

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Children and Young People Bill 2007

(in 2 volumes)

Volume 1 contains chapters 1 to 13

Volume 2 contains chapters 14 to 30 and dictionary

Each volume has its own table of contents

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Children and Young People Bill 2007

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(Prepared by Parliamentary Counsel's Office)

Children and Young People Bill 2007

A Bill for

An Act about the welfare of children and young people

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 2006*.

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 the commencement of a detention place chapter.

- (3) In this section:

detention place chapter—each of the following is a ***detention place chapter***:

- (a) Chapter 10 (Criminal matters—detention places);
- (b) Chapter 11 (Criminal matters—search and seizure at detention places);
- (c) Chapter 12 (Criminal matters—discipline at detention places);
- (d) Chapter 13 (Conduct of disciplinary inquiries).

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 impairment*—see the Criminal Code, s 27.' means that the term 'mental impairment' is defined in that section 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

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—
 - (i) section 1601 (Voluntary reporting of abuse and neglect);
or
 - (ii) section 1602 (Offence—mandatory reporting of abuse and neglect) arising from something happening in the ACT; or
 - (iii) section 1607 (Prenatal reporting—anticipated abuse and neglect).

Part 1.2 **Objects, principles and considerations**

7 **Main objects of Act**

The objects of this Act include—

- (a) providing for, and promoting, the wellbeing, care and protection of children and young people in a way that recognises their right to grow in a safe and stable environment and that takes into account the responsibilities of parents, families, the community and the whole of government for them; and
- (b) ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide for their wellbeing, care and protection; and
- (c) preventing abuse and neglect of children and young people by providing whole of government assistance to children and young people, their parents and families, the community, and others who have responsibility for them; and
- (d) ensuring that indigenous people take part in—
 - (i) providing for, and promoting, the wellbeing, care and protection of indigenous children and young people; and
 - (ii) preventing the abuse and neglect of indigenous children and young people; and
 - (iii) rehabilitating and reintegrating indigenous young offenders; and

-
- (e) ensuring that services provided by, or for, government for the wellbeing, care and protection of children and young people—
 - (i) are centred on the needs of children and young people; and
 - (ii) take into account the views and wishes of children and young people; and
 - (iii) support the health, education, developmental needs, spirituality, self-respect, self-reliance and dignity of children and young people; and
 - (iv) respect the individual race, ethnicity, religion, disability, sexuality and culture of children and young people; and
 - (f) recognising that the support of young offenders, and the provision of positive opportunities to allow them to become rehabilitated and reintegrated community members, is the responsibility of the child or young person, their parents and families, the community and the government in partnership; and
 - (g) providing an effective system for licensing, and imposing standards on, childcare services; and
 - (h) preventing exploitation of children and young people in employment.

8 Principles applying to Act

The principles underlying these objects are that, except when it is, or would be, contrary to the best interests of a child or young person—

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

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-
- (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption; and
 - (c) a decision-maker making a decision about a child or young person must consider the child's or young person's age, maturity, sex and background (including, if the child or young person is indigenous, the need to maintain a connection with the lifestyle, culture and traditions of the child's or young person's indigenous community) and any other characteristics the decision-maker considers relevant; and
 - (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing; and
 - (e) a court should make an order under this Act for a child or young person only if the court considers that making the order would be better for the child or young person than making no order at all.

9 Indigenous children and young people principle

In making a decision or taking action under this Act in relation to an indigenous child or young person, the decision-maker or person taking the action must take into account the following:

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

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10 Best interests of children and young people paramount consideration

- (1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.
- (2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.
- (3) This section does not apply to a decision under a criminal matters chapter.

Note 1 For a criminal matters chapter, a decision-maker must, in making a decision in relation to a child or young person—

- (a) consider the best interests of the child or young person; and
- (b) apply the young offender principles (see s 401 and s 402).

Note 2 For the care and protection chapters, there are further provisions about how a decision-maker decides what is in the best interest of a child or young person (see s 1513).

Part 1.3 Important concepts

Division 1.3.1 Definitions

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

In this Act:

child means a person who is younger than 12 years old.

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

In this Act:

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

13 **Who is a *family member* of a person?**

In this Act:

family member, of a person, means the person's—

- (a) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
- (b) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
- (c) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
- (d) uncle, aunt, uncle-in-law or aunt-in-law; or
- (e) nephew, niece or cousin.

14 Who is a *relative* of a child or young person?

In this Act:

relative—each of the following is a *relative* of a child or young person:

- (a) a family member of the child or young person;
- (b) a person who is or has been a domestic partner of a parent of the child or young person;

Note Domestic partner—see the Legislation Act, s 169.

- (c) a person regarded by the child or young person as a relative;
- (d) for an indigenous child or young person—a person who has responsibility for the child or young person in accordance with the traditions and customs of the child’s or young person’s indigenous community.

Division 1.3.2 Parental responsibility

15 What is *parental responsibility*?

In this Act:

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

- (a) responsibility for day-to-day matters for the child or young person;
- (b) responsibility for long-term matters for the child or young person;

-
- (c) responsibility for health care treatment for the child or young person.

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

Note 2 Responsibility for day-to-day matters is dealt with in s 19.
Responsibility for long-term matters is dealt with in s 20.
Responsibility for health care treatment is dealt with in s 21.

16 Parents have parental responsibility

- (1) Each parent of a child or young person has parental responsibility for the child or young person.
- (2) This section is subject to the following sections:
- (a) section 17 (Aspects of parental responsibility may be transferred);
 - (b) section 18 (Aspects of parental responsibility may be shared).

17 Aspects of parental responsibility may be transferred

- (1) An aspect of parental responsibility may be transferred from someone to someone else under—
- (a) a family group conference agreement (see Chapter 3); or
 - (b) an appraisal order including a temporary custody provision (see s 1620); or
 - (c) a voluntary care agreement (see pt 16.3); or
 - (d) emergency medical treatment (see pt 17.1); or
 - (e) emergency action (see pt 17.2); or
 - (f) a care and protection order including a parental responsibility provision (see pt 18.6); or

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

Example of court order under another law

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

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).

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

Note If the chief executive has responsibility for day-to-day matters for a child or young person, the chief executive must place the child or young person with an out-of-home carer (see s 2013).

- (2) If an aspect of parental responsibility is transferred from someone to someone else—
- (a) only the aspect of parental responsibility expressly stated to be transferred is transferred; and
- (b) no-one else's parental responsibility, or aspect of parental responsibility, for the child or young person is diminished except to the extent expressly stated or necessary to give effect to the transfer.

18 Aspects of parental responsibility may be shared

- (1) An aspect of parental responsibility may be shared between 2 or more people under—
- (a) a family group conference agreement (see Chapter 3); or
- (b) a voluntary care agreement (see pt 16.3); or
- (c) a care and protection order including a parental responsibility provision (see pt 18.6); or
- (d) a court order (under this Act or another law in force in the Territory); or

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

Note If the chief executive has responsibility for day-to-day matters for a child or young person, the chief executive must place the child or young person with an out-of-home carer (see s 2013).

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

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

(a) section 1959 (Short-term parental responsibility provision—sharing responsibility);

Note If the Childrens Court includes a short-term parental responsibility provision in a care and protection order for a child or young person and the provision directs that an aspect of parental responsibility for the child or young person is shared between 2 or more people, the court may also order that 1 of the people must, if practicable, consult another of the people before exercising the responsibility (see s 1959 (2)).

(b) section 1964 (Long-term parental responsibility provision—sharing responsibility);

(c) section 1969 (Enduring parental responsibility provision—sharing responsibility);

Note If the Childrens Court includes an enduring parental responsibility provision in a care and protection order for a child or young person and the provision directs that an aspect of parental responsibility for the child or young person is shared between 2 or more people, if 1 of the people has responsibility for the child or young person under an enduring parental responsibility provision in a care and protection order, no-one else may discharge their responsibility in a way that would be incompatible with the person's discharge of the responsibility (see s 1969 (2)).

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- (d) section 2003 (Chief executive sharing responsibility for health care treatment);

Note If the chief executive shares responsibility for health care treatment for a child or young person, no-one may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 2003 (2)).

- (e) section 2005 (Chief executive sharing responsibility for long-term matters);

Note If the chief executive shares responsibility for long-term matters for a child or young person, the chief executive must consult each other person who has responsibility for long-term matters for the child or young person in making a decision about a long-term matter for the child or young person. If another person disagrees with the chief executive's proposed decision, the chief executive must not make the decision and may apply to the Childrens Court for a care and protection order including a specific issues provision about the matter (see s 2005 (2)).

- (f) section 2008 (Chief executive sharing responsibility for day to day matters).

Note If the chief executive shares responsibility for day-to-day matters for a child or young person, no-one may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 2008 (2)).

19 Responsibility for day-to-day matters for children and young people

- (1) A person who has responsibility for day-to-day matters for a child or young person has responsibility for the day-to-day care, welfare and development of the child or young person, including responsibility for making decisions about the following matters for the child or young person:
- (a) where and with whom the child or young person is to live;

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- (b) care of the child or young person, including, for example, personal appearance and grooming;

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).

- (c) temporary care of the child or young person by someone else (whether in the ACT or elsewhere);

- (d) assessment of the child's or young person's physical or mental wellbeing (including admission to hospital);

Note However, a person who has responsibility for health care treatment for a child or young person has responsibility for deciding whether the child or young person may undergo health care treatment (see s 21).

- (e) the people with whom the child or young person may, or must not, have contact;

- (f) day-to-day matters about education, training and employment.

- (2) A person who has responsibility for day-to-day matters for a child or young person also has responsibility for health care treatment for the child or young person.

Note Responsibility for health care treatment is dealt with in s 21.

- (3) If the person makes arrangements under subsection (1) (d), the person is entitled to any report of the assessment.

- (4) If the person makes a decision about something under subsection (1) (d) or (e), the person is also responsible for arrangements to give effect to the decision.

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

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

Note 1 The Childrens Court may make a care and protection order for a child or young person that includes a parental responsibility provision giving responsibility for day-to-day matters for the child or young person to someone, or removing the responsibility from someone, or stating how someone may exercise the responsibility (see pt 18.6).

Note 2 The Childrens Court may make a care and protection order for a child or young person that includes a parental responsibility provision directing that a stated person has, or does not have, responsibility for health care treatment for the child or young person (see pt 18.6).

Note 3 The Childrens Court may make a care and protection order for a child or young person that includes a contact provision about who may, or must not, have contact with the child or young person (see pt 18.7).

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

Note A care plan for a child or young person is a written plan of the chief executive's proposals for the care and protection of the child or young person (see s 1935).

20 Responsibility for long-term matters for children and young people

- (1) A person who has responsibility for long-term matters for a child or young person has responsibility for the long-term care, welfare and development of the child or young person, including responsibility for making decisions about the following matters for the child or young person:
- (a) administration, management and control of the child's or young person's property;
 - (b) religion and observance of racial, ethnic, religious or cultural traditions;
 - (c) issuing (and opposing the issuing) of a passport for the child or young person;
 - (d) long-term matters about education, training and employment;
 - (e) any aspect of parental responsibility that does not belong to someone else.
- (2) This section does not limit the matters for which the person has responsibility to make decisions for the child or young person, but is subject to—
- (a) a court order (under this Act or another law); and

Note The Childrens Court may make a care and protection order for a child or young person that includes a parental responsibility provision giving responsibility for long-term matters for the child or young person to someone, or removing the responsibility from someone, or stating how someone may exercise the responsibility (see pt 18.6).

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

Note A care plan for a child or young person is a written plan of the chief executive's proposals for the care and protection of the child or young person (see s 1935).

21 Responsibility for health care treatment for children and young people

- (1) A person who has responsibility for health care treatment for a child or young person has responsibility for deciding whether the child or young person may undergo health care treatment.

Note 1 **health care treatment**—see the dictionary.

Note 2 A person who has responsibility for day-to-day matters for a child or young person has responsibility for—

- making decisions about assessing physical or mental wellbeing (including admission to hospital) for the child or young person; and
- health care treatment for a child or young person (see s 19).

- (2) This section is subject to a court order (under this Act or another law).

Note 1 The Childrens Court may make a care and protection order for a child or young person that includes a parental responsibility provision giving responsibility for day-to-day matters for the child or young person to someone, or removing the responsibility from someone, or stating how someone may exercise the responsibility (see pt 18.6).

Note 2 The Childrens Court may make a care and protection order for a child or young person that includes a parental responsibility provision directing that a stated person has, or does not have, responsibility for health care treatment for the child or young person (see pt 18.6).

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

22 Parents who cannot be found

- (1) This section applies if a provision of this Act requires a person to act in relation to a parent of a child or young person.
- (2) The person is not required to act in relation to the parent if the person cannot, after reasonable inquiry, find the parent.

23 Powers of people without parental responsibility

A person who does not have parental responsibility for a child or young person, but who provides care (whether regular and substantial care or otherwise) for the child or young person, may do anything that is reasonable in the circumstances to safeguard or promote the child's or young person's care, welfare and development.

Note A person who has parental responsibility for a child or young person would ordinarily have this power in relation to the child or young person (see s 15).

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 10).

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 10).

Part 2.1 Chief executive

Note to pt 2.1

For provisions applying when the chief executive has an aspect of parental responsibility for a child or young person (see s 2002).

100 Chief executive's functions

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 and members of the community about the operation of this Act;

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- (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;
 - (e) providing, or assisting in providing, information to people who report suspected abuse or neglect of children and young people and encouraging those people to continue their involvement in matters arising from their report;
 - (f) exercising aspects of parental responsibility for children and young people;
 - (g) providing, or assisting in providing, information, services or assistance to children and young people who have left the chief executive's care;
 - (h) providing, or assisting in providing, services for children or young people who offend against the criminal law, including by ensuring the provision of the care, support, rehabilitation and guidance necessary for them to become rehabilitated and reintegrated community members;
 - (i) working with other government agencies and community organisations, to promote the care and protection of children and young people, including young offenders.

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

101 Chief executive's duties

The chief executive must—

- (a) have regard to the objects, and apply the principles, of this Act in exercising a function under this Act; and
- (b) set up mechanisms for coordinating services for the care and protection of children and young people.

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102 Chief executive may ask for assistance, etc

- (1) The chief executive may ask an information sharing entity to give the chief executive advice or guidance relevant to the safety, welfare or wellbeing of children and young people.

Note The chief executive may also ask an information sharing entity to give the chief executive safety and welfare information about a child or young person (see s 3119).

- (2) The chief executive may ask a territory entity to provide assistance, facilities or services relevant to the physical or emotional welfare of children and young people.
- (3) A territory entity must promptly comply with the request.
- (4) In this section:

information sharing entity, for a child or young person, means any of the following:

- (a) a parent of the child or young person;
- (b) someone else who has an aspect of 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 (Parental responsibility).

- (c) an out-of-home carer for the child or young person;

Note Out-of-home carers are dealt with in Pt 19.4 (Chief executive has responsibility for day-to-day matters).

- (d) a foster care service;

Note *Foster care service* is defined in s 2017.

- (e) a Minister;
- (f) a territory entity;
- (g) a health facility;

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- (h) a police officer or a member of a police service or force of a State;
 - (i) an entity established under a law of a State or the Commonwealth;
 - (j) the holder of a position established under a law of a State or the Commonwealth;
 - (k) an entity prescribed by regulation for this section.

territory entity means any of the following:

- (a) an administrative unit;
- (b) a territory authority;
- (c) a statutory office-holder;
- (d) a territory instrumentality;
- (e) a public employee;
- (f) a police officer.

103 Chief executive must give identity cards

- (1) This section applies if the chief executive delegates a power under this Act to someone else (an ***authorised person***).

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

- (2) The chief executive must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (3) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and

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- (c) if the person is only authorised to exercise functions under particular provisions of this Act—the provisions; and
 - (d) anything else prescribed by regulation.
- (4) A person commits an offence if the person—
- (a) stops being an authorised person; and
 - (b) does not return the person’s identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (5) An offence against this section is a strict liability offence.
- (6) Subsection (3) applies only in relation to a card given by the chief executive after the commencement of this section.
- (7) Subsection (6) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (8) Subsections (6) and (7) and this subsection expire on the day they commence.

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Part 2.2 Childrens services council

104 Establishment of Childrens Services Council

The Childrens Services Council is established.

105 Functions of Childrens Services Council

The Childrens Services Council has the following functions:

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

106 Childrens Services Council members

The Childrens Services Council has at least 3, but not more than 10, members.

107 Appointment of Childrens Services Council members

- (1) The Minister may appoint the members of the Childrens Services Council.

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 s 207).

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

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- (2) The only criteria for deciding whether to appoint a person as a member are that the person—
 - (a) has expertise in relation to services for children or young people; or
 - (b) represents the interests of kinship carers and foster carers.
 - (3) The Minister must ensure that there is always—
 - (a) at least 1 member who represents the interests of kinship carers and foster carers; and
 - (b) at least 1 member who represents the interests of indigenous people.
 - (4) The appointment of a member is for the term stated in the appointment.
 - (5) The conditions of appointment of a member are the conditions stated in the appointment.

108 Appointment of chair and deputy

- (1) The Minister must appoint a chair for the Childrens Services Council.
- (2) The Minister may appoint a deputy chair for the Childrens Services Council.

109 Ending member appointments

The Minister may end the appointment of a member of the Childrens Services Council—

- (a) for misbehaviour; or
- (b) if the member is convicted, or found guilty, in Australia of an indictable offence; or

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- (c) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be an indictable offence; or
 - (d) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

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

110 Presiding member at meetings

- (1) The chair presides at all meetings at which the chair is present.
- (2) If the chair is absent, the member chosen by the members present presides.

111 Quorum at meetings

Business may be carried on at a meeting of the Childrens Services Council only if at least $\frac{1}{2}$ the number of members appointed are present.

112 Voting at meetings

- (1) At a meeting of the Childrens Services Council, each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

113 Advice and assistance by chief executive and public advocate

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

Part 2.3 Official visitors

114 Definitions—pt 2.3

In this part:

entitled child or young person means a child or young person who is—

- (a) detained in a detention place; or
- (b) confined at a therapeutic protection place; or
- (c) accommodated in a place of care.

operating entity, for a detention place, 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.

115 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.

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

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

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

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

116 Official visitors—functions

- (1) An official visitor's functions are—
- (a) to inspect detention places, therapeutic protection places and places of care; and
 - (b) to report to—
 - (i) the Minister under section 117; and
 - (ii) the chief executive under section 118; and
 - (c) to receive and consider complaints from entitled children and young people; and
 - (d) to exercise any other function given to an official visitor under this Act or another territory law.
- (2) For subsection (1), an official visitor—
- (a) must, if practicable, visit each detention place at least once each fortnight; and
 - (b) must visit a therapeutic protection place at least once each week—
 - (i) if practicable; and

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- (ii) if a child or young person is confined at the therapeutic protection place; and
 - (c) must, if practicable, visit a place of care at least once each fortnight; and
 - (d) may, at any reasonable time, enter a detention place, therapeutic protection place or place of care.

Example of time that would not be reasonable

a time that would hinder a search, or coincide with an escape attempt, 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).

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

117 Official visitors—reporting to Minister

- (1) This section applies if an official visitor believes, on reasonable grounds, that either of the following is not in accordance with this Act:
 - (a) the treatment of entitled children or young people at a detention place or therapeutic protection place;
 - (b) the living conditions, education or activities of entitled children or young people at a detention place or therapeutic protection place.
- (2) The official visitor must report the belief to the Minister in writing.

118 Official visitors—reporting to chief executive

- (1) This section applies if an official visitor believes, on reasonable grounds, that either of the following is not in accordance with this Act:
 - (a) the treatment of entitled children or young people at a place of care;
 - (b) the living conditions, education or activities of entitled children or young people at a place of care.
- (2) The official visitor must report the belief to the chief executive in writing.

119 Ending appointment of official visitors

- (1) The Minister may end a person's appointment as an official visitor—
 - (a) for misbehaviour; or
 - (b) if—
 - (i) the person does not inspect a detention place, therapeutic protection place or place of care as required under a schedule under subsection (4); and
 - (ii) continues to fail to inspect the place as required for 4 consecutive weeks; or
 - (c) if the person is not a suitable entity.
- (2) The Minister must end the person's appointment as official visitor—
 - (a) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions; or

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- (b) if the person fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the person's functions.
 - (3) A person's appointment as official visitor ends, by force of this section, if the person becomes a public employee.

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

- (4) The Minister must prepare a schedule that sets out—
 - (a) each detention place, therapeutic protection place and place of care that an official visitor must inspect; and
 - (b) how often the official visitor must inspect each place.

120 Complaints to official visitors

- (1) An entitled child or young person, or anyone else, may complain to an official visitor about—
 - (a) the detention, confinement or accommodation of an entitled child or young person; or
 - (b) how a detention place, therapeutic protection place or place of care is conducted.
- (2) The entitled child or young person may make the complaint to the official visitor personally or through someone else.
- (3) If the entitled child or young person complains to the operating entity under subsection (1), the operating entity may refer the complaint to an official visitor.

Note A person who gives information to the official visitor under this section does not breach professional ethics etc and is protected from civil liability (see s 3132).

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- (4) The entitled child or young person may ask the official visitor to hear the complaint with no-one else present and, if so, the official visitor must comply.

121 Requests to see official visitor

- (1) The operating entity must ensure that an official visitor is told as soon as practicable about an entitled child or young person who has told the operating entity that the child or young person wants to see an official visitor.
- (2) An entitled child or young person need not explain to the operating entity why the child or young person wants to see an official visitor.

122 Notice of complaints

- (1) This section applies if—
- (a) an official visitor receives a complaint about a detention place, therapeutic protection place or place of care under section 120 (1); and
 - (b) the operating entity for the place is not the chief executive.
- (2) The official visitor must tell the chief executive, in writing, that a complaint has been made and the name of the place to which it relates.

123 Official visitors must try to resolve complaints

- (1) After receiving a complaint in relation to a detention place, therapeutic protection place or place of care, an official visitor must take all reasonable steps to resolve the complaint with the operating entity for the place.
- (2) To resolve a complaint, the official visitor may—
- (a) make inquiries about any matter raised in the complaint; and

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- (b) exercise any other function given to an official visitor under this Act.
 - (3) This section is subject to the following sections:
 - (a) section 125 (Complaints may be closed—referral to other entity);
 - (b) section 126 (Complaints may be closed—other entity investigating);
 - (c) section 128 (Complaints closed—frivolous, etc);
 - (d) section 129 (Complaints closed—resolved);
 - (e) section 130 (Complaints closed—cannot be resolved).

124 Withdrawal of complaints

- (1) At any time, a complainant may, by written notice given to an official visitor, withdraw a complaint.
- (2) If a complaint is withdrawn, the official visitor to whom the complaint was made must close the complaint.

125 Complaints may be closed—referral to other entity

- (1) This section applies if—
 - (a) an official visitor receives a complaint; and
 - (b) after considering the complaint, the official visitor is satisfied that the complaint would be better dealt with by an investigative entity with power to investigate the complaint.
- (2) The official visitor may refer the complaint to the investigative entity.

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- (3) If the official visitor refers the complaint to an investigative entity, the official visitor —
- (a) may give the entity any information that the official visitor has in relation to the complaint; and
 - (b) must tell the complainant about the referral; and
 - (c) may close the complaint.
- (4) In this section:
- investigative entity*—each of the following is an investigative entity:
- (a) the Australian Federal Police;
 - (b) the human rights commission;
 - (c) the public advocate;
 - (d) the ombudsman.

126 Complaints may be closed—other entity investigating

- (1) This section applies if—
- (a) the official visitor receives a complaint; and
 - (b) after considering the complaint, the official visitor is satisfied that the substance of the complaint has been, is being or will be investigated by the public advocate or another appropriate entity.
- (2) The official visitor—
- (a) may give the public advocate or other entity any information that the official visitor has in relation to the complaint; and
 - (b) may close the complaint.

127 Information about complaints being investigated elsewhere

- (1) This section applies if—
 - (a) an official visitor has referred a complaint under section 125; or
 - (b) has given the public advocate or another entity information under section 126 in relation to a complaint.
- (2) The official visitor may ask the entity to whom the complaint has been referred or the public advocate or other entity investigating, or to investigate, the complaint about the investigation of the complaint.
- (3) The entity or public advocate must tell the official visitor about the investigation of the complaint.
- (4) The official visitor must tell the complainant anything the official visitor is told about the investigation of the complaint.

