Therapeutic protection orders are dealt with in s 531.

20 (viii) an interim therapeutic protection order; and

21 *Note* Interim therapeutic protection orders are dealt with in
22 div 16.2.3.

23 (b) there are reasonable grounds for suspecting that—

24 (i) someone has contravened the order; and

25 (ii) because of the contravention, the child or young person is
26 in danger; and

- 1 (iii) the child or young person is at the premises or may be at
2 the premises within the next 14 days.
- 3 (2) The magistrate may also issue a safe custody warrant for a child or
4 young person, for stated premises, if satisfied that—
- 5 (a) a therapeutic protection order, or an interim therapeutic
6 protection order, is in force for the child or young person; and
- 7 *Note* Therapeutic protection orders are dealt with in pt 16.2. Interim
8 therapeutic protection orders are dealt with in div 16.2.3.
- 9 (b) there are reasonable grounds for suspecting that—
- 10 (i) the child or young person is absent without lawful
11 authority or excuse from the therapeutic protection place
12 where the child or young person has been directed to be
13 confined under the therapeutic protection order; and
- 14 (ii) the child or young person is at the premises or may be at
15 the premises within the next 14 days.

16 **686 Safe custody warrant—content**

- 17 (1) A safe custody warrant must state—
- 18 (a) the name of the child or young person who may be taken into
19 safe custody under the warrant; and
- 20 (b) the order for which the safe custody warrant is issued; and
- 21 (c) that the chief executive or police officer may, with any
22 necessary and reasonable assistance and force, enter stated
23 premises and exercise the chief executive's or police officer's
24 powers under this part; and
- 25 (d) the hours when the premises may be entered; and
- 26 (e) the date, not later than 14 days after the day the warrant is
27 issued, that the warrant ends; and

1 (f) the date that the transfer of daily care responsibility for the
2 child or young person to the chief executive ends (the *safe*
3 *custody period*).

4 (2) A safe custody warrant may also state the place where the child or
5 young person is to be placed by the person who executes the
6 warrant.

7 **687 Safe custody warrant—application made other than in**
8 **person**

9 (1) The chief executive or a police officer may apply for a warrant by
10 phone, fax, radio or other form of communication if the chief
11 executive or police officer considers it necessary because of urgent
12 circumstances.

13 (2) Before applying for the warrant, the chief executive or police officer
14 must prepare an application stating the grounds on which the
15 warrant is sought.

16 (3) The chief executive or police officer may apply for the warrant
17 before the application is sworn.

18 (4) After issuing the warrant, the magistrate must immediately fax a
19 copy to the chief executive or police officer if it is practicable to do
20 so.

21 (5) If it is not practicable to fax a copy to the chief executive or police
22 officer—

23 (a) the magistrate must tell the chief executive or police officer—

24 (i) the terms of the warrant; and

25 (ii) the date and time the warrant was issued; and

26 (b) the chief executive or police officer must complete a form of
27 warrant (the *warrant form*) and write on it—

28 (i) the magistrate's name; and

- 1 (ii) the date and time the magistrate issued the warrant; and
2 (iii) the warrant's terms.
- 3 (6) The faxed copy of the warrant, or the warrant form properly
4 completed by the chief executive or police officer, authorises the
5 entry and the exercise of the chief executive or police officer's
6 powers under this part.
- 7 (7) The chief executive or police officer must, at the first reasonable
8 opportunity, send to the magistrate—
9 (a) the sworn application; and
10 (b) if the chief executive or police officer completed a warrant
11 form—the completed warrant form.
- 12 (8) On receiving the documents, the magistrate must attach them to the
13 warrant.
- 14 (9) A court must find that a power exercised by the chief executive or
15 police officer was not authorised by a warrant under this section if—
16 (a) the question arises in a proceeding in the court whether the
17 exercise of power was authorised by a warrant; and
18 (b) the warrant is not produced in evidence; and
19 (c) it is not proved that the exercise of power was authorised by a
20 warrant under this section.

21 **688 Safe custody warrant—announcement before entry**

- 22 (1) The chief executive or a police officer must, before anyone enters
23 premises under a safe custody warrant—
24 (a) announce that the chief executive or police officer is authorised
25 to enter the premises; and
26 (b) give anyone at the premises an opportunity to allow entry to
27 the premises; and

- 1 (c) if the occupier of the premises, or someone else who
2 apparently represents the occupier, is present at the premises—
3 identify himself or herself to the person.
- 4 (2) The chief executive or police officer is not required to comply with
5 subsection (1) if the chief executive or police officer believes on
6 reasonable grounds that immediate entry to the premises is required
7 to ensure—
- 8 (a) the safety of anyone (including the chief executive or police
9 officer or a person assisting); or
- 10 (b) that the effective execution of the warrant is not frustrated.
- 11 **689 Safe custody warrant—details of warrant to be given to**
12 **occupier etc**
- 13 If the occupier of premises, or someone else who apparently
14 represents the occupier, is present at the premises while a safe
15 custody warrant is being executed, the chief executive or police
16 officer or a person assisting must make available to the person—
- 17 (a) a copy of the warrant; and
- 18 (b) a document setting out the rights and obligations of the person.
- 19 **690 Safe custody warrant—occupier entitled to be present etc**
- 20 (1) If the occupier of premises, or someone else who apparently
21 represents the occupier, is present at the premises while a safe
22 custody warrant is being executed, the person is entitled to observe
23 the warrant being executed.
- 24 (2) However, the person is not entitled to observe the warrant being
25 executed if—
- 26 (a) to do so would impede the execution of the warrant; or

1 (b) the person is under arrest, and allowing the person to observe
2 the warrant being executed would interfere with the objectives
3 of the warrant.

4 (3) This section does not prevent the warrant being executed at 2 or
5 more areas of the premises at the same time.

6 **691 Safe custody warrant—placement of child or young**
7 **person**

8 A child or young person taken into safe custody under a safe
9 custody warrant must be placed by the person who executed the
10 warrant—

11 (a) in the place stated in the warrant; or

12 (b) if no place is stated—in a place decided by the chief executive.

13 **692 Offence—remove child or young person**

14 (1) A person commits an offence if—

15 (a) a child or young person has been taken into safe custody and is
16 subject to a safe custody placement; and

17 (b) the person removes the child or young person from a place;
18 and

19 (c) the removal is in contravention of the safe custody placement;
20 and

21 (d) the person knows the removal is in contravention of the safe
22 custody placement.

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

25 (2) Strict liability applies to subsection (1) (a).

1 (3) In this section:

2 *safe custody placement*, for a child or young person, means the
3 placement of the child under section 691 (Safe custody warrant—
4 placement of child or young person).

5 **693 Safe custody—matter must be brought to court promptly**

6 (1) If a child or young person is taken into safe custody under a safe
7 custody warrant, the chief executive must ensure that the matter is
8 brought before the Childrens Court as soon as practicable, but not
9 later than 1 working day, after the day the child or young person is
10 taken into safe custody.

11 *Note* A child or young person has a right to take part in a proceeding in a
12 court in relation to the child or young person (see *Court Procedures*
13 *Act 2004*, s 74A).

14 (2) When a matter is brought before the Childrens Court under this
15 section, the court may exercise any of its powers in relation to the
16 child or young person including the following:

- 17 (a) making or extending an appraisal order under division 11.2.3;
- 18 (b) making, extending, amending or revoking an interim care and
19 protection order under division 14.3.2;
- 20 (c) making, extending, amending or revoking an assessment order
21 under division 14.3.3;
- 22 (d) making, extending, amending or revoking a care and protection
23 order under part 14.5;
- 24 (e) making, extending, amending or revoking a therapeutic
25 protection order under part 16.2.

1 **Chapter 19** **Care and protection—**
2 **provisions applying to all**
3 **proceedings under care and**
4 **protection chapters**

5 **Part 19.1** **Applications**

6 **694** **Application—including cross-application**

7 In this chapter:

8 *application* includes a cross-application.

9 **695** **Application—must include statements, documents and**
10 **reports**

11 An application to a court under the care and protection chapters
12 must be accompanied by the following:

13 (a) a written statement of the substance of the oral evidence that
14 the applicant intends to present at the hearing of the
15 application;

16 (b) a written copy of any document or expert report that the
17 applicant intends to rely on at the hearing of the application.

18 **696** **Application—statements and reports to be signed etc**

19 Unless otherwise directed by a court, a statement or report prepared
20 for use in a proceeding under the care and protection chapters—

21 (a) must be in the form of an affidavit; or

22 (b) must—

23 (i) be signed and dated by the person making the statement
24 or report; and

- 1 (ii) contain a declaration to the effect that the maker of the
2 statement or report believes it to be true and understands
3 that it may be used in court.

4 **697 Application—oral applications**

- 5 (1) A person may, with the leave of the court, make an oral application
6 under this Act for a proceeding before, during or after the hearing of
7 the proceeding.
- 8 (2) Subsection (1) applies despite any requirement about service in this
9 Act.
- 10 (3) If an oral application is made, the court must direct the applicant
11 about—
- 12 (a) which (if any) of the requirements for service or notice of the
13 making of an application are to apply to the oral application
14 and how they are to apply; and
- 15 (b) whether a written application is required; and
- 16 (c) whether service of a written application is required.
- 17 (4) If the court does not give directions under subsection (3) for an oral
18 application, no service is required under this Act.

19 **698 Application—withdrawal or discontinuance**

- 20 (1) A person who has applied to a court for an order under the care and
21 protection chapters may withdraw or discontinue the application
22 before the end of the proceeding by—
- 23 (a) telling, in writing, each person who was given the application;
24 and
- 25 (b) filing a notice of withdrawal or discontinuance with the court.
- 26 (2) If another party to the proceeding agrees with the withdrawal or
27 discontinuance, the notice of withdrawal or discontinuance must
28 have the agreement endorsed on it.

Part 19.2 Parties

699 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.

1 **700 Parties—hearing in party’s or other person’s absence**

- 2 (1) If someone makes an application under the care and protection
3 chapters, the person may, at the same time, seek the leave of the
4 court to have the application heard in the absence of any other party
5 or person who must be given a copy of the application.

6 *Note* For people who must be given copies of applications under the care and
7 protection chapters, see:

- 8 (a) s 378 (Appraisal orders—who must be given application);
9 (b) s 426 (Care and protection orders—who must be given
10 application);
11 (c) s 444 (Assessment orders—who must be given application);
12 (d) s 540 (Therapeutic protection orders—who must be given
13 application).

- 14 (2) The court may give leave only if satisfied that notice of the
15 application to the other party or person would place a child or young
16 person at significant risk of significant harm.

17 **701 Parties—failure to attend proceeding**

- 18 (1) This section applies if someone has been given a copy of an
19 application under the care and protection chapters.

- 20 (2) If the person does not attend the proceeding, the court must—
21 (a) adjourn the proceeding and make any order about further
22 service of the person that the court considers appropriate; or
23 (b) make any other order or give any other direction that it
24 considers appropriate, including an order or direction that is
25 binding on the person.

- 1 **702** **Parties—court may join affected party**
- 2 (1) This section applies to a proceeding under the care and protection
- 3 chapters.
- 4 (2) If the court is satisfied that it should make an order binding on or
- 5 affecting someone who is not a party to the proceeding, the court
- 6 may join the person as a party to the proceeding.
- 7 (3) However, the court must give the person a reasonable opportunity to
- 8 make representations to the court about why the order should not be
- 9 made—
- 10 (a) before making the order; or
- 11 (b) if, because of the urgency of the case it is not possible to do so
- 12 before making the order—not later than a reasonable time after
- 13 making the order.
- 14 **703** **Parties—application to join party**
- 15 (1) This section applies to a proceeding for a child or young person
- 16 under the care and protection chapters.
- 17 (2) If someone (the *applicant*) applies to the court to be joined as a
- 18 party to the proceeding, the court may order the person be joined as
- 19 a party to the proceeding if it considers it appropriate to do so.
- 20 (3) If the applicant is the public advocate, the court must join the public
- 21 advocate as a party to the proceeding.
- 22 (4) If the applicant has been caring for the child or young person
- 23 continuously for 2 years or more, there is a rebuttable presumption
- 24 that it is appropriate to join the applicant as a party to the
- 25 proceeding.
- 26 (5) An application may be made orally without notice to the parties to
- 27 the proceeding, but the court must give each party an opportunity to
- 28 be heard on the application before deciding whether to join the
- 29 applicant as a party.

- 1 **704 Parties—filed material to be given to joined parties**
- 2 If the court joins a person as a party to a proceeding under
- 3 section 702 or section 703—
- 4 (a) the person is entitled to material already filed in the proceeding
- 5 only if the court directs; and
- 6 (b) the court must direct what material already filed in the
- 7 proceeding must be given to the person, and by whom; and
- 8 (c) the court may make any further orders or give any further
- 9 directions about the conduct of the proceeding that the court
- 10 considers appropriate.
- 11 **705 Parties—application for removal of party**
- 12 (1) A party to a proceeding under the care and protection chapters (the
- 13 *applicant*) may apply to the court for an order that another party to
- 14 the proceeding be removed as a party.
- 15 (2) The applicant must give a copy of the application to the following
- 16 people before the application is heard by the court:
- 17 (a) each party to the proceeding;
- 18 (b) the public advocate.
- 19 **706 Parties—court may remove party**
- 20 (1) This section applies if the court is satisfied that a party to a
- 21 proceeding under the care and protection chapters—
- 22 (a) has been improperly or unnecessarily joined; or
- 23 (b) is no longer a proper or necessary party.
- 24 (2) The court may, on application by a party to a proceeding or on its
- 25 own initiative—
- 26 (a) order that the party is no longer a party; and

- 1 (b) make any other orders or give any other directions for the
2 conduct of the proceeding that the court considers appropriate.
- 3 (3) Before making an order under this section, the court must provide
4 each party to the proceeding with an opportunity to be heard on the
5 application or motion.

6 **707 Parties—notice of address for service**

7 A party to a proceeding under the care and protection chapters must
8 file with the court, and give to each other party to the proceeding, a
9 written statement of the party's name and address for service of
10 documents.

11 **708 Parties—representation**

- 12 (1) A party to a proceeding under the care and protection chapters may
13 appear before the court—
- 14 (a) in person; or
- 15 (b) represented by a lawyer; or
- 16 (c) with the leave of the court, represented by someone else.

17 *Note* Representation of children and young people is dealt with in the *Court*
18 *Procedures Act 2004*, pt 7A (Procedural provisions—proceedings
19 involving children).

- 20 (2) Also, the chief executive may appear before the court by the chief
21 executive's delegate or someone authorised to appear on the chief
22 executive's behalf.
- 23 (3) If a party to a proceeding under the care and protection chapters (the
24 ***represented party***) is represented by a lawyer in the proceeding, the
25 lawyer must file with the court, and give to each other party to the
26 proceeding, a written statement that the lawyer acts for the
27 represented party and an address in the ACT for service of
28 documents.

- 1 (4) A lawyer may stop representing a party to a proceeding under the
2 care and protection chapters only if the lawyer files with the court,
3 and gives to each other party to the proceeding, a written statement
4 to that effect.

5 **709 Exclusion of people from hearings**

- 6 (1) This section applies to a proceeding for a child or young person
7 under the care and protection chapters.
- 8 (2) The court may order that someone must not be present in the
9 courtroom during all or part of the hearing of the proceeding if the
10 court considers it appropriate.
- 11 (3) This section applies to everybody including—
12 (a) the child or young person; and
13 (b) the parents of the child or young person; and
14 (c) anyone else who has daily care responsibility, or long-term
15 care responsibility, for the child or young person.

1 **Part 19.3** **Burden of proof**

2 **710** **Burden of proof**

3 In a proceeding under the care and protection chapters, a fact is
4 proved if it is proved on the balance of probabilities.

Part 19.4 Witnesses and evidence

711 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.

712 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.

713 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;

- 1 (b) issue a summons;
2 (c) issue a warrant.
3 (3) A summons must include a statement to the effect that—
4 (a) if the person does not attend the court, a warrant may be issued
5 to bring the person before the court; and
6 (b) there is a penalty for not taking all reasonable steps to attend
7 court in answer to the summons.
8 (4) The court may issue a warrant to bring a person before the court if—
9 (a) a summons has been given to the person under this section; and
10 (b) the person does not attend the court to answer to the summons.

11 **714 Child or young person as witness**

- 12 (1) A child or young person may be called as a witness in a proceeding
13 under the care and protection chapters only with the leave of the
14 court.
15 (2) If the court gives leave for a child or young person to be called as a
16 witness, the court may prohibit cross-examination of the child or
17 young person if satisfied that it is in the best interests of the child or
18 young person to do so.

19 **715 Court not bound by rules of evidence**

- 20 (1) In a proceeding under the care and protection chapters, the court—
21 (a) is not bound by the rules of evidence; and
22 (b) may inform itself of a matter in any way that it considers
23 appropriate.
24 (2) Also, if the court is making, extending, amending or revoking an
25 order under the care and protection chapters, the court may—
26 (a) admit and act on hearsay evidence; and

1 (b) take submissions from someone who is not a party.

2 **716 Restriction on taking evidence**

3 If it appears to the court to be necessary or convenient for the proper
4 determination of the matters at issues in a proceeding, the court may
5 restrict the way or the extent to which someone, including a child or
6 young person, is to be examined or cross-examined for the
7 proceeding.

Part 19.5 Orders

717 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).

718 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.

1 **719 Orders—must be given to people**

2 As soon as practicable after making an order under the care and
3 protection chapters in a proceeding, the court must give a copy of
4 the order to—

- 5 (a) the chief executive; and
- 6 (b) the public advocate; and
- 7 (c) each lawyer representing a party to the proceeding who has,
8 before the date of the order, filed a notice of address for
9 service; and
- 10 (d) if a party to the proceeding is not represented by a lawyer and
11 has, before the date of the order, filed a notice of address for
12 service—the party.

13 **720 Residence, contact and specific issues provisions—**
14 **giving, amending or extending directions**

15 (1) This section applies to a care and protection order that includes 1 or
16 more of the following:

- 17 (a) a specific issues provision that includes a direction that a stated
18 person—
- 19 (i) do a stated thing; or
- 20 (ii) not do a stated thing; or
- 21 (iii) comply with a stated condition;
- 22 (b) a contact provision that includes a direction that a stated person
23 must not have contact with the child or young person;
- 24 (c) a residence provision that includes a direction—
- 25 (i) that a stated person must not live at the same premises as
26 the child or young person (including that the stated person
27 must stop living at those premises); or

- 1 (ii) that a stated person may live with the child or young
2 person only subject to stated conditions.
- 3 (2) If a court makes, amends or extends the care and protection order,
4 the court must give a copy of the order or revised order to the
5 following people:
- 6 (a) the stated person, by personal service on the person;
7 (b) the chief executive;
8 (c) the public advocate;
9 (d) the chief police officer;
10 (e) each other person who was a party to the proceeding;
11 (f) any other person the court considers appropriate.
- 12 (3) However, if the court considers personal service on the stated person
13 is impracticable, the court may give the copy of the order or revised
14 order to the stated person in another way.
- 15 *Note* Under the Legislation Act, s 247, a document may also be served on an
16 individual—
- 17 (a) by sending it by prepaid post, addressed to the individual, to a
18 home or business address of the individual; or
19 (b) by faxing it to a fax number of the individual; or
20 (c) by emailing it to an email address of the individual; or
21 (d) by leaving it, addressed to the individual, at a home or business
22 address of the individual with someone who appears to be at least
23 16 years old and to live or be employed at the address.
- 24 (4) If the court considers it appropriate, the court may direct that a
25 police officer give the copy of the order or revised order to
26 someone.
- 27 (5) If the court directs that a police officer give the copy of the order or
28 revised order to someone, the chief police officer must, if asked by
29 the registrar, arrange for the copy of the order or revised order to be
30 given by a police officer.

1 (6) In this section:

2 ***revised order*** means—

3 (a) if the order is amended—the order as amended; or

4 (b) if the order is extended—the order as extended.

5 *Note 1* A specific issues provision, a contact provision or a residence provision
6 may be extended, amended or revoked under pt 19.5.

7 *Note 2* In a proceeding for an appraisal order, a fact is proved if it is proved on
8 the balance of probabilities (see s 710).

9 *Note 3* The court may make an order imposing an obligation on a person only if
10 the person agrees to it, has been given an opportunity to be heard about
11 it or cannot be found (see s 717).

12 **721 Orders—statement of reasons**

13 (1) This section applies if a court—

14 (a) makes an order under the care and protection chapters in a
15 proceeding; or

16 (b) hears and decides an application for—

17 (i) extension of a therapeutic protection order under
18 section 561; or

19 (ii) amendment of a therapeutic protection order under
20 section 568; or

21 (iii) revocation of a therapeutic protection order under
22 section 569.

23 *Note* The court must record a written statement of reasons for these
24 decisions (see s 562 and s 570).

25 (2) Not later than 28 days after the day the order is made, a party to the
26 proceeding may ask the court, in writing, to give the party a
27 statement of reasons for making, extending, amending or revoking
28 the order.

- 1 (3) The court must give a written statement of reasons as soon as
2 practicable, but not later than 28 days, after the day the court
3 receives the request.

4 **722 Orders about service**

5 A court may make the following orders in relation to a proceeding
6 under the care and protection chapters:

- 7 (a) an order dispensing with service of a notice, order or other
8 instrument under the care and protection chapters;
9 (b) an order shortening the time for serving a notice, order or other
10 instrument under the care and protection chapters

Part 19.6 Costs

723 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.

724 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.

- 1 **725** **Costs—parties bear own costs unless order otherwise**
- 2 (1) This section applies to a proceeding under the care and protection
- 3 chapters including—
- 4 (a) an interlocutory proceeding; and
- 5 (b) an appeal from a decision made under the care and protection
- 6 chapters.
- 7 (2) A court exercising jurisdiction under this Act may, on application or
- 8 on its own initiative, order someone's costs be paid if the hearing of
- 9 a proceeding is adjourned because—
- 10 (a) someone else required to attend the hearing did not attend; or
- 11 (b) someone else contravened a direction or order of the court.
- 12 (3) A person who applies for an order for costs under this section must
- 13 give a copy of the application to the party from whom the costs are
- 14 sought.
- 15 **726** **Costs—how court may share costs**
- 16 (1) This section applies if a court exercising jurisdiction under this Act
- 17 has made an order about costs under section 724 or section 725.
- 18 (2) The court may order costs be paid by or shared between the parties
- 19 in the way the court orders.
- 20 (3) However, if the Childrens Court makes an order for the payment of
- 21 costs in a proceeding, the costs allowed are up to 50% of the costs
- 22 that would be allowed if the proceeding had been heard in the
- 23 Supreme Court.

Chapter 20 Childcare services

Part 20.1 Childcare services—preliminary

727 Definitions—Act and ch 20

(1) In this Act:

childcare centre—see section 732.

childcare service—see section 731.

family day care scheme—see section 733.

(2) In this chapter:

cancellation notice—see section 765.

childcare service licence, for a childcare service, means a licence under section 746 (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 759 (2).

compliance suspension notice—see section 760 (2).

controlling person, for a childcare service—see section 735.

intention to cancel notice—see section 763 (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.

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 734.

responsible person, for a childcare service—see section 737.

728 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 886.

729 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).

1 **730 Application—ch 20**

- 2 (1) This chapter does not apply to care provided for a child—
- 3 (a) at a playgroup; or
- 4 (b) in conjunction with a meeting, function or similar activity that
- 5 involves a person who has daily care responsibility for the
- 6 child, at the same or adjacent premises (unless provided in
- 7 conjunction with the person's usual employment); or
- 8 (c) by a family member (unless provided as part of a family day
- 9 care scheme); or
- 10 (d) by an out-of-home carer with whom the chief executive has
- 11 placed the child or young person under section 511; or
- 12 *Note* If the chief executive has daily care responsibility for a child or
- 13 young person, the chief executive must place the child or young
- 14 person with an out-of-home carer (see pt 15.4).
- 15 (e) by a government school or non-government school under the
- 16 *Education Act 2004*, whether provided during or outside school
- 17 hours; or
- 18 (f) by a person providing home education to the child if the child
- 19 is registered, or provisionally registered, for home education
- 20 under the *Education Act 2004*; or
- 21 (g) that is incidental to the child's participation in religious
- 22 instruction, sporting, educational, recreational or cultural
- 23 events or activities; or
- 24 (h) that is incidental to activities by the child as a member, or
- 25 while training to become a member, of a club or class
- 26 sponsored by a non-profit community organisation; or
- 27 (i) while the child is a patient in a hospital, including a day
- 28 hospital.

- 1 (2) In this section:
- 2 *day hospital*—see the *Health Act 1993*, dictionary.

1 **Part 20.2** **Childcare services—important**
2 **concepts**

3 **731** **What is a *childcare service*?**

4 In this Act:

5 *childcare service* means—

- 6 (a) a childcare centre; or
7 (b) a family day care scheme.

8 **732** **What is a *childcare centre*?**

9 (1) In this Act:

10 *childcare centre* means a service, operated from premises, that
11 provides care—

- 12 (a) for at least the minimum number of children; and
13 (b) for payment or other material benefit.

14 (2) For this section, when working out how many children care is being
15 provided for by a service operated from premises—

- 16 (a) a child for whom care is provided on an emergency basis, or in
17 unexpected or exceptional circumstances, must not be counted
18 unless the child is cared for at the premises for 2 or more
19 consecutive days; and
20 (b) if a child of a childcare worker is being cared for at the
21 premises, the child must be counted.

22 (3) In this section:

23 *minimum number*, of children, means—

- 24 (a) 5 young children; or

- 1 (b) 8 children, if no more than 4 children are young children.
2 ***young child*** means a child who is not yet either—
3 (a) attending school as required under the *Education Act 2004*; or
4 (b) registered, or provisionally registered, for home education
5 under the *Education Act 2004*.

6 **733 What is a *family day care scheme*?**

- 7 (1) In this Act:
8 ***family day care scheme*** means a scheme that organises, coordinates
9 and monitors home-based care for children.
10 (2) In this section:
11 ***home-based care***, for a child, means care provided by a person for
12 the child if—
13 (a) the care is provided at a home that is not the child's home; and
14 (b) the care is provided for payment or other material benefit; and
15 (c) the person does not have—
16 (i) daily care responsibility for the child; or
17 (ii) long-term care responsibility for the child.

18 **Examples—schemes that are not family day care schemes**

- 19 1 a scheme that organises, coordinates and monitors nannies
20 2 a scheme that organises, coordinates and monitors babysitters

21 *Note 1* Daily care responsibility is dealt with in s 19.
22 Long-term care responsibility is dealt with in s 20.

23 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 Legislation Act, s 126 and s 132).

1 **734 Who is the *proprietor* of a childcare service?**

2 In this chapter:

3 *proprietor*, of a childcare service, means—

4 (a) for a licensed childcare service—the licensed proprietor of the
5 childcare service; or

6 (b) in any other case—the person who owns or operates the
7 childcare service.

8 **735 Who is a *controlling person* for a childcare service?**

9 In this chapter:

10 *controlling person*, for a childcare service, means a person (other
11 than the proprietor if the proprietor is not an individual) who
12 exercises control or may exercise control over the childcare service.

13 **736 Offence—fail to notify change of controlling person**

14 (1) A licensed proprietor of a childcare service commits an offence if—

15 (a) someone stops being a controlling person for the childcare
16 service; and

17 (b) the licensed proprietor does not tell the chief executive, in
18 writing, that the person has stopped being a controlling person
19 not later than 30 days after the day the person stops being a
20 controlling person.

21 Maximum penalty: 5 penalty units.

22 (2) A licensed proprietor of a childcare service commits an offence if—

23 (a) someone becomes a controlling person for the childcare
24 service; and

- 1 (b) the licensed proprietor does not tell the chief executive, in
2 writing, that the person has become a controlling person not
3 later than 30 days after the day the person becomes a
4 controlling person.

5 Maximum penalty: 5 penalty units.

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

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 chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

737 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 734 and s 735).