128 Complaints closed—frivolous, etc

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

129 Complaints closed—resolved

- (1) This section applies if the official visitor—
 - (a) receives a complaint about a detention place, therapeutic protection place or place of care; and

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- (b) is satisfied that the complaint is resolved—
 - (i) with the operating entity for the place; and
 - (ii) to the satisfaction of the complainant.
 - (2) The official visitor must close the complaint.

130 Complaints closed—cannot be resolved

- (1) This section applies if—
 - (a) the official visitor receives a complaint about a detention place, therapeutic protection place or place of care; and
 - (b) after taking all reasonable steps to resolve the complaint with the operating entity for the place, the official visitor is satisfied that the complaint cannot be resolved with the operating entity.
- (2) The official visitor must—
 - (a) refer the complaint to the human rights commission for conciliation; and
 - (b) close the complaint.

131 Complainant must be told if complaint closed

- (1) This section applies if an official visitor closes a complaint, other than because the complaint has been withdrawn.

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- (2) The official visitor must tell the complainant—
- (a) that the official visitor has closed the complaint; and
 - (b) the reasons why the official visitor has closed the complaint.

Example of reason for closing complaint

the complaint has been referred to the human rights commission for conciliation

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).

132 Reopening complaints

- (1) This section applies if—
- (a) a complaint about a detention place, therapeutic protection place or place of care is resolved with the operating entity for the place; and
 - (b) as part of resolving the complaint, the operating entity agrees to do, or not do, something; and
 - (c) an official visitor is satisfied that the operating entity has not done what was agreed.
- (2) The official visitor may reopen the complaint.
- (3) If the official visitor reopens a complaint, the official visitor must try to resolve the complaint under section 123.

133 Monthly reports by official visitors

- (1) As soon as practicable after the end of each month, an official visitor must give the Minister, the chief executive and the public advocate a written report for the month summarising—
- (a) the number and kinds of complaints received by the official visitor; and

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

134 Handover of records by official visitors

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

EXPOSURE DRAFT

Part 2.4 Suitable entities for purposes under the Act

135 Definitions—pt 2.4

(1) In this Act:

suitability information—see section 140.

suitable entity—see section 136.

(2) In this part:

requirement notice—see section 143.

suitability information notice—see section 141.

suitable entities register—see section 147.

136 What is a *suitable entity*?

In this Act:

suitable entity, for a stated purpose, means an entity approved by the chief executive under section 138 (Chief executive may approve suitable entity for purpose) as a suitable entity for the purpose.

Examples of suitable entities for purposes stated in the Act

- 1 family group conference facilitators—under s 205, the chief executive may appoint a person as a family group conference facilitator only if satisfied that the person is a suitable entity to be a family group conference facilitator
- 2 parental responsibility provisions—under s 1955, the Children’s Court may include a parental responsibility provision in a care and protection order for a child or young person that transfers to someone, or shares with someone, an aspect of parental responsibility for the child or young person only if the person is a suitable entity to have the aspect of parental responsibility for the child or young person

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- 3 kinship carers—under s 2018, the chief executive may approve a relative or significant person of the child or young person to exercise responsibility for day-to-day matters for the child or young person for the chief executive only if satisfied that the relative or significant person is a suitable entity to have responsibility for day-to-day matters for the child or young person
 - 4 foster carers for a stated child or young person—under s 2019, the chief executive may approve a person to exercise responsibility for day-to-day matters for the child or young person for the chief executive only if satisfied that the person is a suitable entity to have responsibility for day-to-day matters for the child or young person and, if the person is connected to a foster care service, the foster care service is a suitable entity to facilitate foster care services
 - 5 foster carers for any child or young person—under s 2020 the chief executive may approve a person to exercise responsibility for day-to-day matters for any child or young person for whom the chief executive has responsibility for day-to-day matters only if satisfied that the person is a suitable entity to have responsibility for day-to-day matters for any child or young person and, if the person is connected to a foster care service, the foster care service is a suitable entity to facilitate foster care services
 - 6 residential care services for a stated child or young person—under s 2021, the chief executive may approve an entity to exercise responsibility for day-to-day matters for the child or young person for the chief executive only if satisfied that the entity is a suitable entity to have responsibility for day-to-day matters for the child or young person
 - 7 residential care services for any child or young person—under s 2022, the chief executive may approve an entity to exercise responsibility for day-to-day matters for any child or young person for whom the chief executive has responsibility for day-to-day matters only if satisfied that the entity is a suitable entity to have responsibility for day-to-day matters for any child or young person
 - 8 childcare service licences—under s 2619, 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 the proposed proprietor is a suitable entity to provide the childcare service and each proposed controlling person for the childcare service is a suitable entity to provide the childcare service

EXPOSURE DRAFT

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- 9 research projects—under s 2804, the chief executive may approve a research project that involves a child or young person taking part in the project only if satisfied that the researcher is a suitable entity to have contact with children or young people in the way proposed in the project and any other person who is to have contact with children or young people for the project is a suitable entity to have contact with children or young people in the way proposed in the project
- 10 research projects—under s 2806 the chief executive may approve a research project that involves the chief executive giving the researcher protected information, that is not sensitive information, about a child or young person for the research project only if satisfied that the researcher is a suitable entity to have access to the information and any other person who is to have access to the information for the project is a suitable entity to have access to the information

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).

137 Entity may apply to be suitable entity for purpose

An entity may apply to the chief executive for approval as a suitable entity for a stated purpose.

Note If a form is approved under s 3210 for this provision, the form must be used.

138 Chief executive may approve suitable entity for purpose

The chief executive may, in writing, approve an entity as a suitable entity for a stated purpose if satisfied that the entity is suitable for the purpose.

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

Note 2 The chief executive must establish a suitable entities register (see s 147).

EXPOSURE DRAFT

139 Chief executive must consider suitability information, etc

In deciding whether an entity is a suitable entity for a stated purpose, the chief executive must consider each of the following:

- (a) suitability information about the entity;

Note *Suitability information* is defined in s 140.

- (b) if the chief executive requires the entity to provide a reference or report under section 143 (2) (a)—the reference or report;
- (c) if the chief executive requires the entity to undergo a test or medical examination under section 143 (2) (b)—the result of the test or medical examination.

140 What is *suitability information*?

In this Act:

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

- (a) any conviction of, or finding of guilt against, the entity for an offence—
- (i) relating to the provision of services for children or young people; or
 - (ii) against a child or young person; or
 - (iii) involving a child or young person; or
 - (iv) involving violence; or
 - (v) involving sex; or
 - (vi) involving dishonesty or fraud; or
 - (vii) involving possession of, or trafficking in, a drug of dependence or controlled drug; or

(viii) against an animal;

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

Example

the entity is a licensed proprietor of a childcare service and the licence is suspended for safety reasons under s 2636 or under a law of another jurisdiction that substantially corresponds to s 2636

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).

- (c) any refusal, whether in the ACT or elsewhere, of an application for a licence or other authority (however described) in relation to providing services for children or young people;
- (d) the soundness of the entity's financial reputation and the stability of the entity's financial background;
- (e) the entity's reputation for honesty and integrity;
- (f) whether the entity has proven experience or demonstrated capacity in providing services for children and young people;
- (g) any other consideration relevant to the entity's ability to provide high quality services for children or young people.

141 Chief executive may require suitability information

- (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 *suitability information notice*), require the entity to give the chief executive stated suitability information about the entity not later than a stated reasonable time.

Note *Suitability information* is defined in s 140.

EXPOSURE DRAFT

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

142 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.

143 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 of 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).

144 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
 - (b) the entity does not do the thing required in accordance with the requirement notice.
- (2) The chief executive need not decide whether the entity is a suitable entity for a stated purpose.

145 Offence—ongoing duty to update suitability information

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

Note **Suitability information** is defined in s 140.
- (2) The entity commits an offence if—
 - (a) the entity's suitability information under section 140 (a), (b) or (c) changes; and

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- (b) the entity does not tell the chief executive about the change as soon as practicable, but no later than 7 days after the change happens.

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

- (3) The entity commits an offence if—

- (a) the entity becomes bankrupt or executes a personal insolvency agreement; and
- (b) the entity does not tell the chief executive about the bankruptcy or agreement as soon as practicable, but no later than 7 days after the bankruptcy happens or agreement is executed.

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

- (4) The entity commits an offence if—

- (a) any of the following makes an adverse finding against the entity:
- (i) a court or tribunal;
- (ii) an authority or person with power to require the production of documents or the answering of questions; and

Examples—subpar (ii)

- 1 commissioner for fair trading
- 2 human rights commission
- 3 discrimination commissioner

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).

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- (b) the entity does not tell the chief executive about the finding as soon as practicable, but no later than 7 days after the finding is made.

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

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

146 Chief executive may employ etc suitable entity

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

147 Suitable entities register

- (1) The chief executive must establish a register of suitable entities (the *suitable entities register*) for this Act.
- (2) The suitable entities register must include the following details for each suitable entity:
 - (a) the entity's name;
 - (b) the purpose for which the entity is approved;
 - (c) any other detail the chief executive considers appropriate;
 - (d) anything else prescribed by regulation for this section.

Chapter 3 Family group conferences

Part 3.1 Family group conferences— general

200 Family group conferences—definitions for Act

In this Act:

family group conference—see section 202.

family group conference agreement—see section 203.

family group conference facilitator means a family group conference facilitator appointed under section 205.

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 213.

relevant conference participant, for a family group conference about a child or young person, means a participant who has an aspect of 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.

201 Family group conferences—objects

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

- (a) encourage the child or young person, their family members and relatives, to take part in decisions affecting the child or young person; and
- (b) increase the support for the child or young person by their family members, relatives and other people who are significant in the child or young person's life; and
- (c) reduce the likelihood of the child or young person being in need of care and protection in the future.

202 What is a *family group conference*?

In this Act:

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

- (a) reach an agreement about a matter relating to the welfare of the child or young person; and
- (b) enter into a family group conference agreement detailing the agreed arrangements for the welfare of the child or young person; and
- (c) if a family group conference agreement is already in force for the child or young person—review the agreement.

203 What is a *family group conference agreement*?

(1) In this Act:

family group conference agreement means an agreement that—

- (a) arises from a family group conference about a child or young person; and
- (b) is between—
 - (i) the chief executive; and
 - (ii) a relevant conference participant; and
- (c) details the arrangements agreed to by the parties for the welfare of the child or young person; and
- (d) is in writing and signed by—
 - (i) the chief executive; and
 - (ii) the relevant conference participant; and
 - (iii) any other conference participant who agrees with the arrangements; and
- (e) may, but need not, include a requirement for the chief executive to arrange for a family group conference to review the family group conference agreement not later than a stated day.

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

- (a) transfer an aspect of parental responsibility for the child or young person from a person to the chief executive; or
- (b) share an aspect of parental responsibility for the child or young person with the chief executive; or

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- (c) have an effect equivalent to an enduring parental responsibility provision in a care and protection order for the child or young person.

Note 1 **Parental responsibility**, for a child or young person, is dealt with in div 1.3.2.

Note 2 Enduring parental responsibility provisions in care and protection orders are dealt with in div 18.6.4.

204 Offence—publish details of family group conferences

- (1) A person commits an offence if the person publishes all or part of—
- (a) a family group conference agreement; or
 - (b) a family group conference outcome report; or
 - (c) a record or report prepared for and presented to a family group conference.

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

- (3) This section does not apply if the publication is made under this Act.

Note Ch 29 contains further provisions about information secrecy and sharing.

Part 3.2 Family group conferences— facilitators

205 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 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.

206 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 210.

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

Examples of ways facilitator may facilitate family group conference

- 1 preparing for the family group conference by—
 - meeting with proposed participants; and
 - providing mediation between proposed participants; and
 - resolving conflict between proposed participants
- 2 consulting someone with knowledge of a particular culture

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- 3 asking someone to give information or a report to the conference without inviting the person to be a participant
 - 4 inviting someone to attend the conference as a participant, at any time
 - 5 allowing someone to take part in the conference by telephone or in another way
 - 6 deciding when and where the family group conference will take place

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

Note 2 A family group conference facilitator may give the chief executive protected information (including sensitive information) about a child or young person if the family group conference facilitator considers that the giving of the information is in the best interests of the child or young person (see s 3112).

207 Family group conference facilitators—register

The chief executive must establish a register of family group conference facilitators.

Part 3.3 Family group conferences— arrangement and conduct

208 Family group conferences—criteria

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 welfare 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, relatives or other people who are significant in the child or young person's life
- 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).

209 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

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- (b) asked to do so by—
 - (i) the child or young person; or
 - (ii) a person who—
 - (A) has an aspect of parental responsibility for the child or young person; and
 - (B) is a signatory to the agreement.
 - (3) However, the chief executive is not required to arrange for a family group conference under subsection (2) (b) if the chief executive—
 - (a) has already convened a conference to review the agreement because of a request under subsection (2) (b); and
 - (b) considers it inappropriate to do so.

210 Family group conferences—facilitator to organise

- (1) If the chief executive arranges a family group conference about a child or young person, the chief executive must assign a family group conference facilitator to the conference.
- (2) The family group conference facilitator must, as soon as practicable after being assigned to the family group conference—
 - (a) decide, under section 211 (b) to (e), who should be invited to the conference; and
 - (b) tell each person to be invited to the conference, in writing, when and where the conference will take place; and
 - (c) conduct the conference.

211 Family group conferences—who must be invited

A family group conference facilitator for a family group conference must invite the following people to the family group conference:

- (a) the chief executive;
- (b) if the family group conference facilitator is satisfied that the child or young person can understand and take part in the conference—the child or young person;
- (c) each parent of the child or young person, unless the family group conference facilitator considers that it would not be in the best interests of the child or young person for the parent to attend;
- (d) each other person (if any) who has an aspect of parental responsibility for the child or young person, unless the family group conference facilitator considers that it would not be in the best interests of the child or young person for the person to attend;

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

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

212 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 3211.

213 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 welfare of the child or young person.

Note **Relevant conference participant** means a participant who has an aspect of parental responsibility for the child or young person (see s 200).

- (2) The facilitator must—
- (a) propose that the parties enter a family group conference agreement detailing the agreed arrangements for the welfare of the child or young person; and
 - (b) give the relevant conference participant an opportunity to get legal advice about the meaning and effect of the proposed family group conference agreement; and
 - (c) if the facilitator is satisfied that the child or young person is able to understand the proposed family group conference agreement—
 - (i) give the child or young person an opportunity to get legal advice about the meaning and effect of the proposed family group conference agreement; and
 - (ii) find out and consider the child's or young person's views and wishes about the proposed family group conference agreement.

214 Family group conferences—young person does not agree

- (1) This section applies if a family group conference agreement proposed under section 213 (2) (a) is about a young person who is school-leaving age or older.

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

- (2) The parties may enter the proposed family group conference agreement only if the facilitator for the family group conference is satisfied that the young person either—
- (a) agrees to the proposed family group conference agreement; or
 - (b) does not have capacity to agree.

215 Family group conferences—before family group conference agreement

- (1) This section applies if the family group conference facilitator for a family group conference about a child or young person—
- (a) has, under section 213—
 - (i) proposed that the parties enter a family group conference agreement; and
 - (ii) given the relevant conference participant an opportunity to get legal advice; and
 - (iii) if required, found out and considered the child's or young person's views and wishes; and
 - (b) for a young person who is school-leaving age or older—is satisfied under section 214 that the young person either—
 - (i) agrees to the proposed family group conference agreement; or
 - (ii) does not have capacity to agree.

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- (2) The facilitator must encourage the parties to enter into the proposed family group conference agreement by putting the agreement in writing and seeking—
- (a) the signatures of the parties; and
 - (b) the signature of any other participant who agrees with the arrangements in the agreement.

216 Family group conferences—outcome report

- (1) After a family group conference, the family group conference facilitator must give the chief executive a written report about the outcome of the conference (the *family group conference outcome report*).
- (2) A family group conference outcome report must include the following:
- (a) details of when and where the conference took place;
 - (b) the name of—
 - (i) the family group conference facilitator; and
 - (ii) each person invited to the conference and whether they attended; and
 - (iii) the name of anyone else who was not a participant but who provided information or a report to the conference;
 - (c) if the conference resulted in a family group conference agreement—a copy of the family group conference agreement.

217 Family group conference agreements—copy to people invited

After receiving a family group conference agreement, the chief executive must give a copy of the agreement to each person invited to attend the family group conference.

218 Family group conference agreements—implementation

After receiving a family group conference agreement, the chief executive must implement the arrangements in the agreement in a way that complies with the family group conference agreement standards.

Note 1 The Minister may make family group conference agreement standards under s 3211.

Note 2 If a family group conference agreement transfers or shares an aspect of parental responsibility for the child or young person to, or with, someone else (who is not the chief executive) the Childrens Court may register the family group conference agreement and it is enforceable as if it were a court order (see pt 16.2).

Note 3 The parties to a family group conference agreement may agree that an aspect of parental responsibility for a child or young person be transferred to, or shared with, someone else (other than the chief executive (see s 203)). If so, the Childrens Court may be able to register the family group conference agreement. A registered family group conference agreement has effect as if it were a care and protection order and may be enforced accordingly. Registration of family group conference agreements is dealt with in pt 16.2 (Registration of family group conference agreements that transfer or share parental responsibility).

Chapter 4 The Childrens Court and other courts

Part 4.1 The Childrens Court

300 Childrens Court

- (1) The Magistrates Court is known as the Childrens Court when it is constituted by the Childrens Court Magistrate exercising the jurisdiction given under section 301.
- (2) The Magistrates Court is also known as the Childrens Court when it is constituted by a magistrate assigned under section 307 (Assignment of other magistrates for Childrens Court matters) who is exercising the jurisdiction given under section 301.
- (3) The Magistrates Court is also known as the Childrens Court when it is constituted by a magistrate who is acting under section 308 (2) (Completion of part-heard matters).
- (4) The Childrens Court must have a seal.

301 Jurisdiction of Childrens Court

- (1) The Childrens Court has jurisdiction to hear and decide—
 - (a) indictments against children and young people; and
 - (b) applications and other proceedings under this Act in relation to children and young people.
- (2) A proceeding transferred to the Childrens Court under chapter 21 (Care and protection—interstate transfer of orders and proceedings) is a proceeding under this Act in relation to children and young people.

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- (3) Subsection (1) does not prevent a magistrate other than the Childrens Court Magistrate from—
- (a) exercising a function or power given to a magistrate under a provision of this Act; or
 - (b) exercising a power given to a magistrate under a law of the Territory to admit a child or young person to bail under the *Bail Act 1992* or to remand a child or young person in custody.

302 Jurisdiction and age

- (1) In deciding whether the Childrens Court has jurisdiction to hear a proceeding in relation to a person, regard must be had to the person's age when the proceeding begins.
- (2) This section does not apply to a proceeding to which section 504 (Childrens Court jurisdiction and age—criminal matters) applies.

Note Section 504 applies to a criminal proceeding against a young offender.

303 Chief Magistrate to arrange business of Childrens Court

- (1) The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Childrens Court.
- (2) The Chief Magistrate may, subject to appropriate and practicable consultation with the magistrates, make arrangements about—
 - (a) the magistrate who is to be the Childrens Court Magistrate; and
 - (b) the assignment of a magistrate under section 306 (Acting Childrens Court Magistrate); and
 - (c) the assignment of a magistrate under section 307 (Assignment of other magistrates for Childrens Court matters).

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304 Childrens Court Magistrate to hear all matters

- (1) The Childrens Court Magistrate is responsible for dealing with all matters within the jurisdiction of the Childrens Court.
- (2) Subsection (1) is subject to—
 - (a) section 307 (Assignment of other magistrates for Childrens Court matters); and
 - (b) section 308 (Completion of part-heard matters).

Note A magistrate assigned to act as Childrens Court Magistrate is the Childrens Court Magistrate for this Act (see s 306 (2)).

Part 4.2 Childrens Court Magistrate

305 Childrens Court Magistrate

- (1) The Chief Magistrate must declare 1 magistrate to be the Childrens Court Magistrate for a stated term of up to 2 years.
- (2) The Chief Magistrate must revoke the declaration if asked, in writing, by the Childrens Court Magistrate.
- (3) The Chief Magistrate may declare himself or herself to be the Childrens Court Magistrate.
- (4) A declaration, or revocation, under this section is a notifiable instrument.

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

306 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.

307 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 section 10 that in making a decision under the 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.

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- (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
 - (b) is not subject to prohibition, mandamus or injunction in any court.
- (5) This section is in addition to, and does not limit, section 306 (Acting Childrens Court Magistrate).

308 Completion of part-heard matters

- (1) This section applies if—
- (a) a magistrate begins to deal with a Childrens Court matter under this chapter; and
 - (b) before the matter is finally decided, the magistrate ceases to—
 - (i) be the Childrens Court Magistrate; or
 - (ii) hold an assignment under section 306 (Acting Childrens Court Magistrate); or
 - (iii) hold an assignment under section 307 (Assignment of other magistrates for Childrens Court matters).
- (2) The magistrate may continue to deal with the matter until it is finally decided.

Note The Magistrates Court is known as the Childrens Court when it is constituted by a magistrate acting under s (2) (see s 300 (3)).

Part 4.3 Childrens Court proceedings

Division 4.3.1 Childrens Court proceedings— general

309 Childrens Court procedure

- (1) The *Magistrates Court Act 1930* (other than chapter 4 (Civil proceedings)) applies to the Childrens Court in relation to a proceeding under a criminal matters chapter.
- (2) The rules under the *Court Procedures Act 2004* applying to civil proceedings in the Magistrates Court apply to the Childrens Court in relation to any other proceeding under this Act.

310 Interaction of people in Childrens Court precincts

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

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

311 Childrens Court may make orders about service

The Childrens Court may make any of the following orders:

- (a) an order dispensing with service of a notice, order or other instrument under this Act;

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

312 Parents must attend Childrens Court proceedings

- (1) This section does not apply to a proceeding under chapter 14 (Care and protection—general).
- (2) A parent of a child or young person who is the subject of a proceeding in the Childrens Court must attend the court throughout the proceeding if—
 - (a) notice of the proceeding has been given to the parent; or
 - (b) the parent otherwise knows of the proceeding.
- (3) Notice of a proceeding given to a parent must state—
 - (a) when and where the hearing of the proceeding will begin; and
 - (b) that a warrant may be issued to bring the parent before the Childrens Court if the parent does not attend throughout the proceeding.
- (4) The Childrens Court may issue a warrant to bring a parent of a child or young person before the court if—
 - (a) notice of the proceeding has been given to a parent of the child or young person; but
 - (b) neither parent attends the court at the beginning of, or at any time during, the proceeding.

EXPOSURE DRAFT

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- (5) If the parent is brought before the Childrens Court on the warrant and the court is not satisfied that the parent has a reasonable excuse for not attending, the court may admit the parent to bail on an undertaking by the parent, with or without sureties, to attend the court throughout the remainder of the proceeding.
- (6) This section applies to a parent who lives inside or outside the ACT.

313 Childrens Court proceedings not open to public

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

- (a) an officer of the court;
- (b) a party to the proceeding, a lawyer representing the party, and an employee of the lawyer;
- (c) a parent of the child or young person who is the subject of the proceeding;
- (d) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person who is the subject of the proceeding;
- (e) anyone else the court admits as the child's or young person's representative;
- (f) the chief executive or an authorised person;
- (g) the public advocate or a person authorised by the public advocate for this section;
- (h) a person who has, or a representative of an entity that has, provided a report under chapter 14 (Care and protection—general);

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- (i) if the proceeding is a proceeding under a criminal matters chapter—a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person’s employer;

Note Identifying information etc about the child or young person, or a relative, must not be published (see s 326).

- (j) anyone else required or permitted to be present by the court or under this Act.

314 Childrens Court may excuse parties from attending

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

315 Related applications may be heard together

- (1) If 2 or more applications under this Act have been filed about a child or young person, the Childrens Court may hear and decide the applications together if it considers that it would be in the best interests of the child or young person.
- (2) If 2 or more applications under this Act are before the Childrens Court in relation to children or young people who are related or that raise related matters, the court may hear and decide the applications together if it considers that it would be in the best interest of each child or young person.