738 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.

1 (2) This section does not apply to a person caring for a child for a
2 childcare service if the person is—

3 (a) unable to take the precaution; and

4 (b) unable to ensure that the precaution is taken by someone else.

5 **739 Offence—fail to supervise child**

6 A person commits an offence if the person—

7 (a) is a responsible person for a childcare service; and

8 (b) does not take reasonable steps to ensure that a child being
9 cared for by the service is adequately supervised.

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

12 **740 Offence—unreasonably discipline child**

13 A person commits an offence if the person—

14 (a) is a responsible person for a childcare service; and

15 (b) subjects a child being cared for by the service to unreasonable
16 discipline.

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

19 **741 Offence—fail to maintain buildings, equipment etc**

20 A person commits an offence if the person—

21 (a) is a responsible person for a childcare service; and

1 (b) does not take reasonable steps to ensure that the buildings,
2 grounds, equipment and furnishings used in operating the
3 service are maintained in a safe, clean and hygienic condition
4 and in good repair.

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

**Part 20.4 Childcare services—childcare
service licences**

**Division 20.4.1 Childcare service licences—
application, eligibility, etc**

**742 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 chief executive; 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 885 for this provision, the form must be used.

Note 4 A fee may be determined under s 884 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.

(4) If subsection (3) applies, the proposed proprietor must give the chief executive 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.

743 Childcare service licence—further information

(1) This section applies if the chief executive has received an application for a childcare service licence under section 742.

(2) The chief executive may ask the proposed proprietor to give the chief executive 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 chief executive may ask the proposed proprietor to allow the chief executive 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 chief executive has received an application under s 742 and asked the proposed proprietor to allow the chief executive to inspect the premises under s (3) and the proposed proprietor has agreed to allow the chief executive to inspect the premises (see s 816).

744 Childcare service licence—chief executive need not decide if no information or inspection

- (1) This section applies if, under section 743, the chief executive asks the proposed proprietor—
- (a) to give the chief executive more information but the proposed proprietor does not give the chief executive the information; or
 - (b) to allow the chief executive to inspect premises but the proposed proprietor does not allow the chief executive to inspect the premises.
- (2) The chief executive need not decide whether the proposed proprietor is eligible for a childcare service licence.

745 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 chief executive 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 886.

-
- 1 **746 Childcare service licence—decision on application**
- 2 (1) This section applies if the chief executive has received an
- 3 application for a childcare service licence under section 742.
- 4 (2) If the proposed proprietor is eligible under section 745 for a
- 5 childcare service licence to operate the childcare service, the chief
- 6 executive must give the proposed proprietor a licence to operate the
- 7 childcare service.
- 8 (3) If the proposed proprietor is not eligible under section 745 for a
- 9 childcare service licence to operate the childcare service, the chief
- 10 executive must refuse to give the proposed proprietor a licence to
- 11 operate the childcare service.
- 12 *Note* A decision under this subsection is a reviewable decision (see s 838).
- 13 (4) The chief executive must, not later than the required time—
- 14 (a) decide the application; and
- 15 (b) tell the proposed proprietor about the decision on the
- 16 application.
- 17 (5) For subsection (4), the ***required time*** is the latest of the following:
- 18 (a) if the chief executive requires a proposed proprietor or
- 19 proposed controlling person to provide a reference or report
- 20 under section 68 (2) (a)—30 days after the day the chief
- 21 executive receives the reference or report;
- 22 (b) if the chief executive requires a proposed proprietor or
- 23 proposed controlling person to undergo a test or medical
- 24 examination under section 68 (2) (b)—30 days after the day the
- 25 chief executive receives the results of the test or examination;
- 26 (c) if the chief executive asks the proposed proprietor to give the
- 27 chief executive more information under section 743 (2)—
- 28 30 days after the day the chief executive receives the
- 29 information;

- 1 (d) if the chief executive asks the proposed proprietor to allow the
2 chief executive to inspect premises under section 743 (3)—
3 30 days after the day the chief executive is allowed to inspect
4 the premises;
- 5 (e) in any other case—30 days after the day the chief executive
6 receives the application.
- 7 *Note* Power given by a law to make a decision includes power to reverse or
8 change the decision. The power to reverse or change the decision is
9 exercisable in the same way, and subject to the same conditions, as the
10 power to make the decision (see Legislation Act, s 180).

11 **747 Childcare service licence—content**

12 A childcare service licence must state—

- 13 (a) the name of the proprietor of the childcare service; and
14 (b) the kind of childcare service for which the licence is given; and
15 (c) the length of the licence; and
16 (d) for a licence to operate a childcare centre—
17 (i) the premises where the childcare centre may operate; and
18 (ii) the maximum number of children that may be cared for at
19 the childcare centre; and
20 (iii) the age of the children who may be cared for at the
21 childcare centre.

748 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 886.

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 chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

Note 4 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive may exempt a childcare service from 1 or more childcare service standards (a ***temporary standards exemption***) if the chief executive 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

- 1 (d) the exemption will not result in the proprietor of the childcare
2 centre failing to take all reasonably practicable steps to protect
3 the health, safety and welfare of employees of the childcare
4 service.
- 5 (3) A temporary standards exemption must not include information that
6 identifies a childcare worker or would allow the identity of a
7 childcare worker to be worked out.
- 8 (4) A temporary standards exemption must be for not longer than
9 6 months.
- 10 (5) The chief executive may extend a temporary standards exemption if
11 the total period of the exemption is not longer than 12 months.
- 12 (6) A temporary standards exemption may be conditional.
- 13 (7) The chief executive may revoke a temporary standards exemption at
14 any time on reasonable grounds.
- 15 (8) A temporary standards exemption is a notifiable instrument.
- 16 *Note* A notifiable instrument must be notified under the Legislation Act.

17 **749 Childcare service licence—length**

- 18 (1) The chief executive must not give a childcare service licence for
19 longer than 3 years.
- 20 (2) However, if a licensed proprietor of a childcare service has applied
21 for renewal of the licence under section 753, the chief executive
22 may extend the licence until the application is decided.

23 **750 Childcare service licence—extensions**

- 24 (1) If a childcare service licence is shorter than 3 years, the licensed
25 proprietor may apply for an extension of the licence.

26 *Note 1* If a form is approved under s 885 for this provision, the form must be
27 used.

28 *Note 2* A fee may be determined under s 884 for this provision.

(2) If the licensed proprietor would be eligible under section 745 (Childcare service licence—eligibility) for the licence as extended, the chief executive 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 745 for the licence as extended, the chief executive 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 838).

(4) The chief executive must decide the application, and tell the proprietor about the decision, not later than 30 days after the day the chief executive receives the application.

751 Childcare service licence—amendment

(1) A licensed proprietor of a childcare service may apply to the chief executive 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

(c) the age of the children who may be cared for at the childcare centre.

Note 1 If a form is approved under s 885 for this provision, the form must be used.

Note 2 A fee may be determined under s 884 for this provision.

- 1 (2) The chief executive may amend the licence if satisfied that the
2 childcare service can be operated under the amended licence in a
3 way that complies with the childcare service standards.

4 *Note 1* A childcare service licence is subject to the condition that the service
5 must be operated in a way that complies with the childcare services
6 standards.

7 *Note 2* The Minister may make childcare services standards under s 886.

- 8 (3) The chief executive must decide the application, and tell the
9 proprietor about the decision, not later than 30 days after the day the
10 chief executive receives the application.

11 **752 Childcare service licence—transfer**

- 12 (1) The licensed proprietor of a childcare service may apply to the chief
13 executive to transfer the childcare service licence to someone else.

14 *Note 1* If a form is approved under s 885 for this provision, the form must be
15 used.

16 *Note 2* A fee may be determined under s 884 for this provision.

- 17 (2) The chief executive may transfer the licence if the person to whom
18 the license is proposed to be transferred would be eligible under this
19 chapter for the licence.

- 20 (3) The chief executive must, not later than 30 days after the day the
21 chief executive receives the application—

22 (a) decide the application; and

23 (b) if the decision is to transfer the licence, decide the date that the
24 transfer takes effect; and

25 (c) tell the licensed proprietor about the decision on the
26 application.

27 *Note* A decision under this subsection is a reviewable decision (see s 838).

- 28 (4) A transfer takes effect on the date decided by the chief executive.

Division 20.4.2 Childcare service licences—renewal

753 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 chief executive; and
 - (b) received by the chief executive at least 30 days, but not more than 60 days, before the childcare service licence ends.
- (3) However, the chief executive may extend the time for making an application.

Note 1 A licensed proprietor may apply to the chief executive for the time to be extended, and the chief executive may extend the time, even though the time has ended (see Legislation Act, s 151C).

Note 2 If a form is approved under s 885 for this provision, the form must be used.

Note 3 A fee may be determined under s 884 for this provision.

754 Childcare service licence renewal—further information

- (1) This section applies if the chief executive has received an application for renewal of a childcare service licence under section 753.
- (2) The chief executive may ask the licensed proprietor to give the chief executive 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.

- 1 (3) The chief executive may ask the licensed proprietor to allow the
2 chief executive to inspect the premises where the licensed proprietor
3 operates the childcare service.

4 *Note* An authorised person may, at any reasonable time, enter premises if the
5 chief executive has received an application for renewal of a childcare
6 service licence under s 753 and asked the proposed proprietor to allow
7 the chief executive to inspect the premises under this section and the
8 proposed proprietor has agreed to allow the chief executive to inspect
9 the premises (see s 816).

10 **755 Childcare service licence renewal—chief executive need**
11 **not decide if no information or inspection**

- 12 (1) This section applies if, under section 754, the chief executive asks
13 the licensed proprietor—
14 (a) to give the chief executive more information but the licensed
15 proprietor does not give the chief executive the information; or
16 (b) to allow the chief executive to inspect premises but the
17 licensed proprietor does not allow the chief executive to
18 inspect the premises.
19 (2) The chief executive need not decide whether the licensed proprietor
20 is eligible for renewal of a childcare service licence.

21 **756 Childcare service licence renewal—eligibility**

- 22 (1) A licensed proprietor of a childcare service is eligible for renewal of
23 the licence only if the chief executive is satisfied that the licensed
24 proprietor—
25 (a) is eligible for a childcare service licence under section 745; 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 chief executive 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 886.

(2) For subsection (1) (b), the chief executive 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.

757 Childcare service licence renewal—decision on application

(1) This section applies if the chief executive receives an application for renewal of a childcare service licence under section 753.

(2) If the licensed proprietor is eligible under section 756 for renewal of the childcare service licence, the chief executive must give the licensed proprietor a new childcare service licence.

(3) If the licensed proprietor is not eligible under section 756 for renewal of the childcare service licence, the chief executive must refuse to renew the childcare service licence.

Note A decision under this subsection is a reviewable decision (see s 838).

(4) The chief executive 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.

- 1 (5) For subsection (4), the required time for an application is the latest
2 of the following:
- 3 (a) if the chief executive requires the licensed proprietor or a
4 controlling person to provide a reference or report under
5 section 68 (2) (a)—30 days after the day the chief executive
6 receives the reference or report;
- 7 (b) if the chief executive requires the licensed proprietor or a
8 controlling person to undergo a test or medical examination
9 under section 68 (2) (b)—30 days after the day the chief
10 executive receives the results of the test or examination;
- 11 (c) if the chief executive asks the licensed proprietor to give the
12 chief executive more information under section 754 (2)—
13 30 days after the day the chief executive receives the
14 information;
- 15 (d) if the chief executive asks the licensed proprietor, to allow the
16 chief executive to inspect premises under section 754 (3)—
17 30 days after the day the chief executive is allowed to inspect
18 the premises;
- 19 (e) in any other case—30 days after the day the chief executive
20 receives the application.
- 21 *Note* Power given by a law to make a decision includes power to reverse or
22 change the decision. The power to reverse or change the decision is
23 exercisable in the same way, and subject to the same conditions, as the
24 power to make the decision (see Legislation Act, s 180).

Division 20.4.3 Childcare service licences— suspension and cancellation

758 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.

759 Childcare service licence—compliance notices

- (1) This section applies if the chief executive 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 chief executive may also give an intention to cancel notice (see s 763).

Note 2 An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

Note 3 The Minister may make childcare services standards under s 886.

- (2) The chief executive 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

- 1 (b) telling the licensed proprietor that the licensed proprietor may
2 make a submission, orally or in writing, to the chief executive
3 about the notice not later than 7 days after the day the notice is
4 given to the licensed proprietor.
- 5 (3) If the licensed proprietor does not make a submission in accordance
6 with the compliance notice, the chief executive must take reasonable
7 steps to tell a person with daily care responsibility for each affected
8 child about the compliance notice.
- 9 *Note* A parent of a child has daily care responsibility for the child unless that
10 aspect of parental responsibility has been transferred to someone else
11 (see s 16 and s 17). Daily care responsibility for a child may also be
12 shared with someone else (see s 18).
- 13 (4) If the licensed proprietor makes a submission in accordance with the
14 compliance notice, the chief executive must consider the submission
15 and must either—
- 16 (a) confirm the compliance notice; or
17 (b) amend the compliance notice; or
18 (c) revoke the compliance notice.
- 19 *Note* A decision under this subsection is a reviewable decision (see s 838).
- 20 (5) After making a decision under subsection (4), the chief executive
21 must tell the licensed proprietor about the decision.
- 22 (6) If the licensed proprietor makes a submission in accordance with the
23 compliance notice and the chief executive decides to confirm or
24 amend the compliance notice, the chief executive must take
25 reasonable steps to tell a person with daily care responsibility for
26 each affected child about the compliance notice and the decision to
27 confirm or amend it.

760 Childcare service licence—suspension for noncompliance

(1) This section applies if—

- (a) the chief executive gives the licensed proprietor of a childcare service a compliance notice under section 759; 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 chief executive 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 chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

(2) The chief executive 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 chief executive 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 838).

(3) If the chief executive gives a compliance suspension notice to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with daily care responsibility for each affected child about the suspension.

(4) The compliance suspension notice has effect until either—

- (a) the suspension is ended under section 761; or

(b) the notice is revoked by the chief executive by written notice given to the licensed proprietor.

Note If a form is approved under s 885 for this provision, the form must be used.

761 Childcare service licence—ending noncompliance suspension

(1) This section applies if—

(a) the chief executive gives the licensed proprietor of a childcare service a compliance suspension notice under section 760; and

(b) the licensed proprietor makes a submission in accordance with the notice.

(2) The chief executive must consider the submission.

(3) After considering the submission, the chief executive 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 838).

(4) The chief executive must tell—

(a) the licensed proprietor about the decision under subsection (3); and

(b) anyone else about the decision who was told under section 760 about the suspension.

762 Childcare service licence—suspension if children unsafe

(1) This section applies if the chief executive believes on reasonable grounds that—

(a) children being cared for by a licensed childcare service are unsafe; and

(b) the exercise of the chief executive'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 chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

(2) The chief executive 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 838).

(3) If the chief executive gives a ***safety suspension notice*** to the licensed proprietor, the chief executive 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 chief executive by written notice given to the licensed proprietor.

Note If a form is approved under s 885 for this provision, the form must be used.

- 1 **763 Childcare service licence—notice of intention to cancel**
- 2 (1) This section applies if—
- 3 (a) the licensed proprietor of a childcare service is convicted or
- 4 found guilty of an offence against this Act; or
- 5 (b) the chief executive believes on reasonable grounds that—
- 6 (i) a childcare service licence was obtained improperly; or
- 7 (ii) the licensed proprietor of a childcare service has operated
- 8 the childcare service in a way that does not comply with a
- 9 childcare services standard; or
- 10 *Note 1* The Minister may make childcare services standards under
- 11 s 886.
- 12 *Note 2* For subpar (ii), the chief executive may instead give a
- 13 compliance notice (see s 759).
- 14 (iii) the licensed proprietor of a childcare service is not a
- 15 suitable entity to provide the childcare service; or
- 16 (iv) a controlling person for a childcare service is not a
- 17 suitable entity to provide the childcare service.
- 18 *Note* Suitable entities to provide services are dealt with in pt 2.4.
- 19 (2) The chief executive may give a written notice (an ***intention to***
- 20 ***cancel notice***) to the licensed proprietor telling the licensed
- 21 proprietor—
- 22 (a) that the chief executive intends to cancel the childcare service
- 23 licence; and
- 24 (b) the reasons for the intended cancellation; and
- 25 (c) that the licensed proprietor may make a submission, in writing,
- 26 to the chief executive about the intended cancellation not later
- 27 than 21 days after the day the notice is given to the licensed
- 28 proprietor.

- (3) If the chief executive gives an intention to cancel notice to the licensed proprietor, the chief executive 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).

764 Childcare service licence—cancellation

- (1) This section applies if the chief executive gives a licensed proprietor of a childcare service an intention to cancel notice under section 763.

- (2) If the licensed proprietor makes a submission in accordance with the intention to cancel notice, the chief executive must consider the submission.

- (3) After considering the submission, the chief executive 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 838).

- (4) If the licensed proprietor does not make a submission in accordance with the notice, the chief executive must decide to cancel the childcare service licence.

- (5) If the chief executive decides to revoke the intention to cancel notice, the chief executive must tell the following people about the decision:

- (a) the licensed proprietor;
- (b) anyone else who was told under section 763 (3) about the intention to cancel notice.

- 1 **765 Childcare service licence—cancellation notice**
- 2 (1) This section applies if the chief executive decides to cancel a
3 licensed proprietor's childcare service licence.
- 4 (2) The chief executive must give a written notice (a ***cancellation***
5 ***notice***) to the licensed proprietor, cancelling the childcare service
6 licence starting on the date stated in the notice (the ***cancellation***
7 ***date***).
- 8 (3) If the chief executive gives a cancellation notice to the licensed
9 proprietor, the chief executive must also take reasonable steps to tell
10 a person with daily care responsibility for each affected child about
11 the cancellation.
- 12 (4) The cancellation notice must be given to the licensed proprietor at
13 least 7 days before the cancellation date.
- 14 **766 Offence—fail to return cancelled childcare service licence**
- 15 (1) A person commits an offence if—
- 16 (a) the person is a licensed proprietor of a childcare service; and
- 17 (b) the chief executive cancels the childcare service licence by
18 giving the licensed proprietor a cancellation notice; and
- 19 (c) the person fails to return the childcare service licence to the
20 chief executive not later than 7 days after the day the
21 cancellation notice is given to the person.
- 22 Maximum penalty: 5 penalty units.
- 23 (2) An offence against this section is a strict liability offence.

767 Childcare service licence—identity of childcare workers protected

If the chief executive is required to tell a person with daily care responsibility for an affected child about something under this division, the chief executive 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

768 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 chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

- 1 **769 Offence—advertise unlicensed childcare service**
- 2 (1) A person commits an offence if—
- 3 (a) the person is—
- 4 (i) a proprietor of a childcare service; or
- 5 (ii) a controlling person for a childcare service; and
- 6 (b) the person publishes an advertisement for the childcare service;
- 7 and
- 8 (c) the proprietor of the childcare service does not hold a childcare
- 9 service licence to operate the childcare service.
- 10 Maximum penalty: 30 penalty units.
- 11 (2) This section does not apply if—
- 12 (a) a person applies for a childcare service licence to operate a
- 13 childcare service; and
- 14 (b) the application has not been decided; and
- 15 (c) the person publishes an advertisement for the childcare service;
- 16 and
- 17 (d) the advertisement clearly states that the person does not hold a
- 18 licence to operate the service.
- 19 (3) In this section:
- 20 *advertisement*—
- 21 (a) includes an enrolment form, circular, label, notice and sign; but
- 22 (b) does not include a document published for a feasibility study.

770 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 760 (Childcare service licence—suspension for noncompliance); or

(ii) section 762 (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 chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

771 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

- 1 (b) the childcare service is operated in a way that does not comply
 2 with the childcare services standards.

3 *Note* The Minister may make childcare services standards under s 886.

4 Maximum penalty: 50 penalty units.

5 (2) This section does not apply if—

6 (a) a temporary standards exemption under section 748 (2) is in
 7 force for the childcare service; and

8 (b) the exemption exempts the childcare service from the operation
 9 of this section; and

10 (c) the proprietor of the childcare service operates the childcare
 11 service in accordance with the exemption.

12 *Note* An authorised person may, at any reasonable time, enter premises if a
 13 licensed childcare service is operating on the premises or the chief
 14 executive suspects on reasonable grounds that a childcare service is
 15 operating on the premises (see s 816).

16 **Division 20.4.5 Childcare service licences—register,**
 17 **assessment and reporting**

18 **772 Childcare service licence—register**

19 The chief executive must establish a register of childcare service
 20 licences.

21 **773 Assessing compliance with childcare services standards**

22 (1) At least once during the period of a childcare service licence, the
 23 chief executive must assess the childcare service’s compliance with
 24 the childcare services standards.

25 *Note* An authorised person may, at any reasonable time, enter premises if a
 26 licensed childcare service is operating on the premises (see s 816).

27 (2) The Minister may make childcare services assessment requirements.

- 1 (3) A childcare services assessment requirement is a disallowable
2 instrument.
- 3 *Note* A disallowable instrument must be notified, and presented to the
4 Legislative Assembly, under the Legislation Act.
- 5 (4) An assessment must be carried out in accordance with the childcare
6 services assessment requirements.
- 7 (5) The chief executive may ask the licensed proprietor of a childcare
8 service to give the chief executive any information about the
9 childcare service reasonably required by the chief executive to carry
10 out the assessment.
- 11 (6) The licensed proprietor must comply with the request as soon as
12 practicable.

13 **774 Annual childcare standards report**

- 14 (1) The chief executive must, for each financial year, prepare a report (a
15 ***childcare standards report***) about the compliance of licensed
16 childcare services with the childcare services standards.
- 17 (2) A childcare standards report must include—
- 18 (a) any temporary standards exemptions under section 748 (2); and
- 19 (b) any compliance notices confirmed or amended under
20 section 759 (4); and
- 21 (c) any compliance suspension notices given under section 760;
22 and
- 23 (d) any safety suspension notices given under section 762 (2); and
- 24 (e) any intention to cancel notices or cancellation notices given
25 under section 764 or section 765; and
- 26 (f) any assessments made by the chief executive under section 773
27 during the financial year to which the report relates; and

- (g) if no assessment was made by the chief executive under section 773 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 chief executive is required to include under section 776 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 chief executive must consult, and consider submissions by, the licensed proprietor (see s 776).
- (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.

775 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.

776 Annual childcare standards report—consultation

- (1) This section applies if the chief executive 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 chief executive must give the licensed proprietor of the childcare service a written notice (a ***childcare standards report notice***) stating—
- (a) the chief executive’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 chief executive; 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.

- 1 (4) Before including in a childcare standards report information about a
2 childcare service being operated in a way that does not comply with
3 a childcare services standard, the chief executive must consider any
4 submission made by the licensed proprietor in accordance with the
5 childcare standards report notice.
- 6 (5) If the chief executive decides to include in a childcare standards
7 report information about a licensed childcare service being operated
8 in a way that does not comply with a childcare services standard, the
9 chief executive must also include in the report a copy of any written
10 submission given to the chief executive by the licensed proprietor in
11 accordance with a childcare standard report notice.

Part 20.5 Childcare services—enforcement

Note to pt 20.5

Other enforcement provisions apply to this chapter (see ch 23).

777 Removal of child in immediate danger

- (1) This section applies if the chief executive 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 chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 816).

- (2) The chief executive 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
 - (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 1 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).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) If the chief executive arranges for the child to be temporarily cared for by a licensed childcare service, the chief executive 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 chief executive removes something required for a child's care under subsection (2) (b), the chief executive 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.

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

778 Chapter 21 subject to Education Act 2004, s 13

This chapter has effect subject to the *Education Act 2004*, section 13 (Employment of children under school-leaving age).

Note The *Education Act 2004*, s 13 makes it an offence for a person to employ a child or young person under school-leaving age (15 years old), on a day and at a time, when the child or young person—

- (a) is required under the Act to attend a school, school activity or approved educational course; or
- (b) if the child or young person does not live in the ACT or is enrolled at a school under State law—would be required under this Act to attend a school, school activity or approved educational course if the child or young person were living in the ACT or were not enrolled at a school under State law.

The *Education Act 2004*, s 14 allows the chief executive to issue a certificate exempting the child or young person from school if—

- (a) it is necessary or desirable, considering any educational, vocational training or employment opportunity offered to the child or young person; or
- (b) it is otherwise in the best interests of the child or young person, considering the care, health, development or education of the child or young person.

- 1 **779 Definitions—ch 21**
- 2 In this chapter:
- 3 *contrary to the best interests of a child or young person*—see
- 4 section 781.
- 5 *educational institution* means a school, college or other educational
- 6 institution, whether or not operated by or on behalf of the Territory.
- 7 *employment*—see section 780.
- 8 *employment conditions notice*—see section 789.
- 9 *employment prohibition notice*—see section 787.
- 10 *work experience* means the engagement of a child or young person
- 11 who is under school-leaving age by someone if the engagement is—
- 12 (a) arranged by an educational institution where the child or young
- 13 person is enrolled; and
- 14 (b) part of a work experience program (however described)
- 15 conducted by the educational institution.
- 16 *Note School-leaving age* is 15 years old (see dict).
- 17 **780 When does someone employ a child or young person?**
- 18 (1) In this chapter:
- 19 *employment* means—
- 20 (a) performance of work under a contract for services (whether
- 21 written or unwritten); or
- 22 (b) an apprenticeship, traineeship or other work-related training for
- 23 a trade or occupation; or
- 24 (c) work experience, other than work experience as part of a work
- 25 experience program exempted under section 783.

- 1 (2) In deciding whether something is *employment* of a child or young
2 person for this chapter, it does not matter whether the child or young
3 person receives payment (however described) or not.
- 4 (3) Taking part in an approved program of compliance testing under the
5 *Tobacco Act 1927*, part 6A (Tobacco compliance testing) is not
6 *employment* for this chapter.

7 **781 When is employment *contrary to the best interests of a***
8 ***child or young person*?**

9 In this chapter, employment is taken to be *contrary to the best*
10 *interests of a child or young person* if—

- 11 (a) for a child or young person who is required to attend school
12 under the *Education Act 2004*—it contravenes that Act,
13 section 13 in relation to the child or young person; or
- 14 (b) for a child or young person engaged in education or training—
15 it is likely to prejudice the ability of the child or young person
16 to benefit from the education or training; or
- 17 (c) it is otherwise likely to harm the child's or young person's
18 health, safety, personal or social development (including by
19 sexual or financial exploitation).

Part 21.2 **Work experience programs—
exemption**

782 **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 chief executive; 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 886.

Note 2 If a form is approved under s 885 for this provision, the form must be used.

Note 3 A fee may be determined under s 884 for this provision.

783 **Work experience program—decision on application**

(1) This section applies if the chief executive has received an application from an educational institution for an exemption under section 782.

(2) The chief executive may exempt the educational institution in relation to a work experience program only if the chief executive 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 chief executive need not decide the application if the application does not contain sufficient information to allow the chief executive to decide it.

784 Work experience program exemption—further information

- (1) This section applies if the chief executive has—
 - (a) received an application from an educational institution for an exemption under section 782; or
 - (b) exempted an educational institution from the operation of this chapter in relation to a work experience program under section 783.
- (2) The chief executive may, at any time, ask the educational institution to give the chief executive 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.

785 Suspension of work experience program exemption

- (1) The chief executive may suspend an educational institution's exemption under section 783 if the chief executive suspects on reasonable grounds that the educational institution has not complied with, or continued to comply with, the work experience standards.
- (2) The chief executive may suspend the exemption by—
 - (a) giving the educational institution written notice of the suspension, including the chief executive's reasons for suspending the exemption; and
 - (b) telling the educational institution that it may make a submission, in writing, to the chief executive 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.

- 1 (4) After the end of 14 days after the chief executive gives notice of the
2 suspension, the chief executive must—
3 (a) consider any submission made by the entity; and
4 (b) either—
5 (i) revoke the suspension; or
6 (ii) give the entity notice of the chief executive's intention to
7 revoke the authorisation under section 786.

8 **786 Revocation of educational institution's exemption**

- 9 (1) The chief executive may revoke an educational institution's
10 exemption under section 783 if satisfied that the educational
11 institution has not complied with, or continued to comply with, the
12 work experience standards.
13 (2) Before revoking an exemption under subsection (1), the chief
14 executive must—
15 (a) give the educational institution written notice of the chief
16 executive's intention to revoke the exemption, including the
17 chief executive's reasons; and
18 (b) tell the educational institution that it may make a submission,
19 in writing, to the chief executive about the notice not later than
20 14 days after the day the notice is given to the educational
21 institution; and
22 (c) if the educational institution makes a submission—consider the
23 submission.

1 (3) This section is in addition to the Legislation Act, section 180 (Power
2 to make decision includes power to reverse or change).

3 *Note 1* Under the Legislation Act, s 180, power given by a law to make a
4 decision includes power to reverse or change the decision. The power
5 to reverse or change the decision is exercisable in the same way, and
6 subject to the same conditions, as the power to make the decision.

7 *Note 2* A decision under this section is a reviewable decision (see s 838).

Part 21.3 Employment of children and young people

Note to pt 21.3

Occupational health and safety matters are dealt with in the *Occupational Health and Safety Act 1989*.

787 Chief executive may prohibit employment

The chief executive 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 chief executive believes on reasonable grounds that the employment is, or is likely to be, contrary to the best interests of the child or young person.

788 Offence—contravene employment prohibition notice

An employer commits an offence if—

- (a) the chief executive gives the employer an employment prohibition notice under section 787; and
- (b) the employer engages in conduct that contravenes the employment prohibition notice.

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

1 **789 Chief executive may state conditions of employment**

2 The chief executive may, by written notice given to an employer
3 (an *employment conditions notice*), state conditions in relation to
4 the employment of a child or young person named in the notice, that
5 must be complied with to ensure the employment is not contrary to
6 the best interests of the child or young person.

7 **Examples—conditions**

- 8 1 conditions about adequate direct supervision of the young person
9 2 conditions about appropriate induction and training
10 3 conditions about supply and use of suitable protective clothing
11 4 conditions about workplace premises including compliance with any
12 registration or licensing requirement
13 5 conditions about availability of grief or trauma counselling at the workplace

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

17 **790 Offence—contravene employment conditions notice**

18 An employer commits an offence if—

- 19 (a) the chief executive gives the employer an employment
20 conditions notice under section 789; and
21 (b) the employer engages in conduct that contravenes the
22 employment conditions notice.

23 Maximum penalty: 50 penalty units.

24 **791 Children and young people employment standards**

25 An employer of a child or young person must comply with the
26 children and young people employment standards in relation to the
27 employment.

28 *Note* The Minister may make children and young people standards under
29 s 886.

Part 21.4 Employment of children and young people under school-leaving age

Notes to pt 21.4

Occupational health and safety matters are dealt with in the *Occupational Health and Safety Act 1989*.

School-leaving age is 15 years old (see dict).

792 What is *light work*?

(1) In this part:

light work means work that is not contrary to the best interests of a child or young person.

Examples—work that may be light work

- 1 babysitting
- 2 going on errands
- 3 casual work in or around a private home
- 4 golf-caddying
- 5 clerical work
- 6 gardening
- 7 selling, delivering or distributing newspapers or advertisements
- 8 entertaining at a place used for providing entertainment or amusement
- 9 entertaining at a place used for sporting activities
- 10 singing, dancing, playing a musical instrument or similar work
- 11 performing in a radio, television or film program or production, or a similar program or production, other than a news item
- 12 modelling
- 13 acting as a photographic subject, whether still or moving

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

- 1 (2) To remove any doubt, an example to the definition of *light work* is
2 not light work to the extent that it is contrary to the best interests of
3 a child or young person.

4 **Example**

5 acting as a photographic subject if the nature and environment of the workplace
6 makes it contrary to the best interests of a child or young person

7 **793 What is *high risk employment*?**

8 In this part:

9 *high risk employment* means employment declared to be high risk
10 employment under section 797 (1).

11 **794 Offence—employment of children and young people**
12 **under school-leaving age**

- 13 (1) A person commits an offence if—

- 14 (a) the person employs a child or young person; and
15 (b) the child or young person is under school-leaving age.

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

18 *Note* Employment as part of an exempted work experience program is not
19 employment for this chapter (see s 780 (1), def *employment*, par (c)).

- 20 (2) This section is subject to the following sections:

- 21 (a) section 795 (which is about light work);
22 (b) section 796 (which is about family businesses).

23 **795 Exception to s 794—employment in light work**

- 24 (1) Section 794 (1) does not apply to the employment of a child or
25 young person if—

- 26 (a) the employment is in light work; and

- 1 (b) the child or young person is employed for 10 hours per week or
2 less.
- 3 (2) Section 794 (1) does not apply to the employment of a child or
4 young person in light work for more than 10 hours per week if—
- 5 (a) the employment is in light work; and
- 6 (b) the proposed employer has, at least 7 days before the day the
7 employment starts, told the chief executive in writing about the
8 employment.
- 9 *Note* If a form is approved under s 885 for this provision, the form must be
10 used.

11 **796 Exception to s 794—employment in family business**

- 12 Section 794 (1) does not apply to the employment of a child or
13 young person if—
- 14 (a) the employer is—
- 15 (i) a parent of the child or young person; or
- 16 (ii) a company of which a parent of the child or young person
17 is a director; or
- 18 (iii) a partnership of which a parent of the child or young
19 person is a partner; and
- 20 (b) the employment is light work.

21 **797 Declaration of high risk employment**

- 22 (1) The Minister may declare employment in an industry, occupation or
23 activity to be high risk employment if satisfied that it is likely to
24 harm a child's or young person's health, safety, personal or social
25 development (including by sexual or financial exploitation).
- 26 (2) A declaration is a notifiable instrument.
- 27 *Note* A notifiable instrument must be notified under the Legislation Act.

- 1 **798 High risk employment—employer may apply for permit**
- 2 (1) An employer may apply for a permit to employ a child or young
- 3 person who is under school-leaving age in high risk employment
- 4 (a *high risk employment permit*).
- 5 (2) The application must—
- 6 (a) be made in writing to the chief executive; and
- 7 (b) include complete details of—
- 8 (i) the activities that the child or young person will be
- 9 expected to perform during the proposed employment;
- 10 and
- 11 (ii) the period of proposed employment; and
- 12 (iii) how the employer proposes to protect the young person's
- 13 health, safety, personal or social development during the
- 14 employment; and
- 15 (c) be accompanied by written consent to the proposed
- 16 employment of a person with daily care responsibility for the
- 17 young person.
- 18 *Note 1* Giving false or misleading information is an offence against the
- 19 Criminal Code, s 338.
- 20 *Note 2* If a form is approved under s 885 for this provision, the form must be
- 21 used.
- 22 *Note 3* A fee may be determined under s 884 for this provision.
- 23 **799 High risk employment permit—decision on application**
- 24 (1) This section applies if the chief executive has received an
- 25 application for a high risk employment permit.

1 (2) The chief executive may issue the permit only if the chief executive
2 believes on reasonable grounds that the proposed employment is not
3 likely to harm the child's or young person's health, safety, personal
4 or social development (including by sexual or financial
5 exploitation).

6 (3) The permit may be subject to conditions about the child's or young
7 person's health and safety.

8 **Examples—conditions**

- 9 1 conditions about adequate direct supervision of the young person
10 2 conditions about appropriate induction and training
11 3 conditions about supply and use of suitable protective clothing
12 4 conditions about workplace premises including compliance with any
13 registration or licensing requirement
14 5 conditions about availability of grief or trauma counselling at the workplace

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

18 (4) The employer must give a copy of the permit to the person with
19 daily care responsibility who gave consent for section 798 (2) (c)
20 when the application for the permit was made.

21 (5) The chief executive need not decide the application if the
22 application does not contain sufficient information to allow the chief
23 executive to decide it.

24 **800 High risk employment permit—further information**

25 (1) This section applies if the chief executive has received an
26 application from an employer for a high risk employment permit
27 under section 798 or has issued a high risk employment permit to an
28 employer under section 799.

29 (2) The chief executive may, at any time, ask the employer to give the
30 chief executive further information about—

31 (a) the application; or

- 1 (b) the employment of the child or young person.
- 2 (3) The employer must comply with a request as soon as practicable.
- 3 **801 High risk employment permit—content**
- 4 A high risk employment permit must state—
- 5 (a) the name of the employer who is to employ the child or young
- 6 person; and
- 7 (b) the name of the child or young person who is to be employed;
- 8 and
- 9 (c) the location of the premises where the employment is to be
- 10 undertaken; and
- 11 (d) the length of the permit; and
- 12 (e) any conditions to which the permit is subject.
- 13 **802 Offence—employment of child or young person under**
- 14 **school-leaving age in high risk employment**
- 15 (1) A person commits an offence if—
- 16 (a) the person employs a child or young person; and
- 17 (b) the employment is in high risk employment; and
- 18 (c) the child or young person is under school-leaving age.
- 19 Maximum penalty: 200 penalty units, imprisonment for 2 years or
- 20 both.
- 21 (2) This section does not apply to the employment of a child or young
- 22 person if the chief executive has issued a high risk employment
- 23 permit in relation to the employment of the child or young person.

- 1 **803 Offence—contravene condition of permit**
- 2 A person commits an offence if—
- 3 (a) the chief executive has issued a high risk employment permit
- 4 under section 799; and
- 5 (b) the permit is conditional; and
- 6 (c) the person engages in conduct that contravenes a condition of
- 7 the permit.
- 8 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 9 both.

Chapter 22 Research involving children and young people

804 Definitions—ch 22

In this chapter:

approved research project means a research project approved under section 806 (1).

ethics committee means a committee approved under section 809 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 805.

805 What is a *research project*?

(1) In this chapter:

research project means a research project by an entity (the *researcher*) that involves—

- (a) the chief executive giving the researcher protected information (including sensitive information) about a child or young person; or

Note 1 The chief executive may give protected information to a researcher for an approved project (see s 854).

Note 2 *Protected information* is defined in s 843. *Sensitive information* is defined in s 844.

- 1 (b) the researcher recruiting a person through the chief executive
2 to take part in the project if—
- 3 (i) the person is a child or young person who is the subject of
4 a proceeding under this Act; or
- 5 (ii) the person is a child or young person for whom a care and
6 protection order is in force; or
- 7 (iii) the person is a child or young person who is the subject of
8 a child concern report; or
- 9 (iv) the person is a child or young person for whom the chief
10 executive has parental responsibility; or
- 11 (v) the person is a young detainee; or
- 12 (c) the researcher recruiting a person who exercises a function
13 under this Act; or
- 14 (d) the researcher conducting the research project at a place of
15 care, a place of detention or a place of therapeutic protection.
- 16 (2) However, a *research project* does not include—
- 17 (a) the chief executive giving the researcher protected information
18 (including sensitive information) about a child or young person
19 in a form that does not identify an individual or allow an
20 individual's identity to be worked out (including a person who
21 made a child concern report); or
- 22 (b) an activity conducted by the chief executive that would
23 reasonably be considered to be a quality assurance exercise or
24 an audit.

1 **806 Approval of research projects—generally**

- 2 (1) The chief executive may approve a research project.
- 3 (2) However, the chief executive may approve a research project only
- 4 if—
- 5 (a) the chief executive is satisfied the project complies with or is
- 6 likely to comply with the research standards; and
- 7 (b) if the project involves a child or young person taking part in
- 8 the project—the chief executive has approved the project under
- 9 section 808.
- 10 (3) In deciding whether to approve a research project, the chief
- 11 executive may have regard to a recommendation made by an ethics
- 12 committee approved by the Minister under section 809.

13 **807 Research standards—certain matters to be covered**

- 14 (1) If a child or young person is to take part in a research project, the
- 15 research standards must—
- 16 (a) ensure that the safety and wellbeing of the child or young
- 17 person is paramount; and
- 18 (b) appropriately protect the child's or young person's health,
- 19 safety and personal and social development; and
- 20 (c) allow the child or young person to stop taking part in the
- 21 project at any time; and
- 22 (d) ensure that the child's or young person's identity as a
- 23 participant in the project is protected; and
- 24 (e) comply with anything else prescribed by regulation.

25 *Note* The Minister may make research standards under s 886.

- 1 (2) If the chief executive is to give a researcher protected information
2 about a child or young person for a research project, the research
3 standards must ensure that the secrecy of the information is
4 protected.

5 **808 Approval of research projects—child or young person to**
6 **take part**

- 7 (1) This section applies if the chief executive is deciding whether to
8 approve a research project that involves a child or young person
9 taking part in the project.
- 10 (2) The chief executive may approve the research project only if
11 satisfied that—
- 12 (a) the researcher is a suitable entity to have contact with children
13 or young people in the way proposed in the project; and
- 14 *Note* Suitable entities to provide services are dealt with in pt 2.4.
- 15 (b) any other person who is to have contact with children or young
16 people for the project is a suitable entity to have contact with
17 children or young people in the way proposed in the project.
- 18 (3) If the chief executive approves a research project that involves a
19 child or young person, the researcher must—
- 20 (a) seek the written consent, for the child or young person to take
21 part in the research project, of—
- 22 (i) the child or young person (if the child or young person
23 has sufficient developmental capacity to give consent); or
- 24 (ii) a person with daily care responsibility for the child or
25 young person; and
- 26 (b) tell the child or young person that—
- 27 (i) he or she can refuse consent; and

- 1 (ii) if consent is given, he or she can stop taking part in the
2 project at any time.

3 **809 Approval of ethics committees**

- 4 (1) The Minister may approve a stated committee as an ethics
5 committee for this chapter.

- 6 (2) An approval is a notifiable instrument.

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

8 **810 Offence—researcher contravene approved standards**

9 A person commits an offence if the person—

- 10 (a) is a researcher for an approved research project; and
11 (b) carries out the approved research project in a way that does not
12 comply with the research standards.

13 Maximum penalty: 50 penalty units.

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

811 Definitions—ch 23

In this chapter:

authorised person—see section 26.

Note If the chief executive 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.

- 1 ***occupier***, of premises, includes—
- 2 (a) a person believed on reasonable grounds to be an occupier of
- 3 the premises; and
- 4 (b) a person apparently in charge of the premises.
- 5 ***offence*** includes an offence that there are reasonable grounds for
- 6 believing has been, is being, or will be, committed.

Part 23.2 Powers of authorised people

812 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).

1 **813 Power to enter premises—Chapter 13 (Care and**
2 **protection and therapeutic protection—emergency**
3 **situations)**

4 (1) For this Act, an authorised person or police officer may, at any time,
5 enter premises if—

6 (a) the authorised person or police officer believes on reasonable
7 grounds that a child or young person at the premises is in need
8 of emergency care and protection or emergency therapeutic
9 protection; and

10 *Note 1 In need of emergency care and protection* is defined in s 402.

11 *Note 2 In need of emergency therapeutic protection* is defined in s 403.

12 (b) the purpose of the entry is for the authorised person or police
13 officer to take emergency action for the child or young person
14 under section 405.

15 *Note Emergency action* is defined in s 404.

16 (2) The authorised person or police officer may use reasonable and
17 necessary force to enter the premises to safeguard the wellbeing of
18 the child or young person.

19 (3) This section is additional to section 812.

20 **814 Power to enter premises—ch 15 (Care and Protection—**
21 **chief executive has aspect of parental responsibility)**

22 (1) For this Act, an authorised person may, at any reasonable time, enter
23 premises where a child or young person is living if—

24 (a) the chief executive has placed the child or young person with
25 an out-of-home carer under section 511; and

26 (b) the purpose of the entry is to ensure that the child or young
27 person is being properly cared for.

1 (2) For this Act, an authorised person may also, at any reasonable time,
2 enter a place operated by a residential care service if—

3 (a) the Minister—

4 (i) is deciding whether to approve the place as a place of care
5 under section 524; and

6 (ii) has asked the residential care service to allow the chief
7 executive to inspect the place; and

8 (b) the residential care service has agreed to allow the chief
9 executive to inspect the place.

10 *Note* If the residential care service does not allow the chief executive to
11 inspect the place, the Minister need not decide whether to approve
12 the place as a place of care (see s 524).

13 (3) This section is additional to section 812.

14 (4) In this section:

15 *at any reasonable time* includes at any time during normal business
16 hours.

17 *Note* An official visitor also inspects places of care and handles complaints
18 made by children and young people who are placed with a residential
19 care service and accommodated at a place of care (see pt 2.3).

20 **815 Power to enter premises—ch 16 (Care and protection—**
21 **therapeutic protection of children and young people)**

22 (1) For this Act, an authorised person may, at any reasonable time, enter
23 a therapeutic protection place for which the operating entity is not
24 the chief executive.

- 1 (2) For this Act, an authorised person may also, at any reasonable time,
2 enter any place for which the operating entity is not the chief
3 executive if—
- 4 (a) the Minister—
- 5 (i) is deciding whether to declare the place as a therapeutic
6 protection place under section 624; and
- 7 (ii) has asked the operating entity to allow the chief executive
8 to inspect the place; and
- 9 (b) the operating entity for the place has agreed to allow the chief
10 executive to inspect the place.
- 11 (3) However, subsection (1) authorises entry into a part of premises
12 used for residential purposes only if the part of the premises is used
13 to operate the therapeutic protection place.
- 14 (4) This section is additional to section 812.
- 15 (5) In this section:
- 16 *at any reasonable time* includes at any time during normal business
17 hours.
- 18 *operating entity*, for a place, means the entity that operates the
19 place.

20 **816 Power to enter premises—ch 20 (Childcare services)**

- 21 (1) For this Act, an authorised person may, at any reasonable time, enter
22 premises if—
- 23 (a) the chief executive has—
- 24 (i) received an application for a childcare service licence
25 under section 742 and has asked the proposed proprietor
26 to allow the chief executive to inspect the premises where
27 the proposed proprietor proposes to operate the childcare
28 service under section 743; or

1 (ii) received an application for renewal of a childcare service
2 licence under section 753 and has asked the proposed
3 proprietor to allow the chief executive to inspect the
4 premises where the proposed proprietor proposes to
5 operate the childcare service under section 754; and

6 (b) the proposed proprietor has agreed to allow the chief executive
7 to inspect the premises.

8 *Note* If the proposed proprietor does not allow the chief executive to
9 inspect the premises, the chief executive need not decide whether
10 the proposed proprietor is eligible for the childcare service licence
11 or for renewal of the licence (see s 744 and s 755).

12 (2) For this Act, an authorised person may also—

13 (a) at any reasonable time, enter premises if a licensed childcare
14 service is operating on the premises; or

15 (b) at any time, enter premises with the occupier's consent.

16 (3) However, this section authorises entry into a part of premises used
17 for residential purposes only if the part of the premises is used to
18 operate the childcare service.

19 (4) This section is additional to section 812.

20 (5) In this section:

21 *at any reasonable time* includes at any time during normal business
22 hours.

23 **817 Production of identity card**

24 An authorised person must not remain at premises entered under this
25 chapter if the authorised person does not produce his or her identity
26 card when asked by the occupier.

- 1 **818 Consent to entry**
- 2 (1) When seeking the consent of an occupier of premises to enter
- 3 premises under section 812 (1) (b), an authorised person must—
- 4 (a) produce his or her identity card; and
- 5 (b) tell the occupier—
- 6 (i) the purpose of the entry; and
- 7 (ii) that anything found and seized under this chapter may be
- 8 used in evidence in court; and
- 9 (iii) that consent may be refused.
- 10 (2) If the occupier consents, the authorised person must ask the occupier
- 11 to sign a written acknowledgment (an *acknowledgement of*
- 12 *consent*)—
- 13 (a) that the occupier was told—
- 14 (i) the purpose of the entry; and
- 15 (ii) that anything found and seized under this chapter may be
- 16 used in evidence in court; and
- 17 (iii) that consent may be refused; and
- 18 (b) that the occupier consented to the entry; and
- 19 (c) stating the time and date when consent was given.
- 20 (3) If the occupier signs an acknowledgment of consent, the authorised
- 21 person must immediately give a copy to the occupier.
- 22 (4) A court must find that the occupier did not consent to entry to the
- 23 premises by the authorised person under this chapter if—
- 24 (a) the question arises in a proceeding in the court whether the
- 25 occupier consented to the entry; and
- 26 (b) an acknowledgment of consent is not produced in evidence;
- 27 and

1 (c) it is not proved that the occupier consented to the entry.

2 **819 General powers on entry to premises**

3 (1) An authorised person who enters premises under this chapter may,
4 for this Act, do 1 or more of the following in relation to the premises
5 or anything on the premises:

6 (a) inspect or examine;

7 (b) take measurements or conduct tests;

8 (c) take samples;

9 (d) take photographs, films, or audio, video or other recordings;

10 (e) make copies of, or take extracts from, a document kept at the
11 premises;

12 (f) require the occupier, or anyone at the premises, to give the
13 authorised person records, or copies of records that the person
14 has or has access to that are reasonably required by the
15 authorised person for this Act;

16 (g) require the occupier, or an employee or agent of the occupier,
17 to give the authorised person any other assistance to exercise a
18 power under this chapter.

19 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
20 privilege against self incrimination and client legal privilege.

21 (2) A person must take all reasonable steps to comply with a
22 requirement made of the person under subsection (1) (f) or (g).

23 Maximum penalty: 50 penalty units.

24 **820 Duty to give information or documents**

25 (1) An authorised person may, by written notice given to a person,
26 require the person to give to the authorised person the stated
27 information or document required for this Act.

- 1 (2) The information or document must be given to the authorised person
2 within the period stated in the notice or, if an authorised person
3 allows a longer period, the longer period.
- 4 (3) The period stated in the notice must be not less than 14 days after
5 the day the notice is given to the person.
- 6 (4) A person commits an offence if—
- 7 (a) the person is required to give information or a document to an
8 authorised person under subsection (1); and
- 9 (b) the person does not take all reasonable steps to comply with
10 the requirement within the period applying under
11 subsection (2).

12 Maximum penalty: 50 penalty units.

13 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
14 privilege against self incrimination and client legal privilege.

15 **821 Power to require name and address**

- 16 (1) An authorised person may require a person to state the person's
17 name and home address if the authorised person believes on
18 reasonable grounds that the person is committing or has just
19 committed an offence against this Act.

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

- 23 (2) The authorised person must tell the person the reason for the
24 requirement and, as soon as practicable, record the reason.
- 25 (3) The authorised person must also produce his or her identity card for
26 inspection by the person.
- 27 (4) A person must comply with a requirement made of the person under
28 subsection (1) if the authorised person—
- 29 (a) told the person the reason for the requirement; and

- 1 (b) produced his or her identity card for inspection by the person.
2 Maximum penalty: 10 penalty units.
- 3 (5) An offence against this section is a strict liability offence.
4 (6) In this section:
5 *home address*, of a person, means the address of the place where the
6 person usually lives.
- 7 **822 Power to seize things**
- 8 (1) An authorised person who enters premises under this chapter with
9 the occupier's consent may seize anything at the premises if—
10 (a) satisfied on reasonable grounds that the thing is connected with
11 an offence against this Act; and
12 (b) seizure of the thing is consistent with the purpose of the entry
13 told to the occupier when seeking the occupier's consent.
- 14 (2) An authorised person who enters premises under a warrant under
15 this chapter may seize anything at the premises that the authorised
16 person is authorised to seize under the warrant.
- 17 (3) An authorised person who enters premises under this chapter
18 (whether with the occupier's consent, under a warrant or otherwise)
19 may seize anything at the premises if satisfied on reasonable
20 grounds that—
21 (a) the thing is connected with an offence against this Act; and
22 (b) the seizure is necessary to prevent the thing from being—
23 (i) concealed, lost or destroyed; or
24 (ii) used to commit, continue or repeat the offence.
- 25 (4) Having seized a thing, an authorised person may—
26 (a) remove the thing from the premises where it was seized (the
27 *place of seizure*) to another place; or

- 1 (b) leave the thing at the place of seizure but restrict access to it.
- 2 (5) A person commits an offence if—
- 3 (a) the person interferes with a seized thing, or anything
- 4 containing a seized thing, to which access has been restricted
- 5 under subsection (4); and
- 6 (b) the person knows access to the seized thing has been restricted;
- 7 and
- 8 (c) the person does not have an authorised person's approval to
- 9 interfere with the thing.
- 10 Maximum penalty: 50 penalty units.
- 11 (6) Strict liability applies to subsection (5) (a).

Part 23.3 Search warrants

823 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

- 1 (e) the date, within 14 days after the day of the warrant's issue, the
2 warrant ends.

3 **824 Warrants—application made other than in person**

- 4 (1) An authorised person may apply for a warrant by phone, fax, radio
5 or other form of communication if the authorised person considers it
6 necessary because of urgent circumstances.
- 7 (2) Before applying for the warrant, the authorised person must prepare
8 an application stating the grounds on which the warrant is sought.
- 9 (3) The authorised person may apply for the warrant before the
10 application is sworn.
- 11 (4) After issuing the warrant, the magistrate must immediately fax a
12 copy to the authorised person if it is practicable to do so.
- 13 (5) If it is not practicable to fax a copy to the authorised person—
14 (a) the magistrate must tell the authorised person—
15 (i) the terms of the warrant; and
16 (ii) the date and time the warrant was issued; and
17 (b) the authorised person must complete a form of warrant (the
18 **warrant form**) and write on it—
19 (i) the magistrate's name; and
20 (ii) the date and time the magistrate issued the warrant; and
21 (iii) the warrant's terms.
- 22 (6) The faxed copy of the warrant, or the warrant form properly
23 completed by the authorised person, authorises the entry and the
24 exercise of the authorised person's powers under this chapter.
- 25 (7) The authorised person must, at the first reasonable opportunity, send
26 to the magistrate—
27 (a) the sworn application; and

- 1 (b) if the authorised person completed a warrant form—the
2 completed warrant form.
- 3 (8) On receiving the documents, the magistrate must attach them to the
4 warrant.
- 5 (9) A court must find that a power exercised by the authorised person
6 was not authorised by a warrant under this section if—
- 7 (a) the question arises in a proceeding in the court whether the
8 exercise of power was authorised by a warrant; and
- 9 (b) the warrant is not produced in evidence; and
- 10 (c) it is not proved that the exercise of power was authorised by a
11 warrant under this section.

12 **825 Search warrants—announcement before entry**

- 13 (1) An authorised person must, before anyone enters premises under a
14 search warrant—
- 15 (a) announce that the authorised person is authorised to enter the
16 premises; and
- 17 (b) give anyone at the premises an opportunity to allow entry to
18 the premises; and
- 19 (c) if the occupier of the premises, or someone else who
20 apparently represents the occupier, is present at the premises—
21 identify himself or herself to the person.
- 22 (2) The authorised person is not required to comply with subsection (1)
23 if the authorised person believes on reasonable grounds that
24 immediate entry to the premises is required to ensure—
- 25 (a) the safety of anyone (including the authorised person or a
26 person assisting); or
- 27 (b) that the effective execution of the warrant is not frustrated.

1 **826 Details of search warrant to be given to occupier etc**

2 If the occupier of premises, or someone else who apparently
3 represents the occupier, is present at the premises while a search
4 warrant is being executed, the authorised person or a person
5 assisting must make available to the person—

6 (a) a copy of the warrant; and

7 (b) a document setting out the rights and obligations of the person.

8 **827 Occupier entitled to be present during search etc**

9 (1) If the occupier of premises, or someone else who apparently
10 represents the occupier, is present at the premises while a search
11 warrant is being executed, the person is entitled to observe the
12 search being conducted.

13 (2) However, the person is not entitled to observe the search if—

14 (a) to do so would impede the search; or

15 (b) the person is under arrest, and allowing the person to observe
16 the search being conducted would interfere with the objectives
17 of the search.