Part 4.4 Childrens Court and other courts

316 Participation of children and young people in proceedings

- (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.
- (2) 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.

Note If the proceeding involves a decision under ch 14 (Care and protection—general) for a child or young person, the court must endeavour to ensure that the child or young person, the parents of the child or young person, and any other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person, understand what the decision is going to be about, understand the decision-making process, know that they may take part in the decision-making process and have their views and wishes heard and are informed of, and understand, the decision (see s 1515).

317 Court must ensure children and young people etc understand proceedings

In a proceeding under this Act or another Territory law in any court having jurisdiction in the ACT to which a child or young person is a party, the court must endeavour to ensure that the child or young person and any other party present at the hearing of the proceeding—

- (a) understands the nature and purpose of the proceeding and of any order that the court proposes to make or has made; and

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- (b) if any relevant right of appeal exists—knows of the existence of a right of appeal against the relevant finding or order of the court.

Note A decision-maker making a decision under ch 14 (Care and protection—general) for a child or young person must endeavour to ensure that the child or young person, the parents of the child or young person and each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person, understand what the decision is going to be about, understand the decision-making process, know that they may take part in the decision-making process and have their views and wishes heard and are informed of, and understand, the decision (see s 1515).

318 Chief executive and public advocate may appear at proceedings

- (1) This section applies if there is a hearing in a court of—
- (a) an information or complaint against a child or young person; or
 - (b) an application, proceeding or matter under this Act or in relation to which this Act applies.
- (2) The chief executive or public advocate, an authorised person or someone authorised by the public advocate for this section, is entitled to appear and be heard and may call witnesses.
- (3) This section does not apply to an application, proceeding or matter under chapter 18 (Care and protection—care and protection orders) or to which that chapter applies.

319 Court may order report about guilty young people

- (1) A court hearing any proceeding in relation to or against a child or young person may order a chief executive responsible for the welfare of children and young people in the ACT to give the court a report about the child or young person.

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- (2) A chief executive given an order must, despite any other law of the ACT, give a report.
 - (3) In giving effect to an order under subsection (1), the chief executive may do 1 or more of the following:
 - (a) visit and interview the child or young person;
 - (b) interview a parent of the child or young person;
 - (c) interview a schoolteacher or other person involved with the education or welfare of the child or young person;
 - (d) require the child or young person to submit to being interviewed by a doctor or other named person.

Note 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 3132).

320 Report may be given to parties

- (1) Unless a court otherwise orders, a copy of a report provided under section 319 must be made available to the parties to the proceeding.
- (2) The person providing a report under section 319 may be called as a witness by a party to the proceeding.

321 Children and young people may have legal and other representative

- (1) In a proceeding in a court in relation to a child or young person, the child or young person may be represented by a lawyer or litigation representative, or both.
- (2) A representative of the child or young person must ensure that views and wishes stated by the child or young person are put to the court.

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- (3) A representative of the child or young person must tell the court whether the representative is acting on the child's or young person's instructions or in the best interests of the child or young person, or both.

322 Leave needed for litigation representative

- (1) In a proceeding in a court in relation to a child or young person, a person may be a litigation representative for the child or young person only if the court gives leave.
- (2) The court may give leave for a person to be a litigation representative of a child or young person only if both the person and the child or young person have been given an opportunity to be heard about the appointment.

323 Legal representation of children and young people

A court may hear an application in relation to a child or young person only if—

- (a) the child or young person has a lawyer; or
- (b) the court is satisfied that—
- (i) the child or young person has had a reasonable opportunity to get legal representation; and
 - (ii) the best interests of the child or young person will be adequately represented in the proceeding.

324 Orders about legal representation of children and young people

- (1) This section applies if, in a proceeding in a court in relation to a child or young person—
- (a) the child or young person does not have a lawyer; and

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- (b) either—
- (i) the court is not satisfied that the child or young person has made, or can make, an informed and independent decision not to be represented by a lawyer, and it considers that the child or young person should be represented by a lawyer; or
 - (ii) the court is not satisfied the interests of the child or young person will be adequately represented in the proceeding.
- (2) A person (the *applicant*) may apply to the court for the child or young person to have legal representation.
- (3) The applicant must give a copy of the application to the following people before the application is heard by the court:
- (a) each party to the proceedings;
 - (b) the public advocate.
- (4) The court may, on application or on its own initiative, make any order, or give any direction, it considers necessary or desirable to allow the child or young person a reasonable opportunity to get a lawyer.

325 Lawyer to act on instructions of children and young people

In a proceeding in a court in relation to a child or young person, a lawyer representing the child or young person must—

- (a) if the lawyer is satisfied that, because of the child's or young person's age, maturity and level of understanding of the proceeding, the child or young person can give the lawyer instructions—act and make representations to the court in accordance with the instructions; or

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- (b) in any other case—act and make representations to the court in the best interests of the child or young person and having regard to the objects and principles of this Act.

326 Offence—publish identity of children and young people

- (1) This section applies to a proceeding in relation to a child or young person—
- (a) under this Act; or
 - (b) to which this Act applies; or
 - (c) under a law of a State that relates to the welfare of children or young people.
- (2) A person commits an offence if—
- (a) the person publishes an account or report of the proceeding; and
 - (b) the account or report—
 - (i) discloses identifying material in relation to the child or young person or a relative of the child or young person; or
 - (ii) allows identifying material in relation to the child or young person, or a relative of the child or young person, to be worked out.

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

- (3) A prosecution for an offence against subsection (2) may be started only by, or with the written agreement of, the Attorney-General or DPP.
- (4) This section applies to a proceeding started or finished before the commencement of this section.

EXPOSURE DRAFT

(5) In this section:

identifying material, in relation to a child or young person, or relative of the child or young person, means the name, address or suburb of the child, young person or relative.

EXPOSURE DRAFT

Chapter 5 Children and young people and criminal matters

400 Overview of criminal matters chapter

- (1) In this Act:
criminal matters chapter—each of the following is a *criminal matters chapter*:
 - (a) this chapter;
 - (b) Chapter 6 (Criminal matters—proceedings);
 - (c) Chapter 7 (Criminal matters—sentencing and non-conviction options);
 - (d) Chapter 8 (Criminal matters—sentence administration);
 - (e) Chapter 9 (Criminal matters—transfers);
 - (f) Chapter 10 (Criminal matters—detention places);
 - (g) Chapter 11 (Criminal matters—search and seizure at detention places);
 - (h) Chapter 12 (Criminal matters—discipline at detention places).
- (2) This chapter sets out the principles (the young offender principles) that apply in the criminal matters chapters and defines some commonly used terms.
- (3) Chapter 6 sets out how and when children and young people are detained and the process that must be followed before a hearing, during a hearing and after a hearing, but does not deal with sentencing.

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- (4) Chapter 7 deals with the sentencing and non-conviction options in relation to children and young people who have been convicted or found guilty of an offence.
 - (5) Chapter 8 deals with sentence administration for young offenders.
 - (6) Chapter 9 deals with transfers of young detainees.
 - (7) Chapter 10 deals with detention places generally.
 - (8) Chapter 11 deals with search and seizure at detention places.
 - (9) Chapter 12 deals with the discipline of young detainees at detention places.

401 Principles applying to criminal matters chapters

In making a decision under the criminal matters chapters in relation to a child or young person (however described), the decision-maker must—

- (a) consider the best interests of the child or young person; and
- (b) apply the young offender principles.

Note Under s 8, other general principles also apply.

402 Young offender principles

The following principles are the *young offender principles*:

- (a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
- (b) a child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;

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- (c) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort;
 - (d) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age and maturity and have at least the same rights and protection before the law as would adults in similar circumstances;
 - (e) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
 - (f) a balanced approach must be taken between the need to rehabilitate the young offender, the rights of any victim of the young offender's offence and the interests of the community.

403 Definitions—criminal matters chapters

In the criminal matters chapters:

escort officer means a police officer or authorised person.

guilty young person—see section 600.

prohibited area means an area declared to be a prohibited area under section 1014.

young detainee—see section 900.

young offender—see section 404.

young offender principles—see section 402.

EXPOSURE DRAFT

404 Who is a *young offender*?

- (1) In the criminal matters chapters:

young offender means—

- (a) a person for whom the Childrens Court has made an order mentioned in section 606 (Non-conviction orders—general) or section 610 (Conviction orders—general), other than an order requiring the person to submit to the jurisdiction of the mental health tribunal; or
- (b) a person who—
 - (i) has committed an offence against a law of a State; and
 - (ii) is under 18 years old, or is under 21 years old and was under 18 years old when the offence was committed; and
 - (iii) has been dealt with for the offence under a young offenders law of the State, but is not on remand.

- (2) In this section:

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

405 Other rights and freedoms not affected

The criminal matters chapters, as far as they protect a child or young person—

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

Chapter 6 Criminal matters—proceedings

Part 6.1 Children and young people and criminal proceedings—preliminary

500 Definitions—ch 6

In this chapter:

committed an offence, for a child or young person, includes committed an offence with someone else or other people.

under restraint—see section 501.

Note See also the definitions of *young offender* (s 404) and *young offender principles* (s 402).

501 When are children and young people *under restraint*?

- (1) For this chapter, a child or young person is *under restraint* if—
 - (a) the child or young person is under restraint as a result of having been lawfully arrested or detained; or
 - (b) the child or young person is under restraint in relation to an offence and a police officer reasonably believes that—
 - (i) the child or young person committed the offence; or
 - (ii) the police officer would be authorised under a law in force in the ACT to arrest the child or young person for the offence; or

(c) the child or young person is in the company of a police officer in connection with the investigation of an offence or possible offence.

(2) In this section:

police officer includes a person holding a position under a territory law and having power because of the position to arrest or detain someone, or to take someone into the person's custody, but does not include an authorised person exercising a function at a detention place.

502 **When are children and young people *in the company of a police officer*?**

(1) For section 501 (1) (c), a child or young person is *in the company of a police officer* in connection with the investigation of an offence or possible offence if—

- (a) the police officer would not allow the child or young person to leave if the child or young person wished to do so; or
- (b) the child or young person is waiting at a place at the request of a police officer in connection with the investigation of the offence or possible offence.

(2) For subsection (1), it does not matter whether or not—

- (a) the police officer reasonably believes that the child or young person has committed the offence; or
- (b) the child or young person is in lawful custody in relation to the offence.

EXPOSURE DRAFT

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- (3) However, for section 501 (1) (c), a child or young person is not in the company of a police officer in connection with the investigation of an offence or possible offence—
- (a) if—
- (i) the child or young person is with a police officer by a roadside (whether or not the child or young person is in a motor vehicle); and
 - (ii) the police officer is investigating an offence or possible offence, other than an indictable offence or possible indictable offence, arising out of the use of a motor vehicle; or
- (b) if the child or young person is with a police officer for breath analysis, a screening test or the taking of a blood sample under the *Road Transport (Alcohol and Drugs) Act 1977*; or
- (c) if—
- (i) the child or young person is with an inspector under the *Liquor Act 1975*; and
 - (ii) the inspector is investigating an offence or possible offence against that Act that the inspector reasonably believes was not committed by the child or young person.
- (4) In this section:
- motor vehicle***—see the *Road Transport (General) Act 1999*, dictionary.
- police officer***—see section 501 (2).

EXPOSURE DRAFT

Part 6.2 Children, young people and young adults—criminal proceedings in ACT

Division 6.2.1 General

503 Saving of other laws

This part does not affect the operation of the common law or any other law in force in the ACT except as otherwise expressly provided by this Act.

504 Childrens Court jurisdiction and age—criminal matters

- (1) In deciding whether an information alleging an offence by an individual should be heard and decided by the Childrens Court, regard should be had to the individual's age at the time of the alleged offence.
- (2) If an individual was younger than 18 years old at the time of an alleged offence and between the ages of 18 years and 18 years 6 months at the time of the individual's first appearance in the Childrens Court after having been charged with the alleged offence—
 - (a) the individual must be dealt with under this chapter until the time (if any) that the court finds the offence proved; and
 - (b) in dealing with the individual, this chapter applies to the individual as if the individual were a young person; and
 - (c) if the court finds the offence proved, the individual must be dealt with as an adult.

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- (3) If an individual was younger than 18 years old at the time of an alleged offence and over the age of 18 years 6 months at the time of the individual's first appearance in the Childrens Court after having been charged with the alleged offence, the individual must be dealt with as an adult unless the Childrens Court considers it appropriate for the individual to be dealt with as a young person.
 - (4) If the Childrens Court considers it appropriate for an individual mentioned in subsection (3) to be dealt with as a young person—
 - (a) the individual must be dealt with under this chapter until the time (if any) that the court finds the offence proved; and
 - (b) in dealing with the individual, this chapter applies to the individual as if the individual were a young person; and
 - (c) if the court finds the offence proved, the individual must be dealt with as an adult.

505 Proceedings where children and young people jointly charged with adults

- (1) If a child or young person and an adult are jointly charged with an offence, section 301 (Jurisdiction of the Childrens Court) applies to a proceeding against the child or young person arising out of the charge as if the child or young person had been charged separately.

Note Young person includes an adult being treated as a young person because of s 504.

- (2) Section 301 does not apply to the preliminary examination for an indictable offence alleged to have been committed jointly by a child or young person and an adult if the Chief Magistrate, having regard to the nature of the alleged offence and the time and expense involved in carrying out the preliminary examinations separately, orders that the section does not apply.

EXPOSURE DRAFT

506 Power to apprehend children younger than 10 years old

- (1) This section applies if a police officer believes on reasonable grounds that—
 - (a) a person (the *child*) is a child younger than 10 years old; and
 - (b) the child has carried out, or is carrying out, conduct that makes up the physical elements of an offence; and
 - (c) the child is on premises.
 - (2) The police officer may, with reasonable and necessary force, enter the premises and apprehend the child under a warrant.
 - (3) The police officer may also, with reasonable and necessary force, enter the premises and apprehend the child if the police officer believes on reasonable grounds—
 - (a) that—
 - (i) conduct that makes up the physical elements of an offence or a breach of the peace is being or is likely to be carried out; or
 - (ii) a person has suffered physical injury; or
 - (iii) there is imminent danger of injury to a person or damage to property; and
 - (b) it is necessary to enter the premises immediately—
 - (i) to prevent the conduct or a repetition of the conduct; or
 - (ii) to protect life or property.
- Note* The Criminal Code, div 2.3.1 deals with the criminal responsibility of children.
- (4) If apprehending a child under subsection (2) or (3), the police officer may use reasonable and necessary force.

EXPOSURE DRAFT

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- (5) If the police officer apprehends the child under subsection (2) or (3), the police officer must—
- (a) take the child to—
 - (i) a parent of the child; or
 - (ii) someone else who has responsibility for day-to-day matters, or long-term matters, for the child; or
 - (b) if it is not practicable or appropriate to take the child to someone mentioned in paragraph (a)—
 - (i) place the child with a suitable person who is prepared to care for the child; and
 - (ii) tell the chief executive about the placement.

Example—par (b)

if an offence has been committed and the parent or person with parental responsibility appears to be involved in the commission of the offence

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).

Division 6.2.2 Preliminary procedures

507 Interviewing children and young people about offences

- (1) This section applies if a police officer—
- (a) reasonably suspects that a child or young person may have committed—
 - (i) an indictable offence; or
 - (ii) a personal violence offence; or
- Note* **Personal violence offence**—see the dictionary.
- (iii) an offence against property; or

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- (b) reasonably believes that a child or young person may be implicated in the commission of—
 - (i) an indictable offence; or
 - (ii) a personal violence offence; or
 - (iii) an offence against property; or
 - (c) is holding a child or young person under restraint.

Note Young person includes an adult being treated as a young person because of s 504.

- (2) A police officer must not interview the child or young person about an offence, or cause the child or young person to do anything in relation to the investigation of an offence, unless 1 of the following adults is present:
 - (a) a parent (who is not a police officer who has been involved in investigating the offence) of the child or young person;
 - (b) another person (who is not a police officer who has been involved in investigating the offence) who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (c) a relative (who is not a police officer who has been involved in investigating the offence) of the child or young person who is acceptable to the child or young person;
 - (d) a lawyer acting for the child or young person;
 - (e) another suitable person (who is not a police officer who has been involved in investigating the offence) who is acceptable to the child or young person;

EXPOSURE DRAFT

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- (f) if the police officer has taken reasonable steps to have a person mentioned in paragraph (a), (b), (c), (d) or (e) present but it was not practicable for the person to be present within 2 hours after the person was asked to be present—someone else (who may be a police officer) who has not been involved with the investigation of the offence.

Example of suitable person—par (e)

a person trained by the public advocate to attend interviews of children and young people

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, a police officer need not—
- (a) allow a person to be present while the child or young person is being interviewed, or is doing anything, in relation to the investigation of the offence if the police officer reasonably believes the person is an accomplice of the child or young person in relation to the offence; or
 - (b) take steps to have a person mentioned in subsection (2) (a), (b), (c), (d) or (e) present if the police officer reasonably believes the person is an accomplice of the child or young person in relation to the offence.
- (4) Further, a police officer may interview a child or young person, or ask or cause a child or young person to do a particular thing, if the police officer reasonably believes that it is necessary to interview or do the thing without delay to avoid a risk of—
- (a) death or serious injury of a person; or
 - (b) serious damage to property.

EXPOSURE DRAFT

(5) In this section:

accomplice, in relation to the investigation of an offence by a police officer, includes a person who the police officer reasonably believes to be likely to secrete, lose, destroy or fabricate evidence relating to the offence.

police officer includes a person holding a position under a territory law and having power because of that position to arrest or detain someone, or to take someone into the person's custody, but does not include an authorised person exercising a function at a detention place.

508 Who must be told if children and young people under restraint?

(1) If a police officer takes a child or young person under restraint, the police officer must promptly take all reasonable steps to tell 1 of the following people about the restraint (whether or not the person lives in the ACT):

- (a) a parent of the child or young person;
- (b) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

Note Young person includes an adult being treated as a young person because of s 504.

(2) In this section:

police officer includes a person holding a position under a territory law and having power because of the position to arrest or detain someone, or to take someone into the person's custody, but does not include an authorised person exercising a function at a detention place.

509 Police to summons children and young people unless ineffective

- (1) A police officer must not charge a child or young person with an offence at a police station unless satisfied that proceeding by summons would not be effective.

Note Young person includes an adult being treated as a young person because of s 504.

- (2) In deciding whether proceeding by summons would be effective, the police officer must have regard to the need to achieve the purposes stated in the *Crimes Act 1900*, section 212 (1) (b) (Power of arrest without warrant by police officers).

Note The purposes stated in the *Crimes Act 1900*, s 212 (1) (b) are:

- (i) ensuring the appearance of the person before a court for the offence;
- (ii) preventing a repetition or continuation of the offence or the commission of another offence;
- (iii) preventing the concealment, loss or destruction of evidence relating to the offence;
- (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings for the offence;
- (v) preventing the fabrication of evidence for the offence;
- (vi) preserving the safety or welfare of the person.

510 Who must be told if children and young people charged?

- (1) If a child or young person is charged with an offence at a police station, the person who charged the child or young person must promptly take all reasonable steps to tell 1 of the following people the relevant information in relation to the charge (whether or not the person lives in the ACT):

- (a) a parent of the child or young person;

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- (b) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

Note Young person includes an adult being treated as a young person because of s 504.

- (2) In this section:

relevant information, for a charge, means—

- (a) the terms of the charge; and
(b) where the child or young person is; and
(c) when the child or young person will be brought before the Childrens Court.

511 Detained children and young people to be brought before Childrens Court

- (1) This section applies if a child or young person has been charged with an offence and has not been released from detention.

Note Young person includes an adult being treated as a young person because of s 504.

- (2) A police officer or authorised person must, as soon as practicable, bring the child or young person before the Childrens Court.
- (3) If the child or young person is not brought before the Childrens Court, the child or young person must be released from detention immediately.

Division 6.2.3 Escorting children and young people

512 Other powers not limited

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

Examples of other provisions

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

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).

513 Escorts to bring arrested children and young people before court etc

- (1) This section applies if a child or young person—
 - (a) has been arrested; and
 - (b) has not been released on bail; and
 - (c) is in police custody; and
 - (d) is required by law to be brought before a court or tribunal.
- (2) A police officer may require an escort officer to bring the child or young person before the court or tribunal.

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- (3) The escort officer must bring the young person before the court or tribunal and, for that purpose, may—
- (a) take the child or young person into custody; and
 - (b) arrange for the child or young person to be detained under this Act until the child or young person is brought before the court or tribunal.

514 Custody etc during proceedings

Subject to any order or direction of a court or tribunal, an escort officer who is required to bring a child or young person before a court must, as far as practicable—

- (a) ensure the safe custody and welfare of the child or young person for the proceeding; and
- (b) ensure that the child or young person does not obstruct or hinder the proceeding.

515 Executing warrants of imprisonment and remand etc

- (1) The chief executive may make escort officers available to attend on a court or tribunal to—
 - (a) take a child or young person into custody; or
 - (b) arrange for a child or young person to be kept in custody; or
 - (c) transfer or otherwise deal with a child or young person.
- (2) An order or direction of the court or tribunal addressed to all escorts—
 - (a) is taken to be addressed to each escort; and
 - (b) may be executed by any escort.

516 Custody of escorted children or young people

A child or young person in the custody of an escort officer under this part is also taken to be in the chief executive's custody and in detention.

Division 6.2.4 Hearing proceedings against children and young people

517 Procedures for hearing indictable offences

- (1) This section applies if—
- (a) a child or young person charged with an indictable offence is brought before the Childrens Court; and
 - (b) the court—
 - (i) has no power to hear and decide the charge summarily; or
 - (ii) has the power to hear and decide the charge summarily, but decides not to.

Note Young person includes an adult being treated as a young person because of s 504.

- (2) The Childrens Court must deal with the charge as if—
- (a) the charge were a charge for an indictable offence to which the *Magistrates Court Act 1930* applied; and
 - (b) the Childrens Court were the Magistrates Court; and
 - (c) any necessary changes were made.

518 Indictable offences may be dealt with summarily

- (1) The Childrens Court may hear and decide a charge for an indictable offence against a child or young person summarily only if—
- (a) the court is satisfied that the case can be properly disposed of summarily; and
 - (b) the child or young person agrees to the matter being disposed of summarily; and
 - (c) the offence is not punishable by imprisonment for life.

Note 1 For par (a), see s 519. For par (b), see s 520.

Note 2 Young person includes an adult being treated as a young person because of s 504.

- (2) If the Childrens Court decides not to dispose of an indictable offence against a child or young person summarily and commits the child or young person to the Supreme Court for trial, the Childrens Court must state the reasons for the decision and enter the reasons in the court record.

519 Indictable offences heard summarily—Childrens Court opinion

- (1) In deciding whether a case can be properly disposed of summarily for section 518 (1) (a), the Childrens Court must consider the following matters:
- (a) relevant representations made by the child or young person;
 - (b) relevant representations made by the prosecutor in the child's or young person's presence;
 - (c) the facts of the case;
 - (d) the seriousness of the alleged offence;

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- (e) the circumstances in which the offence is alleged to have been committed;
 - (f) the child's or young person's age;
 - (g) the child's or young person's apparent maturity;
 - (h) the child's or young person's apparent mental capacity;
 - (i) the suitability of the penalties that the court is empowered to impose;
 - (j) the difficulty of any question of law that is likely to arise.

Note Young person includes an adult being treated as a young person because of s 504.

- (2) The Childrens Court may also have regard to any other matter the court considers relevant.

520 Indictable offences disposed of summarily—agreement of children and young people

- (1) Before hearing a charge for an indictable offence against a child or young person, the Childrens Court must tell the child or young person, and any responsible person for the child or young person who is present, about section 518 (1) (Indictable offences may be dealt with summarily).

Note Young person includes an adult being treated as a young person because of s 504.

- (2) If a responsible person for the child or young person is not present, the Childrens Court may adjourn the hearing to allow a responsible person for the child or young person to be present.
- (3) If a responsible person for the child or young person is not present at the hearing after the adjournment, the Childrens Court may continue the hearing.

(4) In this section:

responsible person, for a child or young person, means a parent of the child or young person or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

521 Court may adjourn hearings to allow access to legal advice

(1) This section applies to a charge for an indictable offence against a child or young person being heard summarily.

Note Young person includes an adult being treated as a young person because of s 504.