18 (3) This section does not prevent 2 or more areas of the premises being
19 searched at the same time.

1 **Part 23.4** **Return and forfeiture of things**
2 **seized**

3 **828** **Receipt for things seized**

- 4 (1) As soon as practicable after an authorised person seizes a thing
5 under this chapter, the authorised person must give a receipt for it to
6 the person from whom it was seized.
- 7 (2) If, for any reason, it is not practicable to comply with subsection (1),
8 the authorised person must leave the receipt, secured conspicuously,
9 at the place of seizure under section 822 (Power to seize things).
- 10 (3) A receipt under this section must include the following:
- 11 (a) a description of the thing seized;
- 12 (b) an explanation of why the thing was seized;
- 13 (c) the authorised person's name, and how to contact the
14 authorised person;
- 15 (d) if the thing is moved from the premises where it is seized—
16 where the thing is to be taken;
- 17 (e) if an authorised person has restricted access to the thing under
18 section 822 (4) (b)—it is an offence under section 822 (5) to
19 interfere with the thing without an authorised person's
20 approval.

829 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;
 - (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.

- 1 (6) The provisions of this chapter relating to the issue of search
2 warrants apply, with any necessary changes, to the giving of an
3 extension under this section.

4 **830 Access to things seized**

5 A person who would, apart from the seizure, be entitled to inspect a
6 thing seized under this chapter may—

- 7 (a) inspect it; and
8 (b) if it is a document—take extracts from it or make copies of it.

9 **831 Return of things seized**

10 (1) A thing seized under this chapter must be returned to its owner, or
11 reasonable compensation must be paid by the Territory to the owner
12 for the loss of the thing, if—

- 13 (a) a prosecution for an offence relating to the thing is not started
14 within 90 days after the day of the seizure; or
15 (b) a prosecution for an offence relating to the thing is started
16 within 90 days after the day of the seizure but the court does
17 not find the offence proved.

18 (2) If anything seized under this chapter is not required to be returned or
19 reasonable compensation is not required to be paid under
20 subsection (1), the thing—

- 21 (a) is forfeited to the Territory; and
22 (b) may be sold, destroyed or otherwise disposed of as the chief
23 executive directs.

Part 23.5 Miscellaneous

832 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.

833 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.

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

834 Appeals to Supreme Court—generally

(1) A person must not appeal to the Supreme Court in relation to a matter arising under this Act except—

(a) in accordance with section 835; or

(b) for a DVPO protection order made by the Childrens Court for a child or young person in need of care and protection on an application for a care and protection order—in accordance with the *Domestic Violence and Protection Orders Act 2001*.

(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**

835 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;
- (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.

836 Application of Magistrates Court Act

The *Magistrates Court Act 1930*, part 4.5 (Civil appeals) applies in relation to an appeal mentioned in section 835 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.

1 **837 Orders that Supreme Court may make**

2 On an appeal mentioned in section 835, the Supreme Court must not
3 make an order or other decision that is not an order or other decision
4 that could have been made by the Childrens Court in the proceeding
5 appealed from.

6 **Division 24.1.3 AAT review**

7 **838 Review of decisions—ch 15, ch 20 and ch 21**

- 8 (1) A decision mentioned in column 2 in a table in this division is a
9 reviewable decision.
- 10 (2) If the chief executive makes a reviewable decision in an item of a
11 table, the chief executive must give written notice of the decision to
12 each person mentioned in the table, column 3 for the item.
- 13 (3) The notice must be in accordance with the requirements of the code
14 of practice in force under the *Administrative Appeals Tribunal*
15 *Act 1989*, section 25B (1).
- 16 (4) A person mentioned in the table, column 4 for an item may apply to
17 the AAT for review of the reviewable decision mentioned in the
18 item.

Table 838.1 Review of decisions—ch 15 (Care and protection—chief executive has aspect of parental responsibility)

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 515, to refuse to authorise person as kinship carer	the person	the person
2	section 516, to refuse to authorise entity as foster care service	the entity	the entity
3	section 517 or section 518 to refuse to authorise person as foster carer	the person	the person
4	section 519, to refuse to authorise entity as residential care service	the person	the person
5	section 521 (4), or section 522 (4), to revoke authorisation of a person as foster carer	the person	the person
6	section 523 (1), to revoke authorisation of entity as a residential care service	the entity	the entity
7	section 524 (1), to refuse to approve place operated by residential care service as place of care	the residential care service	the residential care service
8	section 524 (4), to revoke approval of place operated by residential care service as place of care	the residential care service	the residential care service

Table 838.2 Review of decisions—ch 20 (Childcare services)

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 746 (3) to refuse to give proprietor childcare service licence	proprietor	proprietor
2	section 750 (4) to refuse to extend childcare service licence	licensed proprietor	licensed proprietor
3	section 751 (3) to refuse to amend a childcare service licence	licensed proprietor	licensed proprietor
4	section 752 (3) to refuse to transfer a childcare service licence	licensed proprietor	licensed proprietor
5	section 757 (3) to refuse to renew childcare service licence	licensed proprietor	licensed proprietor
6	section 759 (4) (a) to confirm compliance notice	licensed proprietor	licensed proprietor
7	section 760 (2) to suspend childcare service licence	licensed proprietor	licensed proprietor
8	section 761 (3) (a) to confirm suspension of childcare service licence	licensed proprietor	licensed proprietor
9	section 762 (2) to suspend childcare service licence	licensed proprietor	licensed proprietor
10	section 764 (3) to cancel childcare service licence	proprietor	proprietor

- 1 **839** **Decision to refuse to give childcare service licence must**
2 **not be stayed or otherwise affected pending outcome of**
3 **review**
- 4 (1) The *Administrative Appeals Tribunal Act 1989*, section 39A (2)
5 does not apply to a decision under section 746 (3) (Childcare service
6 licence—decision on application) to refuse to give a childcare
7 service licence.
- 8 (2) The Supreme Court must not make an order or other decision under
9 the *Administrative Decisions (Judicial Review) Act 1989*, section 16
10 in relation to a decision under section 746 (3) (Childcare service
11 licence—decision on application) to refuse to give a childcare
12 service licence.

13 **Table 838.3 Review of decisions—ch 21 (Employment of children and young**
14 **people)**

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 785 to suspend educational institution's exemption (in relation to work experience program)	educational institution	educational institution
2	section 786 to revoke educational institution's exemption (in relation to work experience program)	educational institution	educational institution
3	section 787 to prohibit employer from employing, or continuing to employ, child or young person	the employer the child or young person	the employer the child or young person

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
4	section 789 to state conditions in relation to employment of child or young person that must be complied with	the employer the child or young person	the employer the child or young person
5	section 799 (2) to refuse to issue permit for high risk employment	the employer the child or young person	the employer the child or young person
6	section 799 (3) to issue permit for high risk employment subject to conditions	the employer the child or young person	the employer the child or young person

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

840 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.

841 Definitions—Act and ch 25

(1) In this Act:

protected information—see section 843.

sensitive information—see section 844.

(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 professional

2 a written document

3 an electronic record

4 a verbal recommendation for action

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

information holder—see section 842.

State includes New Zealand.

842 Who is an *information holder*?

In this chapter:

information holder means a person who—

(a) is or has been—

(i) the chief executive; 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 496 (Annual review report—must be given to certain people);
- s 849 (Minister or chief executive—giving information to person about the person);

- 1 • s 850 (Minister or chief executive—giving information in best
- 2 interests of child or young person);
- 3 • s 851 (Chief executive—giving information to person under
- 4 corresponding provisions);
- 5 • s 854 (Chief executive—giving information to researcher);
- 6 • s 859 (Minister or chief executive—giving safety and wellbeing
- 7 information to information sharing entity);
- 8 • s 864 (Giving protected information to court or investigative
- 9 entity).

10 **843 What is *protected information*?**

11 (1) In this Act:

12 *protected information* means information about a person that is

13 disclosed to, or obtained by, an information holder because the

14 information holder is, or has been, an information holder.

15 (2) Without limiting subsection (1), *protected information* includes

16 sensitive information.

17 **844 What is *sensitive information*?**

18 (1) For this Act:

19 *sensitive information* means any of the following:

- 20 (a) care and protection report information;
- 21 (b) care and protection appraisal information;
- 22 (c) interstate care and protection information;
- 23 (d) family group conference information;
- 24 (e) contravention report information;
- 25 (f) information prescribed by regulation.

26 *Note* Prenatal report information is also *sensitive information* (see s 364).

- 1 (2) In this section:
- 2 ***care and protection appraisal information*** means information—
- 3 (a) in a record of an appraisal; or
- 4 (b) that would allow information in a record of an appraisal to be
- 5 worked out; or
- 6 (c) in a report (an ***incident report***) to the public advocate under
- 7 section 506 (Public advocate to be told about action following
- 8 appraisals); or
- 9 (d) that would allow information in a record of an appraisal or
- 10 incident report to be worked out.
- 11 ***care and protection report information*** means information—
- 12 (a) in a child concern report; or
- 13 (b) in a record that relates to—
- 14 (i) a notification under the *Children's Services Act 1986*,
- 15 section 103 (as in force at any time); or
- 16 (ii) a report under the *Children and Young People Act 1999*,
- 17 section 157A, section 158 or section 159 (as in force at
- 18 any time); or
- 19 (iii) any other information received by the chief executive
- 20 under the *Children and Young People Act 1999* about the
- 21 suspected abuse or neglect of a child or young person; or
- 22 (iv) any information received about the suspected abuse or
- 23 neglect of a child or young person at any time an
- 24 ordinance was in force in relation to child welfare; or
- 25 (c) that would allow information in a child concern report or
- 26 record mentioned in paragraph (b) to be worked out; or
- 27 (d) that identifies a person as a person who made a child concern
- 28 report or record mentioned in paragraph (b); or

- 1 (e) that would allow a person's identity as a person who made a
2 child concern report or record mentioned in paragraph (b) to be
3 worked out.

4 ***contravention report information*** means information—

- 5 (a) in a confidential report made under section 875 (Confidential
6 report of contravention of Act); or
7 (b) that would allow the information in a confidential report to be
8 worked out; or
9 (c) that identifies a person as a person who made a confidential
10 report; or
11 (d) that would allow a person's identity as a person who made a
12 confidential report to be worked out.

13 ***family group conference information*** means information—

- 14 (a) about anything said or done to facilitate, or anything said or
15 done at, a family group conference arranged under
16 section 80 (2); or
17 (b) information in a family group conference agreement, or in a
18 family group conference outcome report, that relates to a
19 family group conference arranged under section 80 (2); or
20 (c) information that would allow information mentioned in
21 paragraph (a) or (b) to be worked out.

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

- 1 ***interstate care and protection information*** means information—
- 2 (a) in a report (an ***interstate care and protection report***) made
- 3 under a provision of a law of a State corresponding (or
- 4 substantially corresponding) to section 353 (Voluntary
- 5 reporting of abuse and neglect), section 355 (Offence—
- 6 mandatory reporting of abuse) or section 361 (Prenatal
- 7 reporting—anticipated abuse and neglect), that is provided to
- 8 the chief executive under a section corresponding (or
- 9 substantially corresponding) to—
- 10 (i) section 851 (Chief executive—giving information to
- 11 person under corresponding provisions); or
- 12 (ii) section 860 (Information sharing entity—giving safety
- 13 and wellbeing information to chief executive); or
- 14 (b) that would allow the information in an interstate care and
- 15 protection report to be worked out; or
- 16 (c) that identifies a person as a person who made an interstate care
- 17 and protection report; or
- 18 (d) that would allow a person’s identity as a person who made an
- 19 interstate care and protection report to be worked out.

**Part 25.2 Offence to record or divulge
protected information**

845 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.

- 1 **846 Exception to s 845—information given under this Act**
- 2 (1) Section 845 (1) does not apply to the making of a record of
3 protected information if the record is made—
- 4 (a) under this Act; or
- 5 (b) in the exercise of a function, as an information holder, under
6 this Act.
- 7 (2) Section 845 (2) does not apply to the divulging of protected
8 information if the information is divulged—
- 9 (a) under this Act; or
- 10 (b) in the exercise of a function, as an information holder, under
11 this Act.
- 12 *Note* Protected information may be given to people under various provisions
13 of this Act, including the following:
- 14 • s 496 (Annual review report—must be given to certain people);
- 15 • pt 25.3 (Sharing protected information);
- 16 • pt 25.4 (Courts and investigative entities).
- 17 **847 Exception to s 845—information given under another law**
- 18 (1) Section 845 (1) (Offence—secrecy of protected information) does
19 not apply to the making of a record of protected information if—
- 20 (a) the information is not sensitive information; and
- 21 (b) the record is made—
- 22 (i) in the exercise of a function, as an information holder,
23 under another law in force in the Territory; or
- 24 (ii) under another law in force in the Territory.
- 25 (2) Section 845 (2) does not apply to the divulging of protected
26 information if—
- 27 (a) the information is not sensitive information; and

- 1 (b) the information is divulged—
2 (i) under another territory law; or
3 (ii) in the exercise of a function, as an information holder,
4 under another territory law.

- 5 *Note* Other legislation may provide for information to be given to people,
6 including the following:
7 • *Freedom of Information Act 1989*, s 10 (Right of access) and s 38
8 (Documents to which secrecy provisions of enactments apply)
9 • *Health Records (Privacy and Access) Act 1997*, s 10 (Statement of
10 principle regarding right of access), and s 14A (No access to
11 health record relating to Children and Young People Act
12 complaint etc).

13 **848 Exception to s 845—information given with agreement**

14 Section 845 (Offence—secrecy of protected information) does not
15 apply to protected information about a person if the information—

- 16 (a) is not sensitive information; and
17 (b) is divulged with the person's consent.

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 chief executive under this chapter (see s 886 (2) (i) (Standard-making power)).

Division 25.3.1 Generally

849 Minister or chief executive—giving information to person about the person

The Minister or chief executive may give a person protected information held by the Minister or chief executive about the person.

850 Minister or chief executive—giving information in best interests of child or young person

- (1) The Minister or chief executive may give someone protected information about a child or young person if the Minister or chief executive 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 chief executive for advice about giving the information and consider any advice given by the chief executive.
- (3) An information sharing entity may ask the chief executive for information the chief executive may give the information sharing entity under this section.

851 Chief executive—giving information to person under corresponding provisions

The chief executive 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 chief executive considers that giving the information is necessary to allow the person to exercise the function to administer the law.

852 Family group conference facilitator—giving information in best interests of child or young person

A family group conference facilitator may give the chief executive 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.

853 Out-of-home carer and foster care service—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 chief executive.

(2) In this section:

carer means—

(a) an out-of-home carer; or

(b) a foster care service.

1 **854 Chief executive—giving information to researcher**

- 2 (1) The chief executive may give protected information to a researcher
3 for an approved research project.
- 4 (2) The information may be about the child or young person, his or her
5 family or someone else.
- 6 (3) In this section:
7 *approved research project*—see section 804.

8 **855 Chief executive—giving information to authorised**
9 **assessor**

- 10 (1) The chief executive may give an authorised assessor for a care and
11 protection assessment protected information in relation to the child
12 or young person, or other person, who is the subject of the
13 assessment.
- 14 (2) In this section:
15 *authorised assessor*—see section 437.

16 **856 Certain identifying information not to be given**

- 17 Information must not be given to anyone under this part if it is
18 information that—
- 19 (a) identifies a person as a person who made—
20 (i) a child concern report; or
21 (ii) a confidential report; or
22 (iii) an interstate care and protection report; or
- 23 (b) would allow a person's identity as a person who made a report
24 mentioned in paragraph (a) to be worked out.

Division 25.3.2 Sharing safety and wellbeing information

857 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

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

(2) 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.

- 1 **858** **Who is an *information sharing entity*?**
- 2 (1) In this part:
- 3 ***information sharing entity***, for a child or young person, means any
- 4 of the following:
- 5 (a) a parent of the child or young person;
- 6 (b) someone else who has parental responsibility for the child or
- 7 young person;
- 8 *Note* Parental responsibility for a child or young person is dealt with in
- 9 div 1.3.2.
- 10 (c) an out-of-home carer for the child or young person;
- 11 *Note* Out-of-home carers are dealt with in pt 15.4.
- 12 (d) a foster care service;
- 13 *Note* ***Foster care service*** is defined in s 514.
- 14 (e) a Minister;
- 15 (f) an ACT education provider;
- 16 (g) a police officer or a member of a police service or force of a
- 17 State;
- 18 (h) a health facility;
- 19 (i) any of the following entities that provides services to, or has
- 20 contact with, the child or young person or his or her family:
- 21 (i) an administrative unit;
- 22 (ii) a community-based service;
- 23 (iii) a territory authority (other than the legal aid commission);
- 24 (iv) a territory instrumentality;
- 25 (v) an entity established under a law of a State or the
- 26 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.

859 Minister or chief executive—giving safety and wellbeing information to information sharing entity

(1) The Minister or chief executive 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 chief executive for information the chief executive can give the information sharing entity under this section.

(3) This section is additional to section 25 (Chief executive may ask for assistance, etc).

Note The chief executive may also ask an information sharing entity for information relevant to the safety, welfare and wellbeing of a child or young person (see s 860).

860 Information sharing entity—giving safety and wellbeing information to chief executive

An information sharing entity for a child or young person may give the chief executive 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.

- 1 **861 Chief executive—asking information sharing entity for**
2 **safety and wellbeing information**
- 3 (1) The chief executive may ask an information sharing entity for a
4 child or young person to give the chief executive safety and
5 wellbeing information in relation to the child or young person.
- 6 (2) An information sharing entity must comply with a request under
7 subsection (1)—
- 8 (a) promptly; and
- 9 (b) if the chief executive tells the entity that the situation is an
10 emergency—not later than 24 hours after the entity receives
11 the request.
- 12 (3) This section is additional to section 25 (Chief executive may ask for
13 assistance, etc).
- 14 **862 Care teams—sharing safety and wellbeing information**
- 15 (1) The chief executive may declare that the chief executive and a group
16 of other people and entities are a care team for a child or young
17 person.
- 18 **Examples—care team members**
- 19 1 an out-of-home carer
- 20 2 a counsellor
- 21 3 a psychologist
- 22 4 a health professional
- 23 5 an education provider
- 24 6 a foster care service
- 25 7 a family support worker
- 26 8 a youth support worker
- 27 9 a therapeutic protection service

- 1 10 a member of the child or young person's treating team under the *Health*
2 *Records (Privacy and Access) Act 1997*
- 3 *Note* An example is part of the Act, is not exhaustive and may extend, but
4 does not limit, the meaning of the provision in which it appears (see
5 Legislation Act, s 126 and s 132).
- 6 (2) The chief executive may include a person or entity as a member of a
7 care team for a child or young person only if satisfied that the
8 person or entity is responsible for coordinating or delivering a
9 service or care to the child or young person, or his or her family
10 members, under this Act or for a criminal proceeding under another
11 territory law.
- 12 (3) A member of a care team for a child or young person—
- 13 (a) may ask another member of the care team for safety and
14 wellbeing information about the child or young person; and
- 15 (b) may give safety and wellbeing information to another member
16 of the care team.
- 17 (4) The giving or receiving of safety and wellbeing information under
18 this section is subject to any instruction made by the chief executive
19 under section 23.

Part 25.4 Courts and investigative entities

863 Definitions—pt 25.4

In this part:

court includes a tribunal.

produce includes allow access to.

Note *Investigative entity*—see the dictionary.

864 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.

- 1 (5) In this section:
2 ***court*** includes a court of the Commonwealth, a State or another
3 Territory.

4 **Example**
5 the Family Court of Australia

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

9 **865 Court may order sensitive information to be given or**
10 **produced**

- 11 (1) A court may, in any proceeding, order an information holder to—
12 (a) give sensitive information to the court; or
13 (b) produce a document containing sensitive information to the
14 court.
15 (2) However, the court must not allow a document given to it under
16 subsection (1) (b) to be given to the parties to the proceeding unless
17 satisfied that—
18 (a) the information is materially relevant to the proceeding; and
19 (b) if the information is about a child or young person—the best
20 interests of the child or young person are protected.
21 (3) In making a decision under subsection (2), the court must consider
22 the desirability of protecting the identity of a person who made a
23 child concern report, confidential report or interstate care and
24 protection report.
25 (4) To enable the court to make a decision under subsection (2), the
26 court must allow the information holder to be heard in relation to its
27 disclosure to the parties.

- 1 (5) In making a decision under subsection (2), the court must deal with
2 the information given or produced under subsection (3) in a way that
3 ensures the information is not divulged or produced to anyone else.
- 4 (6) In particular, the court must ensure that no copies of the information
5 can be made without leave of the court.
- 6 (7) If the court decides not to allow a document produced to it under
7 subsection (1) (b) to be given to the parties, the court must return the
8 document to the information holder.

9 **866 Investigative entity may divulge protected information etc**

- 10 (1) An investigative entity may—
- 11 (a) divulge protected information (including sensitive information)
12 in relation to an investigation it is carrying out to another
13 investigative entity; and
- 14 (b) divulge protected information (other than sensitive
15 information) in relation to an investigation it is carrying out to
16 someone else.
- 17 (2) However, an investigative entity may divulge sensitive information
18 in relation to an investigation to someone other than another
19 investigative entity only if satisfied that—
- 20 (a) the information is materially relevant to the investigation; and
- 21 (b) disclosure of the information is in the public interest; and
- 22 (c) if the information is about a child or young person—the best
23 interests of the child or young person are protected; and
- 24 (d) the information does not include information that—
- 25 (i) identifies a person as a person who made a child concern
26 report; or
- 27 (ii) would allow a person's identity as a person who made a
28 child concern report to be worked out; or

- 1 (iii) identifies a person as a person who made a confidential
2 report; or
- 3 (iv) would allow a person's identity as a person who made a
4 confidential report to be worked out; or
- 5 (v) identifies a person as a person who made an interstate
6 care and protection report; or
- 7 (vi) would allow a person's identity as a person who made an
8 interstate care and protection report to be worked out.
- 9 (3) To enable the investigative entity to make a decision under
10 subsection (2), the investigative entity must allow the information
11 holder to be heard in relation to the divulging of the information.

Part 25.5 Admissibility of evidence

867 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 chief executive the opportunity to be heard.

Note For admissibility of a prenatal report, see s 363.

868 Confidential report—not admissible in evidence

- (1) A confidential report is not admissible in evidence in any proceeding in a court or tribunal.
- (2) Evidence of the contents of a confidential report is also not admissible in evidence in any proceeding in a court or tribunal.

1 (3) No-one may be compelled in any proceeding before a court or
2 tribunal—

3 (a) to produce a confidential report or a copy of, or extract from, a
4 confidential report; or

5 (b) to disclose, or give evidence of, the contents of a confidential
6 report.

7 (4) This section is subject to section 869 and section 870.

8 **869 Confidential report—confidential reporter may give**
9 **evidence**

10 In any proceeding in a court or tribunal, the confidential reporter
11 may give evidence about the confidential reporter's suspicion under
12 section 875 (1), and the reasons for the suspicion.

13 **870 Confidential report—evidence admissible with agreement**
14 **or leave**

15 (1) This section applies to evidence—

16 (a) that a particular matter is contained in a confidential report; or

17 (b) that identifies, or is likely to lead to the identification of, the
18 confidential reporter.

19 (2) The evidence is admissible in a proceeding in a court or tribunal
20 only if—

21 (a) the confidential reporter agrees, in writing, to the admission of
22 the evidence; or

23 (b) the court or tribunal gives leave for the evidence to be given.

24 (3) The court or tribunal may give leave under subsection (2) (b) only if
25 satisfied that it is necessary for the evidence to be given—

26 (a) to ensure the safety and wellbeing of a child or young person;
27 or

1 (b) in relation to a charge or allegation made in a proceeding
2 against someone about the exercise of the person's functions
3 under this Act; or

4 (c) to decide whether the report was made honestly and without
5 recklessness.

6 **871 Things said at conference not admissible in care and**
7 **protection proceedings**

8 (1) Evidence of anything said or done at a family group conference
9 arranged under section 80 (2) is not admissible in a proceeding
10 under the care and protection chapters.

11 (2) However, a conference outcome report is admissible in a proceeding
12 under the care and protection chapters to prove whether an
13 agreement was or was not reached.

14 **872 Interim matters—things said at court-ordered meeting**

15 Evidence of anything said or done at a court-ordered meeting in
16 relation to a proceeding under the care and protection chapters is
17 admissible in the proceeding only if—

18 (a) the parties to the proceeding agree to the evidence being
19 admitted; or

20 (b) the Childrens Court gives leave for the evidence to be
21 admitted.

**Part 25.6 Protection of people who give
information**

873 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 chief executive in response to a request made by the chief executive under section 25 (Chief executive may ask for assistance, etc); and
 - (b) a person to the official visitor under section 44 (Complaints to official visitors); and
 - (c) a person to a chief executive for a report under the *Court Procedures Act 2004*, section 74D (Court may order report about young person); and
 - (d) a health professional to the chief executive in a report of assessment made by the health professional under section 160 (3) (Health assessment); and
 - (e) a relevant chief executive to the chief executive in a report under section 185 (Health reports); and

- 1 (f) a person in a report to the chief executive under section 192
2 (Mandatory reporting of threats to security etc at detention
3 place); and
- 4 (g) a person to the chief executive under section 353 (Voluntary
5 reporting of abuse and neglect); and
- 6 (h) a person to the chief executive under section 355 (Offence—
7 mandatory reporting of abuse); and
- 8 *Note* Information given honestly and without recklessness to the public
9 advocate under s 358 is protected under the *Public Advocate Act*
10 *2005*, s 15.
- 11 (i) a person to the chief executive under section 359 (4) (a) (Chief
12 executive to act on child concern report); and
- 13 (j) a person to the chief executive under section 360 (3) (a) (Chief
14 executive action on child protection report); and
- 15 (k) a person to the chief executive under section 361 (Prenatal
16 reporting—anticipated abuse and neglect); and
- 17 (l) a person in a report to the chief executive under section 361
18 (Prenatal reporting—anticipated abuse and neglect); and
- 19 (m) a person to a police officer under section 679 (1) (d) (Police
20 powers); and
- 21 (n) an out-of-home carer or foster care service to someone under
22 section 853 (Out-of-home carer and foster care service—giving
23 information necessary for responsibilities); and
- 24 (o) an information sharing entity to the chief executive under
25 section 860 (Information sharing entity—giving safety and
26 wellbeing information to chief executive) or section 861 (Chief
27 executive—asking information sharing entity for safety and
28 wellbeing information); and

(p) a member of a care team to another member of the care team under section 862 (Care teams—sharing safety and wellbeing information); and

(q) a person to the chief executive under section 875 (Confidential report of contravention of Act).

Note The chief executive and official visitor are protected from civil liability for giving information by s 877.

874 Interaction with other laws

(1) This chapter does not limit a power or obligation under another law to give relevant information.

(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 1995* (Cwlth)
- *Health Records (Privacy and Access) Act 1997*
- *Privacy Act 1988* (Cwlth)
- *Public Sector Management Act 1994*

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

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).

875 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 886 (see Legislation Act, s 104).

- (2) The person may report (in a *confidential report*) the suspicion, and the reasons for the suspicion, to the chief executive.

876 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

- 1 (ii) tattoo the child or young person in that way.
- 2 Maximum penalty: 50 penalty units.
- 3 (2) An offence against this section is a strict liability offence.
- 4 (3) It is a defence to a prosecution for an offence against this section if
- 5 the defendant proves that—
- 6 (a) before tattooing the person, the person had shown a document
- 7 of identification to the defendant; and
- 8 (b) the defendant had no reasonable grounds for believing that the
- 9 document was not a genuine document of identification of the
- 10 person.
- 11 (4) In this section:
- 12 ***document of identification***, of a person, means a document that—
- 13 (a) is—
- 14 (i) an Australian driver licence or a licence to drive a motor
- 15 vehicle (however described) issued under the law of an
- 16 external Territory or a foreign country; or
- 17 (ii) a proof of age card under the *Liquor Act 1975* or a
- 18 corresponding document issued under the law of a State;
- 19 or
- 20 (iii) a passport; and
- 21 (b) contains a photograph that could reasonably be taken to be of
- 22 the person; and
- 23 (c) indicates that the person to whom the document was issued is
- 24 at least 18 years old.

1 **877 Protection of officials from liability**

2 (1) In this section:

3 *official* means—

4 (a) the chief executive; or

5 (b) an official visitor; or

6 (c) a person who is exercising, or has exercised, a function under
7 this Act; or

8 (d) a person who is, or has been, engaged in the administration of
9 this Act.

10 (2) An official, or anyone engaging in conduct under the direction of an
11 official, is not civilly liable for conduct engaged in honestly and
12 without recklessness—

13 (a) in the exercise of a function under this Act; or

14 (b) in the reasonable belief that the conduct was in the exercise of
15 a function under this Act.

16 (3) Any liability that would, apart from this section, attach to an official
17 attaches instead to the Territory.

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

21 **878 ACT child welfare services must assist public advocate**

22 (1) For the purpose of exercising a statutory function, the public
23 advocate may ask an ACT child welfare service to provide
24 information, advice, guidance, assistance, documents, facilities or
25 services in relation to the physical or emotional welfare of children
26 and young people.

1 (2) If the public advocate makes a request of an ACT child welfare
2 service under subsection (1), the service must comply with the
3 request promptly.

4 (3) In this section:

5 *ACT child welfare service* means any of the following entities if the
6 entity is involved in providing welfare services for children and
7 young people:

- 8 (a) an administrative unit;
9 (b) a territory authority;
10 (c) a territory instrumentality;
11 (d) a public employee;
12 (e) a police officer.

13 *Note* A person who gives information honestly and without recklessness
14 under this section does not breach professional ethics etc and is
15 protected from civil liability (see *Public Advocate Act 2005*, s 15).

16 **879 Notification of location of child or young person**

17 (1) This section applies if—

- 18 (a) a child or young person has voluntarily entered a hospital,
19 police station or refuge (the *place*); and
20 (b) the person in charge, or an occupier, of the place suspects on
21 reasonable grounds that none of the following people knows
22 the location of the child or young person:
23 (i) a parent of the child or young person;
24 (ii) someone else who has daily care responsibility, or
25 long-term care responsibility, for the child or young
26 person.

1 (2) The person in charge, or occupier, may, if the person or occupier
2 believes on reasonable grounds that it is in the best interests of the
3 child or young person to do so—

4 (a) tell a parent of the child or young person, or someone else who
5 has daily care responsibility, or long-term care responsibility,
6 for the child or young person, of the location of the child or
7 young person; and

8 (b) if the place is not at a police station—tell a police officer that
9 the child or young person is at the hospital or refuge.

10 **880 Evidentiary certificates—chief executive—parental**
11 **responsibility**

12 In a proceeding under this Act, a certificate purporting to be signed
13 by the chief executive stating that, on a stated date or during a stated
14 period, the chief executive had, or shared, daily care responsibility,
15 or long-term care responsibility, for a stated child or young person is
16 evidence of the matters stated in the certificate.

17 **881 Evidentiary certificates—chief executive—custody etc**

18 (1) A certificate that appears to be signed by the chief executive that
19 states any of the following is evidence of the matter:

20 (a) that a stated person was, or was not, subject to detention on a
21 stated day;

22 (b) that a stated person was, or was not, in the chief executive's
23 custody on a stated day;

24 (c) that a stated young offender subject to full-time detention did
25 not comply with a stated obligation of the detention;

26 (d) that the chief executive gave a stated direction to a stated
27 person on a stated day;

28 (e) that a stated person did not comply with a stated direction by
29 the chief executive on a stated day;

- 1 (f) that a stated decision was made by the chief executive on a
2 stated date;
- 3 (g) that a stated person did, or did not, occupy a position under this
4 Act on a stated day;
- 5 (h) that a stated instrument under this Act was, or was not, in force
6 on a stated day;
- 7 (i) that a stated instrument is a copy of an instrument made, given,
8 issued or received under this Act.
- 9 (2) A certificate mentioned in subsection (1) may state a matter by
10 reference to a date or period.
- 11 (3) A certificate of the results of the analysis of a substance under this
12 Act, signed by an analyst appointed under section 882, is evidence
13 of the facts stated in the certificate.
- 14 (4) A certificate signed by or for the chief executive that states any
15 matter prescribed by regulation is evidence of the stated matter.
- 16 (5) A court must accept a certificate or other document mentioned in
17 this section as proof of the matters stated in it if there is no evidence
18 to the contrary.

19 **882 Appointment of analyst for Act**

- 20 (1) The chief executive may appoint analysts for this Act.

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

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

- 27 (2) An appointment under subsection (1) is a notifiable instrument.

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

1 **883 Chief police officer delegations**

2 (1) The chief police officer may delegate any of the chief police
3 officer's functions under this Act to a police officer.

4 (2) This section does not limit the chief police officer's power to
5 delegate a function under any other territory law.

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

8 **884 Determination of fees**

9 (1) The chief executive may determine fees for this Act.

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

12 (2) A determination is a disallowable instrument.

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

15 **885 Approved forms**

16 (1) The chief executive may approve forms for this Act (other than for
17 use in relation to the Childrens Court).

18 (2) If the chief executive approves a form for a particular purpose, the
19 approved form must be used for that purpose.

20 *Note* For other provisions about forms, see the Legislation Act, s 255.

21 (3) An approved form is a notifiable instrument.

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

23 **886 Standard-making power**

24 (1) The Minister may make standards for this Act.

25 *Note* Power to make a statutory instrument includes power to amend or repeal
26 the instrument. The power to amend or repeal the instrument is
27 exercisable in the same way, and subject to the same conditions, as the
28 power to make the instrument (see Legislation Act, s 46).

- 1 (2) The standards may make provision for the following:
- 2 (a) the conduct of family group conferences and the
3 implementation of family group conference agreements (*family*
4 *group conference standards*);
- 5 *Note* Family group conferences are dealt with in ch 3 and ch 12.
- 6 (b) the conduct of drug testing under a drug use provision in a care
7 and protection order (*drug testing standards*);
- 8 *Note* Drug use provisions in care and protection orders are dealt with in
9 pt 14.9.
- 10 (c) the care to be provided for children and young people by
11 out-of-home carers (*out-of-home care standards*);
- 12 *Note* Out-of-home care is dealt with in pt 15.4.
- 13 (d) the operation of therapeutic protection places and services
14 (*therapeutic protection standards*);
- 15 *Note* A child or young person may be confined at a therapeutic
16 protection place under a therapeutic protection order (see pt 16.2).
- 17 (e) the operation of childcare services (*childcare services*
18 *standards*);
- 19 *Note* Childcare services are dealt with in ch 20.
- 20 (f) employers of children and young people (*children and young*
21 *people employment standards*);
- 22 *Note* Employment of children and young people is dealt with in ch 21.
- 23 (g) the requirements for the operation of work experience
24 programs (*work experience standards*);
- 25 *Note* Work experience programs are dealt with in pt 21.2.
- 26 (h) research involving children and young people (*research*
27 *standards*);
- 28 *Note* Research is dealt with in ch 22.

1 (i) the giving and seeking of protected information by the chief
2 executive under chapter 25 (*information sharing standards*).

3 (3) A standard is a disallowable instrument.

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

6 **887 Regulation-making power**

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

8 *Note* A regulation must be notified, and presented to the Legislative
9 Assembly, under the Legislation Act.

10 (2) A regulation may make provision for—

11 (a) the duties of people in charge of detention places; and

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

15 (c) any of the following in relation to injuries suffered by children
16 or young people, and other people, that arise out of, or in the
17 course of, their detention, or the performance of community
18 service:

19 (i) injury management;

20 (ii) compensation for a permanent injury;

21 (iii) vocational rehabilitation;

22 (iv) death benefits; and

23 (d) travel and transport arrangements for children or young people,
24 and other people, performing community service; and

25 (e) the discipline and security (including the use of force,
26 inspection of mail, and the use of video surveillance and other
27 monitoring devices) at or for places of detention; and

- 1 (f) the safety, management and good order of places of detention.
- 2 (3) A regulation may also prescribe offences for contraventions of the
- 3 regulation and prescribe maximum penalties of not more than
- 4 10 penalty units for offences against the regulation.
- 5 (4) In this section:
- 6 *injury* includes—
- 7 (a) disease; and
- 8 (b) aggravation, acceleration and recurrence of an injury or
- 9 disease.
- 10 **888 Legislation amended**
- 11 This Act amends the legislation mentioned in schedule 1.

Schedule 1 Amendments of other legislation

(see s 888)

Part 1.1 Corrections Management Act 2007

[1.1] Section 6 (3)

substitute

- (3) Also, this Act (other than chapter 4 (Detention in police and court cells)) does not apply to a person detained under the *Children and Young People Act 2008*.

[1.2] Section 29, new definitions

insert

chief executive means—

- (a) for a detainee (other than a young detainee)—the chief executive responsible for this Act;
- (b) for a young detainee—the chief executive responsible for the *Children and Young People Act 2008*.

young detainee—see the *Children and Young People Act 2008*, section 95.

1 **[1.3] New section 29 (2)**

2 *insert*

3 (2) In this chapter—

4 (a) a reference to a ***correctional centre*** is, in relation to the
5 custody or detention of a young detainee, a reference to a
6 detention place under the *Children and Young People*
7 *Act 2008*; and

8 (b) a reference to a ***corrections officer*** is, in relation to the custody
9 or detention of a young detainee, a reference to a youth
10 detention officer under the *Children and Young People*
11 *Act 2008*.

12 **[1.4] Section 30 (2)**

13 *substitute*

14 (2) However, a person lawfully required to be in police custody must
15 not be detained continuously at a police cell for a period longer than
16 the following period (the ***allowed period***):

17 (a) for a detainee (other than a young detainee)—36 hours;

18 (b) for a young detainee—12 hours.

19 **[1.5] Section 30 (3)**

20 *omit*

21 36 hours

22 *substitute*

23 the allowed period

[1.6] Section 31 (2)

omit

For this section,

substitute

For the application of this section to a detainee (other than a young detainee),

[1.7] New section 31 (3)

insert

(3) For the application of this section to a young detainee, the following provisions of the *Children and Young People Act 2008* apply as if the direction, search or seizure occurred under the relevant part in relation to a young detainee at a detention place:

- (a) part 7.1 (Preliminary—ch 7);
- (b) part 7.2 (Searches generally);
- (c) part 7.3 (Scanning, frisking and ordinary searches);
- (d) part 7.4 (Strip searches—young detainees);
- (e) part 7.9 (Seizing property).

[1.8] New section 31A

insert

31A Detention in police cells—additional provisions for young detainees

- (1) This section applies if a young detainee is detained at a police cell under section 30.
- (2) The chief police officer must ensure that the young detainee—
 - (a) is kept separate from adult detainees; and

- (b) has prompt access to medical and legal assistance; and
- (c) is told, in language and a way he or she can readily understand, about the reason for the detention and the procedures that apply; and
- (d) is able to contact and be contacted by each of the following:
- (i) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
 - (ii) the public advocate;
 - (iii) the ombudsman.

Note The *Crimes Act 1914* (Cwlth), pt 1C contains provisions about investigation of offences (including about periods of arrest and obligations of investigating officials) that apply to indictable offences against ACT laws.

In particular, that Act, s 23Q provides that a person who is under arrest or a protected suspect must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment.

[1.9] Section 33 (2), new note

insert

Note If the person is a young offender who is under 18 years old, he or she must not be placed in a room with an adult who is under detention (see *Children and Young People Act 2008*, s 100).

[1.10] Section 33 (3)

substitute

- (3) However, the person must not be detained continuously at a court cell for a period longer than the following period (the ***allowed period***):
- (a) for a detainee (other than a young detainee)—36 hours;
 - (b) for a young detainee—12 hours.

[1.11] Section 33 (4)

omit

36 hours

substitute

the allowed period

[1.12] Section 33 (5)

substitute

(5) While detained at a court cell under this section—

(a) a detainee (other than a young detainee) is taken to be a detainee for all purposes under this Act; and

(b) a young detainee is taken to be a young detainee for all purposes under the *Children and Young People Act 2008*.

[1.13] New section 33A

insert

33A Detention in court cells—additional provisions for young detainees

(1) This section applies if a young detainee is detained at a court cell under section 33.

(2) The chief executive must ensure that the young detainee—

(a) is kept separate from adult detainees; and

(b) has prompt access to medical and legal assistance; and

(c) is told, in language and a way he or she can readily understand, about the reason for the detention and the procedures that apply; and

(d) is able to contact and be contacted by each of the following:

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

(ii) the public advocate;

(iii) the ombudsman.

[1.14] Section 34 (6)

substitute

(6) To remove any doubt, while detained under this section—

(a) a detainee (other than a young detainee) remains a detainee for all purposes under this Act; and

(b) a young detainee remains a young detainee for all purposes under the *Children and Young People Act 2008*.

Part 1.2 Court Procedures Act 2004

[1.15] New part 7A

insert

**Part 7A Procedural provisions—
proceedings involving children
or young people**

Division 7A.1 General

69 Childrens Court procedure

(1) The *Magistrates Court Act 1930*, chapter 3 (Criminal proceedings), and the rules applying to criminal proceedings in the Magistrates Court, apply to the Childrens Court in relation to a criminal proceeding.

- 1 (2) The rules applying to civil proceedings in the Magistrates Court
2 apply to the Childrens Court in relation to any other proceeding.

3 **71 When parents must attend court proceedings**

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

7 (a) notice of the proceeding has been given to the parent; or

8 (b) the parent otherwise knows of the proceeding.

- 9 (2) Notice of a proceeding given to a parent must state—

10 (a) when and where the hearing of the proceeding will begin; and

11 (b) that a warrant may be issued to bring the parent before the
12 court if the parent does not attend throughout the proceeding.

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

15 (a) notice of the proceeding has been given to a parent of the child
16 or young person; but

17 (b) neither parent attends the court at the beginning of, or at any
18 time during, the proceeding.

- 19 (4) This section applies to a parent who lives in or outside the ACT.

- 20 (5) However, this section does not apply to a parent if—

21 (a) daily care responsibility or long-term care responsibility for the
22 child or young person has been transferred to someone else; or

23 (b) for a criminal proceeding—the parent was a victim of the
24 offence to which the proceeding relates and the court excludes
25 the parent under section 72 (2); or

(c) exceptional circumstances prevent the parent from attending.

Examples—par (c)

1 the parent is overseas and unable to return

2 the parent is serving a sentence of imprisonment by full-time detention

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

(6) Also, this section does not apply to a proceeding under the care and
protection chapters of the *Children and Young People Act 2008*.

(7) In this section:

daily care responsibility—see the *Children and Young People
Act 2008*, section 19.

long-term care responsibility—see the *Children and Young People
Act 2008*, section 20.

72 Court proceedings involving children or young people not open to public

(1) If a child or young person is the subject of a proceeding in a court,
the following people are the only people who may be present at the
hearing of the proceeding:

(a) an officer of the court;

(b) a party to the proceeding, a lawyer representing the party, and
an employee of the lawyer;

(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) anyone else the court admits as the child's or young person's
representative;

- 1 (f) the chief executive responsible for the *Children and Young*
2 *People Act 2008* or an authorised person under that Act;
- 3 (g) the public advocate or a person authorised by the public
4 advocate for this section;
- 5 (h) a person who has, or a representative of an entity that has,
6 provided a report under the care and protection chapters of the
7 *Children and Young People Act 2008*;
- 8 (i) for a criminal proceeding—a person who attends the
9 proceeding to prepare a news report of the proceeding and is
10 authorised to attend for that purpose by the person’s employer;
- 11 *Note* Publishing certain information about proceedings involving
12 children is an offence (see Criminal Code, s 712A (Publishing
13 identifying information about childrens proceedings)).
- 14 (j) for a criminal proceeding—a person who was a victim of an
15 offence to which the proceeding relates, unless the person is
16 excluded by the court under subsection (2);
- 17 (k) for a criminal proceeding in which circle sentencing is being
18 considered—a person involved in the circle sentencing;
- 19 (l) anyone else required or permitted to be present by the court or
20 under the *Children and Young People Act 2008* or any other
21 Act.
- 22 (2) A court may exclude a person who was a victim of an offence to
23 which a criminal proceeding relates from being present at the
24 hearing of the proceeding if it considers it is appropriate to do so
25 having regard to—
- 26 (a) the person’s behaviour or expected behaviour; or

(b) the nature of the person's relationship with the child or young person.

Example—par (b)

a violent or abusive relationship

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

(3) The public advocate and the chief executive responsible for the *Children and Young People Act 2008* may make submissions to the court about whether the court should require or permit a person to be present under subsection (1) (l), or exclude a person under subsection (2).

(4) In this section:

circle sentencing—see the *Magistrates Court Act 1930*, section 309 (4).

daily care responsibility—see the *Children and Young People Act 2008*, section 19.

long-term care responsibility—see the *Children and Young People Act 2008*, section 20.

73 Court may excuse parties from attending proceedings

(1) This section applies if a child or young person is the subject of a proceeding in a court.

(2) On the application of a party to the proceeding, the court may excuse the party from attending all or part of the proceeding.

(3) The court may, at any time and by notice given to the party, require the party to attend the proceeding.

- 1 **74** **Certain related applications may be heard together**
- 2 (1) If 2 or more applications have been filed in a court in relation to a
- 3 child or young person, the court may hear and decide the
- 4 applications together if it considers that it would be in the best
- 5 interests of the child or young person.
- 6 (2) If 2 or more applications are before a court in relation to children or
- 7 young people who are related, or that raise related matters about
- 8 children or young people, the court may hear and decide the
- 9 applications together if it considers that it would be in the best
- 10 interests of each child or young person.
- 11 **74A** **Participation of children and young people in**
- 12 **proceedings**
- 13 (1) A child or young person has a right to take part in a proceeding in a
- 14 court in relation to the child or young person.
- 15 (2) The court may ask the chief executive responsible for the *Children*
- 16 *and Young People Act 2008* to assist the court by giving the child or
- 17 young person sufficient information about the proceeding, in
- 18 language and a way that the child or young person can understand,
- 19 to allow the child or young person to take part fully in the
- 20 proceeding.
- 21 **74B** **Court must ensure children and young people etc**
- 22 **understand proceedings**
- 23 In a proceeding under the *Children and Young People Act 2008* or
- 24 another territory law to which a child or young person is a party, the
- 25 court must endeavour to ensure that the child or young person and
- 26 any other party present at the hearing of the proceeding—
- 27 (a) understands the nature and purpose of the proceeding and of
- 28 any order that the court proposes to make or has made; and

- 1 (b) if any relevant right of appeal exists—knows of the existence
2 of a right of appeal against the relevant finding or order of the
3 court.

4 **74C Chief executive and public advocate etc may appear at**
5 **proceedings**

- 6 (1) This section applies if there is a hearing in a court of—
7 (a) a proceeding against a child or young person; or
8 (b) an application, proceeding or matter under the *Children and*
9 *Young People Act 2008* or in relation to which that Act applies.
10 (2) Each of the following is entitled to appear and be heard and may call
11 witnesses:
12 (a) the chief executive responsible for the *Children and Young*
13 *People Act 2008*;
14 (b) an authorised person under the *Children and Young People*
15 *Act 2008*;
16 (c) the public advocate;
17 (d) a person authorised by the public advocate for this section.

18 **74D Court may order report about young person**

- 19 (1) A court hearing a criminal proceeding in relation to or against a
20 child or young person may order the chief executive responsible for
21 the *Children and Young People Act 2008* to give the court a report
22 about the child or young person.
23 (2) A chief executive given an order must, despite any other ACT law
24 other than the *Human Rights Act 2004*, give a report.
25 (3) In giving effect to the order, the chief executive may do, or arrange
26 for someone else to do, 1 or more of the following:
27 (a) visit and interview the child or young person;

- 1 (b) interview a parent of the child or young person;
- 2 (c) interview a schoolteacher or other person involved with the
3 education or welfare of the child or young person;
- 4 (d) require the child or young person to submit to being
5 interviewed by a doctor or other named person.
- 6 (4) Unless a court otherwise orders, a copy of the report must be made
7 available to the parties to the proceeding.
- 8 (5) The person providing the report may be called as a witness by a
9 party to the proceeding.
- 10 **74E Children and young people may have legal and other**
11 **representative**
- 12 (1) In a proceeding in a court in relation to a child or young person, the
13 child or young person may be represented by a lawyer or litigation
14 guardian, or both.
- 15 (2) A representative of the child or young person must ensure that views
16 and wishes stated by the child or young person are put to the court.
- 17 (3) A representative of the child or young person must tell the court
18 whether the representative is acting on the child's or young person's
19 instructions or in the best interests of the child or young person, or
20 both.
- 21 **74F Leave needed for litigation guardian**
- 22 (1) In a proceeding in a court in relation to a child or young person, a
23 person may be a litigation guardian for the child or young person
24 only if the court gives leave.
- 25 (2) The court may give leave for a person to be a litigation guardian for
26 a child or young person only if both the person and the child or
27 young person have been given an opportunity to be heard about the
28 appointment.

- 1 **74G Legal representation of children and young people**
- 2 A court may hear a proceeding in relation to a child or young person
- 3 only if—
- 4 (a) the child or young person has a lawyer; or
- 5 (b) the court is satisfied that—
- 6 (i) the child or young person has had a reasonable
- 7 opportunity to get legal representation; and
- 8 (ii) the best interests of the child or young person will be
- 9 adequately represented in the proceeding.
- 10 **74H Orders about legal representation of children and young**
- 11 **people—all proceedings**
- 12 (1) This section applies if, in a proceeding in a court in relation to a
- 13 child or young person—
- 14 (a) the child or young person does not have a lawyer; and
- 15 (b) either—
- 16 (i) the court is not satisfied that the child or young person
- 17 has made, or can make, an informed and independent
- 18 decision not to be represented by a lawyer, and it
- 19 considers that the child or young person should be
- 20 represented by a lawyer; or
- 21 (ii) the court is not satisfied that the interests of the child or
- 22 young person will be adequately represented in the
- 23 proceeding.
- 24 (2) The court may, on application or on its own initiative, make any
- 25 order, or give any direction, it considers necessary or desirable to
- 26 allow the child or young person a reasonable opportunity to get a
- 27 lawyer.

74I Rule-making committee and court to have regard to youth justice principles

- (1) The rule-making committee must have regard to the youth justice principles in making rules that relate, or may relate, to criminal proceedings involving children or young people.
- (2) A court must have regard to the youth justice principles in deciding any matter relating to the conduct of a criminal proceeding before the court that involves a child or young person.
- (3) A court may also have regard to the youth justice principles when deciding any matter relating to the conduct of a criminal proceeding before the court that involves—
- (a) a person who is at least 18 years old but under 21 years old; and
- (b) an offence committed, or allegedly committed, by the person when he or she was under 18 years old.
- (4) In this section:
- youth justice principles*—see the *Children and Young People Act 2008*, section 94.

Division 7A.2 Care and protection considerations in proceedings

74J Definitions—div 7A.2

In this division:

care and protection chapters means the care and protection chapters under the *Children and Young People Act 2008*.

chief executive means the chief executive responsible for the *Children and Young People Act 2008*.

in need of care and protection, for a child or young person—see the *Children and Young People Act 2008*, section 344.

- 1 **74K Proceedings dismissed or adjourned for care and**
2 **protection reasons**
- 3 (1) If, when hearing an indictment against a child or young person, the
4 court is satisfied that the child or young person is in need of care
5 and protection, the court may—
- 6 (a) dismiss the indictment; or
- 7 (b) adjourn the proceeding for up to 15 days.
- 8 *Note Indictment* includes information (see Legislation Act, dict, pt 1).
- 9 (2) If a court acts under subsection (1), the court must, as soon as
10 practicable but not later than 2 working days after the day it acts,
11 give a statement of the reasons for the action to—
- 12 (a) the chief executive; and
- 13 (b) the public advocate.
- 14 (3) The statement of reasons must contain the following information
15 about the proceeding:
- 16 (a) if the proceeding has been adjourned—the reason the
17 proceeding was adjourned;
- 18 (b) the circumstances the court is aware of that led to the child or
19 young person coming before the court;
- 20 (c) the factors that satisfied the court that the child or young
21 person is in need of care and protection.
- 22 (4) The chief executive must treat a statement of reasons given to the
23 chief executive under subsection (2) as if it were a report made
24 under the *Children and Young People Act 2008*, section 355
25 (Offence—mandatory reporting of abuse).

- 1 **74L Chief executive must report to court and public advocate**
- 2 (1) This section applies if—
- 3 (a) a proceeding has been adjourned under section 74K (1); and
- 4 (b) the court has given the chief executive a statement of reasons
- 5 under section 74K (2).
- 6 (2) Not later than 15 days after the day the court adjourns the
- 7 proceeding under section 74K (1), the chief executive must tell the
- 8 public advocate and the court, in writing—
- 9 (a) what action the chief executive has taken, is taking or proposes
- 10 to take under the care and protection chapters in relation to the
- 11 child or young person; or
- 12 (b) if the chief executive proposes to take no action under any care
- 13 and protection chapter in relation to the child or young
- 14 person—that the chief executive proposes to take no action.
- 15 (3) Without limiting when the chief executive is taken to have complied
- 16 with subsection (2), the chief executive is taken to have complied
- 17 with that subsection if the chief executive—
- 18 (a) makes an application under the care and protection chapters in
- 19 relation to the child or young person; and
- 20 (b) gives a copy of the application to the public advocate.
- 21 **74M Court action after adjournment**
- 22 (1) This section applies when a proceeding adjourned under
- 23 section 74K (1) comes before the court again.

1 (2) The court may dismiss the proceeding—

2 (a) if—

3 (i) the chief executive has, under section 74L (2) (a), told the
4 court what action the chief executive has taken, is taking
5 or proposes to take under the care and protection chapters
6 in relation to the child or young person; and

7 (ii) the court is satisfied that taking the action is in the best
8 interests of the child or young person; or

9 (b) if—

10 (i) the chief executive has, under section 74L (2) (b), told
11 the court that the chief executive proposes to take no
12 action under any care and protection chapter in relation to
13 the child or young person; and

14 (ii) the court is satisfied that it is in the best interests of the
15 child or young person that the chief executive takes no
16 action; or

17 (c) the chief executive has made an application under the care and
18 protection chapters in relation to the child or young person.

19 (3) The court may also make any other order or take any other action in
20 relation to the indictment against the child or young person that the
21 court considers appropriate.

22 **[1.16] Dictionary, new definitions**

23 *insert*

24 ***child***, for part 7A (Procedural provisions—proceedings involving
25 children or young people)—see the *Children and Young People*
26 *Act 2008*, section 11.

27 ***young person***, for part 7A (Procedural provisions—proceedings
28 involving children or young people)—see the *Children and Young*
29 *People Act 2008*, section 12.

Part 1.3 Crimes Act 1900

[1.17] New division 10.7

insert

Division 10.7 Particular provisions for children

Subdivision 10.7.1 Arrest of children under 10 years old

252A Warrant for arrest of child under 10 years old

(1) An issuing officer may issue a warrant for the arrest of a child under 10 years old only if the issuing officer believes on reasonable grounds that the child has carried out, or is carrying out, conduct that—

(a) makes up the physical elements of an offence; or

(b) poses a risk to community safety or the child.

(2) However, the issuing officer must not issue a warrant unless a police officer has given the issuing officer an affidavit setting out—

(a) the reasons why the warrant is sought; and

(b) any evidence the police officer believes supports the warrant's issue.

(3) If the issuing officer issues a warrant, the issuing officer must write on the warrant which of the reasons stated in the affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.