(2) The Childrens Court may, at any time, adjourn the hearing to allow any of the following people to get legal advice:

- (a) the child or young person;
- (b) a parent of the child or young person;
- (c) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

522 Childrens Court to exclude unlawfully obtained evidence

(1) If, in a proceeding against a child or young person for an offence, the Childrens Court is satisfied that evidence tendered to the court was obtained in contravention of, or in consequence of a contravention of, a provision of this Act (the **Act contravention**) in relation to the child or young person, the court must refuse to admit the evidence (the **unlawfully obtained evidence**) in the proceeding.

Note Young person includes an adult being treated as a young person because of s 504.

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- (2) However, the Childrens Court may admit the unlawfully obtained evidence if satisfied that—
- (a) admission of the unlawfully obtained evidence is substantially in the public interest in the administration of criminal justice; and
 - (b) the public interest would outweigh any prejudice to the rights of a person, including the child or young person, that has occurred or is likely to occur as a result of the Act contravention or the admission of the unlawfully obtained evidence.
- (3) The Childrens Court may consider the following matters in deciding whether to admit the unlawfully obtained evidence:
- (a) the seriousness of the offence to which the evidence relates, the difficulty of detecting the child or young person, the need to apprehend the child or young person and the need to preserve evidence of the facts;
 - (b) the nature and seriousness of the Act contravention;
 - (c) the extent to which the evidence might have been lawfully obtained;
 - (d) any other matter the court considers appropriate.
- (4) This section is in addition to any other law or rule under which the Childrens Court may refuse to admit evidence.

523 Adjourment of proceedings

- (1) If the hearing of a charge against a child or young person is adjourned by the Childrens Court, the adjournment must not, except in special circumstances, be longer than 15 days.

Note Young person includes an adult being treated as a young person because of s 504.

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- (2) If the Childrens Court adjourns the proceeding, the court may—
- (a) by order—
 - (i) release the child or young person if the child or young person and 1 parent of the child or young person give an undertaking satisfactory to the court that the child or young person will be present at the next hearing; or
 - (ii) release the child or young person on bail under the *Bail Act 1992*; or
 - (iii) place the child or young person in the custody of a suitable person; or
 - (b) order that the child or young person be remanded in custody.

524 Cases may be sent to mental health tribunal

- (1) This section applies if, in a proceeding against a child or young person for an offence, the Childrens Court is satisfied that—
- (a) the child or young person is a person with a mental impairment; and

Note The Childrens Court may make any appropriate order to help it decide whether a child or young person is a person with a mental impairment (see s 525).

- (b) on an outline of the facts to be alleged in the proceeding, or other evidence that the court considers relevant, it would be appropriate to deal with the child or young person under this section.

Note Young person includes an adult being treated as a young person because of s 504.

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- (2) The Childrens Court may—
- (a) by order (a *mental health transfer order*) dismiss the charge and require the child or young person to submit to the jurisdiction of the mental health tribunal to allow the tribunal to make a mental health order; or
 - (b) by order, dismiss the charge unconditionally.
- (3) An order under subsection (2) is not a finding that an offence has, or has not, been committed.
- (4) If the Childrens Court makes a mental health transfer order, the order operates as a stay of the proceeding, or of further proceedings, against the child or young person for the offence.

525 Power of Childrens Court to make order to decide whether mental impairment

To help decide whether a child or young person is a person with a mental impairment for section 524, the Childrens Court may make any order it considers appropriate, including an order that the child or young person submit to the jurisdiction of the mental health tribunal.

Division 6.2.5 Care and protection considerations in proceedings

526 Proceedings dismissed or adjourned for care and protection reasons

- (1) If, when hearing an information against a child or young person, the Childrens Court is satisfied that the child or young person should be dealt with under the care and protection chapters, the court may—
- (a) dismiss the information; or
 - (b) adjourn the proceeding for up to 15 days.

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- (2) If the Childrens Court acts under subsection (1), the court must, as soon as practicable but no later than 2 working days after the day it acts, give a statement of the reasons for the action to—
 - (a) the chief executive; and
 - (b) the public advocate.
 - (3) The statement of reasons must contain the following information about the proceeding:
 - (a) if the proceeding has been adjourned—the reason the proceeding was adjourned;
 - (b) the circumstances that the court is aware of that led to the child or young person coming before the court;
 - (c) the factors that satisfied the court that the child or young person should be dealt with under the care and protection chapters.
 - (4) The chief executive must treat a statement of reasons given to the chief executive under subsection (2) as if it were a report made under section 1602 (Offence—mandatory reporting of abuse and neglect).

527 Care of children and young people during adjournment

- (1) If the Childrens Court proposes to adjourn a proceeding in relation to a child or young person under section 526 (1) (b), the court may make an order placing the child or young person into the physical care of—
 - (a) the chief executive; or
 - (b) a police officer for delivery to the chief executive.

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(2) The Childrens Court may make an order under subsection (1) only if satisfied that—

(a) if the child or young person were convicted because of the proceeding, it would be appropriate to make a prescribed order in relation to the child or young person; or

Note **Prescribed order**—see s (5).

(b) immediate release would not be in the best interests of the child or young person.

(3) If the Childrens Court makes an order under subsection (1), the chief executive has responsibility for day-to-day matters for the child or young person as if the chief executive had taken emergency action in relation to the child or young person.

Note Emergency action is dealt with in ch 17.

(4) The chief executive must—

(a) approve the existing arrangements for the care and protection of the child or young person; or

(b) make suitable arrangements for the care and protection of the child or young person.

(5) In this section:

prescribed order means—

(a) a good behaviour order under section 610 (b); or

(b) a deferred sentence order under section 610 (c); or

(c) a suspended sentence order under section 610 (d); or

(d) an accommodation order under section 610 (g); or

(e) a committal order under section 610 (h).

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528 Chief executive must report to court and public advocate

- (1) This section applies if—
 - (a) a proceeding has been adjourned under section 526 (1); and
 - (b) the Childrens Court has given the chief executive a statement of reasons under section 526 (2).
- (2) Not later than 15 days after the day the Childrens Court adjourns the proceeding under section 526 (1), the chief executive must tell the public advocate and the court, in writing—
 - (a) what action the chief executive has taken, is taking or proposes to take under the care and protection chapters in relation to the child or young person; or
 - (b) if the chief executive proposes to take no action under any care and protection chapter in relation to the child or young person—that the chief executive proposes to take no action.
- (3) Without limiting when the chief executive is taken to have complied with subsection (2), the chief executive is taken to have complied with subsection (2) if the chief executive—
 - (a) makes an application under the care and protection chapters in relation to the child or young person; and
 - (b) gives a copy of the application to the public advocate.

529 Court action after adjournment

- (1) This section applies when a proceeding adjourned under section 526 (1) comes before the Childrens Court again.

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- (2) The Childrens Court must dismiss the proceeding—
- (a) if—
 - (i) the chief executive has, under section 528 (2) (a), told the court of the action the chief executive has taken, is taking or proposes to take under the care and protection chapters in relation to the child or young person; and
 - (ii) the court is satisfied that taking the action is in the best interests of the child or young person; or
 - (b) if—
 - (i) the chief executive has, under section 528 (2) (b), told the court that the chief executive proposes to take no action under any care and protection chapter in relation to the child or young person; and
 - (ii) the court is satisfied that it is in the best interests of the child or young person that the chief executive takes no action; or
 - (c) the chief executive has made an application under the care and protection chapters in relation to the child or young person.
- (3) The Childrens Court may also make any other order or take any other action in relation to the information against the child or young person that the court considers appropriate.

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Chapter 7 Criminal matters—sentencing and non-conviction options

Part 7.1 Interpretation

600 **Meaning of *guilty young person* and *good behaviour order*—criminal matters chapters**

In the criminal matters chapters:

good behaviour order—see section 646.

guilty young person means a child or young person who has been convicted, or found guilty, of an offence, but not sentenced for the offence.

601 **Definitions—ch 7**

In this chapter:

basic good behaviour order means a good behaviour order that contains only—

- (a) core conditions; or
- (b) core conditions and supervision conditions.

conviction order means an order under section 610.

core conditions, of a good behaviour order, means the core conditions under section 833.

non-conviction order means an order under section 606.

pre-sentence report—see section 615.

Part 7.2 **Guilty young people—sentencing courts**

602 Childrens Court may send cases to Supreme Court for sentencing

- (1) This section applies if the Childrens Court convicts a child or young person of an indictable offence.
- (2) The Childrens Court may, by order, commit the child or young person to the Supreme Court for sentence if satisfied that sentence should be passed on the child or young person by the Supreme Court because of the character and history of the child or young person.
- (3) In deciding whether sentence should be passed on the child or young person by the Supreme Court, the Childrens Court must consider any report provided under section 319 (Court may order report about guilty young people).
- (4) The Supreme Court may deal with the guilty young person as if the child or young person had been convicted of the offence in the Supreme Court.

Note Section 603 sets out the Supreme Courts powers after convicting a child or young person.

603 Powers of Supreme Court after conviction

- (1) If the Supreme Court convicts a child or young person of an offence, the Supreme Court may—
 - (a) make any order in relation to the child or young person that the Childrens Court could have made if the child or young person had been convicted by the Childrens Court; or

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- (b) issue any warrant that the Childrens Court could have issued if the child or young person had been convicted by the Childrens Court; or
 - (c) do anything else that the Childrens Court could have done if the child or young person had been convicted by the Childrens Court; or
 - (d) make an order committing the child or young person to a detention place for a stated period not longer than the period of imprisonment that could have been imposed for the offence if the offence had been committed by an adult; or
 - (e) deal with the child or young person in a way that it could have dealt with the child or young person if the child or young person had been an adult at the time the offence was committed.
- (2) If a child or young person is sentenced to imprisonment under subsection (1) (e), the sentence has effect subject to a law of a State where the child or young person is detained relating to the detention of young people (however described).

604 Supreme Court may send cases to Childrens Court for sentencing

- (1) If the Supreme Court convicts a child or young person of an offence, the Supreme Court may remit the case to the Childrens Court for sentencing.
- (2) If the Supreme Court remits the case—
 - (a) the Supreme Court may give directions about the detention of the child or young person, or the release of the child or young person on bail, until the child or young person is brought before the Childrens Court; and

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- (b) the registrar of the Supreme Court must give the registrar of the Magistrates Court a certificate stating—
- (i) the nature of the offence; and
 - (ii) that the child or young person has been convicted of the offence; and
 - (iii) that the case has been remitted under this section.
- (3) The Childrens Court may deal with the child or young person in the same way as it would deal with the guilty young person if the guilty young person had been convicted of the offence in the Childrens Court.

605 Imposition of penalties

- (1) The penalty the Childrens Court may impose on a guilty young person for an offence is the penalty provided under this Act or any other territory law.
- (2) Part 7.4 (Sentencing procedures) applies to the imposition of all penalties imposed on a guilty young person by a court, whether under this Act or otherwise.

Note 1 Under this Act, the Childrens Court has the following sentencing and non-conviction options:

- commitment served by full-time detention at a detention place (see s 639)
- suspension of a sentence of commitment (see s 644)
- good behaviour order (see s 646)
- fine order (see s 722)
- driver licence disqualification order (see s 725)
- non-conviction order (see s 606)
- reparation order (see s 684)
- deferred sentence order (see s 699).

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Note 2 The Childrens Court may also impose a *combination sentence* combining 2 or more of the options listed in note 1 or otherwise available under a territory law (see pt 7.12).

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Part 7.3 Conviction and non-conviction options generally

Division 7.3.1 Non-conviction orders

606 Non-conviction orders—general

- (1) This section applies if a child or young person is found guilty of an offence.
- (2) Without convicting the child or young person of the offence, the Childrens Court may make 1 or more of the following orders (each of which is a *non-conviction order*) for the child or young person:
 - (a) if satisfied that it is not appropriate to impose any punishment (other than normal punishment) on the child or young person—an order directing that the charge be dismissed;
 - (b) a fine order;
 - (c) a reparation order;
 - (d) an order reprimanding the child or young person;
 - (e) subject to section 607—a good behaviour order.

Note 1 The Childrens Court may also be required to consider certain things, or do certain things, before making an order under this section (see pt 7.5, pt 7.6 and pt 7.7).

Note 2 Also, an offence with which this part deals may be referred for restorative justice (see *Crimes (Restorative Justice) Act 2004*, pt 6).

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- (3) In deciding whether to make a non-conviction order for the child or young person, the Childrens Court must consider the following:
- (a) the character, antecedents, age, health and mental condition of the child or young person;
 - (b) the seriousness of the offence;
 - (c) any extenuating circumstances in which the offence was committed.
- (4) The Childrens Court may also consider anything else the court considers relevant.

Note An appeal may lie to the Supreme Court from a decision of the Childrens Court to make a non-conviction order for a child or young person in the same circumstances as an appeal from a decision of the Childrens Court in relation to the conviction of a child or young person for an offence (see *Magistrates Court Act 1930*, pt 3.10).

607 Limit on good behaviour orders without conviction

If the Childrens Court makes a non-conviction order that is a good behaviour order, the order must be a basic good behaviour order for a term of no longer than 3 years.

Note **Basic good behaviour order**—see s 601.

608 Non-conviction orders—ancillary orders

- (1) This section applies if the Childrens Court makes a non-conviction order for a child or young person for an offence.
- (2) The Childrens Court may make any ancillary order that it could have made if it had convicted the child or young person of the offence.

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- (3) The child or young person has the same right of appeal in relation to the making of the ancillary order as the child or young person would have had if the order had been made on the conviction of the child or young person for the offence.
- (4) This section is subject to section 731 (Operation of ancillary and restitution orders).
- (5) In this section:

ancillary order means an order or direction in relation to any of the following:

- (a) restitution;
- (b) compensation;
- (c) costs;
- (d) forfeiture;
- (e) destruction;
- (f) disqualification or loss or suspension of a licence or privilege.

Examples

- 1 a reparation order
- 2 a driver licence disqualification 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).

609 Notice of non-conviction orders and ancillary orders

- (1) If the Childrens Court makes a non-conviction order (other than a good behaviour order) for a child or young person, the court must, as soon as practicable after the order is made, ensure that written notice of the order, and any ancillary order, together with a copy of the orders, is given to—
- (a) the child or young person; and
 - (b) either a parent of the child or young person or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

Note For notice of a non-conviction order that is a good behaviour order, see s 648.

- (2) Failure to comply with subsection (1) in relation to a non-conviction order or ancillary order does not invalidate the order.

Division 7.3.2 Conviction orders

610 Conviction orders—general

If a child or young person has been convicted of an offence by the Childrens Court, the court must, as soon as practicable and in any event within 6 months after the date of the conviction, make 1 or more of the following orders for the child or young person:

- (a) an order reprimanding the child or young person;
- (b) a good behaviour order;
- (c) a deferred sentence order;
- (d) a suspended sentence order;
- (e) a fine order;
- (f) a reparation order;

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- (g) an accommodation order;
 - (h) a committal order;
 - (i) another order that the court is empowered by another law to make in relation to the offence.

Note 1 Section 611 restricts when a committal order, accommodation order, suspended sentence order, other than a basic good behaviour order, or a good behaviour order can be made.

Note 2 Also, an offence with which this part deals may be referred for restorative justice (see *Crimes (Restorative Justice) Act 2004*, pt 6).

Note 3 Notice must be given of the making of an order under this section (see s 643, s 644, s 692, s 709, s 718, s 719, s 723 and s 726).

611 Limits on making some orders

- (1) The Childrens Court must not make a prescribed order if 1 or more of the following apply:
 - (a) if a court would not, if the offence had been committed by an adult, have been empowered to sentence the adult to imprisonment;
 - (b) the court is not satisfied that, in the circumstances, no other order that might be made is appropriate;
 - (c) the term of the order proposed to be made is longer than the period of imprisonment that could have been imposed for the offence if the offence had been committed by an adult.

- (2) In this section:

prescribed order means any of the following orders made under section 610:

- (a) a good behaviour order other than a basic good behaviour order;

Note ***Basic good behaviour order***—see s 601.

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- (b) an accommodation order;
 - (c) a committal order;
 - (d) a suspended sentence order.

612 Childrens Court must not order imprisonment

The Childrens Court must not make an order for the imprisonment of a guilty young person.

613 Childrens Court may prevent reduction of commitment

- (1) This section applies if the Childrens Court commits a child or young person to detention place for a period (the *period of commitment*).
- (2) The Childrens Court may order that the period of commitment, or part of the period, not be reduced.

Note A period of commitment may be reduced by the chief executive under s 872 unless the Childrens Court orders otherwise.

Part 7.4 Sentencing procedures

Division 7.4.1 Pre-sentence reports

614 Application—div 7.4.1

This division applies in relation to a child or young person if—

- (a) the Childrens Court—
 - (i) finds the child or young person guilty of an offence; or
 - (ii) convicts the child or young person of the offence; or
- (b) the child or young person indicates to the Childrens Court an intention to plead guilty to an offence.

615 Pre-sentence reports may be ordered

- (1) Before sentencing the child or young person, the Childrens Court may—
 - (a) order the chief executive to prepare a report (a *pre-sentence report*) under this division for the child or young person; and
 - (b) adjourn the proceeding for the report to be prepared.

Note If a form is approved under the *Court Procedures Act 2004* for the order, the form must be used (see that Act, s 8 (2)).
- (2) The chief executive must prepare a pre-sentence report for a child or young person if ordered to do so by the Childrens Court.

616 Pre-sentence reports—contents

- (1) If the Childrens Court orders that a pre-sentence report for a child or young person must include a particular thing, the chief executive must take all reasonable steps to ensure that the report includes the thing.
- (2) Without limiting what the Childrens Court may require in a pre-sentence report, the court may require the following to be included in a report:
 - (a) the age of the child or young person;
 - (b) the social history and background (including cultural background) of the child or young person;
 - (c) the medical and psychiatric history of the child or young person;
 - (d) the educational background of the child or young person;
 - (e) the employment history of the child or young person;
 - (f) the extent to which the child or young person is complying, or has complied, with any sentence;
 - (g) the financial circumstances of the child or young person;
 - (h) any special needs of the child or young person;
 - (i) any courses, programs, treatment, therapy or other assistance that is available to the child or young person and from which the child or young person may benefit;
 - (j) any risk assessments made of the likelihood that the child or young person will commit further offences or of things (including circumstances) that may make the child or young person more likely to commit further offences;

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- (k) a recommendation on whether it would be appropriate to refer the offence for which the child or young person is being tried for restorative justice under the *Crimes (Restorative Justice) Act 2004*;
 - (l) a recommendation about the suitability of particular orders for the child or young person and any conditions that might be appropriate on a recommended order.
- (3) A pre-sentence report may contain anything else the chief executive considers relevant.

617 Pre-sentence reports—powers of chief executive

- (1) In preparing a pre-sentence report for the child or young person, the chief executive—
 - (a) may conduct any investigation the chief executive considers appropriate; and
 - (b) may ask any of the following to provide information:
 - (i) an administrative unit;
 - (ii) a territory authority;
 - (iii) a statutory office-holder;
 - (iv) a victim of the offence;
 - (v) any other entity.
- (2) If an entity mentioned in subsection (1) (b) (i), (ii) or (iii) is asked to provide information, the entity must promptly comply with the request.

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- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
- (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
 - (b) a ground for a civil proceeding for defamation, malicious prosecution or conspiracy.
- (4) This section does not limit any other power of the chief executive to obtain information for the purposes of the pre-sentence report.
- (5) A regulation may make provision in relation to—
- (a) the preparation and provision of pre-sentence reports; and
 - (b) the conduct of assessments of the suitability of a child or young person for a deferred sentence order or to serve a particular kind of sentence.
- (6) In this section:
information includes a document.

618 Pre-sentence reports—provision to court

The pre-sentence report may be given to the Childrens Court either orally or in writing.

619 Pre-sentence reports—availability of written reports

- (1) This section applies if the Childrens Court has received a written pre-sentence report for the child or young person.
- (2) The Childrens Court must ensure that a copy of the report is made available to the following people at least 2 working days before the day the child or young person is to be sentenced:
 - (a) the prosecutor;

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- (b) any lawyer representing the child or young person;
 - (c) the child or young person, if—
 - (i) the court has so directed; or
 - (ii) the child or young person is not legally represented.
 - (3) For subsection (2), the Childrens Court may make a copy of the report available to a person mentioned in the subsection by giving a copy of the report to the person.

620 Pre-sentence reports—cross-examination

- (1) The prosecutor and the defence may cross-examine the chief executive on the pre-sentence report about the child or young person given to the Childrens Court by the chief executive.
- (2) In this section:
 - defence* means—
 - (a) any lawyer representing the child or young person; or
 - (b) if the child or young person is not legally represented—the child or young person.

Division 7.4.2 Victim impact statements

621 Application—div 7.4.2

This division applies in relation to an offence that a child or young person has been convicted of if the offence is—

- (a) an indictable offence; or
- (b) an offence against the *Crimes Act 1900*, section 26A (Common assault—summary offence); or

(c) any other offence prescribed by regulation for this paragraph.

Note An offence is an **indictable offence** if it is punishable by imprisonment for longer than 1 year or is declared by a law to be an indictable offence, and includes an indictable offence that is or may be dealt with summarily (see Legislation Act, s 190 (1) and (2)).

622 Definitions—div 7.4.2

In this division:

because of, an offence, means—

- (a) as a result of, or in the course of, the commission of the offence; or
- (b) in the course of assisting a police officer in the exercise of the officer's power to arrest a person for the offence or to take action to prevent the offence.

given, for a victim impact statement, includes made orally in court or read out in court under this division.

harm includes—

- (a) physical injury; and
- (b) mental injury or emotional suffering (including grief); and
- (c) pregnancy; and
- (d) economic loss; and
- (e) substantial impairment of rights accorded by law.

victim, of an offence, means—

- (a) a person (a **primary victim**) who suffers harm because of the offence; or

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- (b) if a primary victim dies because of the offence—a person who was financially or psychologically dependent on the primary victim immediately before the primary victim’s death.

victim impact statement, for an offence, means a statement made by or for a victim of the offence that contains details of any harm suffered by the victim because of the offence.

623 Victim impact statements—who may make

The following people may make a victim impact statement for the offence:

- (a) a victim of the offence;
- (b) if a victim of the offence is a child or young person—a person who has responsibility for day-to-day matters, or long-term matters, for the victim of the offence;
- (c) a close family member of a victim of the offence;
- (d) a carer for a victim of the offence;
- (e) a person with an intimate personal relationship with a victim of the offence.

624 Victim impact statements—oral and written

A victim impact statement for the offence may be made as—

- (a) a written statement signed by or for a victim of the offence; or
- (b) a statement given orally in court by or for a victim of the offence.

625 Victim impact statements—form and contents

- (1) A victim impact statement for the offence must identify the victim to whom it relates.

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- (2) The statement must include the full name of the person who makes the statement.
 - (3) If the person who makes the statement is not the victim (or the victim's representative)—
 - (a) the statement must indicate that the victim does not object to the statement being made to the court; and
 - (b) if practicable, the victim (or representative) must sign the statement, or make a separate written or oral statement to the court, to verify that the victim does not object.
 - (4) If the victim to whom the statement relates is not a primary victim, the statement must identify the primary victim and state the nature and length of the victim's relationship with the primary victim.
 - (5) If the statement is made by a person who is not the victim, the statement must indicate the nature and length of the person's relationship with the victim.
 - (6) The statement must not contain anything that is offensive, threatening, intimidating or harassing.
 - (7) This section does not prevent a victim impact statement being made by or for more than 1 victim.

626 Victim impact statements—use in court

- (1) A victim impact statement may be—
 - (a) tendered to the Childrens Court; or
 - (b) made orally in the court; or
 - (c) read out in court by the person who made the statement or someone else (whether or not the statement is tendered to the court).

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- (2) The statement may be given when the court considers appropriate—
- (a) after the child or young person has been convicted; and
 - (b) before the child or young person is sentenced.

627 When written victim impact statement may be given

- (1) A victim impact statement must not be given in writing to the Childrens Court unless—
- (a) the statement is made in accordance with section 625 (Victim impact statements—form and contents); and
 - (b) a copy of the statement has been given to the defence.
- (2) In this section:
- defence* means—
- (a) any lawyer representing the child or young person; or
 - (b) if the child or young person is not legally represented—the child or young person.