- 1 **252B Arrest of child under 10 years old—without warrant**
- 2 (1) A police officer may, without a warrant, arrest a child under
- 3 10 years old if the police officer believes on reasonable grounds—
- 4 (a) that—
- 5 (i) conduct that makes up the physical elements of an
- 6 offence or a breach of the peace is being or is likely to be
- 7 carried out by the child; or
- 8 (ii) a person has suffered physical injury because of the
- 9 child's conduct; or
- 10 (iii) there is imminent danger of injury to a person or serious
- 11 damage to property because of the child's conduct; and
- 12 (b) that it is necessary to arrest the child immediately—
- 13 (i) to prevent the conduct or a repetition of the conduct; or
- 14 (ii) to protect life or property.
- 15 (2) If the police officer believes on reasonable grounds that the child is
- 16 on premises, the police officer may, with reasonable and necessary
- 17 force, enter the premises to arrest the child.
- 18 **252C Police action after arresting child under 10 years old**
- 19 (1) If a police officer arrests a child under 10 years old (whether under a
- 20 warrant or under section 252B), the police officer must—
- 21 (a) do the minimum necessary to prevent or stop the conduct for
- 22 which the warrant was issued or the arrest was made; and
- 23 (b) take the child to—
- 24 (i) a parent of the child; or
- 25 (ii) someone else who has daily care responsibility, or
- 26 long-term care responsibility, for the child; or

1 (iii) if it is not practicable or appropriate to take the child to
2 someone mentioned in subparagraph (i) or (ii)—another
3 appropriate person or agency.

4 (2) Before deciding whether another person or agency is appropriate,
5 the police officer must consult with the chief executive responsible
6 for the *Children and Young People Act 2008*.

7 **Subdivision 10.7.2 Preliminary procedures in relation to**
8 **children and young people**

9 **252D Definitions—subdiv 10.7.2**

10 In this subdivision:

11 *child*—see the *Children and Young People Act 2008*, section 11.

12 *committed* an offence, for a child or young person, includes
13 committed an offence with someone else or other people.

14 *under restraint*—see section 252E.

15 *young person*—see the *Children and Young People Act 2008*,
16 section 12.

17 **252E Meaning of *under restraint***

18 For this subdivision, a child or young person is *under restraint* if—

19 (a) the child or young person is under restraint as a result of
20 having been lawfully arrested or detained; or

21 (b) the child or young person is under restraint in relation to an
22 offence and a police officer suspects on reasonable grounds
23 that—

24 (i) the child or young person committed the offence; or

25 (ii) the police officer would be authorised under a law in
26 force in the Territory to arrest the child or young person
27 for the offence; or

- 1 (c) the child or young person is in the company of a police officer
2 in connection with the investigation of an offence or possible
3 offence.

4 **252F Meaning of *in the company of a police officer***

- 5 (1) For section 252E (c), a child or young person is *in the company of a*
6 *police officer* in connection with the investigation of an offence or
7 possible offence if—
- 8 (a) the police officer would not allow the child or young person to
9 leave if the child or young person wished to do so; or
- 10 (b) the child or young person is waiting at a place at the request of
11 a police officer in connection with the investigation of the
12 offence or possible offence.
- 13 (2) For subsection (1), it does not matter whether or not—
- 14 (a) the police officer believes on reasonable grounds that the child
15 or young person has committed the offence; or
- 16 (b) the child or young person is in lawful custody in relation to the
17 offence.
- 18 (3) However, for section 252E (c), a child or young person is not in the
19 company of a police officer in connection with the investigation of
20 an offence or possible offence—
- 21 (a) if—
- 22 (i) the child or young person is with a police officer by a
23 roadside (whether or not the child or young person is in a
24 motor vehicle); and
- 25 (ii) the police officer is investigating an offence or possible
26 offence, other than an indictable offence or possible
27 indictable offence, arising out of the use of a motor
28 vehicle; or

- 1 (b) if the child or young person is with a police officer for breath
2 analysis under the *Road Transport (Alcohol and Drugs)*
3 *Act 1977*; or
- 4 (c) if—
- 5 (i) the child or young person is with an inspector under the
6 *Liquor Act 1975*; and
- 7 (ii) the inspector is investigating an offence or possible
8 offence against that Act that the inspector believes on
9 reasonable grounds was not committed by the child or
10 young person.
- 11 (4) In this section:
- 12 *motor vehicle*—see the *Road Transport (General) Act 1999*,
13 dictionary.
- 14 **252G Interviewing children and young people about offences**
- 15 (1) This section applies if a police officer—
- 16 (a) suspects on reasonable grounds that a child or young person
17 may have committed, or be implicated in the commission of,
18 an offence; or
- 19 (b) is holding a child or young person under restraint.
- 20 (2) A police officer must not interview the child or young person about
21 an offence, or cause the child or young person to do anything in
22 relation to the investigation of an offence, unless—
- 23 (a) one of the following people (who is an adult and who the
24 police officer does not believe on reasonable grounds to be an
25 accomplice of the child or young person in relation to the
26 offence) is present:
- 27 (i) a parent of the child or young person;

- 1 (ii) someone else who has daily care responsibility, or
2 long-term care responsibility, for the child or young
3 person;
4 (iii) a family member of the child or young person who is
5 acceptable to the child or young person;
6 (iv) a lawyer acting for the child or young person;
7 (v) another suitable person who is acceptable to the child or
8 young person; or
9 (b) if the police officer has taken reasonable steps to have a person
10 mentioned in paragraph (a) present but it was not practicable
11 for such a person to be present within 2 hours after being asked
12 to be present—someone else who is not a police officer and
13 has not been involved with the investigation of the offence.

14 **Example—suitable person—par (a) (v)**

15 a person trained by the public advocate to attend interviews of children and
16 young people

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

20 (3) In this section:

21 ***accomplice***, in relation to an offence, includes a person who a police
22 officer believes on reasonable grounds to be likely to secrete, lose,
23 destroy or fabricate evidence relating to the offence.

24 **252H Interviewing children and young people about offences—**
25 **urgent circumstances**

26 A police officer may interview a child or young person if—

- 27 (a) the police officer—
28 (i) suspects on reasonable grounds that the child or young
29 person may have committed, or be implicated in the
30 commission of, an offence; or

- 1 (ii) is holding the child or young person under restraint; and
- 2 (b) the police officer believes on reasonable grounds that it is
- 3 necessary to interview the child or young person without delay
- 4 to avoid—
- 5 (i) a risk of death or serious injury of a person; or
- 6 (ii) serious damage to property.

7 **252I Parents etc to be told if children and young people under**

8 **restraint**

9 (1) If a police officer takes a child or young person under restraint, the

10 police officer must promptly take all reasonable steps to tell a

11 responsible person about the restraint (whether or not the person

12 lives in the ACT).

13 (2) In this section:

14 *responsible person* means—

- 15 (a) a parent of the child or young person; or
- 16 (b) if no parent of the child or young person has parental
- 17 responsibility for the child or young person—someone else
- 18 who has daily care responsibility, or long-term care
- 19 responsibility, for the child or young person.

20 **252J Police to summons children and young people unless**

21 **ineffective**

22 A police officer must not charge a child or young person with an

23 offence at a police station unless satisfied that proceeding by

24 summons would not achieve 1 or more of the purposes mentioned in

25 section 212 (1) (b) (Power of arrest without warrant by police

26 officers).

1 **252K Parents etc to be told if children and young people**
2 **charged**

3 (1) If a child or young person is charged with an offence at a police
4 station, the person who charged the child or young person must
5 promptly take all reasonable steps to tell 1 of the following people
6 the relevant information in relation to the charge (whether or not the
7 person lives in the ACT):

8 (a) a parent of the child or young person;

9 (b) if no parent of the child or young person has parental
10 responsibility for the child or young person—someone else
11 who has daily care responsibility, or long-term care
12 responsibility, for the child or young person.

13 (2) In this section:

14 *relevant information*, for a charge, means—

15 (a) the terms of the charge; and

16 (b) where the child or young person is; and

17 (c) when the child or young person will be brought before the
18 Childrens Court.

19 **[1.18] New section 300 (2)**

20 *insert*

21 (2) To remove any doubt, a reference in this part to the Magistrates
22 Court includes a reference to the Childrens Court.

[1.19] Section 375

substitute

375 Summary disposal of certain cases

- (1) This section applies if a person is before the Magistrates Court charged with—
- (a) a common law offence; or
 - (b) an offence punishable by imprisonment for a term not exceeding—
 - (i) if the offence relates to money or other property—14 years; or
 - (ii) in any other case—10 years.
- (2) This section also applies if a person is before the Childrens Court charged with any offence (other than an offence punishable by imprisonment for life).
- (3) The court may proceed in accordance with subsections (4) to (12) if—
- (a) the court considers that it has no jurisdiction, apart from this section, to hear and determine the charge summarily; and
 - (b) for a charge that relates to money, or to property other than a motor vehicle, and is being heard in the Magistrates Court—the court considers that the amount of the money or the value of the property does not exceed \$10 000.
- (4) The court may invite the person (the *defendant*) to plead guilty or not guilty to the charge.
- (5) If the defendant pleads guilty to the charge, the court may accept or reject the plea.

- 1 (6) The defendant is taken to have pleaded not guilty to the charge if—
2 (a) the defendant does not plead to the charge when invited to do
3 so under subsection (4); or
4 (b) the court rejects a plea of guilty to the charge under
5 subsection (5);
6 (7) The court may hear and determine the charge summarily, and may
7 sentence or otherwise deal with the defendant according to law, if—
8 (a) the defendant pleads or is to be taken to have pleaded not
9 guilty to the charge; and
10 (b) the court considers that the case can properly be disposed of
11 summarily; and
12 (c) the defendant consents to the case being disposed of
13 summarily.
14 (8) The court may sentence or otherwise deal with the defendant if—
15 (a) the court accepts a plea of guilty to a charge; and
16 (b) the court considers that the case can properly be disposed of
17 summarily; and
18 (c) the defendant consents to the case being disposed of
19 summarily.
20 (9) Before the Magistrates Court decides whether a case can properly be
21 disposed of summarily, the court must consider the following:
22 (a) any relevant representations made by the defendant;
23 (b) any relevant representations made by the prosecutor in the
24 defendant's presence;

- 1 (c) whether, if the defendant were found guilty or the defendant's
2 plea of guilty has been accepted by the court, the court is,
3 under this section, empowered to impose an adequate penalty,
4 having regard to the circumstances and the degree of
5 seriousness of the case;
- 6 (d) any other circumstances that appear to the court to make it
7 more appropriate for the case to be dealt with on indictment
8 rather than summarily.
- 9 (10) Before the Childrens Court decides whether a case can properly be
10 disposed of summarily, the court must consider the following:
- 11 (a) relevant representations made by the defendant;
- 12 (b) relevant representations made by the prosecutor in the
13 defendant's presence;
- 14 (c) the facts of the case;
- 15 (d) the seriousness of the alleged offence;
- 16 (e) the circumstances in which the offence is alleged to have been
17 committed;
- 18 (f) the defendant's age;
- 19 (g) the defendant's apparent maturity;
- 20 (h) the defendant's apparent mental capacity;
- 21 (i) the suitability of the penalties that the court is empowered to
22 impose;
- 23 (j) the difficulty of any question of law that is likely to arise.
- 24 (11) If the court accepts a plea of guilty to a charge under this section,
25 and—
- 26 (a) the court considers that the case cannot properly be disposed of
27 summarily; or

(b) the defendant has not consented to the case being disposed of summarily;

the *Magistrates Court Act 1930*, section 90A (7) to (13) applies in relation to the defendant as if the court had accepted a plea of guilty to the charge under that section.

(12) If the court disposes of a case summarily under this section and convicts the defendant of the offence, the court must not impose a penalty that exceeds—

(a) a fine of \$5 000, imprisonment for 2 years or both; or

(b) if the maximum penalty provided for the offence by the law creating it is less than the penalty mentioned in paragraph (a)—the maximum penalty.

(13) In this section:

Magistrates Court does not include the Childrens Court.

[1.20] Dictionary, new definitions

insert

child, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

committed an offence, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

daily care responsibility—see the *Children and Young People Act 2008*, section 19.

long-term care responsibility—see the *Children and Young People Act 2008*, section 20.

Magistrates Court, for part 13—see section 300.

under restraint, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

1 *young person*, for subdivision 10.7.2 (Preliminary procedures in
2 relation to children and young people)—see section 252D.

3 **Part 1.4** **Crimes (Sentence**
4 **Administration) Act 2005**

5 **[1.21] Section 95 (1)**

6 *after*
7 offender
8 *insert*
9 (other than a young offender)

10 **[1.22] Section 96 (1)**

11 *after*
12 offender
13 *insert*
14 (other than a young offender)

15 **[1.23] New section 102 (4)**

16 *insert*
17 (4) This section does not apply in relation to a young offender.
18 *Note* For young offenders, see s 320F (Young offenders—breach of good
19 behaviour obligations).

20 **[1.24] Section 172 (1) (b)**

21 *omit*
22 or a young offender

23 **[1.25] Section 172 (2)**

24 *omit*

[1.26] Section 213, definition of *registered victim*

substitute

***registered victim*—**

- (a) in relation to an offence by an offender (other than a young offender)—means a victim of the offender about whom information is entered in the register kept under section 215; and
- (b) in relation to an offence by a young offender—means a victim of the young offender about whom information is entered in the register kept under section 215A.

[1.27] Sections 215 and 216

substitute

215 Victims register—offenders other than young offenders

- (1) The chief executive must maintain a register of victims of offenders.
- (2) The chief executive must enter in the register information about a victim of an offender that the victim, or someone acting for the victim, asks the chief executive to enter in the register.
- (3) As soon as practicable after entering the victim's information in the register, the chief executive must give the victim information, orally or in writing, about the following:
 - (a) the role of the board;
 - (b) the rights of registered victims under section 216 to information about offenders who are sentenced;
 - (c) the role of victims under chapter 7 (Parole) and part 13.1 (Release on licence) in relation to the release of an offender from imprisonment under a parole order or licence.

- 1 (4) If the victim is a child under 15 years old, the chief executive may
2 give the information to a person who has parental responsibility for
3 the victim under the *Children and Young People Act 2008*.
- 4 (5) Subsection (4) does not limit the cases in which the chief executive
5 may give information to a person acting for a victim.
- 6 (6) In this section:
7 *offender* does not include a young offender.
- 8 **215A Victims register—young offenders**
- 9 (1) The chief executive must maintain a register of victims of young
10 offenders.
- 11 (2) The chief executive must enter in the register information about a
12 victim of a young offender that the victim, or someone acting for the
13 victim, asks the chief executive to enter in the register.
- 14 (3) As soon as practicable after entering the victim's information in the
15 register, the chief executive must give the victim information, orally
16 or in writing, about the rights of registered victims under
17 section 216A to information about young offenders who are
18 sentenced.
- 19 (4) If the victim is a child under 15 years old, the chief executive may
20 give the information to a person who has parental responsibility for
21 the victim under the *Children and Young People Act 2008*.
- 22 (5) Subsection (4) does not limit the cases in which the chief executive
23 may give information to a person acting for a victim.
- 24 (6) In this section:
25 *chief executive* means the chief executive responsible for the
26 *Children and Young People Act 2008*.

216 Disclosures to registered victims—offenders other than young offenders

- (1) If an offender has been sentenced, the chief executive may disclose information about the offender to a registered victim of the offender if satisfied the disclosure is appropriate in the circumstances.

Examples—disclosures

- 1 any non-association order or place restriction order that applies to the offender
- 2 if the offender is subject to periodic detention—the offender’s periodic detention period, reporting place and reporting time
- 3 if the offender is under a good behaviour order—the place where the offender may do community service work or attend a rehabilitation program
- 4 if the offender is serving a sentence of imprisonment by full-time detention—
 - the correctional centre where the offender is detained;
 - the offender’s classification in detention;
 - the transfer of the offender between correctional centres, including NSW correctional centres;
 - the offender’s parole eligibility date;
 - any unescorted leave given to the offender under the *Corrections Management Act 2007*;
 - the death or escape of, or any other exceptional event relating to, the offender.

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

- (2) If the victim is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.

Note The *Crimes (Sentencing) Act 2005*, s 136 (Information exchanges between criminal justice entities) also deals with information about a victim of an offence.

- (3) Subsection (2) does not limit the cases in which the chief executive may give information to a person acting for a victim.

- 1 (4) In this section:
2 *offender* does not include a young offender.

3 **216A Disclosures to registered victims—young offenders**

- 4 (1) If a young offender has been sentenced, the chief executive may
5 disclose information about the young offender to a registered victim
6 of the young offender if satisfied the disclosure is appropriate in the
7 circumstances.

8 **Examples—disclosures**

- 9 1 any non-association order or place restriction order that applies to the young
10 offender
11 2 if the young offender is under a good behaviour order—the place where the
12 young offender may do community service work or attend a rehabilitation
13 program
14 3 if the young offender is to be released from imprisonment—when and where
15 the young offender will be released

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

- 19 (2) However, the chief executive must not disclose identifying
20 information for the young offender unless the offence was a
21 personal violence offence and the chief executive believes that the
22 victim, or a family member of the victim, may come into contact
23 with the young offender.

24 **Examples**

- 25 1 the victim and young offender live in the same neighbourhood and may see
26 each other at the local shopping centre
27 2 the victim and young offender may be enrolled at the same school

- 1 (3) If the victim is a child under 15 years old, the chief executive may
2 give the information to a person who has parental responsibility for
3 the victim under the *Children and Young People Act 2008*.

4 *Note* The *Crimes (Sentencing) Act 2005*, s 136 (Information exchanges
5 between criminal justice entities) also deals with information about a
6 victim of an offence.

- 7 (4) Subsection (3) does not limit the cases in which the chief executive
8 may give information to a person acting for a victim.

- 9 (5) In this section:

10 *chief executive* means the chief executive responsible for the
11 *Children and Young People Act 2008*.

12 *domestic violence offence*—see the *Domestic Violence and*
13 *Protection Orders Act 2001*, section 9 (2).

14 *personal violence offence* means—

- 15 (a) an offence that involves causing harm, or threatening to cause
16 harm, to anyone; or
17 (b) a domestic violence offence.

18 **[1.28] Section 314A, new dot point**

19 *insert*

- 20 • the *Children and Young People Act 2008*

1 **[1.29] New chapter 14A**

2 *insert*

3 **Chapter 14A Sentence administration—**
4 **young offenders**

5 **Part 14A.1 General**

6 **320A Purpose—ch 14A**

7 (1) The purpose of this chapter is to set out particular provisions that
8 apply to administration of sentences of young offenders.

9 (2) Except as provided in this chapter or otherwise in this Act, this Act
10 applies to young offenders in the same way as it applies to other
11 offenders.

12 *Note* See dict, def *offender* (it includes a young offender).

13 **320B Youth justice principles to be considered**

14 (1) An entity exercising a function under this Act must consider the
15 youth justice principles when dealing with a young offender.

16 (2) In this section:

17 *youth justice principles*—see the *Children and Young People*
18 *Act 2008*, section 94.

19 **320C Young offenders—references to correctional centre etc**

20 (1) A reference in this Act to a correctional centre is, in relation to a
21 sentence of imprisonment of a young offender, a reference to a
22 detention place under the *Children and Young People Act 2008*.

23 (2) A reference in this Act to a corrections officer is, in relation to a
24 young offender, a reference to a youth detention officer under the
25 *Children and Young People Act 2008*.

- 1 (3) A reference in this Act to the *Corrections Management Act 2007* is,
2 in relation to a young offender in detention under the *Children and*
3 *Young People Act 2008*, a reference to that Act.

4 **320D Young offenders—references to chief executive**

5 A reference in this Act to the chief executive is, in relation to a
6 function to be exercised in relation to a young offender, a reference
7 to the chief executive responsible for the *Children and Young*
8 *People Act 2008*.

9 **320E Young offenders—administration of community-based**
10 **sentences**

- 11 (1) This section applies to a young offender who is serving a
12 community-based sentence and becomes an adult.
- 13 (2) The chief executive responsible for this Act and the chief executive
14 responsible for the *Children and Young People Act 2008* must
15 decide which of them is to be the responsible chief executive for
16 matters relating to the sentence and the young offender under this
17 Act.

18 **320F Young offenders—breach of good behaviour obligations**

- 19 (1) If an authorised person believes on reasonable grounds that a young
20 offender has breached any of the young offender's good behaviour
21 obligations, the authorised person may report the belief to the
22 sentencing court.
- 23 (2) The report must be—
24 (a) in writing; and
25 (b) accompanied by a copy of a written record in support of the
26 authorised person's belief.

- 1 (3) In this section:
- 2 *authorised person* means an authorised person under the *Children*
- 3 *and Young People Act 2008*.
- 4 **320G Sentencing court to deal with breaches**
- 5 (1) This section applies if—
- 6 (a) a court imposed a sentence on a person as a young offender;
- 7 and
- 8 (b) the person is required to be dealt with by a court for a breach in
- 9 relation to the sentence.
- 10 (2) The breach must be dealt with by the court that imposed the
- 11 sentence, whether or not the person is still under 18 years old.
- 12 **320H Young offenders—transfer**
- 13 Chapter 11 (Transfer of prisoners) does not apply to a young
- 14 offender who is subject to an ACT sentence of imprisonment unless
- 15 the young offender is imprisoned in a correctional centre.
- 16 **320I Young offenders—transfer of community-based**
- 17 **sentences**
- 18 Chapter 12 (Transfer of community-based sentences) does not apply
- 19 to a young offender who is under 18 years old (see section 262 (1)).

**Part 14A.2 Young offenders—
 accommodation orders**

320J Accommodation orders—contraventions

A young offender in relation to whom an accommodation order is in force contravenes the order if the young offender contravenes the reasonable lawful directions of—

- (a) if the order is to live at a place—the person in charge of the place; or
- (b) if the order is to live with a person—the person.

320K Accommodation orders—resentencing for breach

- (1) This section applies if a young offender breaches an accommodation order, or a condition of an accommodation order, in force for the young offender.
- (2) The court may resentence the young offender for the offence in relation to which the accommodation order was made.
- (3) In resentencing the young offender, the court must take into account the following (in addition to any other matters the court considers should be taken into account):
 - (a) the fact that the accommodation order was made;
 - (b) anything done under the order;
 - (c) any other order made for the offence for which the accommodation order was made, and anything done under that other order.
- (4) In resentencing the young offender, the court must not impose a penalty that, when taken together with a penalty previously imposed for the offence for which the accommodation order was made, is greater than the maximum penalty the court could have imposed for that offence.

1 **[1.30] Dictionary, new definitions**

2 *insert*

3 *accommodation order*—see the *Crimes (Sentencing) Act 2005*,
4 section 133V.

5 *chief executive (CYP)* means the chief executive responsible for the
6 *Children and Young People Act 2008*.

7 **[1.31] Dictionary, definition of *offender*, paragraph (a)**

8 *substitute*

9 (a) means a person convicted or found guilty of an offence by a
10 court, and includes a young offender; but

11 **[1.32] Dictionary, definition of *victims register***

12 *omit*

13 **[1.33] Dictionary, new definition of *young offender***

14 *insert*

15 *young offender* means a person who—

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

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

19 **Part 1.5 Crimes (Sentencing) Act 2005**

20 **[1.34] Section 7 (2), new note**

21 *insert*

22 *Note* However, see s 133C in relation to the sentencing of a young offender.

[1.35] Section 8, definition of *offender*, paragraph (a)

substitute

(a) means a person convicted or found guilty of an offence by a court, and includes a young offender; but

[1.36] Section 9, note 1, 1st dot point

substitute

- imprisonment served by full-time detention at a correctional centre or detention place (see s 10, ch 5 and s 133H)

[1.37] Section 9, note 1, new dot point

insert

- accommodation order (young offenders only) (see pt 8A.3).

[1.38] Section 10 (2), new note 2

insert

Note 2 See s 133G for additional matters that apply in sentencing a young offender to imprisonment.

[1.39] Section 10 (3), note

substitute

Note 1 For a young offender who is under 21 years old when the sentence is imposed, see s 133H.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.40] Section 12 (4), new note 2

insert

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- 1 **[1.41] Section 13 (3) (a), new note**
- 2 *insert*
- 3 *Note* This paragraph does not apply to a young offender (see s 133M).
- 4 **[1.42] Section 13 (3), note 2**
- 5 *substitute*
- 6 *Note 2* See s 133M for additional conditions available for young offenders
7 (education and training conditions and supervision conditions).
- 8 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
9 does not limit, the meaning of the provision in which it appears (see
10 Legislation Act, s 126 and s 132).
- 11 **[1.43] Section 14 (6), new note 2**
- 12 *insert*
- 13 *Note 2* For a young offender who is under 18 years old, the notice and order
14 must also be given to a parent or person with parental responsibility (see
15 s 133J).
- 16 **[1.44] Section 16 (4), new note 2**
- 17 *insert*
- 18 *Note 2* For a young offender who is under 18 years old, the notice and order
19 must also be given to a parent or person with parental responsibility (see
20 s 133J).
- 21 **[1.45] Section 17 (5), new note 2**
- 22 *insert*
- 23 *Note 2* For a young offender who is under 18 years old, the notice and order
24 must also be given to a parent or person with parental responsibility (see
25 s 133J).
- 26 **[1.46] Section 23 (1), new note**
- 27 *insert*
- 28 *Note* See s 133I for an additional consideration that applies in sentencing a
29 young offender.
-

1 **[1.47] Section 25 (2), new note**

2 *insert*

3 *Note* For a young offender who is under 18 years old, the notice and order
4 must also be given to a parent or person with parental responsibility (see
5 s 133J).

6 **[1.48] Section 29 (1) (a), note**

7 *substitute*

8 *Note* A sentence of imprisonment must be served by full-time detention at a
9 correctional centre or detention place unless the court otherwise orders,
10 or the offender is released from detention under this Act or another
11 territory law (see s 10 (3) and s 133H).

12 **[1.49] Section 29 (1), example 2, 1st dot point**

13 *omit*

14 (ie full-time detention at a correctional centre)

15 **[1.50] Section 31 (c), example, 1st dot point**

16 *omit*

17 (ie full-time detention at a correctional centre)

18 **[1.51] Section 33 (1), new note**

19 *insert*

20 *Note* See s 133D for additional considerations that apply in sentencing a
21 young offender.

22 **[1.52] Section 40A, new note**

23 *insert*

24 *Note* See s 133E for additional pre-sentence report matters for young
25 offenders.

1 **[1.53] New section 41 (7)**

2 *insert*

3 (7) In this section:

4 *chief executive* means—

5 (a) for a report about a young offender—the chief executive
6 (CYP); and

7 (b) for any other report—the chief executive responsible for this
8 Act.

9 **[1.54] New section 43 (1) (b) (iiia)**

10 *insert*

11 (iiia) for a report for a young offender—a parent or anyone else who
12 has parental responsibility for the young offender under the
13 *Children and Young People Act 2008*;

14 **[1.55] New section 43 (1A)**

15 *insert*

16 (1A) However, an assessor may make a request under
17 subsection (1) (b) (iiia) in relation to a young offender who is an
18 adult only with the young offender's consent.

19 **[1.56] Section 64 (3), definition of *excluded sentence of***
20 ***imprisonment*, new paragraph (f)**

21 *insert*

22 (f) a sentence of imprisonment imposed on a young offender.

23 **[1.57] New section 77 (1A)**

24 *insert*

25 (1A) The court must not set a periodic detention period for a young
26 offender unless the periodic detention is to be served when the
27 young offender is an adult.

1 **[1.58] Section 82 (1) (c)**

2 *after*

3 correctional centre

4 *insert*

5 or detention place

6 **[1.59] Section 84 (1), note 2**

7 *substitute*

8 *Note 2* For a young offender who is under 18 years old, the notice and order
9 must also be given to a parent or person with parental responsibility (see
10 s 133J).

11 *Note 3* If the order is part of a combination sentence, a single notice may be
12 given for the sentences (see Legislation Act, s 49).

13 **[1.60] New section 84 (5)**

14 *insert*

15 (5) In this section:

16 *chief executive* means—

17 (a) for an order made for a young offender—the chief executive
18 (CYP); and

19 (b) for any other order—the chief executive responsible for this
20 Act.