628 Cross-examination of people making victim impact statement

- (1) The defence may cross-examine a person who makes a victim impact statement on the contents of the statement.
- (2) However, if the child or young person is not legally represented, the child or young person may cross-examine the person only if—
- (a) the child or young person has indicated to the court the nature of the proposed cross-examination; and
 - (b) the court gives the child or young person leave to cross-examine the person.

(3) In this section:

defence means—

- (a) any lawyer representing the child or young person; or
- (b) if the child or young person is not legally represented—the child or young person.

629 Victim impact statements—effect on sentencing

- (1) To remove any doubt, in deciding how the child or young person should be sentenced (if at all) for the offence, the Childrens Court must make the decision in accordance with the young offender principles.
- (2) However, the Childrens Court—
 - (a) must also consider any victim impact statement given to the court in relation to the offence; and
 - (b) must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence.

Division 7.4.3 Taking additional offences into account

630 Application—div 7.4.3

- (1) This division applies if—
 - (a) a child or young person has been convicted or found guilty of an offence (the *principal offence*); and
 - (b) the Childrens Court has not made a conviction or non-conviction order (a *sentence-related order*) in relation to the offence; and
 - (c) the prosecutor files in the Childrens Court a document (the *list of additional offences*) that lists other offences (each of which is an *additional offence*) allegedly committed by the child or young person.
- (2) However, this division does not apply in relation to an offence punishable by life imprisonment.

631 Definitions—div 7.4.3

In this division:

additional offence—see section 630.

list of additional offences—see section 630.

principal offence—see section 630.

sentence-related order—see section 630.

632 List of additional offences

- (1) The list of additional offences must—
 - (a) indicate that the offences listed are offences that the child or young person wants the Childrens Court to take into account in making a sentence-related order for the principal offence; and
 - (b) be signed by the director of public prosecutions and the child or young person.
- (2) A copy of the list of additional offences must be given to the child or young person.

633 Outstanding additional offences taken into account in sentencing

- (1) Before making a sentence-related order for the principal offence, the Childrens Court must ask the child or young person whether the child or young person wants the court to take any of the additional offences into account in relation to the principal offence.
- (2) The Childrens Court may take an additional offence into account in making a sentence-related order for the principal offence if—
 - (a) the child or young person admits guilt to the additional offence; and
 - (b) the child or young person confirms that the child or young person wants the additional offence to be taken into account by the court in relation to the principal offence; and
 - (c) the prosecutor consents to the additional offence being taken into account.

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- (3) If the Childrens Court takes an additional offence into account in relation to the principal offence, any penalty imposed for the principal offence must not exceed the maximum penalty the court could have imposed for the principal offence if the additional offence had not been taken into account.
 - (4) The Childrens Court must not take an additional offence into account if the court does not have jurisdiction to make a sentence-related order for the offence.
 - (5) For subsection (4), the Childrens Court is taken to have jurisdiction to make a sentence-related order for an additional offence even if the jurisdiction may only be exercised with the consent of the child or young person.
 - (6) To remove any doubt, subsection (4) does not prevent the Supreme Court, if sentencing a child or young person, from taking an additional offence into account.

634 Ancillary orders relating to offences taken into account in sentencing

- (1) This section applies if the Childrens Court takes an additional offence into account in making a sentence-related order for the child or young person for the principal offence.
- (2) The Childrens Court may make any ancillary order that it could have made if it had convicted the child or young person of the additional offence when it took the offence into account.
- (3) To remove any doubt, the Childrens Court may not make a separate sentence-related order for the additional offence.
- (4) The child or young person has the same right of appeal in relation to the making of the ancillary order as the child or young person would have had if the order had been made on the conviction of the child or young person for the additional offence.

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(5) This section is subject to section 731 (Operation of ancillary and restitution orders).

(6) In this section:

ancillary order—see section 608 (5).

635 Consequences of taking offences into account in sentencing

(1) This section applies if the Childrens Court takes an additional offence into account for the principal offence.

(2) The Childrens Court must certify, on the list of additional offences, that the additional offence has been taken into account.

(3) A proceeding must not be started or continued in relation to the additional offence unless the conviction or finding of guilt for the principal offence is reversed or set aside.

(4) Subsection (3) does not prevent the Childrens Court from taking the additional offence into account if the court, on a later occasion, makes another sentence-related order for the child or young person, or re-sentences the child or young person, for the principal offence.

(5) The admission of guilt of the child or young person in relation to the additional offence is not admissible in evidence in a proceeding in relation to—

(a) the additional offence; or

(b) any other offence mentioned in the list of additional offences.

(6) The child or young person is not, for any purpose, taken to have been convicted or found guilty of the additional offence only because the additional offence is taken into account.

636 Evidence of offences taken into account in sentencing

- (1) This section applies if the Childrens Court takes an additional offence into account in making a sentence-related order for the child or young person for the principal offence.
- (2) The fact that the additional offence has been taken into account is admissible in a criminal proceeding if—
 - (a) the fact that the child or young person has been convicted or found guilty of the principal offence is admissible in the proceeding; and
 - (b) had the child or young person been convicted or found guilty of the additional offence, that fact would have been admissible in the proceeding.
- (3) For subsection (2), a fact is *admissible* in a criminal proceeding if—
 - (a) reference may be made to the fact in the proceeding; or
 - (b) evidence may be given of the fact in the proceeding.
- (4) The fact that the additional offence has been taken into account may be proved in the same way as the conviction or finding of guilt for the principal offence.

Division 7.4.4 Correction and adjustment of penalties

637 Reopening proceedings to correct penalty errors

- (1) This section applies to a criminal proceeding (including a proceeding on appeal) in which a court has—
 - (a) made a sentence-related order that is contrary to law; or
 - (b) failed to make a sentence-related order that is required to be made by law.

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- (2) This section applies whether or not anyone has been convicted or found guilty of an offence in the proceeding.
- (3) However, this section does not apply to a criminal proceeding in relation to a person being dealt with as an adult.
- (4) The Childrens Court may reopen the proceeding (on the application of a party to the proceeding, or on its own initiative) and may, after giving the parties an opportunity to be heard, do either or both of the following:
- (a) make a sentence-related order that is in accordance with law;
 - (b) amend any relevant finding of guilt, conviction, sentence or order.
- (5) For this section, the Childrens Court may issue a warrant for the arrest of the child or young person charged in the proceeding if—
- (a) the court considers that the child or young person will not appear unless the warrant is issued; or
 - (b) the child or young person fails to appear when called on by the court to appear.
- (6) For an appeal under any Act against a sentence-related order made under this section, the time within which the appeal must be made starts on the day the order is made.
- (7) However, this section does not otherwise affect any right of appeal.
- (8) In this section:
- sentence-related order*—
- (a) see section 630 (Application—div 7.4.3); and
 - (b) includes an ancillary order within the meaning of section 634 (Ancillary orders relating to offences taken into account in sentencing).

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Part 7.5 **Particular orders—committal orders**

Division 7.5.1 **Committal orders generally**

638 **Meaning of *committal order*—Act**

In this Act:

committal order means an order sentencing a guilty young person to commitment for all or part of the term of the sentence.

639 **Commitment of guilty young people**

- (1) This section applies if—
 - (a) the Childrens Court is sentencing a guilty young person convicted of an offence punishable by imprisonment; and
 - (b) having considered possible alternatives, the court is satisfied that no penalty other than commitment is appropriate.
- (2) The Childrens Court may, by order, sentence the guilty young person to commitment for all or part of the term of the sentence.
- (3) If the Childrens Court sentences the guilty young person to commitment, the sentence must be served by full-time detention at a detention place, unless—
 - (a) the court orders otherwise; or
Note The court may suspend the sentence (see s 644).
 - (b) the guilty young person is released from detention under this Act or another territory law.
- (4) If the Childrens Court sentences the guilty young person to commitment, the court must record the reasons for its decision.

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- (5) Failure to comply with subsection (4) does not invalidate the sentence of commitment.
 - (6) This section also applies subject to any contrary intention in the law that directly or indirectly creates the offence or directly or indirectly affects its scope or operation.
 - (7) This section is subject to this part.

Division 7.5.2 Commitment—explanation and information

640 Application—div 7.5.2

This division applies if—

- (a) the Childrens Court sentences a guilty young person to commitment for an offence; and
- (b) the sentence of commitment is not fully suspended.

641 Commitment—explanation to young offenders and others

- (1) The Childrens Court must ensure that reasonable steps are taken to explain to the young offender and either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender—
 - (a) the reason why the sentence of commitment is imposed, and why no penalty other than commitment is appropriate; and
 - (b) the purpose of the sentence; and

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- (c) in general terms, the young offender's obligations as a young detainee under chapter 8 (Criminal matters—sentence administration) and the consequences if the young offender breaches the obligations; and

Note A young offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (d) the day when the sentence starts or is taken to have started; and

Note For examples of the operation of this paragraph, see the end of this subsection.

- (e) if a suspended sentence order is made for the young offender suspending the sentence in part—in general terms, the effect of the suspension of the sentence; and

Note Explanations for the young offender and a person with responsibility for day-to-day matters, or long-term matters for the young offender of the effect of entering into a good behaviour order are required under s 647.

- (f) the earliest day (on the basis of the information currently available to the court) that the young offender may be eligible to be released from detention, having regard to each sentence of commitment to which the young offender is subject; and

- (g) the day the young offender is entitled to be released if not released earlier.

Examples—par (d), (f) and (g)

- 1 The Childrens Court sentences Rick to 7 days commitment. The sentence is imposed on a Monday. Rick is not subject to any other sentence of commitment.

To comply with paragraphs (d), (f) and (g), the court must explain to Rick that the sentence starts on the Monday when it is imposed and that the earliest day when Rick will become eligible to be released from detention is the day he is entitled to be released, on the following Monday.

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- 2 The Childrens Court sentences Sam to 9 months commitment. The sentence is imposed on 5 May 2007. Sam is not subject to any other sentence of commitment. Because Sam has been remanded in custody for sentencing since 27 April 2007, the court has backdated the start of the sentence to that date.

To comply with paragraphs (d), (f) and (g), the court must explain to Sam that the sentence is taken to have started on 27 April 2007 and that the earliest day when Sam will become eligible to be released is 27 October 2007 (based on the possible maximum remission of 1/3 of the whole sentence) and that Sam is entitled to be released on 27 January 2008 if not released earlier.

- 3 The Childrens Court sentences Robert to 9 months commitment and orders that 6 months of the period not be reduced by way of remissions. The sentence is imposed on 1 February 2007.

To comply with paragraphs (d), (f) and (g), the court must explain to Robert that the sentence starts on 1 February 2007 when it is imposed, that the earliest date when Robert will become eligible to receive remissions to be released is 1 August 2007, that the earliest day when Robert will become eligible to be released is 1 October 2007 (based on the possible maximum remission of 1/3 of the 3 months part of the sentence which may be taken into account for remissions) and Robert is entitled to be released on 1 November 2007 if not released earlier.

- 4 The Childrens Court sentences Heather to 18 months commitment and orders that none of the period be reduced by way of remissions. The sentence is imposed on 2 June 2007.

To comply with paragraphs (d), (f) and (g), the court must explain to Heather that the sentence starts on 2 June 2007 when it is imposed and that the earliest day when Heather will become eligible to be released from detention is the day she is entitled to be released, on 2 December 2008.

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

Note 2 The chief executive may reduce part of a sentence of commitment (see s 872), other than a part of a sentence which the Childrens Court has ordered not be reduced (see s 613).

- (2) An explanation under subsection (1) must be in language the person given the explanation can readily understand.

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- (3) Failure to comply with this section does not invalidate the sentence of commitment.

642 Commitment—written record of explanation

- (1) The Childrens Court must ensure that a written record of the explanation under section 641 is given as soon as practicable after (but no later than 10 working days after the day) the explanation is given to the young offender or the young offender’s lawyer.

Example of written record

a copy of the transcript of the explanation

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) Failure to comply with this section does not invalidate the sentence of commitment.

643 Commitment—notice of sentence

- (1) As soon as practicable after, but no later than 10 working days after the day, the Childrens Court makes the committal order for the young offender, the court must ensure that written notice of the order, together with a copy of the order, is given to—

- (a) the young offender; and
- (b) either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender; and
- (c) the chief executive.

Note 1 If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used (see that Act, s 8 (2)).

Note 2 If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

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- (2) The notice must include the following information:
- (a) when the sentence starts or is taken to have started;
 - (b) when the sentence ends;
 - (c) if a suspended sentence order is made suspending part of the sentence—when the suspended part of the sentence starts and ends;
 - (d) the earliest day (on the basis of the information currently available to the court) that the young offender may be eligible to be released from detention;
 - (e) the day that the young offender is entitled to be released from detention if not released earlier.
- (3) Failure to comply with this section does not invalidate the sentence of commitment.

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Part 7.6 Particular orders—suspended sentence orders

644 Suspended sentences

- (1) This section applies if the Childrens Court sentences a guilty young person (the *young offender*) to commitment for an offence.
- (2) The Childrens Court may make an order (a *suspended sentence order*) suspending all or part of the sentence of commitment.
- (3) If the Childrens Court makes a suspended sentence order, the court must also make a good behaviour order for the period during which the sentence is suspended, or for any longer period that the court considers appropriate.

Note A suspended sentence order may be part of a combination sentence together with other sentencing options (see pt 7.12).

- (4) If the Childrens Court makes a suspended sentence order fully suspending the sentence of commitment, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to—
 - (a) the young offender; and
 - (b) either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender.
- (5) Failure to comply with subsection (4) does not invalidate the suspended sentence order.
- (6) This section is subject to the following provisions:
 - (a) part 7.5 (Particular orders—committal orders);
 - (b) part 7.7 (Particular orders—good behaviour orders).

Part 7.7 Particular orders—good behaviour orders

Division 7.7.1 Good behaviour orders generally

645 Definitions—pt 7.7

In this part:

good behaviour obligations—see section 831.

Note *Personal violence offence*—see the dictionary.

harm—see the Criminal Code, dictionary.

646 Good behaviour orders

- (1) This section applies if a child or young person has been convicted or found guilty of an offence.
- (2) The Childrens Court may, with the agreement of the child or young person, make a good behaviour order requiring the child or young person to comply with the good behaviour obligations of the order for a stated period.
- (3) A good behaviour order may include any or all of the following conditions:
 - (a) a non-association condition;
 - (b) a place restriction condition;
 - (c) a community service condition;
 - (d) a rehabilitation condition;
 - (e) an education and training condition;
 - (f) a supervision condition;

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- (g) that the child or young person comply with a reparation order;
 - (h) a condition prescribed by regulation for this paragraph;
 - (i) any other condition, not inconsistent with this Act, that the court considers appropriate.

Examples of conditions—par (d)

- 1 that the young offender not drive a motor vehicle or consume alcohol or non-prescription drugs or medications
- 2 that the young offender regularly attend alcohol or drug management programs

Example of conditions—par (e)

that the young offender attend educational, vocational, psychological, psychiatric or other programs or counselling

Examples of conditions—par (i)

- 1 that the young offender undertake medical treatment and supervision (eg by taking medication and cooperating with medical assessments)
- 2 that the young offender supply samples of blood, breath, hair, saliva or urine for alcohol or drug testing if required

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

Note 2 A court may also issue assessment orders and treatment orders under the *Drugs of Dependence Act 1989*, pt 9 providing for the participation of young offenders in drug treatment programs.

- (4) However, the Childrens Court must not make a good behaviour order that includes a non-association condition, a place restriction condition, a community service condition or a rehabilitation condition unless the court has considered a pre-sentence report.

Note 1 The Childrens Court may order a pre-sentence report under s 615.

Note 2 The Childrens Court must not include a condition other than a core condition or supervision condition in a good behaviour order unless the child or young person is convicted of the offence for which the order is imposed (see s 611).

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- (5) If the offence is punishable by imprisonment, a good behaviour order—
 - (a) may be made instead of imposing a sentence of commitment or as part of a combination sentence that includes a sentence of commitment; and
 - (b) may apply to all or part of the term of the sentence.
 - (6) To remove any doubt, subsection (4) does not limit the sentences that a court may impose under this Act or another territory law.
 - (7) This section is subject to this part.

647 Good behaviour orders—explanation to young offenders and others

- (1) If the Childrens Court makes a good behaviour order for a young offender, the court must ensure that reasonable steps are taken to explain to the young offender, and either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender, in general terms—
 - (a) the nature and conditions of the good behaviour order; and
 - (b) the young offender’s good behaviour obligations under chapter 8 (Criminal matters—sentence administration); and
 - (c) the consequences if the young offender breaches the obligations.

Note A young offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).
- (2) An explanation under subsection (1) must be in language the person given the explanation can readily understand.
- (3) Failure to comply with this section does not invalidate the good behaviour order.

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648 Good behaviour orders—notice

- (1) If the Childrens Court makes a good behaviour order for a young offender, the court must ensure, as soon as practicable after making the order, that written notice of the order, together with a copy of the order, is given to—
- (a) the young offender; and
 - (b) either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender; and
 - (c) if the order includes a community service condition, rehabilitation condition, non-association condition, place restriction condition, education and training condition or supervision condition—the chief executive.

Note If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

- (2) The notice must include the following information:
- (a) the term of the good behaviour order;
 - (b) if the good behaviour order includes a community service condition—
 - (i) the number of hours of community service work the young offender is to perform; and
 - (ii) the period during which the work is to be completed; and
 - (iii) where the young offender must present himself or herself to start complying with the condition; and
 - (iv) when, or the period within which, the young offender must present;

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- (c) if the good behaviour order includes a rehabilitation condition—
 - (i) the rehabilitation the young offender is to take part in; and
 - (ii) the period during which the young offender is to take part in the rehabilitation; and
 - (iii) where the young offender must present himself or herself to start complying with the condition; and
 - (iv) when, or the period within which, the young offender must present;
 - (d) if the good behaviour order includes a non-association condition—
 - (i) the person with whom the young offender must not associate; and
 - (ii) the period for which the young offender is not to associate with the person; and
 - (iii) information that could reasonably identify someone (other than the young offender) to whom the non-association condition relates;
 - (e) if the good behaviour condition includes a place restriction condition—
 - (i) the place or area the young offender is prohibited from being in, or within a stated distance of; and
 - (ii) the period for which the young offender is prohibited from being in, or within a stated distance of, the place or area;

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- (f) if the good behaviour order includes an education and training condition—
 - (i) where the young offender must present himself or herself to start complying with the condition; and
 - (ii) when, or the period within which, the young offender must present;
 - (iii) the period for which the young offender is to take part in the education or training;
 - (g) any other conditions included in the good behaviour order.
- (3) Failure to comply with this section does not invalidate the good behaviour order.

649 Contravention of good behaviour order

- (1) This section applies to a young offender if—
- (a) the young offender is the subject of a basic good behaviour order (the *original order*); and
 - (b) the young offender was found guilty, but not convicted, of the offence for which the original order was made; and
 - (c) while the order is in force, the young offender contravenes—
 - (i) the order; or
 - (ii) a condition of the order.
- (2) The Childrens Court may cancel the original order and resentence the young offender for the offence in relation to which the original order was made.

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- (3) In resentencing a young offender under subsection (2), the Childrens Court must, in addition to any other matters that the court considers should be taken into account, take into account—
- (a) the fact that the original order was made; and
 - (b) anything done under the original order; and
 - (c) any other order made for the offence for which the original order was made and anything done under that other order.
- (4) The Childrens Court may only make an order when resentencing the young offender imposing a penalty that, when taken together with a penalty previously imposed for the offence for which the original order was made, is no greater than the maximum penalty the court could have imposed for that offence.

Division 7.7.2 Good behaviour orders— non-association conditions

650 Application—div 7.7.2

This division applies if the Childrens Court is considering whether to include a non-association condition in a good behaviour order for a child or young person in relation to an offence.

651 Meaning of *non-association condition*—div 7.7.2

In this division:

non-association condition, of a good behaviour order, means a condition included in the order prohibiting a child or young person from—

- (a) being with a named person, or attempting to be with the person; or

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- (b) being with a named person or communicating in any way with the person, or attempting to be with the person or to communicate in any way with the person.

652 Non-association conditions—grounds for making

- (1) The Childrens Court may include a non-association condition in a good behaviour order for a child or young person in relation to an offence if—
 - (a) the offence is a personal violence offence; and
 - (b) the court is satisfied that it is necessary and reasonable to make the order for 1 or more of the following purposes:
 - (i) preventing the child or young person from harassing anyone or endangering the safety or welfare of anyone;
 - (ii) preventing the child or young person from committing further offences (including a personal violence offence);
 - (iii) assisting the child or young person to manage things that may make the child or young person more likely to commit further offences (including a personal violence offence) if not managed.
- Note* A good behaviour order cannot include a non-association condition unless the child or young person the order is to apply to has been convicted of the offence for which the order is imposed (see s 607).
- (2) The restriction imposed on the child or young person by a non-association condition of a good behaviour order, and the period of the order, must not be unreasonably disproportionate to the purpose for which the order is made.
 - (3) To remove any doubt, this section is additional to the Childrens Court's other powers under this Act or any other territory law.

653 Non-association conditions—maximum period

- (1) A non-association condition of a good behaviour order—
 - (a) must be for a period of no longer than 1 year; and
 - (b) must state when it starts and the period for which it operates.
- (2) To remove any doubt, the period of a non-association condition of a good behaviour order is not limited by the term of any other sentence imposed for the offence for which the order is made.

Example

Andrew is convicted of an offence. The Childrens Court decides to sentence Andrew to 6 months commitment, to suspend the committal order and impose a good behaviour order with a non-association condition. The good behaviour order with the non-association condition may be for longer than the 6 months of the suspended committal 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).

654 Non-association conditions—disclosure of identifying information

- (1) A person commits an offence if the person publishes—
 - (a) the fact that a person is someone (other than the child or young person subject to the order) to whom a non-association condition of a good behaviour order relates; or
 - (b) any information that could reasonably identify someone (other than the child or young person subject to the order) to whom a non-association condition of a good behaviour order relates.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the publication is—
 - (a) to a relevant person (see subsection (5)); or

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- (b) to a named person by, or in accordance with, a direction of the Childrens Court; or
 - (c) part of an official report of a court proceeding and the publication is relevant to the proceeding.
- (3) However, the Childrens Court must not give a direction under subsection (2) (b) unless satisfied that the publication is in the interests of justice.
- (4) An offence against this section is a strict liability offence.
- (5) In this section:

relevant person, in relation to an order, means any of the following:

- (a) the child or young person subject to the order;
- (b) a person (other than the child or young person) to whom the order relates;
- (c) a police officer;
- (d) anyone involved in the administration of the order, or any other penalty to which the child or young person is subject in relation to the offence for which the order was made;
- (e) anyone involved in a proceeding for failure to comply with the non-association order;
- (f) anyone stated in the non-association order as someone to whom the information may be published;
- (g) anyone else to whom the information is required or allowed to be published under a law of the Territory, the Commonwealth, a State or another Territory.

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Division 7.7.3 Good behaviour orders—place restriction conditions

655 Application—div 7.7.3

This division applies if the Childrens Court is considering whether to include a place restriction condition in a good behaviour order for a child or young person in relation to an offence.

656 Meaning of *place restriction condition*—div 7.7.3

In this division:

place restriction condition, of a good behaviour order, means a condition of the order prohibiting a child or young person from being in, or within a stated distance of, a named place or area or attempting to be in, or within the stated distance, of the place or area.

657 Place restriction conditions—grounds for making

- (1) The Childrens Court may include a place restriction condition in the good behaviour order for the child or young person in relation to the offence if—
 - (a) the offence is a personal violence offence; and
 - (b) the court is satisfied that it is necessary and reasonable to make the order for 1 or more of the following purposes:
 - (i) preventing the child or young person from harassing anyone or endangering the safety or welfare of anyone;
 - (ii) preventing the child or young person from committing further offences (including a personal violence offence);

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- (iii) assisting the child or young person to manage things that may make the child or young person more likely to commit further offences (including a personal violence offence) if not managed.

Note A good behaviour order cannot include a place restriction condition unless the child or young person to whom the order is to apply has been convicted of the offence for which the order is imposed (see s 607).

- (2) The restriction imposed on the child or young person by the place restriction condition of the good behaviour order, and the period of the order, must not be unreasonably disproportionate to the purpose for which the order is made.
- (3) To remove any doubt, this section is additional to the Childrens Court's other powers under this Act or any other territory law.