21 **[1.61] Section 85, note 1**

22 *substitute*

23 *Note 1* The number of hours that may be required to be performed for a
24 community service condition is at least 20 hours and not more than
25 500 hours or, for a young offender, not more than 200 hours (see s 91
26 and s 133L).

- 1 **[1.62] Section 91 (1), new note**
- 2 *insert*
- 3 *Note* For a young offender, the maximum is 200 hours (see s 133L).
- 4 **[1.63] Section 92 (3), new note**
- 5 *insert*
- 6 *Note* For a young offender, the maximum is 200 hours (see s 133L).
- 7 **[1.64] Section 103 (1), new note 2**
- 8 *insert*
- 9 *Note 2* For a young offender who is under 18 years old, the notice and order
- 10 must also be given to a parent or person with parental responsibility (see
- 11 s 133J).
- 12 **[1.65] New section 103 (4)**
- 13 *insert*
- 14 (4) In this section:
- 15 *chief executive* means—
- 16 (a) for an order made for a young offender—the chief executive
- 17 (CYP); and
- 18 (b) for any other order—the chief executive responsible for this
- 19 Act.
- 20 **[1.66] Section 113 (1), note**
- 21 *omit*

1 **[1.67] Section 113 (2), new notes**

2 *insert*

3 *Note 1* If the order is part of a combination sentence, a single notice may be
4 given for the sentences (see Legislation Act, s 49).

5 *Note 2* For a young offender who is under 18 years old, the notice and order
6 must also be given to a parent or person with parental responsibility (see
7 s 133J).

8 **[1.68] Section 121 (2), note**

9 *substitute*

10 *Note 1* The offender must also be given written notice of any bail conditions
11 (see *Bail Act 1992*, s 34).

12 *Note 2* For a young offender who is under 18 years old, the notice and order
13 must also be given to a parent or person with parental responsibility (see
14 s 133J).

15 **[1.69] New section 126 (5)**

16 *insert*

17 (5) In this section:

18 *chief executive* means—

19 (a) if the offender is under 18 years old when the application is
20 made—the chief executive (CYP); and

21 (b) in any other case—the chief executive responsible for this Act.

22 **[1.70] New section 127 (3)**

23 *insert*

24 (3) In this section:

25 *chief executive* means—

26 (a) if the offender is under 18 years old when the notice is given—
27 the chief executive (CYP); and

1 (b) in any other case—the chief executive responsible for this Act.

2 **[1.71] Section 129 (5), new note**

3 *insert*

4 *Note* For a young offender who is under 18 years old, the notice and order
5 must also be given to a parent or person with parental responsibility (see
6 s 133J).

7 **[1.72] New section 129 (7)**

8 *insert*

9 (7) In this section:

10 *chief executive* means—

11 (a) if the offender is under 18 years old when the amendment
12 order is made—the chief executive (CYP); and

13 (b) in any other case—the chief executive responsible for this Act.

14 **[1.73] Section 130 (4), new note**

15 *insert*

16 *Note* For a young offender who is under 18 years old, the notice and order
17 must also be given to a parent or person with parental responsibility (see
18 s 133J).

19 **[1.74] New section 130 (6)**

20 *insert*

21 (6) In this section:

22 *chief executive* means—

23 (a) if the offender is under 18 years old when the cancellation
24 order is made—the chief executive (CYP); and

25 (b) in any other case—the chief executive responsible for this Act.

1 **[1.75] New chapter 8A**

2 *insert*

3 **Chapter 8A Sentencing young offenders**

4 **Part 8A.1 General**

5 **133A Purpose—ch 8A**

- 6 (1) The purpose of this chapter is to set out particular provisions that
7 apply to the sentencing of young offenders.
- 8 (2) Except as provided in this chapter or otherwise in this Act, this Act
9 applies to young offenders in the same way as it applies to other
10 offenders.

11 **133B Meaning of *young offender*—Act**

12 In this Act:

13 *young offender* means a person who—

- 14 (a) has been convicted or found guilty of an offence by a court;
15 and
- 16 (b) was under 18 years old when the offence was committed.

17 **133C Young offenders—purposes of sentencing**

- 18 (1) Despite section 7 (2), in sentencing a young offender, a court must
19 consider the purpose of promoting the rehabilitation of the young
20 offender and may give more weight to that purpose than it gives to
21 any of the other purposes stated in section 7 (1).
- 22 (2) Also, in sentencing a young offender, a court must have particular
23 regard to the common law principle of individualised justice.

- 1 **133D Young offenders—sentencing—additional relevant**
2 **considerations**
- 3 (1) In deciding how a young offender should be sentenced (if at all) for
4 an offence, a court must consider the following matters:
- 5 (a) the young offender’s culpability for the offence having regard
6 to his or her maturity;
- 7 (b) the young offender’s state of development;
- 8 (c) the past and present family circumstances of the young
9 offender.
- 10 (2) This section applies in addition to section 33 (Sentencing—relevant
11 considerations).
- 12 **133E Young offenders—pre-sentence report matters**
- 13 (1) Each of the following is a *pre-sentence report matter* in relation to a
14 young offender:
- 15 (a) the young offender’s culpability for the offence having regard
16 to his or her maturity;
- 17 (b) the young offender’s state of development;
- 18 (c) the past and present family circumstances of the young
19 offender.
- 20 (2) This section applies in addition to section 40A (Pre-sentence report
21 matters).
- 22 **133F Young offenders—chief executive may give court**
23 **information about availability of resources**
- 24 The chief executive (CYP) may give the court information about the
25 availability of resources that would be needed to give effect to an
26 order the court may make in relation to a young offender under this
27 Act.

1 **133G Young offenders—sentences of imprisonment**

- 2 (1) This section applies if a court is sentencing a young offender to
3 imprisonment under section 10.

4 *Note* Section 10 allows a court to sentence an offender to imprisonment if
5 satisfied that no other penalty is appropriate.

- 6 (2) The sentence of imprisonment must be a last resort and for the
7 shortest appropriate term.

- 8 (3) The court must consider making a combination sentence consisting
9 of—

10 (a) the sentence of imprisonment; and

11 (b) a good behaviour order with a supervision condition.

12 *Note* There is no provision for the setting of a nonparole period for a sentence
13 of imprisonment imposed on a young offender (see s 64 (3), def
14 *excluded sentence of imprisonment*).

- 15 (4) The court must not sentence the young offender to imprisonment for
16 life.

17 **133H Young offenders—imprisonment to be at detention place**

- 18 (1) This section applies (instead of section 10 (3)) if a court sentences a
19 young offender to imprisonment and the young offender is under
20 21 years old when the sentence is imposed.

- 21 (2) The sentence must be served by full-time detention at a detention
22 place unless the young offender is—

23 (a) released from full-time detention under this Act or another
24 territory law; or

25 (b) transferred to a correctional centre under the *Children and*
26 *Young People Act 2008*.

- 1 **133I Young offenders—non-association and place restriction**
2 **orders**
- 3 A court must not make a non-association order or place restriction
4 order for a young offender unless satisfied that the order would
5 not—
- 6 (a) interfere with the young offender’s access to appropriate
7 education or training; or
- 8 (b) disproportionately interfere with the young offender’s access to
9 public transport or accommodation.
- 10 *Note* Pt 3.4 makes provision for non-association orders and place restriction
11 orders for offenders.
- 12 **133J Young offenders—notice of orders to parent etc**
- 13 (1) This section applies if written notice of an order and a copy of the
14 order is required to be given to a young offender under any of the
15 following:
- 16 (a) section 12 (4) (Suspended sentences);
- 17 (b) section 14 (6) (Fines—orders to pay);
- 18 (c) section 16 (4) (Driver licence disqualification orders—motor
19 vehicle theft);
- 20 (d) section 17 (5) (Non-conviction orders—general);
- 21 (e) section 25 (2) (Non-association and place restriction orders—
22 explanation and official notice);
- 23 (f) section 84 (1) (Imprisonment—official notice of sentence);
- 24 (g) section 103 (1) (Good behaviour orders—official notice of
25 order);
- 26 (h) section 113 (2) (Reparation orders—official notice of order);
- 27 (i) section 121 (2) (Deferred sentence orders—explanation and
28 official notice of effect);

1 (j) section 129 (5) (Deferred sentence orders—when amendments
2 take effect);

3 (k) section 130 (4) (Deferred sentence orders—when cancellation
4 takes effect).

5 (2) If the young offender is under 18 years old, the court must ensure
6 that the notice and a copy of the order is also given to a parent of the
7 young offender and anyone else who has parental responsibility for
8 the young offender under the *Children and Young People Act 2008*.

9 **133K Young offenders—references to corrections officer**

10 A reference in this Act to a corrections officer is, in relation to a
11 young offender, a reference to a youth detention officer under the
12 *Children and Young People Act 2008*.

13 **Part 8A.2 Young offenders—good**
14 **behaviour orders**

15 **Division 8A.2.1 Young offenders—good behaviour**
16 **orders generally**

17 **133L Young offenders—community service—hours to be**
18 **performed**

19 (1) The number of hours of community service work required to be
20 performed for a community service condition in a good behaviour
21 order for a young offender—

22 (a) must be at least 20 hours and not more than 200 hours; and

23 (b) must not interfere with the young offender's access to
24 appropriate education or training.

25 (2) The period during which the community service work is required to
26 be completed under the community service condition must be not
27 longer than 12 months.

- 1 (3) Section 92 (3) (Community service—concurrent and consecutive
2 orders) applies in relation to a young offender as if the reference to
3 500 hours were a reference to 200 hours.

4 **133M Young offenders—good behaviour orders—conditions**

- 5 (1) A good behaviour order for a young offender must not include a
6 condition mentioned in section 13 (3) (a) (which is about giving
7 security for compliance with an order).

- 8 (2) In addition to the conditions mentioned in section 13 (3) (b) to (f), a
9 good behaviour order for a young offender may include—

- 10 (a) an education and training condition; and

11 *Note* An education and training condition must not be included in the
12 order unless the young offender is convicted of the offence (see
13 s 133M).

- 14 (b) a supervision condition.

15 **Division 8A.2.2 Good behaviour orders—education**
16 **and training conditions**

17 **133N Meaning of *education and training condition*—Act**

18 In this Act:

19 *education and training condition*, of a good behaviour order for a
20 young offender, means a condition included in the order that the
21 young offender undertake education or training.

22 **133O Application—div 8A.2.2**

23 This division applies if a court is considering whether to include an
24 education and training condition in a good behaviour order for a
25 young offender.

1 **133P Education and training conditions—convicted young**
2 **offenders only**

3 A good behaviour order cannot include an education and training
4 condition unless the young offender has been convicted or found
5 guilty of the offence for which the order is made.

6 **133Q Education and training conditions—eligibility**

7 The court must not include an education and training condition in
8 the good behaviour order unless satisfied that—

- 9 (a) education or training of a particular kind is suitable for the
10 young offender; and
11 (b) it is appropriate that the young offender undertake education or
12 training of that kind; and
13 (c) a place for the young offender in education or training of that
14 kind is available or will become available within a reasonable
15 time.

16 **133R Education and training conditions—suitability**

17 (1) In deciding whether to include an education and training condition
18 in the good behaviour order, the court must consider the following:

- 19 (a) any pre-sentence report or relevant sentencing information for
20 the young offender given to the court;
21 (b) any medical report about the young offender given to the court;
22 (c) any evidence given by the person who prepared a pre-sentence
23 report for the young offender or who gave relevant sentencing
24 information to the court;
25 (d) any evidence given by the chief executive (CYP) about the
26 young offender.

27 (2) Subsection (1) does not limit the matters that the court may
28 consider.

- 1 (3) The court may include, or decline to include, an education and
2 training condition in the good behaviour order for the young
3 offender despite—
- 4 (a) any recommendation in any pre-sentence report, or indication
5 in relevant sentencing information, about the suitability of the
6 young offender to serve a sentence (or a part of a sentence) by
7 taking part in education or training; or
- 8 (b) any evidence given by the person who prepared any
9 pre-sentence report for the young offender or who gave
10 relevant sentencing information to the court; or
- 11 (c) any evidence given by the chief executive (CYP) about the
12 young offender.
- 13 (4) The court must record reasons for its decision to include, or not
14 include, an education and training condition in the good behaviour
15 order if—
- 16 (a) a pre-sentence report recommends, or relevant sentencing
17 information indicates, that the young offender is suitable but
18 the court decides not to include an education and training
19 condition; or
- 20 (b) a pre-sentence report recommends, or relevant sentencing
21 information indicates, that the young offender is not suitable
22 but the court decides to include an education and training
23 condition.
- 24 (5) Failure to comply with subsection (4) does not invalidate the good
25 behaviour order.

26 **133S Education and training conditions—maximum period**

27 An education and training condition included in the good behaviour
28 order must not require the young offender take part in education or
29 training for longer than 3 years.

1 **133T Education and training conditions—2 or more good**
2 **behaviour orders**

3 (1) This section applies if—

4 (a) a young offender is currently subject to an education and
5 training condition under a good behaviour order (an *existing*
6 *order*); and

7 (b) the court makes a further good behaviour order that includes an
8 education and training condition (a *new order*).

9 (2) The court may direct how the new order and the existing order work
10 together.

11 (3) However, the new order must not require the young offender to
12 undergo education or training as stated in the order for more than
13 3 years.

14 **Division 8A.2.3 Good behaviour orders—supervision**
15 **conditions**

16 **133U Meaning of *supervision condition*—Act**

17 (1) In this Act:

18 *supervision condition*, of a good behaviour order for a young
19 offender, means a condition included in the order that—

20 (a) requires the young offender to comply with all reasonable
21 directions given by the chief executive; and

22 (b) allows the chief executive to require information from entities
23 directly supervising the young offender.

24 (2) In this section:

25 *chief executive* means—

26 (a) if the offender is under 18 years old when the direction is given
27 or the requirement is made—the chief executive (CYP); and

- 1 (b) in any other case—the chief executive responsible in
2 accordance with a decision made under the *Crimes (Sentence*
3 *Administration) Act 2005*, section 320E.

4 **133V Supervision conditions—when required**

- 5 (1) A court must include a supervision condition in a good behaviour
6 order for a young offender if the court has made, or proposes to
7 make, a good behaviour order that includes—
8 (a) a community service condition; or
9 (b) a rehabilitation condition; or
10 (c) an education and training condition.
11 (2) Subsection (1) does not limit the circumstances in which the court
12 may include a supervision condition in a good behaviour order.

13 **133W Supervision conditions—maximum period**

14 A supervision condition included in the good behaviour order must
15 not require the young offender to comply with all reasonable
16 directions given by the chief executive for longer than 3 years.

17 **133X Supervision conditions—2 or more good behaviour**
18 **orders**

- 19 (1) This section applies if—
20 (a) a young offender is currently subject to a supervision condition
21 under a good behaviour order (an *existing order*); and
22 (b) the court makes a further good behaviour order that includes a
23 supervision condition (a *new order*).
24 (2) The court may direct how the new order and the existing order work
25 together.
26 (3) However, the new order must not require the young offender to be
27 supervised as stated in the order for longer than 3 years.

**Part 8A.3 Young offenders—
 accommodation orders**

133Y Meaning of *accommodation order*—Act

(1) In this Act:

accommodation order, in relation to a young offender, means an order made by a court requiring the young offender to live at the place or with the person, whether within or outside the ACT—

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

(2) In this section:

chief executive means—

- (a) if the offender is under 18 years old when the direction is given—the chief executive (CYP); and
- (b) in any other case—the chief executive responsible in accordance with a decision made under the *Crimes (Sentence Administration) Act 2005*, section 320E.

133Z Accommodation orders—convicted young offenders only

If a young offender has been convicted or found guilty of an offence, the court may make an accommodation order for the young offender.

133ZA Accommodation orders—eligibility

The court must not make an accommodation order for a young offender unless satisfied that—

- (a) the order would be suitable for the young offender; and

- 1 (b) if the order states that the young offender is to live at a place—
2 the person in charge of the place agrees to accommodate the
3 young offender at the place; and
4 (c) if the order states that the child is to live with a person—
5 (i) the person is a suitable person to accommodate the young
6 offender; and
7 (ii) the person agrees to the young offender living with the
8 person.

9 **133ZB Accommodation orders—suitability**

- 10 (1) In deciding whether to make an accommodation order for a young
11 offender, the court must consider the following:
12 (a) any pre-sentence report or relevant sentencing information for
13 the young offender given to the court;
14 (b) any medical report about the young offender given to the court;
15 (c) any evidence given by the person who prepared a pre-sentence
16 report for the young offender or who gave relevant sentencing
17 information to the court;
18 (d) any evidence given by the chief executive (CYP) about the
19 young offender.
20 (2) Subsection (1) does not limit the matters that the court may
21 consider.
22 (3) The Court may make, or decline to make, an accommodation order,
23 for a young offender despite—
24 (a) any recommendation in any pre-sentence report, or indication
25 in relevant sentencing information, about the appropriateness
26 of an accommodation order for the young offender; or

- 1 (b) any evidence given by the person who prepared any
2 pre-sentence report for the young offender or who gave
3 relevant sentencing information to the court; or
- 4 (c) any evidence given by the chief executive (CYP) about the
5 young offender.
- 6 (4) The Court must record reasons for its decision in relation to a young
7 offender if—
- 8 (a) a pre-sentence report recommends, or relevant sentencing
9 information indicates, that an accommodation order be made
10 for the young offender but the court does not make an
11 accommodation order; or
- 12 (b) a pre-sentence report recommends, or relevant sentencing
13 information indicates, that an accommodation order not be
14 made for the young offender but the court makes an
15 accommodation order.
- 16 (5) Failure to comply with subsection (4) does not invalidate the
17 accommodation order.

18 **133ZC Accommodation orders—maximum period**

19 An accommodation order must not be longer than 3 years.

20 **133ZD Accommodation orders—2 or more orders**

- 21 (1) This section applies if—
- 22 (a) a young offender is currently subject to an accommodation
23 order (an *existing order*); and
- 24 (b) the court makes a further accommodation order (a *new order*).
- 25 (2) The court may direct how the new order and the existing order work
26 together.
- 27 (3) However, the new order must not require the young offender to be
28 accommodated as stated in the order for longer than 3 years.

1 **[1.76] Section 136 (4), definition of *criminal justice entity*,**
2 **paragraph (c)**

3 *substitute*

4 (c) the chief executive responsible for this Act;

5 (ca) the chief executive (CYP);

6 **[1.77] Dictionary, new definition of *accommodation order***

7 *insert*

8 *accommodation order*—see section 133Y.

9 **[1.78] Dictionary, definition of *at***

10 *substitute*

11 *at*, in relation to a correctional centre or detention place, includes in
12 the correctional centre or detention place.

13 **[1.79] Dictionary, new definitions**

14 *insert*

15 *chief executive (CYP)* means the chief executive responsible for the
16 *Children and Young People Act 2008*.

17 *detention place* means a detention place under the *Children and*
18 *Young People Act 2008*.

19 *education and training condition*—see section 133N.

20 **[1.80] Dictionary, definition of *pre-sentence report matter***

21 *substitute*

22 *pre-sentence report matter*—

23 (a) for part 4.2 (Pre-sentence reports)—see section 40A; and

24 (b) for a young offender—see section 133E.

[1.81] Dictionary, new definitions

insert

supervision condition—see section 133U.

young offender—see section 133B.

Part 1.6 Criminal Code 2002

[1.82] New section 712A

in division 7.2.3, insert

712A Publishing identifying information about childrens proceedings

- (1) A person commits an offence if the person publishes information that identifies someone else as a person who is or was a child or young person the subject of a childrens proceeding.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) Information that identifies someone includes information that—

- (a) discloses the name, address or suburb of the person, or of a family member of the person; or
- (b) would allow the identity of the person as a child or young person the subject of a childrens proceeding to be worked out.

Example—par (b)

the child's or young person's relationship to another person

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

- 1 (3) This section does not apply if—
- 2 (a) the person the subject of the proceeding is an adult and
- 3 consents to the publication of the information; or
- 4 (b) the person the subject of the proceeding has died and—
- 5 (i) the person’s legal personal representative consents to the
- 6 publication of the information; or
- 7 (ii) the information is published more than 100 years after the
- 8 person’s death.
- 9 (4) To remove any doubt, this section applies to everyone, including,
- 10 for a proceeding under the *Children and Young People Act 2008*,
- 11 people required or entitled to attend the proceeding.
- 12 (5) In this section:
- 13 **child**—see the *Children and Young People Act 2008*, section 11.
- 14 **childrens proceeding**—a child or young person is or was the subject
- 15 of a childrens proceeding if—
- 16 (a) the child or young person is or was the subject of a proceeding
- 17 under the *Children and Young People Act 2008*; or
- 18 (b) any of the following orders is or was in force under that Act for
- 19 the child or young person:
- 20 (i) a care and protection order;
- 21 (ii) an interim care and protection order;
- 22 (iii) an appraisal order;
- 23 (iv) a therapeutic protection order; or
- 24 (v) an interim therapeutic protection order; or
- 25 (c) the child or young person is or was the subject of a child
- 26 concern report under that Act; or

- 1 (d) the child or young person is or was the subject of—
2 (i) a proceeding under the *Children and Young People*
3 *Act 1999*; or
4 (ii) an order or report under that Act that corresponds to an
5 order or report mentioned in paragraph (b) or (c); or
6 (e) a chief executive has or had parental responsibility for the child
7 or young person under the *Children and Young People*
8 *Act 2008* or the *Children and Young People Act 1999*; or
9 (f) the child or young person is or was the subject of a criminal
10 proceeding; or
11 (g) the child or young person is or was the subject of a proceeding
12 under the *Bail Act 1992*.

13 ***proceeding*** includes a proceeding started, or that existed, before the
14 commencement of this section.

15 ***publish*** means communicate or disseminate information in a way or
16 to an extent that makes it available to, or likely to come to the notice
17 of, the public or a section of the public or anyone else not lawfully
18 entitled to the information.

19 ***young person***—see the *Children and Young People Act 2008*,
20 section 12.

Part 1.7 **Evidence (Miscellaneous Provisions) Act 1991**

[1.83] New division 4.8

insert

Division 4.8 **Proceedings against young people**

81A **Exclusion of evidence unlawfully obtained**

- (1) This section applies if, in a proceeding in the Childrens Court against a young person in relation to an offence, the court is satisfied that evidence tendered to the court was obtained in contravention of, or in consequence of a contravention of, the *Crimes Act 1900*, part 10 (Criminal investigation) or the *Crimes Act 1914* (Cwlth).
- (2) The Childrens Court must refuse to admit the evidence in the proceeding unless satisfied that—
- (a) admission of the evidence is substantially in the public interest in relation to the administration of criminal justice; and
 - (b) the public interest would outweigh any prejudice to the rights of a person, including the young person, that has occurred or is likely to occur as a result of the contravention or the admission of the evidence.
- (3) The matters to which the Childrens Court may have regard in deciding whether it should admit the evidence include—
- (a) the seriousness of the offence to which the evidence relates, the difficulty of detecting the offender, the need to apprehend the offender and the need to preserve evidence of the facts; and
 - (b) the nature and seriousness of the contravention; and
 - (c) the extent to which the evidence might have been lawfully obtained.

- 1 (4) This section is in addition to, and does not limit, any other law or
2 rule under which the Childrens Court may refuse to admit evidence.

3 **Part 1.8** **Magistrates Court Act 1930**

4 **[1.84] New chapter 4A**

5 *insert*

6 **Chapter 4A The Childrens Court**

7 **Part 4A.1 The Childrens Court**

8 **287 Childrens Court**

- 9 (1) The Magistrates Court is known as the Childrens Court when it is
10 constituted by the Childrens Court Magistrate exercising the
11 jurisdiction given under section 288.
- 12 (2) The Magistrates Court is also known as the Childrens Court when it
13 is constituted by—
- 14 (a) a magistrate assigned under section 291C (Assignment of other
15 magistrates for Childrens Court matters) who is exercising the
16 jurisdiction given under section 288; or
- 17 (b) a magistrate acting under section 291D (2) (Completion of
18 part-heard matters).
- 19 (3) The Childrens Court may use the Magistrates Court seal.

20 **288 Jurisdiction of Childrens Court**

- 21 (1) The Childrens Court has jurisdiction to hear and decide—
- 22 (a) any criminal proceeding against a person in relation to a
23 summary offence if the person was under 18 years old at the
24 time of the alleged offence; and

- 1 (b) any criminal proceeding against a person in relation to an
2 indictable offence (other than an offence punishable by
3 imprisonment for life) if the person was under 18 years old at
4 the time of the alleged offence; and
- 5 (c) a proceeding in relation to bail for a child; and
- 6 (d) any application or other proceeding under the *Children and*
7 *Young People Act 2008*, including a proceeding transferred to
8 the court under the *Children and Young People Act 2008*,
9 chapter 17 (Care and protection—interstate transfer of orders
10 and proceedings).
- 11 (2) Subsection (1) (b) is subject to the *Crimes Act 1900*, section 375
12 (Summary disposal of certain cases).
- 13 (3) Subsection (1) (c) is subject to the *Bail Act 1992*.

14 **289 Proceedings where children jointly charged with adults**

- 15 (1) If a child and an adult are jointly charged with an offence,
16 section 288 (Jurisdiction of Childrens Court) applies to a proceeding
17 against the child arising out of the charge as if the child had been
18 charged separately.
- 19 (2) Section 288 does not apply to the preliminary examination for an
20 indictable offence alleged to have been committed jointly by a child
21 and an adult if a magistrate, having regard to the nature of the
22 alleged offence and the time and expense involved in carrying out
23 the preliminary examinations separately, orders that the section does
24 not apply.
- 25 (3) To remove any doubt, the *Court Procedures Act 2004*, part 7A
26 (Procedural provisions—proceedings involving children or young
27 people) applies to a proceeding against a child even if the
28 proceeding arises out of an offence for which the child and an adult
29 were jointly charged.

- 1 **290 Chief Magistrate to arrange business of Childrens Court**
- 2 (1) The Chief Magistrate is responsible for ensuring the orderly and
- 3 prompt discharge of the business of the Childrens Court.
- 4 (2) The Chief Magistrate may, subject to appropriate and practicable
- 5 consultation with the magistrates, make arrangements about—
- 6 (a) the magistrate who is to be the Childrens Court Magistrate; and
- 7 (b) the assignment of a magistrate under—
- 8 (i) section 291B (Acting Childrens Court Magistrate); or
- 9 (ii) section 291C (Assignment of other magistrates for
- 10 Childrens Court matters).
- 11 **291 Childrens Court Magistrate to hear all matters**
- 12 (1) The Childrens Court Magistrate is responsible for dealing with all
- 13 matters within the jurisdiction of the Childrens Court.
- 14 (2) Subsection (1) is subject to—
- 15 (a) section 291C (Assignment of other magistrates for Childrens
- 16 Court matters); and
- 17 (b) section 291D (Completion of part-heard matters).
- 18 (2) Also, subsection (1) does not prevent a magistrate other than the
- 19 Childrens Court Magistrate from exercising—
- 20 (a) a function or power given to a magistrate under a provision of
- 21 the *Children and Young People Act 2008*; or
- 22 (b) a power given to a magistrate under a territory law to admit a
- 23 child or young person to bail under the *Bail Act 1992* or to
- 24 remand a child or young person in custody.

Part 4A.2 Childrens Court Magistrate

291A Childrens Court Magistrate

- (1) The Chief Magistrate must declare 1 magistrate to be the Childrens Court Magistrate for a stated term of not longer than 2 years.
- (2) The Chief Magistrate may declare himself or herself to be the Childrens Court Magistrate.
- (3) The Chief Magistrate must not declare a magistrate to be the Childrens Court Magistrate unless satisfied the magistrate is suitably qualified to be the Childrens Court Magistrate.
- (4) The Chief Magistrate must revoke a declaration under this section if asked, in writing, by the Childrens Court Magistrate.
- (5) A declaration, or revocation, under this section is a notifiable instrument.