658 Place restriction conditions—maximum period

- (1) A place restriction condition of a good behaviour order—
- (a) must be for a period of no longer than 1 year; and
 - (b) must state when it starts and the period for which it operates.
- (2) To remove any doubt, the period of a place restriction condition of a good behaviour order is not limited by the term of any other sentence imposed for the offence for which the order is made.

Example

Kelly is convicted of an offence. The Childrens Court decides the appropriate penalty is a 6 month suspended committal order and a good behaviour order with a place restriction condition. The good behaviour order with the place restriction condition may be for longer than 6 months.

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).

Division 7.7.4 Good behaviour orders—community service conditions

659 Application—div 7.7.4

This division applies if the Childrens Court is considering whether to include a community service condition in a good behaviour order for a child or young person.

660 Meaning of *community service condition*—Act

In this Act:

community service condition, of a good behaviour order for a child or young person, means a condition included in the order that the child or young person perform community service work.

Note 1 The number of hours that may be required to be performed for a community service condition is at least 20 and not more than 200 hours (see s 664).

Note 2 *Community service work*—see the dictionary.

661 Community service—eligibility

- (1) The Childrens Court must not include a community service condition in the good behaviour order for the child or young person unless satisfied that—
 - (a) community service work is suitable for the child or young person; and

Note For suitability for community service work, see s 662.

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- (b) it is appropriate that the child or young person be required to perform community service work.

Note A good behaviour order cannot include a community service condition unless the child or young person to whom the order is to apply has been convicted of the offence for which the order is imposed (see s 607).

- (2) The Childrens Court may decline to include a community service condition in the good behaviour order if—
- (a) the court asks the child or young person to undergo a medical examination by a doctor, as directed by the court; and
- (b) the child or young person does not undergo the examination in accordance with the direction.

662 Community service—suitability

- (1) The Childrens Court must not include a community service condition in the good behaviour order unless a pre-sentence report is given to the court about the suitability of the child or young person to serve a sentence (or a part of a sentence) by performing community service work.
- (2) In deciding whether to include a community service condition in the good behaviour order for the child or young person, the Childrens Court must consider the following:
- (a) the pre-sentence report;
- (b) any medical report about the child or young person given to the court;
- (c) any evidence given by the person who prepared the pre-sentence report;
- (d) any evidence given by an authorised person about the child or young person.

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- (3) Subsection (2) does not limit the matters that the Childrens Court may consider.
 - (4) In considering the pre-sentence report, the Childrens Court must consider any indicators of unsuitability mentioned in table 663.1, column 3 that are stated in the report to apply to the child or young person.
 - (5) The Childrens Court may include, or decline to include, a community service condition in a good behaviour order for the child or young person despite—
 - (a) any recommendation in the pre-sentence report about the suitability of the child or young person to serve a sentence (or a part of a sentence) by performing community service work; or
 - (b) any evidence given by the person who prepared the pre-sentence report or an authorised person.
 - (6) The Childrens Court must record reasons for its decision to include, or not include, a community service condition in the good behaviour order if—
 - (a) the pre-sentence report recommends that the child or young person is suitable but the court decides not to include a community service condition; or
 - (b) the pre-sentence report recommends that the child or young person is not suitable but the court decides to include a community service condition.
 - (7) Failure to comply with subsection (6) does not invalidate the good behaviour order.

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663 Community service—pre-sentence report matters

For section 662, the matters for assessing the suitability of a child or young person to serve a sentence (or a part of a sentence) by performing community service work are the matters mentioned in table 663.1, column 2.

Table 663.1 Assessment of suitability—community service work

column 1 item	column 2 matter	column 3 indication of unsuitability
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to perform community service work
4	criminal record	serious criminal record
5	employment, educational and personal circumstances	potential impracticability of regular reporting for community service work

664 Community service—hours to be performed

- (1) The number of hours of community service work required to be performed for a community service condition in the good behaviour order must be at least 20 hours and not more than 200 hours.

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- (2) The period during which the community service work is required to be completed under the community service condition must not be longer than 1 year.

665 Community service—2 or more good behaviour orders

- (1) This section applies if—
- (a) a child or young person is currently subject to a community service condition under a good behaviour order (an *existing order*); and
 - (b) the Childrens Court makes a further good behaviour order that includes a community service condition (a *new order*).
- (2) The Childrens Court may direct how the new order and the existing order work together.
- (3) However, the total of the hours to be performed under the new order and those remaining to be performed under the existing order must not be more than 200.

**Division 7.7.5 Good behaviour orders—
rehabilitation conditions**

666 Application—div 7.7.5

This division applies if the Childrens Court is considering whether to include a rehabilitation condition in a good behaviour order for a child or young person.

667 **Meaning of *rehabilitation condition*—Act**

In this Act:

rehabilitation condition, of a good behaviour order for a child or young person, means a condition included in the order that the child or young person undertake work, activities, classes or programs intended to rehabilitate the child or young person.

668 **Rehabilitation conditions—eligibility**

- (1) The Childrens Court must not include a rehabilitation condition in the good behaviour order for a child or young person unless satisfied that—
- (a) rehabilitation of a particular kind is suitable for the child or young person; and
 - (b) it is appropriate that the child or young person undertake rehabilitation of that kind; and
 - (c) the work, activities, classes or programs making up the particular kind of rehabilitation will have a rehabilitative effect on the child or young person; and
 - (d) a place for the child or young person in rehabilitation of the kind proposed is available or will become available within a reasonable time.
- Note* A good behaviour order cannot include a rehabilitation condition unless the child or young person the order is to apply to has been convicted of the offence for which the order is imposed (see s 607).
- (2) The Childrens Court may decline to include a rehabilitation condition in the good behaviour order if—
- (a) the court asks the child or young person to undergo a medical examination by a doctor, as directed by the court; and

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- (b) the child or young person does not undergo the examination in accordance with the direction.

669 Rehabilitation conditions—suitability

- (1) In deciding whether to include a rehabilitation condition in the good behaviour order for the child or young person, the Childrens Court must consider the following:
 - (a) any pre-sentence report or relevant sentencing information for the child or young person given to the court;
 - (b) any medical report about the child or young person given to the court;
 - (c) any evidence given by the person who prepared a pre-sentence report for the child or young person or who gave relevant sentencing information to the court;
 - (d) any evidence given by an authorised person about the child or young person.
- (2) Subsection (1) does not limit the matters that the Childrens Court may consider.
- (3) The Childrens Court may include, or decline to include, a rehabilitation condition in the good behaviour order for the child or young person despite—
 - (a) any recommendation in any pre-sentence report, or indication in relevant sentencing information, about the suitability of the child or young person to serve a sentence (or a part of a sentence) by taking part in rehabilitation; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the child or young person or who gave relevant sentencing information to the court; or
 - (c) any evidence given by an authorised person.

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- (4) The Childrens Court must record reasons for its decision to include, or not include, a rehabilitation condition in the good behaviour order if—
- (a) a pre-sentence report recommends, or relevant sentencing information indicates, that the child or young person is suitable but the court decides not to include a rehabilitation condition; or
 - (b) a pre-sentence report recommends, or relevant sentencing information indicates, that the child or young person is not suitable but the court decides to include a rehabilitation condition.
- (5) Failure to comply with subsection (4) does not invalidate the good behaviour order.

670 Rehabilitation conditions—maximum period

A rehabilitation condition included in the good behaviour order must not require the child or young person to take part in rehabilitation for longer than 3 years.

671 Rehabilitation conditions—2 or more good behaviour orders

- (1) This section applies if—
- (a) a child or young person is currently subject to a rehabilitation condition under a good behaviour order (an *existing order*); and
 - (b) the Childrens Court makes a further good behaviour order that includes a rehabilitation condition (a *new order*).
- (2) The Childrens Court may direct how the new order and the existing order work together.

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- (3) However, the new order must not require the child or young person to submit to rehabilitation as stated in the order for more than 3 years.

Division 7.7.6 Good behaviour orders—education and training conditions

672 Application—div 7.7.6

This division applies if the Childrens Court is considering whether to include an education and training condition in a good behaviour order for a child or young person.

673 Meaning of *education and training condition*—Act

In this Act:

education and training condition, of a good behaviour order for a child or young person, means a condition included in the order that the child or young person undertake education or training.

674 Education and training conditions—eligibility

- (1) The Childrens Court must not include an education and training condition in the good behaviour order for the child or young person unless satisfied that—
- (a) education or training of a particular kind is suitable for the child or young person; and
 - (b) it is appropriate that the child or young person undertake education or training of that kind; and

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- (c) a place for the child or young person in education or training of that kind is available or will become available within a reasonable time.

Note A good behaviour order cannot include an education and training condition unless the child or young person the order is to apply to has been convicted of the offence for which the order is imposed (see s 607).

- (2) The Childrens Court may decline to include an education and training condition in the good behaviour order if—
 - (a) the court asks the child or young person to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the child or young person does not undergo the examination in accordance with the direction.

675 Education and training conditions—suitability

- (1) In deciding whether to include an education and training condition in the good behaviour order for the child or young person, the Childrens Court must consider the following:
 - (a) any pre-sentence report or relevant sentencing information for the child or young person given to the court;
 - (b) any medical report about the child or young person given to the court;
 - (c) any evidence given by the person who prepared a pre-sentence report for the child or young person or who gave relevant sentencing information to the court;
 - (d) any evidence given by an authorised person about the child or young person.
- (2) Subsection (1) does not limit the matters that the Childrens Court may consider.

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- (3) The Childrens Court may include, or decline to include, an education and training condition in the good behaviour order for the child or young person despite—
- (a) any recommendation in any pre-sentence report, or indication in relevant sentencing information, about the suitability of the child or young person to serve a sentence (or a part of a sentence) by taking part in education or training; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the child or young person or who gave relevant sentencing information to the court; or
 - (c) any evidence given by an authorised person.
- (4) The Childrens Court must record reasons for its decision to include, or not include, an education and training condition in the good behaviour order if—
- (a) a pre-sentence report recommends, or relevant sentencing information indicates, that the child or young person is suitable but the court decides not to include an education and training condition; or
 - (b) a pre-sentence report recommends, or relevant sentencing information indicates, that the child or young person is not suitable but the court decides to include an education and training condition.
- (5) Failure to comply with subsection (4) does not invalidate the good behaviour order.

676 Education and training conditions—maximum period

An education and training condition included in the good behaviour order must not require the child or young person to take part in education or training for longer than 3 years.

677 Rehabilitation conditions—2 or more good behaviour orders

- (1) This section applies if—
 - (a) a child or young person is currently subject to an education and training condition under a good behaviour order (an *existing order*); and
 - (b) the Childrens Court makes a further good behaviour order that includes an education and training condition (a *new order*).
- (2) The Childrens Court may direct how the new order and the existing order work together.
- (3) However, the new order must not require the child or young person to undergo education or training as stated in the order for more than 3 years.

Division 7.7.7 Good behaviour orders—supervision conditions

678 Application—div 7.7.7

This division applies if the Childrens Court is considering whether to include a supervision condition in a good behaviour order for a child or young person.

679 Meaning of *supervision condition*—Act

In this Act:

supervision condition, of a good behaviour order for a child or young person, means a condition included in the order that—

- (a) requires the child or young person to comply with all reasonable directions given by the chief executive; and

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- (b) allows the chief executive to require information from entities directly supervising the child or young person.

680 Supervision conditions—when required

The Childrens Court must include a supervision condition in the good behaviour order for a child or young person if the court has made, or proposes to make, a good behaviour order including a community service condition, rehabilitation condition or education and training condition for the child or young person.

681 Supervision conditions—maximum period

A supervision condition included in the good behaviour order must not require the child or young person to comply with all reasonable directions given by the chief executive for longer than 3 years.

682 Supervision conditions—2 or more good behaviour orders

- (1) This section applies if—
 - (a) a child or young person is currently subject to a supervision condition under a good behaviour order (an *existing order*); and
 - (b) the Childrens Court makes a further good behaviour order that includes a supervision condition (a *new order*).
- (2) The Childrens Court may direct how the new order and the existing order work together.
- (3) However, the new order must not require the child or young person to be supervised as stated in the order for more than 3 years.

Part 7.8 Particular orders—reparation orders

683 Meaning of *reparation order*—Act

In this Act:

reparation order means an order under section 684 (3) or section 685 (3) or (4).

684 Reparation orders—losses and expenses generally

- (1) This section applies if—
 - (a) a child or young person is convicted or found guilty of an offence against a territory law; and
 - (b) a person (the *injured person*) suffers loss or incurs expense (including any out-of-pocket expense) as a direct result of the commission of the offence.

Note 1 **Found guilty** of an offence includes making a non-conviction order for the offence or taking the offence into account under s 633 (see Legislation Act, dict, pt 1).

Note 2 Certain victims of crimes may claim financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*.

- (2) Before the Childrens Court sentences the child or young person or makes a non-conviction order for the child or young person, the director of public prosecutions may apply to the court for an order under this section.

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- (3) On application under subsection (2), or its own initiative, the Childrens Court may make an order (a *reparation order*) requiring the child or young person to make reparation to the injured person, by way of a payment of money or otherwise, for the loss or expense.

Note If the offence relates to stolen property, a reparation order may also be made under s 685.

- (4) However, if the reparation order is for the payment of money, the amount payable must not be more than \$1 000.
- (5) This section is subject to section 731 (Operation of ancillary and restitution orders).
- (6) In this section:
loss—see the Criminal Code, section 300.

685 Reparation orders—stolen property

- (1) This section applies if a child or young person is convicted or found guilty of an offence against a territory law in relation to stolen property.
- (2) Before the Childrens Court sentences the child or young person or makes a non-conviction order for the child or young person, the director of public prosecutions may apply to the court for 1 or more orders under this section.
- (3) On application under subsection (2), or its own initiative, the Childrens Court may make 1 or both of the following orders (each of which is a *reparation order*):
- (a) an order that a person with custody or possession of the stolen property restore it to someone entitled to recover it from the person;

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- (b) an order that the child or young person make reparation by way of payment of an amount, or pay compensation for a loss suffered or expense incurred because of the offence, but so that the total amount of reparation or compensation is not more than \$1 000.

Note A reparation order may also be made under s 684 for the same offence.

- (4) If the Childrens Court makes an order under subsection (3) (a), the court, on application under subsection (2), or its own initiative, may also make either or both of the following orders (each of which is also a *reparation order*):
- (a) if the court considers that the child or young person has sold the property to a purchaser who was acting honestly—an order that the child or young person pay the purchaser an amount not more than the amount paid by the purchaser;
- (b) if the court considers that the child or young person has borrowed money on the security of the property from a lender acting honestly—an order that the child or young offender pay the lender an amount not more than the amount owed to the lender under the loan.
- (5) This section is subject to section 731 (Operation of ancillary and reparation orders).
- (6) In this section:

stolen property—see the Criminal Code, section 314 (Receiving—meaning of *stolen property*).

Note Under the Criminal Code, stolen property includes tainted property. Tainted property is the proceeds of the sale of stolen property, or property that is exchanged for stolen property.

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**686 Reparation orders—no agreement about amount of loss
etc**

- (1) If a child or young offender for whom a reparation order is to be made and the director of public prosecutions (or any other applicant for the reparation order) do not agree about the amount the child or young person is to be ordered to pay under the reparation order, the Childrens Court must decide the amount.
- (2) To remove any doubt—
 - (a) the total amount to be paid under the order must not be more than \$1 000 (excluding any amount that is stolen property being restored); and
Note See s 685 (3).
 - (b) section 688 (Reparation orders—evidential basis for orders) applies in relation to facts about the amount the child or young person is to be ordered to pay under the reparation order.

687 Reparation orders—payment by instalments

If the Childrens Court makes a reparation order for the payment of an amount, the court may, in addition, order that the amount be paid by stated instalments.

688 Reparation orders—evidential basis for orders

- (1) A reparation order must not be made for an offence of which a child or young person has been convicted or found guilty unless the Childrens Court considers that the order should be made on the basis of facts established by—
 - (a) evidence given at the trial; or
 - (b) available documents; or
 - (c) admissions by the child or young person; or

(d) submissions made by or for anyone (including the director of public prosecutions).

(2) In this section:

available documents, in relation to the offence, means any of the following:

- (a) any written statements or admissions made for use as evidence at a trial that would have been admissible as evidence at the trial for the offence;
- (b) depositions taken at any committal proceeding for the offence;
- (c) any written statements or admissions used as evidence in any committal proceeding for the offence;
- (d) any other relevant written documents.

Example—par (d)

If the value of an object, or the cost of its repair, is relevant to the proceeding for the reparation order, an affidavit by a valuer or repairer about the value of the object or the cost of its repair would be a relevant written document.

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).

689 Reparation orders—enforcing non-money order

- (1) This section applies if a reparation order does not require the payment of an amount.
- (2) If the young offender breaches the reparation order, the person in whose favour the order was made may apply to the Childrens Court for an order under this section to be made against the young offender.

Note A young offender may breach a reparation order by failing to comply with it (see Legislation Act, dict, pt 1, def **breach**).

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- (3) On an application under subsection (2), the Childrens Court may make an order for the payment of an amount against the young offender in substitution for the breached order.

690 Reparation orders—power to make other orders etc

To remove any doubt, the power to make a reparation order under a provision of this Act is additional to the Childrens Court’s other powers under this Act or any other territory law, including its power to make a reparation order under another provision of this Act or any other territory law.

Example

Stan broke into Alice’s house and stole property belonging to Alice. None of the property was recovered. Stan is convicted of the theft of the property. The court may make reparation orders ordering Stan to pay Alice—

- the costs of repairing the damage caused during the break-in (see s 684); and
- the value of the stolen property (see s 685).

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).

691 Reparation orders—Confiscation of Criminal Assets Act

- (1) The Childrens Court must not order a child or young person to make reparation to a person only because the person’s property is subject to a restraining order or forfeiture order under the *Confiscation of Criminal Assets Act 2003* (the **Confiscation Act**).
- (2) To remove any doubt—
- (a) an amount payable under a reparation order cannot be recovered from property that has been restrained or forfeited under the Confiscation Act; and

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- (b) a reparation order for the restoration of property cannot be made for property that has been restrained or forfeited under the Confiscation Act.

Note 1 Restrained property may be dealt with only in accordance with the Confiscation Act (see that Act, s 19, def *restraining order* and s 33 (1)). For the exclusion of restrained property from forfeiture, see the Confiscation Act, pt 6.

Note 2 For applications by a person who had an interest in forfeited property for the property's return or for compensation, see the Confiscation Act, div 9.5.

- (3) In this section:

restrained—property that has been *restrained* under the Confiscation Act includes—

- (a) property in relation to which an application for a restraining order has been made under that Act; and
- (b) property in relation to which an application for a conviction forfeiture order has been made under that Act; and
- (c) property subject to forfeiture under that Act.

692 Reparation orders—notice

- (1) This section applies if the Childrens Court makes a reparation order for a child or young person.

Note If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

- (2) As soon as practicable after the Childrens Court makes the reparation order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the child or young person; and

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- (b) either a parent of the child or young person or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person; and
 - (c) the person in whose favour the order is made.
- (3) Failure to comply with this section does not invalidate the reparation order.

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Part 7.9 Particular orders— accommodation orders

693 Meaning of *accommodation order*—Act

In this Act:

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

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

694 Accommodation orders—when cannot be made

The Childrens Court must not make an accommodation order for a child or young person unless satisfied that—

- (a) the accommodation order proposed to be made is suitable for the child or young person; and
- (b) if the order states that the child or young person is to live at a place—the person in charge of the place agrees to accommodate the person at the place; and
- (c) if the order states that the child is to live with a person—the person agrees to the child or young person living with the person.

Note Also, an accommodation order cannot be made on a finding of guilt without conviction (see s 606).

695 Accommodation orders—considerations

- (1) In deciding whether to make an accommodation order for a child or young person, the Childrens Court must consider the following:
 - (a) any pre-sentence report or relevant sentencing information for the child or young person given to the court;
 - (b) any medical report about the child or young person given to the court;
 - (c) any evidence given by the person who prepared a pre-sentence report for the child or young person or who gave relevant sentencing information to the court;
 - (d) any evidence given by an authorised person about the child or young person.
- (2) Subsection (1) does not limit the matters that the Childrens Court may consider.
- (3) The Childrens Court may make, or decline to make, an accommodation order, for a child or young person despite—
 - (a) any recommendation in any pre-sentence report, or indication in relevant sentencing information, about the appropriateness of an accommodation order for the child or young person; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the child or young person or who gave relevant sentencing information to the court; or
 - (c) any evidence given by an authorised person.

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- (4) The Childrens Court must record reasons for its decision in relation to a child or young person if—
- (a) a pre-sentence report recommends, or relevant sentencing information indicates, that an accommodation order be made for the child or young person but the court does not make an accommodation order; or
 - (b) a pre-sentence report recommends, or relevant sentencing information indicates, that an accommodation order not be made for the child or young person but the court makes an accommodation order.
- (5) Failure to comply with subsection (4) (b) does not invalidate the accommodation order.

696 Accommodation orders—maximum period

An accommodation order must not be longer than 3 years.

697 Accommodation orders—2 or more orders

- (1) This section applies if—
- (a) a child or young person is currently subject to an accommodation order (an *existing order*); and
 - (b) the Childrens Court makes a further accommodation order (a *new order*).
- (2) The Childrens Court may direct how the new order and the existing order work together.
- (3) However, the new order must not require the child or young person to be accommodated as stated in the order for longer than 3 years.

Part 7.10 Particular orders—deferred sentence orders

Division 7.10.1 Deferred sentence orders generally

698 Meaning of *deferred sentence order*—Act

In this Act:

deferred sentence order means an order under section 699 (2).

699 Deferred sentence orders generally

- (1) This section applies if—
- (a) a child or young person has been convicted or found guilty by the Childrens Court of an offence punishable by imprisonment; and
 - (b) the court has not sentenced the child or young person for the offence; and
 - (c) the child or young person is neither serving, nor liable to serve, a term of commitment for another offence; and
 - (d) the court considers the child or young person should be given an opportunity to address his or her criminal behaviour, and anything that has contributed to the behaviour, before the court sentences the child or young person for the offence; and
 - (e) the court is satisfied that it may release the child or young person on bail under the *Bail Act 1992*.

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- (2) The Childrens Court may make an order (a *deferred sentence order*) requiring the child or young person to appear before the court at the time and place stated in the order to be sentenced for the offence.

Note The maximum period of the order is 1 year (see s 710).

- (3) If the Childrens Court makes a deferred sentence order for the child or young person, the court must release the child or young person on bail under the *Bail Act 1992*.
- (4) A deferred sentence order applies to all offences for which the Childrens Court may sentence the child or young person, whether or not they are punishable by imprisonment.
- (5) A deferred sentence order may include any condition that the Childrens Court considers appropriate for subsection (1) (d).

Examples

see the examples to s 646 (Good behaviour orders)

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

Note 2 Bail may be granted subject to conditions (see *Bail Act 1992*, s 26).

- (6) This section is subject to this part.

700 Deferred sentence orders—automatic cancellation on bail revocation

The child or young person's deferred sentence order is automatically cancelled if the child or young person's bail in relation to which the order was made is revoked.

701 Deferred sentence orders—relationship with Bail Act

- (1) A requirement in a deferred sentence order under section 699 (Deferred sentence orders—generally) or section 707 (Deferred sentence orders—review requirements in orders) for a child or young person to appear before the Childrens Court —
- (a) does not affect a court’s power under the *Bail Act 1992* to require the child or young person to appear before the court under that Act; and
 - (b) applies to the child or young person despite the *Bail Act 1992*, section 6 (2) (b) (Rights following grant of bail).
- Note* The *Bail Act 1992*, s 6 (2) (b) provides a bailed person is entitled to remain at liberty in relation to the offence until required to appear before a court in accordance with the person’s undertaking to appear under that Act.
- (2) To remove any doubt, section 699 (5) does not limit, and is not limited by, the *Bail Act 1992*, section 26 (Conditions on which bail may be granted to children).
- (3) To remove any doubt, section 716 (Deferred sentence orders—review) does not limit, and is not limited by, any provision of the *Bail Act 1992*, part 6 (Review of bail decisions) about review of a child’s or young person’s bail.
- (4) To remove any doubt, section 717 (Deferred sentence orders—court’s powers on review) does not limit, and is not limited by, any provision of the *Bail Act 1992* about varying a child’s or young person’s bail conditions.

Division 7.10.2 Deferred sentence orders—making

702 Application—div 7.10.2

This division applies if the Childrens Court is considering whether to make, or makes, a deferred sentence order for a child or young person.

703 Meaning of *deferred sentence obligations*—Act

In this Act:

deferred sentence obligations, for a child or young person—see section 708 (Deferred sentence orders—obligations).

704 Deferred sentence orders—eligibility

- (1) The Childrens Court must not make a deferred sentence order for the child or young person unless it considers that—
 - (a) releasing the child or young person on bail would allow the child or young person to address his or her criminal behaviour and anything that has contributed to the behaviour; and
 - (b) if the child or young person were to comply with the order, and any bail conditions, the court might not impose as severe a sentence for the offence.
- (2) The Childrens Court may make a deferred sentence order whether or not it considers that the seriousness of the offence justifies a sentence of commitment.

705 Deferred sentence orders—suitability

- (1) In deciding whether to make a deferred sentence order for the child or young person, the Childrens Court must consider the following:
- (a) any pre-sentence report about the child or young person given to the court;
- Note* The court may order a pre-sentence report under s 615.
- (b) any evidence given by the person who prepared a pre-sentence report for the child or young person;
 - (c) any evidence given by an authorised person about the child or young person.
- (2) Subsection (1) does not limit the matters that the Childrens Court may consider.
- (3) The Childrens Court may make, or decline to make, a deferred sentence order despite—
- (a) any recommendation in any pre-sentence report about the suitability of the child or young person for a deferred sentence order; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the child or young person or an authorised person.
- (4) The Childrens Court must record reasons for its decision in relation to a child or young person if—
- (a) a pre-sentence report recommends that a deferred sentence order be made for the child or young person but the court does not make a deferred sentence order; or
 - (b) a pre-sentence report recommends that a deferred sentence order not be made for the child or young person but the court makes a deferred sentence order.

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- (5) Failure to comply with subsection (4) (b) does not invalidate the deferred sentence order.

706 Deferred sentence orders—indication of penalties

If the Childrens Court makes a deferred sentence order for the child or young person, the court must state, in general terms—

- (a) the penalty that the child or young person might receive if the child or young person complies with the order and any bail conditions; and
- (b) the penalty that the child or young offender might receive if the child or young person does not comply with the order or any bail condition.

707 Deferred sentence orders—review requirements in orders

If the Childrens Court makes a deferred sentence order for the child or young person, the court may require the child or young person to appear before the court at the times (before the time stated in the order under section 699 (2)), and at the places, stated in the order for the purpose of reviewing the compliance of the child or young person with the order.

Note The court may also review the bail of a child or young person at any time, see the *Bail Act 1992*, s 41A.

708 Deferred sentence orders—obligations

The obligations (the *deferred sentence obligations*) of a child or young person while subject to a deferred sentence order are—

- (a) to comply with the order (including any conditions of the order); and
- (b) to comply with the bail conditions of the child or young person.

709 Deferred sentence orders—explanation and notice

- (1) If the Childrens Court makes a deferred sentence order for a child or young person, the court must ensure that reasonable steps are taken to explain to the child or young person, and either a parent of the child or young person or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person, in general terms—
- (a) the nature and conditions of the order and the bail of the child or young person under the *Bail Act 1992*; and
 - (b) the obligations of the child or young person under the order and the *Bail Act 1992*; and
 - (c) the consequences if the child or young person breaches the obligations.

Note A child or young person may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (2) An explanation under subsection (1) must be in language the person given the explanation can readily understand.
- (3) As soon as practicable after the Childrens Court makes the deferred sentence order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the child or young person; and
 - (b) either a parent of the child or young person or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

Note The young offender must also be given written notice of any bail conditions (see *Bail Act 1992*, s 34).

- (4) Failure to comply with this section does not invalidate the deferred sentence order.

710 Deferred sentence orders—period of effect

- (1) A deferred sentence order must not state a time (the *sentencing time*) under section 699 (Deferred sentence orders generally) that is more than 1 year after the day the order is made.
- (2) A deferred sentence order—
 - (a) starts on the day it is made; and
 - (b) ends—
 - (i) at the sentencing time; or
 - (ii) if the order is earlier cancelled under section 700 (Deferred sentence orders—automatic cancellation on bail revocation) or section 717 (Deferred sentence orders—court’s powers on review)—on the day the court cancels it.

Division 7.10.3 Deferred sentence orders— supervision

711 Application—div 7.10.3

This division applies if the Childrens Court (the *sentencing court*) makes a deferred sentence order for a child or young person.

712 Deferred sentence orders—obligations breached

- (1) This section applies if a police officer believes, on reasonable grounds, that the child or young person has breached the child's or young person's deferred sentence obligations.
- (2) The police officer may—
 - (a) give the child or young person written notice (an *attendance notice*) requiring the child or young person to appear before a stated court at a stated time; or
 - (b) arrest the child or young person without a warrant.
- (3) If the police officer arrests the young offender, the police officer must bring the young offender before—
 - (a) the Childrens Court; or
 - (b) if the Childrens Court is not sitting—a magistrate.

713 Deferred sentence orders—arrest warrant

- (1) A judge or magistrate may issue a warrant for the arrest of the child or young person if satisfied, by information on oath, that—
 - (a) there are reasonable grounds for suspecting that the child or young person has breached, or will breach, any of the child's or young person's deferred sentence obligations; or

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- (b) the child or young person has failed to comply with—
- (i) the requirement in an attendance notice given to the child or young person under section 712; or
 - (ii) a summons under section 716.

Note For the arrest of a child or young person who breaches bail, see the *Bail Act 1992*, s 56A and s 56B.

- (2) The warrant must—
- (a) be in writing signed by the judge or magistrate; and
 - (b) be directed to all police officers or a named police officer; and
 - (c) state briefly the matter on which the information is based; and
 - (d) order the arrest of the child or young person and bring the child or young person before the Childrens Court.
- (3) If a police officer arrests the child or young person under this section, the police officer must, as soon as practicable, bring the young offender before—
- (a) the Childrens Court; or
 - (b) if the Childrens Court is not sitting—a magistrate.

Note For remanding or granting bail to the child or young person, see the *Bail Act 1992*.

714 Deferred sentence orders—notice of review

- (1) If the Childrens Court proposes to review a child's or young person's deferred sentence order, the court must give written notice of the proposed review to—
- (a) the child or young person; and

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- (b) either a parent of the child or young person or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person; and
 - (c) the chief executive; and
 - (d) the director of public prosecutions.
- (2) The notice must set out—
- (a) the reasons for the review; and
 - (b) the time and place fixed for the review.

715 Deferred sentence orders—review

- (1) The Childrens Court may review the child’s or young person’s deferred sentence order at any time.

Note The court may also review the child’s or young person’s bail at any time, see the *Bail Act 1992*, s 41A.

- (2) Without limiting subsection (1), the Childrens Court may review the deferred sentence order to consider whether the child or young person has breached, or may breach, the child’s or young person’s deferred sentence obligations.
- (3) The Childrens Court may review the deferred sentence order—
- (a) on its own initiative; or
 - (b) on application by—
 - (i) the child or young person; or
 - (ii) a parent or person who has responsibility for day-to-day matters, or long-term matters, for the young offender; or
 - (iii) the chief executive; or
 - (iv) the director of public prosecutions.

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- (4) A person mentioned in subsection (3) (b) may appear at a review.

716 Deferred sentence order—summons to attend court

- (1) This section applies if information alleging that a child or young person has breached any of the child's or young person's deferred sentence obligations is before the Childrens Court.
- (2) The Childrens Court may issue a summons directing the child or young person to appear before the court to be dealt with under this part.
- (3) The registrar of the Childrens Court must ensure that a copy of the summons is given to each interested person for the deferred sentence order.
- (4) In this section:
interested person—see section 831.

**Division 7.10.4 Deferred sentence orders—
amendment or cancellation**

717 Deferred sentence orders—court’s powers on review

After reviewing a young offender’s deferred sentence order, the Childrens Court may do any of the following:

- (a) take no further action;
- (b) give the young offender a warning about the need to comply with the young offender’s deferred sentence obligations (including any bail conditions);
- (c) by order, amend any of the deferred sentence order’s conditions;
- (d) by order, cancel the deferred sentence order if—
 - (i) the young offender has applied for its cancellation; or
 - (ii) the court is satisfied that the young offender has breached the young offender’s deferred sentence obligations.

718 Deferred sentence orders—when amendments take effect

- (1) This section applies if the Childrens Court makes an order (an *amendment order*) under section 717 amending the young offender’s deferred sentence order’s conditions.
- (2) The Childrens Court must record its reasons for the decision.
- (3) The amendment order must state when it takes effect.
- (4) The date of effect must be—
 - (a) the date when the Childrens Court gives the young offender written notice of the amendment order; or

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- (b) if a later date of effect is stated in the amendment order—the date stated.
- (5) As soon as practicable after the Childrens Court makes the amendment order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the young offender; and
 - (b) either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender; and
 - (c) the chief executive; and
 - (d) the director of public prosecutions.
- (6) Failure to comply with subsection (5) does not invalidate the amendment order.

719 Deferred sentence orders—when cancellation takes effect

- (1) This section applies if the Childrens Court makes an order (a *cancellation order*) under section 717 (Deferred sentence orders—court’s powers on review) cancelling the young offender’s deferred sentence order.
- (2) The Childrens Court must record its reasons for the decision.
- (3) The cancellation order takes effect on the day it is made.
- (4) As soon as practicable after the Childrens Court makes the cancellation order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the young offender; and
 - (b) either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender; and

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- (c) the chief executive; and
 - (d) the director of public prosecutions.
- (5) Failure to comply with subsection (4) does not invalidate the cancellation order.

720 Deferred sentence orders—effect of cancellation

- (1) This section applies if the Childrens Court makes an order (a *cancellation order*) under section 717 (Deferred sentence orders—court’s powers on review) cancelling the young offender’s deferred sentence order.
- (2) The young offender’s bail in relation to which the deferred sentence order was made is automatically revoked on the making of the cancellation order.
- (3) The Childrens Court must sentence the young offender for all offences for which the court may sentence the young offender, whether or not they are punishable by imprisonment.

Part 7.11 Other orders

721 **Meaning of *fine order*—Act**

In this Act:

fine order means an order directing that a child or young person convicted of an offence pay a fine.

722 **Fine orders—making**

- (1) This section applies if a child or young person is convicted or found guilty of an offence that is punishable by a fine.
- (2) The Childrens Court may make an order directing that the child or young person pay a fine (not greater than 50 penalty units) for the offence.
- (3) However, before the Childrens Court makes a fine order in relation to a child or young person, the court must consider the ability of the child or young person to comply with the order.
- (4) The Childrens Court may make a fine order for the young offender whether or not the offence is punishable by a fine otherwise than under this division.
- (5) If the Childrens Court makes a fine order, the court must state in the order—
 - (a) the amount of the fine; and
 - (b) how the fine is to be paid (for example, by stated instalments at stated times).

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).

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- (6) In this section:

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

Note The *Magistrates Court Act 1930*, s 146 defines ***fine*** as—

- (a) a financial penalty imposed by a court for an offence; or
- (b) a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence; or
- (c) costs payable to the Territory under a court order in a proceeding for an offence; or
- (d) a levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*; or
- (e) an amount payable to the Territory under an order for reparation under the *Crimes Act 1900*, s 350.

723 Fine orders—notice

- (1) As soon as practicable after the Childrens Court makes a fine order in relation to a child or young person, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the child or young person; and
 - (b) either a parent of the young offender or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

Note If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

- (2) Failure to comply with subsection (1) in relation to a fine order does not invalidate the order.

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724 Enforcement of fine orders

- (1) A fine order may be enforced by any means provided by law for the enforcement of a similar order of the Magistrates Court.
- (2) However—
 - (a) the Childrens Court must not make an order for the imprisonment of a child or young person in default of payment of a fine; and
 - (b) a warrant must not be issued committing a child or young person to prison because of the child's or young person's failure to pay a fine.
- (3) However, the Childrens Court may resentence the child or young person for the offence for which the fine order was made if—
 - (a) the court is satisfied that all reasonable action has been taken under the *Magistrates Court Act 1930*, division 3.9.2 (Enforcement of fines) to secure payment of an outstanding fine payable by the child or young person and there is no reasonable likelihood of the fine being paid; and
 - (b) the outstanding fine has not been remitted under the *Magistrates Court Act 1930*, section 159 (Remission).
- (4) In this section:

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

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

Note The *Magistrates Court Act 1930*, s 146 defines outstanding fine to include the fine plus any administrative fee payable for the fine.

725 Driver licence disqualification orders—motor vehicle theft

- (1) This section applies if—
- (a) a child or young person is convicted of an offence against a territory law involving the theft of a motor vehicle; or
 - (b) a child or young person is convicted of an offence against the Criminal Code, section 318 (Taking etc motor vehicle without consent).

Example—par (a)

an offence against any of the following provisions of the Criminal Code in relation to property that is a motor vehicle:

- s 308 (Theft)
- s 309 (Robbery)
- s 310 (Aggravated robbery)
- s 311 (Burglary)
- s 312 (Aggravated burglary)

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

Note 2 **Found guilty** of an offence includes making a non-conviction order for the offence or taking the offence into account under s 633 (see Legislation Act, dict, pt 1).

- (2) The Childrens Court may make an order (a ***driver licence disqualification order***) disqualifying the child or young person from holding or obtaining a driver licence under the *Road Transport (Driver Licensing) Act 1999* for a period the court considers appropriate.

Note The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

- (3) To remove any doubt, this section is additional to the court's other powers under this Act or any other territory law, including, for example, the road transport legislation.

(4) In this section:

motor vehicle—see the Criminal Code, section 318 (3).

road transport legislation—see the *Road Transport (General) Act 1999*, section 6.

726 Driver licence disqualification orders—notice

(1) As soon as practicable after the Childrens Court makes a driver licence disqualification order in relation to a child or young person, the court must ensure that written notice of the order, together with a copy of the order, is given to—

- (a) the child or young person; and
- (b) either a parent of the child or young person or someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person; and
- (c) the road transport authority.

Note If the order is part of a combination sentence, a single notice may be given to the child or young person for the sentences (see Legislation Act, s 49).

(2) Failure to comply with subsection (1) in relation to a driver licence disqualification order does not invalidate the order.

Part 7.12 Combination sentences

727 Application—pt 7.12

This part applies if a child or young person is convicted of an offence.

728 Combination sentences—offences punishable by imprisonment

- (1) If the offence is punishable by imprisonment, the Childrens Court may impose a sentence (a *combination sentence*) consisting of 2 or more of the following orders:
 - (a) a committal order;
 - (b) a suspended sentence order;
 - (c) an accommodation order;
 - (d) a good behaviour order;
 - (e) a fine order;
 - (f) a driver licence disqualification order;
 - (g) a reparation order;
 - (h) a treatment order under the *Drugs of Dependence Act 1989*, section 123;
 - (i) an order (however described) imposing another penalty available under any other territory law.

Examples of sentences that may be imposed

- 1 a sentence of 18 months as follows:
 - a committal order for 1 year (ie detention at a detention place)
 - a fine order directing payment of \$500 by stated instalments

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- a good behaviour order for 6 months (the remainder of the term of the sentence) that includes a condition requiring the young offender to undertake 100 hours of community service and a supervision condition
- 2 a sentence of 3 years as follows:
- a committal order for 2 years (ie detention at a detention place)
 - a good behaviour order for 1 year (the remainder of the term of the sentence)
 - a driver licence disqualification order for all of the sentence
- 3 a sentence of 2 years as follows:
- an accommodation order for 2 years
 - a good behaviour order with supervision conditions for 2 years, and a non-association condition for 1 year

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, the Childrens Court must not make an order that forms part of the combination sentence unless the court would have power to make the order otherwise than as part of a combination sentence.

729 Combination sentences—offences punishable by fine

- (1) If the offence is not punishable by imprisonment, the Childrens Court may impose a sentence (also a *combination sentence*) consisting of 2 or more of the following orders:
- (a) a basic good behaviour order;
- Note* **Basic good behaviour order**—see s 601.
- (b) a fine order;
 - (c) a driver licence disqualification order;
 - (d) a reparation order;
 - (e) an order (however described) imposing another penalty available under any other territory law.

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- (2) However, the Childrens Court must not make an order that forms part of the combination sentence unless the court would have power to make the order otherwise than as part of a combination sentence.

730 Combination sentences—start and end

For a combination sentence, the Childrens Court may set the start or end of the period of any part of the sentence, or of any order forming part of the sentence, by reference to anything the court considers appropriate, including, for example—

- (a) a stated day; or
- (b) the lapse of a stated period of time; or
- (c) whenever a stated event happens, or whenever the earlier or later of 2 or more stated events happens.

Example—par (c)

a 3-year combination sentence consisting of the following orders:

- a committal order for 2 years (ie detention at a detention place)
- a good behaviour order with a place restriction condition, stated to start when the young offender is released from detention and to end at the end of the 3-year term of the sentence
- a driver licence disqualification order, also stated to start whenever the young offender is released from detention and to end at the end of the 3-year term of the commitment

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 7.13 Sentencing—miscellaneous

731 Operation of ancillary and reparation orders

(1) In this section:

finalised—a proceeding in relation to an appeal is *finalised* if—

- (a) the appeal is dismissed, withdrawn or struck out or ends without a retrial being ordered and the period for making any further appeal against that decision ends; or
- (b) if a retrial is ordered—the proceeding on the retrial is finalised within the meaning of paragraph (a).

relevant order means—

- (a) an ancillary order under—
 - (i) section 608 (Non-conviction orders—ancillary orders); or
 - (ii) section 634 (Ancillary orders relating to offences taken into account in sentencing); or
 - (b) a reparation order.
- (2) A relevant order takes effect on the day after—
- (a) the end of the period for appealing against the conviction or finding of guilt to which the relevant order relates; or
 - (b) if an appeal in relation to the conviction or finding of guilt is made within the period for making the appeal—the day the proceeding in relation to the appeal is finalised.

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- (3) However, an appeal court may, on application or its own initiative, if satisfied it is in the interests of justice, order that a relevant order take effect on a stated day earlier than the day mentioned in subsection (2).
 - (4) A court may, on application or its own initiative, by order, give any directions it considers appropriate for—
 - (a) the custody of property to which a relevant order relates; or
 - (b) the giving of security, with or without sureties, for payment of an amount under a relevant order.
 - (5) If a conviction or finding of guilt is set aside—
 - (a) any relevant order to which the conviction or finding of guilt relates is set aside; and
 - (b) an appeal court may make any order it considers appropriate in the interests of justice consequent on any order given under subsection (4).
 - (6) An application under this section may be made by the director of public prosecutions or a person whose interests are affected by a relevant order.
 - (7) This section is subject to section 637 (Reopening proceedings to correct penalty errors).

732 Reparation—other actions for recovery

- (1) This Act does not abolish or otherwise affect any cause of action that anyone may have—
 - (a) to recover goods or property; or
 - (b) to recover damages for, or be indemnified against, any loss or expense.

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- (2) However, in a proceeding in relation to any loss or expense that resulted from the commission of an offence, a court must consider any amount paid under a reparation order in relation to the commission of the offence.

733 Effect of failure to comply with Act

A failure to comply with this Act may be considered by an appeal court in any appeal against sentence even if this Act declares that the failure to comply does not invalidate the sentence.

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Chapter 8 Criminal matters—sentence administration

Part 8.1 Detention of young offenders generally

800 Transporting young offenders to and from court

- (1) This section applies if a young offender is detained at a detention place and it is necessary to transport the young offender—
 - (a) from the detention place to a court; or
 - (b) from a court to the detention place.
- (2) The young offender must not be transported with an adult who is under detention.
- (3) The young offender must not be placed in a room with an adult who is under detention.

801 Detaining young offenders at court

- (1) This section applies if a young offender has been transported—
 - (a) from a detention place to a court; or
 - (b) from a court to a detention place.
- (2) The young offender may be detained at the court—
 - (a) before a hearing relating to the young offender; or
 - (b) after a hearing relating to the young offender but before the young offender is transported to the detention place.

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

802 Unlawful absence by young offender—extension of sentence

If a young offender is unlawfully absent from a detention place or other place during the term of the young offender's sentence of commitment, the absence is not to be counted in working out the period of the sentence served by the young offender.

Examples of unlawful absence

the young offender fails to return to a detention place as required after community service work or approved leave

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 8.2 Commitment

Division 8.2.1 Commitment—start and end of sentences

803 Start and end of sentences—general rule

- (1) A sentence of commitment starts—
 - (a) on the day the sentence is imposed; or
 - (b) if a young offender is not in custody—on the day the young offender becomes subject to lawful custody.
- (2) However, subsection (1) is subject to the following provisions of this Act:
 - (a) section 730 (Combination sentences—start and end);
 - (b) chapter 8 (Criminal matters—sentence administration).
- (3) A sentence of commitment that starts on a day starts at the beginning of that day.
- (4) A sentence of commitment that ends on a day ends at the end of that day.
- (5) In this section:

sentence of commitment does not include a sentence of commitment that is fully suspended.

804 Start of sentences—backdated sentences

- (1) The Childrens Court may direct that a sentence of commitment is taken to have started on a day before the day the sentence is imposed.

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- (2) For subsection (1), the Childrens Court must take into account any period during which the young offender has already been detained in relation to the offence.
- (3) However, subsection (2) does not apply to—
- (a) a period of detention shorter than 1 day; or
 - (b) a sentence of commitment shorter than 1 day; or
 - (c) a sentence of commitment that is fully suspended; or
 - (d) the suspended part of a partly suspended sentence of commitment.
- (4) If the young offender is charged with a series of offences committed on different occasions and has been in custody continuously since arrest, the period of custody for subsection (2) must be worked out from the time of the young offender's arrest.
- (5) Subsection (4) applies even if the young offender is not convicted or found guilty of—
- (a) the offence for which the young offender was first arrested; or
 - (b) any particular offence or offences in the series.

Division 8.2.2 Effect and operation of committal orders

805 Application—div 8.2.2

- (1) This division applies if a court (a *committing authority*) makes an order (a *committal order*) sentencing a young offender to commitment that, under a territory law, must be served by detention.

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- (2) A reference in this section to a court sentencing a young offender to commitment includes an entity prescribed by regulation committing the young offender.

Note ACT courts have federal jurisdiction in criminal matters (including sentencing) under the *Judiciary Act 1903* (Cwlth). See particularly that Act, s 68 (Jurisdiction of State and Territory courts in criminal cases).

806 Effect of committal order

The committal order—

- (a) authorises the chief executive to have custody of the young offender under the order; and
- (b) requires the chief executive to—
 - (i) take the young offender into custody; and
 - (ii) keep the young offender under full-time detention until released from commitment under this Act or another territory law.

807 Warrant for commitment

- (1) The committing authority must issue a warrant for the commitment of the young offender in the chief executive's custody.
- (2) The warrant—
 - (a) must be addressed to the chief executive; and
 - (b) may be signed by a person authorised by the committing authority.

Note If a form is approved under the *Court Procedures Act 2004* for a warrant by a court, the form must be used (see that Act, s 8 (2)).

808 Custody of sentenced young offender

The chief executive must keep the young offender committed under full-time detention under this Act until released under this Act or another territory law.

809 Commitment not affected by lack of proper warrant

The validity of the young offender's commitment under this Act is not affected by any failure to issue a proper warrant of commitment, if the commitment is in accordance with the committing authority's committal order.

Division 8.2.3 Commitment—multiple sentences

810 Definitions—div 8.2.3

In this division:

existing sentence—see section 811.

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

primary sentence—see section 811.

811 Application—div 8.2.3

This division applies to a sentence of commitment (a *primary sentence*) imposed by the Childrens Court on a child or young person (the *young offender*) if—

- (a) any of the following apply in relation to the young offender:
 - (i) when the primary sentence is imposed, the young offender is serving another sentence of commitment (an *existing sentence*);

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- (ii) the young offender has been sentenced to another sentence of commitment (also an *existing sentence*) but, when the primary sentence is imposed, the other sentence has not yet started;
 - (iii) the young offender is sentenced to another sentence of commitment (also an *existing sentence*) in the same proceeding; and
- (b) the existing sentence is for an offence against a territory law; and
 - (c) the primary sentence is not fully suspended.