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

291B Acting Childrens Court Magistrate

- (1) The Chief Magistrate may assign a magistrate to act as Childrens Court Magistrate only if—
 - (a) there is no Childrens Court Magistrate; or
 - (b) the Childrens Court Magistrate—
 - (i) is absent from duty or from the ACT; or
 - (ii) cannot exercise the functions of the Childrens Court Magistrate for another reason.
- (2) A magistrate assigned to act as Childrens Court Magistrate is the Childrens Court Magistrate for this Act and any other Act.

291C Assignment of other magistrates for Childrens Court matters

- (1) The Chief Magistrate may assign another magistrate to deal with a matter if the Childrens Court Magistrate is unable to deal with the matter—
- (a) without delay that is likely to prejudice the wellbeing of a child or young person; or
 - (b) because of a conflict of interest, or a perceived conflict of interest.
- (2) A magistrate may be assigned under subsection (1) (a) only if the Chief Magistrate is satisfied the assignment is necessary having regard to—
- (a) how the delay is likely to prejudice the child's or young person's wellbeing; and
 - (b) the principle in the *Children and Young People Act 2008*, section 8 that in making a decision under that 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; and
 - (c) the degree of urgency of the matter to be dealt with by the assigned magistrate; and
 - (d) the views and wishes (if any) of the Childrens Court Magistrate on the proposed assignment.
- (3) This section does not create a right in relation to the assignment of a matter under this section.
- (4) Without limiting subsection (3), the decision to assign or not to assign a matter under this section—
- (a) must not be challenged or called into question in any court; and

1 (b) is not subject to prohibition, mandamus or injunction in any
2 court.

3 (5) This section is in addition to, and does not limit, section 291B
4 (Acting Childrens Court Magistrate).

5 **291D Completion of part-heard matters**

6 (1) This section applies if—

7 (a) a magistrate begins to deal with a Childrens Court matter under
8 this chapter; and

9 (b) before the matter is finally decided, the magistrate ceases to—

10 (i) be the Childrens Court Magistrate; or

11 (ii) hold an assignment under section 291B or section 291C.

12 (2) The magistrate may continue to deal with the matter until it is
13 finally decided.

14 **Part 4A.3 Criminal proceedings**

15 **291E Procedures for hearing indictable offences**

16 (1) This section applies if—

17 (a) a child charged with an indictable offence is brought before the
18 Childrens Court; and

19 (b) the court—

20 (i) has no power to hear and decide the charge summarily; or

21 (ii) has the power to hear and decide the charge summarily,
22 but decides not to.

23 (2) The Childrens Court must deal with the charge as if—

24 (a) the charge were a charge for an indictable offence to which this
25 Act applied; and

1 (b) the Childrens Court were the Magistrates Court; and

2 (c) any necessary changes were made.

3 **291F Childrens Court may adjourn hearings to allow access to**
4 **legal advice**

5 (1) This section applies to a charge for an indictable offence against a
6 child that the Childrens Court is hearing summarily.

7 (2) The court may, at any time, adjourn the hearing to allow any of the
8 following people to get legal advice:

9 (a) the child;

10 (b) a parent of the child;

11 (c) someone else who has daily care responsibility, or long-term
12 care responsibility, for the child.

13 (3) In this section:

14 *daily care responsibility*—see the *Children and Young People*
15 *Act 2008*, section 19.

16 *long-term care responsibility*—see the *Children and Young People*
17 *Act 2008*, section 20.

18 **291G Childrens Court may send cases to Supreme Court for**
19 **sentencing**

20 (1) This section applies if the Childrens Court convicts a person of an
21 indictable offence.

22 (2) The Childrens Court may, by order, commit the person to the
23 Supreme Court for sentence if satisfied that—

24 (a) sentence should be passed on the person by the Supreme Court
25 because of the character and history of the person; or

26 (b) the sentence that is likely to be appropriate is a sentence the
27 Childrens Court does not have power to impose.

- 1 (3) In deciding whether to make an order under subsection (2) (a), the
2 Childrens Court must consider any report provided under the *Court*
3 *Procedures Act 2004*, section 74D (Court may order report about
4 young person).
- 5 (4) If the Childrens Court makes an order under subsection (2), the
6 Supreme Court may deal with the person as if the person had been
7 convicted of the offence in the Supreme Court.

Dictionary

(see s 2(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:

- ACT
- administrative appeals tribunal
- administrative unit
- adult
- chief executive (see s 163)
- chief police officer
- children and young people commissioner
- Childrens Court
- corrections officer
- dentist
- director of corrective services
- disallowable instrument (see s 9)
- doctor
- domestic partner (see s 169 (1))
- entity
- Executive
- function
- human rights commission
- indictable offence (s 190)
- individual
- in relation to
- intersex person (see s 169B)
- judge
- lawyer
- legal aid commission
- magistrate

- 1 • mental health tribunal
- 2 • midwife
- 3 • Minister (see s 162)
- 4 • notifiable instrument (see s 10)
- 5 • nurse
- 6 • ombudsman
- 7 • parent
- 8 • penalty unit (see s 133)
- 9 • police officer
- 10 • privacy commissioner
- 11 • public advocate
- 12 • public employee
- 13 • public servant
- 14 • State
- 15 • statutory office holder
- 16 • territory authority
- 17 • territory instrumentality
- 18 • the Territory
- 19 • transgender person (see s 169A (1) and (2))
- 20 • working day.

21 ***Aboriginal*** means a person who—

- 22 (a) is a descendant of the indigenous inhabitants of Australia; and
- 23 (b) regards himself or herself as an Aboriginal or, if the person is a
- 24 child or young person, is regarded as an Aboriginal by a parent
- 25 or other family member.

26 ***Aboriginal and Torres Strait Islander organisation*** means an

27 organisation whose purpose is to represent the interests of

28 Aboriginal and Torres Strait Islander people.

29 ***abuse***, of a child or young person—see section 341.

accredited person—

(a) in relation to a young detainee, for chapter 6 (Criminal matters—detention places)—see section 136; and

(b) for a child or young person in therapeutic protection, division 16.3.3—see section 575.

accused detainee, for chapter 8 (Criminal matters—discipline at detention places)—see section 285.

administrator, for chapter 8 (Criminal matters—discipline at detention places)—see section 285.

admission, of a young detainee to a detention place, for part 6.4 (Admission to detention places)—see section 154.

affected child, for division 20.4.3 (Childcare service licences—suspension and cancellation)—see section 758.

allegation report, for chapter 8 (Criminal matters—discipline at detention places)—see section 292.

annual review report, for a reviewable care and protection order, for chapter 14 (Care and protection—care and protection orders)—see section 493.

application, for chapter 19 (Care and protection—provisions applying to all proceedings under care and protection chapters)—see section 694.

appraisal order, for the care and protection chapters—see section 371.

approved research project, for chapter 22 (Research involving children and young people)—see section 804.

assessment order, for the care and protection chapters—see section 435.

at risk of abuse or neglect, in the care and protection chapters—see section 343.

- 1 **authorised assessor**—see section 437.
- 2 **authorised person**—see section 26.
- 3 **behaviour breach**—see section 286.
- 4 **behaviour management consequence**—
- 5 (a) for part 8.3 (Dealing with minor behaviour breaches)—see
- 6 section 297; and
- 7 (b) for part 8.4 (Disciplinary action—behaviour breach charged)—
- 8 see section 317.
- 9 **behaviour management framework**, for chapter 8 (Criminal
- 10 matters—discipline at detention places)—see section 285.
- 11 **body** includes an agency or organisation.
- 12 **body search**—
- 13 (a) for chapter 7 (Criminal matters—search and seizure at
- 14 detention places)—see section 245; and
- 15 (b) for part 16.3 (Children and young people in therapeutic
- 16 protection)—see section 587.
- 17 **cancellation notice**, for chapter 20 (Childcare services)—see
- 18 section 765.
- 19 **care and protection appraisal**—see section 365.
- 20 **care and protection assessment**, for the care and protection
- 21 chapters—see section 366.
- 22 **care and protection chapters**—see section 335.
- 23 **care and protection order**—see section 421.
- 24 **care and protection principles**—see section 349.
- 25 **care entities**, for division 15.4.3 (Information to be kept by foster
- 26 carers and residential care services)—see section 525.
- 27 **care plan**—see section 454.

- 1 **case management plan**, for chapter 6 (Criminal matters—detention
2 places)—see section 136.
- 3 **charge**, for chapter 8 (Criminal matters—discipline at detention
4 places)—see section 285.
- 5 **charge notice**, for chapter 8 (Criminal matters—discipline at
6 detention places)—see section 295.
- 7 **child**—see section 11.
- 8 **childcare centre**—see section 732.
- 9 **childcare service**—see section 731.
- 10 **childcare service licence**, for chapter 20 (Childcare services)—see
11 section 727.
- 12 **childcare services standards**—see section 886 (2) (e).
- 13 **childcare worker**, for chapter 20 (Childcare services)—see
14 section 727.
- 15 **child concern report**, for part 11.1 (Care and protection—reporting
16 abuse and neglect)—see section 352.
- 17 **children and young people employment standards**—see
18 section 886 (2) (f).
- 19 **child welfare law**, for chapter 17 (Care and protection—interstate
20 transfer of orders and proceedings)—see section 639.
- 21 **child welfare order**, for chapter 17 (Care and protection—interstate
22 transfer of orders and proceedings)—see section 637.
- 23 **child welfare proceeding**, for chapter 17 (Care and protection—
24 interstate transfer of orders and proceedings)—see section 638.
- 25 **compliance notice**, for chapter 20 (Childcare services)—see
26 section 759.
- 27 **compliance suspension notice**, for chapter 20 (Childcare
28 services)—see section 760.

- 1 **conduct**—see the Criminal Code, section 13.
- 2 **confidential report**—see section 875.
- 3 **connected**, for chapter 23 (Enforcement)—see section 811.
- 4 **contact**—see section 347.
- 5 **contact provision**, in a care and protection chapter—see section 484.
- 6 **contrary to the best interests of a child or young person**, for
7 chapter 21 (Employment of children and young people)—see
8 section 779.
- 9 **controlled drug**—see the Criminal Code, section 600.
- 10 **controlling person**, for a childcare service or proposed childcare
11 service, for chapter 20 (Childcare services)—see section 735.
- 12 **court**, for part 25.4 (Courts and investigative entities)—see
13 section 863.
- 14 **court cell** means a cell (however described) for the detention of a
15 person at a court.
- 16 **criminal matters chapters**—see section 91.
- 17 **daily care responsibility**—see section 19.
- 18 **dangerous thing**, for part 16.3 (Children and young people in
19 therapeutic protection)—see section 589.
- 20 **decision-maker** includes any court exercising jurisdiction under this
21 Act.
- 22 **detention place** means a place declared to be a detention place under
23 section 141.
- 24 **disciplinary action**, for chapter 8 (Criminal matters—discipline at
25 detention places)—see section 316.
- 26 **divulge**, for chapter 25 (Information secrecy and sharing)—see
27 section 841.

- 1 ***domestic violence***, for division 14.3.5 (Orders under Domestic
2 Violence and Protection Orders Act)—see section 457.
- 3 ***drug***, for Part 6.7 (Alcohol and drug testing)—see section 234.
- 4 ***drug of dependence***—see the *Drugs of Dependence Act 1989*,
5 section 3 (1).
- 6 ***drug testing standards***—see section 886 (2) (b).
- 7 ***drug use provision***, in a care and protection order, for the care and
8 protection chapters—see section 487.
- 9 ***DVPO final protection order***, for division 14.3.5 (Orders under
10 Domestic Violence and Protection Orders Act)—see section 457.
- 11 ***DVPO interim protection order***, for division 14.3.5 (Orders under
12 Domestic Violence and Protection Orders Act)—see section 457.
- 13 ***DVPO protection order***, for division 14.3.5 (Orders under Domestic
14 Violence and Protection Orders Act)—see section 457.
- 15 ***educational institution***, for chapter 21 (Employment of children and
16 young people)—see section 779.
- 17 ***emergency action***—see section 404.
- 18 ***emergency action release order***—see section 415.
- 19 ***employment***, for chapter 21 (Employment of children and young
20 people)—see section 780.
- 21 ***employment conditions notice***, for chapter 21 (Employment of
22 children and young people)—see section 789.
- 23 ***employment prohibition notice***, for chapter 21 (Employment of
24 children and young people)—see section 787.
- 25 ***enduring parental responsibility provision***, in the care and
26 protection chapters—see section 480.
- 27 ***engage in conduct***—see the Criminal Code, section 13.

- 1 ***entitled child or young person***, for part 2.3 (Official visitors)—see
2 section 37.
- 3 ***escort officer*** means—
- 4 (a) a police officer; or
- 5 (b) a corrections officer; or
- 6 (c) a youth detention officer.
- 7 ***ethics committee***, for chapter 22 (Research involving children and
8 young people)—see section 804.
- 9 ***external reviewer***—
- 10 (a) for division 6.6.3 (Segregation)—see section 203; and
- 11 (b) for division 8.4.3 (External review of internal review
12 decisions)—see section 307.
- 13 ***family day care scheme***—see section 733.
- 14 ***family group conference***—see section 75.
- 15 ***family group conference agreement***—see section 76.
- 16 ***family group conference facilitator***—see section 78.
- 17 ***family group conference outcome report***, for chapter 3 (Family
18 group conferences)—see section 88.
- 19 ***family group conference standards***—see section 886 (2) (a).
- 20 ***family member***, of a person—see section 13.
- 21 ***former caregiver***, of a child or young person, for the care and
22 protection chapters—see section 346.
- 23 ***foster carer***, for a child or young person—see section 509.
- 24 ***foster care service***—see section 514.

frisk search—

(a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 245; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 585.

general parental authority—see section 514.

government agency for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 636.

harmful conduct, engaged in by a child or young person—see section 532.

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

health care treatment means treatment of an illness, disability, disorder or condition by a health professional.

health facility means a hospital or other facility where health services are provided.

health professional means a health professional registered under the *Health Professionals Act 2004* or someone who is a health professional registered under a corresponding law of a local jurisdiction within the meaning of that Act.

health segregation direction, for division 6.6.3 (Segregation)—see section 203.

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

hearing, for a review, for chapter 8 (Criminal matters—discipline at detention places)—see section 285.

high risk employment, for part 21.4 (Employment of children and young people under school-leaving age)—see section 793.

- 1 **information**, for chapter 25 (Information secrecy and sharing)—see
- 2 section 841.
- 3 **information holder**, for chapter 25 (Information secrecy and
- 4 sharing)—see section 842.
- 5 **information sharing entity**, for part 25.3 (Sharing protected
- 6 information)—see section 858.
- 7 **information sharing standards**—see section 886 (2) (i).
- 8 **in need of care and protection**—see section 344.
- 9 **in need of emergency care and protection**, for the care and
- 10 protection chapters—see section 402.
- 11 **in need of emergency therapeutic protection**—see section 403.
- 12 **intention to cancel notice**, for chapter 20 (Childcare services)—see
- 13 section 763.
- 14 **interim care and protection order**, for chapter 14 (Care and
- 15 protection—care and protection orders)—see section 432.
- 16 **interim child welfare order**, for chapter 17 (Care and protection—
- 17 interstate transfer of orders and proceedings)—see section 660.
- 18 **interim therapeutic protection order**—see section 542.
- 19 **interstate care and protection report**—see section 844 (2),
- 20 definition of **interstate care and protection information**,
- 21 paragraph (a).
- 22 **interstate child welfare order**—see section 665.
- 23 **interstate law**, for chapter 17 (Care and protection—interstate
- 24 transfer of orders and proceedings)—see section 640.
- 25 **interstate leave permit**—see section 241.
- 26 **interstate officer**, for chapter 17 (Care and protection—interstate
- 27 transfer of orders and proceedings)—see section 641.
- 28 **interstate proceedings transfer order**—see section 671.

1 ***in therapeutic protection***—see section 571.

2 ***investigative entity*** means an entity with power to require the
3 production of documents or the answering of questions including,
4 for example, the chief police officer, the human rights commission,
5 the public advocate and the ombudsman.

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

9 ***investigator***, for part 8.2 (Responding to behaviour breaches)—see
10 section 290.

11 ***kinship carer***, for a child or young person—see section 508.

12 ***licensed childcare service***, for chapter 20 (Childcare services)—see
13 section 727.

14 ***licensed proprietor***, of a childcare service, for chapter 20 (Childcare
15 services)—see section 727.

16 ***light work***, for part 21.4 (Employment of children and young people
17 under school-leaving age)—see section 792.

18 ***long-term care responsibility***—see section 20.

19 ***long-term parental responsibility provision***, for the care and
20 protection chapters—see section 478.

21 ***mail*** means postal mail.

22 ***mandatory report***—see section 355.

23 ***mental dysfunction***—see section 529.

24 ***mental health order***—see the *Mental Health (Treatment and Care)*
25 *Act 1994*, dictionary.

26 ***mental health tribunal provision***—see section 490.

27 ***mental illness***—see section 529.

- 1 **Minister of a State**, for part 5.2 (Interstate transfers)—see
 2 section 113.
- 3 **minor behaviour breach**, for chapter 8 (Criminal matters—
 4 discipline at detention places)—see section 287.
- 5 **neglect**—see section 342.
- 6 **nominated person**, for a young detainee—see section 184 (2) (n).
- 7 **non-treating doctor**—
- 8 (a) for chapter 6 (Criminal matters—detention places)—see
 9 section 136; and
- 10 (b) for chapter 7 (Criminal matters—search and seizure at
 11 detention places)—see section 245; and
- 12 (c) for chapter 16 (Care and protection—therapeutic protection of
 13 children and young people)—see section 529.
- 14 **non-treating nurse**—
- 15 (a) for part 6.7 (Alcohol and drug testing)—see section 234; and
- 16 (b) for chapter 7 (Criminal matters—search and seizure at
 17 detention places)—see section 245; and
- 18 (c) for chapter 16 (Care and protection—therapeutic protection of
 19 children and young people)—see section 529.
- 20 **non-treating health professional**—
- 21 (a) for the criminal matters chapters—see section 98; and
- 22 (b) for chapter 16 (Care and protection—therapeutic protection of
 23 children and young people)—see section 529.
- 24 **occupier**, for chapter 23 (Enforcement)—see section 811.
- 25 **offence**—
- 26 (a) includes an offence against a Commonwealth law; and
- 27 (b) for chapter 23 (Enforcement)—see section 811.

official visitor means a person appointed as an official visitor under section 38.

operating entity, for a therapeutic protection place or place of care, means—

(a) if the Territory operates the place—the chief executive; 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 chief executive under section 142.

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 245; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 586.

out-of-home carer—see section 507.

out-of-home carer authorisation—see section 514.

out-of-home care standards—see section 886 (2) (c).

owner, of a thing—

(a) for part 7.9 (Seizing property)—see section 278; and

(b) for division 16.3.6 (Seizing dangerous things)—see section 619.

paediatrician means a doctor who is registered under the *Health Professionals Regulation 2004* in the specialist area of paediatric medicine.

parental responsibility—see division 1.3.2.

- 1 ***parental responsibility provision***, for the care and protection
2 chapters—see section 473.
- 3 ***participant***, for chapter 3 (Family group conferences)—see
4 section 73.
- 5 ***participating state***—for chapter 17 (Care and protection—interstate
6 transfer of orders and proceedings)—see section 636.
- 7 ***parties***, for chapter 3 (Family group conferences)—see section 73.
- 8 ***party***—
- 9 (a) for part 12.3 (Voluntary agreement to share parental
10 responsibility with chief executive)—see section 395; and
- 11 (b) for an application, for the care and protection chapters—see
12 section 699.
- 13 ***personal information***, about a child or young person, for
14 division 15.4.3 (Information to be kept by foster carers and
15 residential care services)—see section 525.
- 16 ***person responsible***, for a young offender, for part 5.2 (Interstate
17 transfers)—see section 113.
- 18 ***place*** includes premises.
- 19 ***placement***, for a child or young person, for division 19.4.5—see
20 section 525.
- 21 ***place of care*** means a place approved as a place of care under
22 section 524.
- 23 ***police cell*** means a cell (however described) for the detention of a
24 person at a police station.
- 25 ***positive test sample***, for part 6.7 (Alcohol and drug testing)—see
26 section 235.
- 27 ***possession***, of a thing, includes the following:
- 28 (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 361.

privilege, for chapter 8 (Criminal matters—discipline at detention places)—see section 288.

privileged, in relation to material, for chapter 7 (Criminal matters—search and seizure at detention places)—see section 245.

produce, for part 25.4 (Courts and investigative entities)—see section 863.

prohibited area, for a criminal matters chapter—see section 146.

prohibited thing—

(a) for chapter 6 (Criminal matters—detention places)—see section 136; and

(b) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 245.

proposed controlling person, for a childcare service, for chapter 20 (Childcare services)—see section 727.

proposed proprietor, for a childcare service, for chapter 20 (Childcare services)—see section 727.

proprietor, of a childcare service, for chapter 20 (Childcare services)—see section 734.

protected information—see section 843.

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

provision, in a care and protection order, for chapter 14 (Care and protection—care and protection orders)—see section 420.

- 1 **psychiatrist** means a doctor who is registered under the *Health*
 2 *Professionals Regulation 2004* in the specialist area of psychiatry.
- 3 **receiving State**, for part 5.2 (Interstate transfers)—see section 113.
- 4 **registered**, for a family group conference, for Chapter 12 (Care and
 5 protection—voluntary agreements to transfer or share parental
 6 responsibility)—see section 388.
- 7 **register of young detainees**, for chapter 6 (Criminal matters—
 8 detention places)—see section 136.
- 9 **relevant conference participant**, for a family group conference
 10 about a child or young person—see section 73.
- 11 **relevant presiding officer**, for division 8.4.4 (Disciplinary action
 12 generally)—see section 315.
- 13 **reporting and investigation procedures** means the procedures made
 14 by the chief executive under section 293.
- 15 **representative**, for a child or young person, means a lawyer or other
 16 person representing the child or young person, but does not include
 17 a child or young person who represents himself or herself.
- 18 **requirement notice**, for part 2.4 (Suitable entities for purposes under
 19 Act)—see section 68.
- 20 **researcher**, for a research project, for chapter 22 (Research
 21 involving children and young people)—see section 804.
- 22 **research project**, for a research project, for chapter 22 (Research
 23 involving children and young people)—see section 805.
- 24 **research standards**—see section 886 (2) (h).
- 25 **residence provision**, for the care and protection chapters—see
 26 section 483.
- 27 **residential care service**—see section 510.
- 28 **responsible person**, for a childcare service, for chapter 20
 29 (Childcare services)—see section 737.

review, for chapter 8 (Criminal matters—discipline at detention places)—see section 285.

reviewable care and protection order, for chapter 14 (Care and protection—care and protection orders)—see section 492.

review officer—

(a) for division 8.4.2 (Internal review)—see section 302; and

(b) for chapter 9 (Criminal matters—conduct of disciplinary reviews)—see section 321.

risk assessment, for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 533.

safe custody warrant—see section 683.

safe room segregation direction, for division 6.6.3 (Segregation)—see section 203.

safety and wellbeing information, for division 25.3.2 (Sharing safety and wellbeing information)—see section 857.

scanning search—

(a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 245; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 584.

school means—

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

(b) an educational institution conducted by the Canberra Institute of Technology.

school-leaving age—see the *Education Act 2004*, dictionary.

Note The *Education Act 2004*, dictionary defines school-leaving age as 15 years old.

- 1 **security classification**, for chapter 6 (Criminal matters—detention
2 places)—see section 136.
- 3 **segregation**, for division 6.6.3 (Segregation)—see section 203.
- 4 **segregation direction**—
- 5 (a) for division 6.6.3 (Segregation)—see section 203; but
- 6 (b) for subdivision 6.6.3.4 (Review of certain segregation
7 directions)—see section 215.
- 8 **sending State**—
- 9 (a) for part 5.2 (Interstate transfers)—see section 113; and
- 10 (b) for chapter 17 (Care and protection—interstate transfer of
11 orders and proceedings)—see section 636.
- 12 **sensitive information**—see section 844.
- 13 **short-term parental responsibility provision**, in a care and
14 protection order, for the care and protection chapters—see
15 section 475.
- 16 **sibling**, of a child or young person, includes a stepbrother or
17 stepsister of the child or young person and a half-brother or
18 half-sister of the child or young person.
- 19 **significant harm**, for the care and protection chapters—see
20 section 340.
- 21 **significant person**, for a child or young person—see section 14.
- 22 **specific issues provision**—see section 491.
- 23 **specific parental authority**—see section 514.
- 24 **stability proposal**, for a child or young person—see section 455.
- 25 **State**—
- 26 (a) for chapter 17 (Care and protection—interstate transfer of
27 orders and proceedings)—see section 636; and

(b) for chapter 25 (Information secrecy and sharing) see section 841 (2).

State Childrens Court, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 636.

strip search—

(a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 245; and

(b) for part 16.3 (Children and young people in therapeutic protection)—see section 588.

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, to provide a service—see section 61.

supervision provision, for the care and protection chapters—see section 488.

support person, of an accused detainee—

(a) for chapter 8 (Criminal matters—discipline at detention places)—see section 285; and

(b) for chapter 9 (Criminal matters—conduct of disciplinary reviews)—see section 285.

temporary parental responsibility provision, in the care and protection chapters—see section 372.

test sample, for part 6.7 (Alcohol and drug testing)—see section 234.

therapeutic protection history—see section 536.

therapeutic protection order—see section 531.

- 1 **therapeutic protection person**, for chapter 16 (Care and
2 protection—therapeutic protection of children and young people)—
3 see section 529.
- 4 **therapeutic protection place**—see section 534.
- 5 **therapeutic protection plan**—see section 535.
- 6 **therapeutic protection standards**—see section 886 (2) (d).
- 7 **Torres Strait Islander** means a person who—
- 8 (a) is a descendant of the indigenous inhabitants of the Torres
9 Strait Islands; and
- 10 (b) regards himself or herself as a Torres Strait Islander or, if the
11 person is a child or young person, is regarded as a Torres Strait
12 Islander by a parent or relative.
- 13 **transfer agreement**, for part 5.2 (Interstate transfers)—see
14 section 114.
- 15 **transfer arrangement**, means a transfer arrangement under
16 section 115 (Transfer arrangements—general) or, if the transfer
17 arrangement has been amended by another transfer arrangement
18 under that section, the transfer arrangement as amended.
- 19 **transfer escort**, for part 5.2 (Interstate transfers)—see section 113.
- 20 **transfer order**—for part 5.2 (Interstate transfers)—see section 119.
- 21 **transition plan**, for chapter 16 (Care and protection—therapeutic
22 protection of children and young people)—see section 537.
- 23 **treating doctor**, for the criminal matters chapters—see section 97.
- 24 **visiting conditions**, for chapter 6 (Criminal matters—detention
25 places)—see section 136.
- 26 **visitor**, for chapter 6 (Criminal matters—detention places)—see
27 section 136.
- 28 **voluntary care agreement**—see section 393.

1 ***voluntary report***—see section 353.

2 ***welfare body***, for chapter 17 (Care and protection—interstate
3 transfer of orders and proceedings)—see section 636.

4 ***work experience***, for chapter 21 (Employment of children and
5 young people)—see section 779.

6 ***work experience standards***—see section 886 (2) (g).

7 ***young detainee***—see section 95.

8 ***young offender*** means—

9 (a) a person who—

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

12 (ii) was under 18 years old when the offence was committed;
13 but

14 (b) for part 5.2 (Interstate transfers)—see section 113.

15 ***young person***—see section 12.

16 ***young remandee***, for chapter 6 (Criminal matters—detention
17 places)—see section 136.

18 ***youth detention officer***, for the criminal matters chapters—see
19 section 96.

20 ***youth detention policy***, for chapter 6 (Criminal matters—detention
21 places)—see section 136.

22 ***youth justice principles***—see section 94.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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