812 Sentences to be concurrent

A primary sentence must be served concurrently with an existing sentence.

813 Amendment of start of sentences on setting aside or amending other sentences

- (1) If a court sets aside or amends a sentence of commitment imposed on a young offender (whether on appeal or otherwise), the court may amend the starting day of any other sentence that has been imposed on the young offender by the court or another court.
- (2) If the young offender is subject to 2 or more sentences, this section applies to each of them.
- (3) The court may amend the starting day of a sentence under this section on its own initiative, or the application of a party to the proceeding on the setting aside or amendment of the other sentence.
- (4) An appeal does not lie only because the starting day of a sentence is amended under this section.
- (5) The term of a sentence must not be amended under this section.

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Part 8.3 Remand

814 Application—pt 8.3

- (1) This part applies if any of the following (a *remanding authority*) orders the remand of a child or young person, or a person being dealt with as a young person, (the *young remandee*) in custody under a territory law:
 - (a) a court;
 - (b) a magistrate;
 - (c) an entity prescribed by regulation.
- (2) To remove any doubt, this part also applies to the remand of a child or young person, or a person being dealt with as a child or young person, (also the *young remandee*) during an adjournment in a proceeding before a remanding authority, whether the remand is for less than a day or longer.

815 Definitions—pt 8.3

In this part:

remanding authority—see section 814.

young remandee—see section 814.

816 Effect of remand order

The remanding authority's order for remand—

- (a) authorises the chief executive to have custody of the young remandee under the order; and

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- (b) requires the chief executive to—
- (i) take the young remandee into custody; and
 - (ii) keep the young remandee in custody under full-time detention under the order; and
 - (iii) return the young remandee to the remanding authority as required by the order.

Note For the treatment of young remandees in detention under this Act, see s 1004.

817 Warrant for remand

- (1) The remanding authority must issue a warrant for the remand of the young remandee in the chief executive's custody.
- (2) The warrant—
 - (a) must be addressed to the chief executive; and
 - (b) may be signed by a person authorised by the remanding authority.

Note 1 If a form is approved under the *Court Procedures Act 2004* for a warrant by a court, the form must be used (see that Act, s 8 (2)).

Note 2 If a form is approved under s 3210 for a warrant by a remanding authority that is not a court, the form must be used (see s 3210 (2)).

- (3) The warrant—
 - (a) may state any considerations about the remand to which the chief executive must have regard; and

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- (b) must state when and where the remanding authority orders the return of the young remandee to the remanding authority.

Examples of considerations—par (a)

- 1 the young remandee's need for access to lawyers or other people in relation to the proceeding before the remanding authority
- 2 the likelihood of the young remandee having to be brought before the Childrens Court in some other proceeding

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).

818 Custody of young remandee

- (1) The chief executive must—
 - (a) keep the young remandee in custody under full-time detention at a detention place under this Act under the order for remand; and
 - (b) return the young remandee to the remanding authority as ordered by the remanding authority.
- (2) The chief executive must ensure that the young remandee is held in the place that the chief executive decides is the most appropriate.
- (3) However, the young remandee must not be held with an adult who is in custody under detention.
- (4) For subsection (2)—
 - (a) the chief executive must have regard to the following:
 - (i) the remanding authority's order for remand;
 - (ii) any considerations about the remand stated in the warrant by the remanding authority;
 - (iii) whether the young remandee is also a sentenced young offender;

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- (iv) the availability of suitable places of custody;
 - (v) the practicality of moving the young remandee to and from the place where the young remandee is detained to satisfy the remanding authority's order for the return of the young remandee; and
- (b) the chief executive may have regard to anything else the chief executive considers relevant.

819 Remand not affected by lack of proper warrant

The validity of the young remandee's remand in custody under detention under this Act is not affected by any failure to issue a proper warrant of remand, if the remand is in accordance with the remanding authority's order for remand.

Part 8.4 Committal—miscellaneous

820 Directions to escort officers

- (1) For this chapter, the chief executive may give directions to an escort officer in relation to a young offender or young remandee, including directions to take the young offender or young remandee into custody or to a place stated in the direction.

Note *Escort officer*—see the dictionary.

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

821 Orders to bring young offenders and young remandees before court etc

- (1) This chapter is additional to, and does not limit, any other power of a court or other entity to require a young offender, young remandee or other person to be brought before the court or entity.
- (2) Without limiting subsection (1), the chief executive must arrange for a young offender, young remandee or other person in the chief executive's custody to be brought before a court or other entity in accordance with any order or direction (however described) of the court or entity.

Part 8.5 Detention

Division 8.5.1 General

822 Application—pt 8.5

- (1) This part applies to a person (a *young detainee*) if the person is—
 - (a) a young offender in the chief executive’s custody because of section 806 (Effect of committal order); or
 - (b) a young remandee in the chief executive’s custody because of section 816 (Effect of remand order).
- (2) A reference in this part to a *young offender* is a reference to the young detainee if—
 - (a) subsection (1) (a) applies to the young detainee; or
 - (b) subsection (1) (b) applies to the young detainee but the young offender is not a young remandee under subsection (3).
- (3) A reference in this part to a *young remandee* is a reference to the young detainee if—
 - (a) subsection (1) (b) applies to the young detainee; and
 - (b) the young detainee—
 - (i) has not been convicted or found guilty of the offence for which the young detainee is remanded in custody; or
 - (ii) is not serving a sentence of committal by detention for another offence.

823 Definitions—Act and ch 8

- (1) In this Act:

release date, for a young offender for a commitment, means the day the term of the sentence ends.

Note The *term* of a commitment includes the term of the commitment as amended (see dict).

- (2) In this chapter:

young detainee—see section 822 (1).

young offender—see section 822 (2).

young remandee—see section 822 (3).

Division 8.5.2 Serving detention

824 Detention obligations

- (1) A young offender must serve the period of commitment set by the sentencing court by full-time detention in accordance with this Act.
- (2) A young offender must also comply with any requirement or direction under this Act that applies to the young offender as a young detainee.
- (3) A young remandee must spend the period of remand in full-time detention in accordance with this Act.
- (4) A young remandee must also comply with any requirement or direction under this Act that applies to the young remandee as a young detainee.

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

825 Detention—chief executive directions

- (1) For this chapter, the chief executive may give directions, orally or in writing, to a young detainee.
- (2) To remove any doubt, this section does not limit section 927 (Chief executive directions—custody under Act).

826 Chief executive to arrange detention

- (1) The chief executive must arrange for a young detainee to be detained at a detention place.
- (2) For this section, the chief executive may, in writing, direct that a young detainee be detained at the detention place stated in the direction.

827 Guidelines—allocation of young detainees to detention places

- (1) The chief executive may make guidelines in relation to the allocation of young detainees to detention places.
- (2) Without limiting subsection (1), guidelines may include provision about—
 - (a) which detention places are to be used for accommodating young detainees; and
 - (b) the transfer of young detainees between detention places.
- (3) A guideline is a notifiable instrument.

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

828 Release at end of sentence

- (1) A young offender must be released from commitment on the young offender's release date for the sentence.

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- (2) The young offender may be released from commitment at any time on the release date.
 - (3) However, if the release date is not a working day at the place of commitment, the young offender may be released from commitment at any time during the last working day at that place before the release date.

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

- (4) If the young offender is released under subsection (3), the young offender's sentence is taken to have ended when the young offender is released under that subsection.

829 Young offender not to be released if serving another sentence etc

- (1) A young offender must not be released under section 828 if—
 - (a) on the release date for the young offender's sentence (the **current sentence**), the young offender is subject to another sentence of commitment to be served by detention; and
 - (b) under the other sentence, the young offender must be kept in full-time detention on or immediately after the release date for the current sentence.
- (2) Also, the young offender must not be released under section 828 if, on the release date for the current sentence, the young offender is otherwise required to be kept in custody in relation to an offence against a law of the Commonwealth, a State or another Territory.

Part 8.6 Young offenders under good behaviour orders

Division 8.6.1 Serving good behaviour orders generally

830 Application—pt 8.6

This part applies to a young offender under a good behaviour order.

831 Definitions—pt 8.6

(1) In this part:

additional condition, of a young offender's good behaviour order, means—

- (a) a condition of the order under section 646 (Good behaviour orders); or
- (b) a condition of the order imposed under—
 - (i) division 8.6.5 (Good behaviour orders—breach); or
 - (ii) division 8.6.6 (Good behaviour orders—amendment and discharge); or
- (c) if a condition of the order is amended under division 8.6.5 or division 8.6.6—the condition as amended.

core condition, of a young offender's good behaviour order, means a core condition under section 833.

good behaviour obligations, of a young offender subject to a good behaviour order, means the young offender's obligations under section 832.

good behaviour order—see section 646.

interested person, for a young offender's good behaviour order, means any of the following:

- (a) the young offender;
- (b) a parent or someone else who has responsibility for day-to-day matters, or long-term matters, for the young offender;
- (c) the chief executive;
- (d) the director of public prosecutions.

832 Good behaviour obligations

A young offender must—

- (a) comply with the young offender's good behaviour order, including—
 - (i) the core conditions of the order; and
 - (ii) any additional condition of the order; and
- (b) comply with any other requirement under this Act that applies to the young offender.

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

833 Good behaviour orders—core conditions

- (1) The core conditions of a young offender’s good behaviour order are as follows:
- (a) the young offender must not commit—
 - (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
 - (ii) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;
 - (b) if the young offender is charged with an offence against a law in force in Australia or elsewhere—the young offender must tell the chief executive about the charge as soon as possible, but within 2 days after the day the young offender becomes aware of the charge;
 - (c) if the young offender’s contact details change—the young offender must tell the chief executive about the change as soon as possible, but within 2 days after the day the young offender knows the changed details;
 - (d) the young offender must comply with any direction given to the young offender by the chief executive under this Act in relation to the good behaviour order;
 - (e) if the good behaviour order is subject to a supervision condition—the young offender must not leave the ACT for more than the defined period without the chief executive’s approval;
 - (f) the young offender must comply with any attendance notice given to the young offender under section 854 (Good behaviour orders—good behaviour obligations breached);

(g) any condition prescribed by regulation that applies to the young offender.

(2) In this section:

contact details, for a young offender, means any of the following:

- (a) home address or phone number;
- (b) address or phone number of an educational institution the young offender is attending;
- (c) work address or phone number;
- (d) mobile phone number.

defined period means 24 hours or, if another period is prescribed by regulation, the prescribed period.

834 Good behaviour orders—end

A good behaviour order for a young offender ends—

- (a) at the end of the term of the order; or
- (b) if the order is cancelled or discharged earlier under division 8.6.5 (Good behaviour orders—breach) or division 8.6.6 (Good behaviour orders—amendment and discharge)—when the cancellation or discharge takes effect.

**Division 8.6.2 Good behaviour orders—doing
community service work**

Subdivision 8.6.2.1 Community service work generally

835 Definitions—Act and div 8.6.2.

- (1) In this Act:

community service work means work prescribed by regulation to be community work.

- (2) In this division:

person involved, in community service work, includes each of the following (other than a young offender doing the work):

- (a) an entity for whose benefit the work is done;
- (b) an entity who directs or supervises the work;
- (c) an entity that owns or occupies the premises or land where the work is done.

**836 Protection from liability for people involved in community
service work**

- (1) A person involved in community service work is not civilly liable to someone (other than the young offender doing the work) for conduct engaged in by the young offender in doing the work.

Note A person may engage in conduct by omitting to do an act (see dict, def *conduct* and def *engage in conduct*).

- (2) A person involved in community service work is not civilly liable to the young offender for conduct engaged in by the person in relation to the work.

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- (3) Any civil liability that would, apart from this section, attach to the person involved attaches instead to the Territory.
 - (4) However, subsections (1) and (2) do not apply if—
 - (a) the community service work was not approved by the chief executive; or
 - (b) the conduct was intended (whether by itself or with other conduct) to cause injury, loss or damage.

837 Community service work not to displace employees

The chief executive must not direct or allow a young offender to do community service work if the chief executive believes, on reasonable grounds, that, in doing the work, the young offender would take the place of someone who would otherwise be employed to do the work.

838 No employment contract for community service work

- (1) To remove any doubt, community service work, and any arrangement under this Act in relation to community service work, is not taken to create a contract of employment.
- (2) In particular, a contract of employment is not taken to exist between the following in relation to community service work by a young offender:
 - (a) the young offender and the Territory;
 - (b) the young offender and a person involved in the work;
 - (c) the Territory and a person involved in the work.

839 Community service work—occupational health and safety

- (1) The chief executive must ensure, as far as practicable, that the conditions for doing community service work comply with requirements under the *Occupational Health and Safety Act 1989* in relation to the doing of the work by employees.
- (2) In particular, the chief executive must ensure that arrangements for a young offender to do community service work take account, as far as practicable, of the need—
 - (a) to secure the health, safety and welfare of the young offender; and
 - (b) to protect people at or near community service work workplaces from risks to health or safety arising out of the activities of the young offender.
- (3) A regulation may provide for the application of the *Occupational Health and Safety Act 1989* in relation to community service work, including modifications of the Act in its application in relation to a young offender doing community service work.

Subdivision 8.6.2.2 Doing community service work

840 Application—sdiv 8.6.2.2

This subdivision applies if a young offender’s good behaviour order is subject to a community service condition.

841 Definitions—sdiv 8.6.2.2

In this subdivision:

CE community service direction, in relation to the young offender, means a direction given under section 843 by the chief executive to the young offender.

reporting officer, in relation to the young offender, means the reporting officer stated under section 843 (2) (e) in the CE community service direction for the young offender.

work supervisor, in relation to a young offender, means the work supervisor stated under section 843 (2) (d) in the CE community service direction for the young offender.

842 Compliance with community service condition

To comply with a community service condition of the young offender's good behaviour order, the young offender must comply with the requirements of this subdivision.

843 Community service work—chief executive directions

- (1) The chief executive may direct the young offender, orally or in writing, to do community service work that the chief executive considers suitable for the young offender.
- (2) The CE community service direction must include details of the following:
 - (a) the community service work the young offender must do;
 - (b) the place to which the young offender must report for the work;
 - (c) the time when the young offender must report;
 - (d) the person (if any) to whom the young offender must report (the *work supervisor*);
 - (e) the person (the *reporting officer*) the young offender must tell if—
 - (i) under the direction, the young offender is being required to do work the young offender is not capable of doing; or

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- (ii) the direction interferes with the young offender's normal attendance at another place for work or at a school or other educational institution.
- (3) The CE community service direction may also include a requirement to be satisfied when reporting to do the community service work.

Examples of reporting requirements directed by chief executive

- 1 the kinds of clothing, personal possessions and other things that the young offender must or must not have when reporting for the work
- 2 cleanliness when reporting for the work

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).

- (4) The CE community service direction must, as far as practicable, avoid any interference with the young offender's normal attendance at another place for work or at a school or other educational institution.

844 Community service work—effect of chief executive and other directions

- (1) A CE community service direction takes effect—
- (a) when it is given to the young offender; or
- (b) if a later date of effect is stated in the direction—on the date stated.
- (2) The young offender must comply with the CE community service direction.
- (3) However, the young offender is not required to do work the young offender is not capable of doing.

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- (4) The young offender must also comply with any reasonable direction given to the young offender, orally or in writing, by the work supervisor in relation to the community service work.
 - (5) If the young offender cannot comply with a CE community service direction, or the direction interferes with the young offender's normal attendance at another place for work or at a school or other educational institution, the young offender must—
 - (a) tell the reporting officer stated in the direction as soon as possible; and
 - (b) comply with the reporting officer's directions.

Examples where young offender cannot comply

- 1 the community service work to which the direction applies is not available at the place
- 2 it is impracticable for the young offender to do the community service work

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).

845 Community service work—failure to report etc

- (1) This section applies if a young offender—
 - (a) fails to report to do community service work in accordance with a CE community service direction; or
 - (b) fails to do community service work in accordance with a CE community service direction; or
 - (c) fails to comply with a reasonable direction given to the young offender by the work supervisor under section 844 in relation to the community service work.
- (2) The chief executive may direct the young offender, orally or in writing, not to do the community service work and to leave the place where it was to be done.

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846 Community service work—maximum daily hours

- (1) A young offender must not do, or be credited with, more than 8 hours of community service work on any day.
- (2) To work out the time spent by the young offender doing community service work—
 - (a) only actual work time, and any breaks from work approved by the work supervisor or reporting officer, is counted; and
 - (b) if the total work time on any day includes part of an hour—that part is counted as 1 hour.

Examples of maximum daily hours

- 1 A young offender, Sunny, is scheduled to perform 8 hours of community service work on a particular day. However, Sunny goes home sick after performing 2 hours and 10 minutes of community service work. He must be credited with having performed 3 hours work on that day.
- 2 Another young offender, Fleur, is scheduled to perform 5 hours of community service work on that day. However, she works just 35 minutes because of bad weather. Fleur must be credited with having performed work for 1 hour on that day.

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).

847 Community service work—health disclosures

A young offender must tell the chief executive as soon as possible about any change of which the young offender is aware in the young offender's physical or mental condition that affects the young offender's ability to do community service work safely.

Examples

The indicators of unsuitability for community service set out in the *Crimes (Sentencing) Act 2005*, table 90.

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).

848 Community service work—reports by entities

- (1) This section applies if the Territory makes an agreement with an entity under which the young offender may participate in community service work for the entity.
- (2) The chief executive must ensure that the agreement requires the entity, on the chief executive's request, to give the chief executive written reports about the young offender's participation in the community service work.

**Division 8.6.3 Good behaviour orders—complying
with rehabilitation conditions**

849 Application—div 8.6.3

This division applies if a young offender’s good behaviour order is subject to a rehabilitation condition.

850 Compliance with rehabilitation condition

To comply with a rehabilitation condition of a young offender’s good behaviour order, the young offender must comply with the requirements of this division.

851 Rehabilitation conditions—chief executive directions

- (1) The chief executive may give the young offender directions, orally or in writing, in relation to the rehabilitation condition.
- (2) Without limiting subsection (1), a direction may include details of the following:
 - (a) the work, activities, classes or programs that the young offender must do or attend;
 - (b) the place to which the young offender must report for the work, activities, classes or programs;
 - (c) the time when the young offender must report;
 - (d) the person (if any) to whom the young offender must report;
 - (e) the person the young offender must tell if—
 - (i) under the direction, the young offender is being required to do work the young offender is not capable of doing; or

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- (ii) the direction interferes with the young offender's normal attendance at another place for work or at a school or other educational institution.
- (3) A direction under this section may also include a requirement to be satisfied when reporting to do the work, activity, class or program required to be done under the rehabilitation condition.

Examples of reporting requirements directed by chief executive

- 1 the kinds of clothing, personal possessions and other things that the young offender must or must not have when reporting for the work, activity, class or program
- 2 cleanliness when reporting for the work, activity, class or 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).

- (4) A direction under this section must, as far as practicable, avoid any interference with the young offender's normal attendance at another place for work or at a school or other educational institution.

852 Rehabilitation program providers—reports by providers

- (1) This section applies if the Territory makes an agreement with an entity under which a young offender may participate in a rehabilitation program provided by the entity.
- (2) The chief executive must ensure that the agreement requires the entity, on the chief executive's request, to give the chief executive written reports about the young offender's participation in the rehabilitation program.

Division 8.6.4 Good behaviour orders—complying with supervision condition

853 Authorised people to report breach of good behaviour obligations

- (1) This section applies if an authorised person believes, on reasonable grounds, that a young offender has breached any of the young offender's good behaviour obligations.
- (2) The authorised person must report the belief to the sentencing court.
- (3) A report under this section must be made in writing and set out the grounds for the authorised person's belief.

854 Good behaviour orders—good behaviour obligations breached

- (1) This section applies if a police officer believes, on reasonable grounds, that a young offender has breached any of the young offender's good behaviour obligations.
- (2) The police officer may—
 - (a) give the young offender written notice (an *attendance notice*) requiring the young offender to appear before a stated court at a stated time; or
 - (b) arrest the young offender without a warrant.
- (3) If the police officer arrests the young offender, the police officer must, as soon as practicable, bring the young offender before—
 - (a) the Childrens Court; or
 - (b) if the Childrens Court is not sitting—a magistrate.

Note For remanding or granting bail to the young offender, see the *Bail Act 1992*.

855 Good behaviour orders—warrants for breach of good behaviour obligations etc

- (1) A judge or magistrate may issue a warrant for a young offender's arrest if satisfied, by information on oath, that—
- (a) there are reasonable grounds for suspecting that the young offender has breached, or will breach, any of the young offender's good behaviour obligations; or
 - (b) the young offender has failed to comply with—
 - (i) the requirement in an attendance notice given to the young offender under section 854; or
 - (ii) a summons under section 856.
- (2) The warrant must—
- (a) be in writing signed by the judge or magistrate; and
 - (b) be directed to all police officers or a named police officer; and
 - (c) state briefly the matter on which the information is based; and
 - (d) order the young offender's arrest and bringing the young offender before the sentencing court.
- (3) If a police officer arrests the young offender under the warrant, the officer must, as soon as practicable, bring the young offender before—
- (a) the sentencing court; or
 - (b) if the sentencing court is not sitting—a magistrate.

Note For remanding or granting bail to the young offender, see the *Bail Act 1992*.

856 Good behaviour orders—summons to attend court

- (1) This section applies if information alleging that a young offender has breached any of the young offender's good behaviour obligations is before the Childrens Court.
- (2) The Childrens Court may issue a summons directing the young offender to appear before the court to be dealt with under this part.
- (3) The registrar of the Childrens Court must ensure that a copy of the summons is given to each interested person for the good behaviour order.

Division 8.6.5 Good behaviour orders—breach

857 Offence committed while under good behaviour order

- (1) If the Supreme Court finds a young offender guilty of an offence committed during the term of the young offender's good behaviour order, the court may deal with the young offender under this part for breach of the young offender's good behaviour obligations.
- (2) If the Childrens Court finds a young offender guilty of an offence committed during the term of the young offender's good behaviour order, and the order was made or changed by the Supreme Court, the Childrens Court must, in addition to dealing with the young offender for the offence, commit the young offender to the Supreme Court to be dealt with under this part for breach of the young offender's good behaviour obligations.
- (3) For subsection (2), a magistrate may remand the young offender in custody until the young offender can be brought before the Childrens Court.

Note For remanding or granting bail to the young offender, see the *Bail Act 1992*.

858 Court powers—breach of good behaviour obligations

- (1) This section applies if—
 - (a) a court is satisfied a young offender has breached any of the young offender's good behaviour obligations; and
 - (b) section 860 (Cancellation of good behaviour order with suspended sentence order) does not apply to the young offender's good behaviour order.
- (2) The court may do 1 or more of the following:
 - (a) take no further action;

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- (b) give the young offender a warning about the need to comply with the young offender's good behaviour obligations;
 - (c) give the chief executive directions about the young offender's supervision;
 - (d) amend the good behaviour order;
 - (e) cancel the order.

Examples—par (d)

impose or amend an additional condition of the order, or amend the term of the order

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

- (3) If the court cancels the good behaviour order, the court must—
 - (a) if section 859 applies to the young offender's good behaviour order—deal with the young offender under that section; or
 - (b) in any other case—re-sentence the young offender for the offence for which the good behaviour order was made (the **relevant offence**).
- (4) This Act applies to the re-sentencing in the same way that it applies to the sentencing of a young offender on conviction for the relevant offence.
- (5) The court's powers under this section are subject to section 862 (Good behaviour orders—limitations on amendment or discharge).
- (6) To remove any doubt, a young offender re-sentenced by a court under this section has the same right of appeal as the young offender would have had if sentenced by the court on being convicted of the relevant offence.

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859 Cancellation of good behaviour order made as non-conviction order

- (1) This section applies if—
 - (a) a young offender’s good behaviour order was made under section 606 (Non-conviction orders—general); and
 - (b) a court cancels the order under section 857.
- (2) The court must—
 - (a) convict the young offender of the offence for which the good behaviour order was made; and
 - (b) sentence the young offender for the offence.
- (3) This Act applies to the sentencing in the same way that it applies to the sentencing of a young offender on conviction for the offence.

860 Cancellation of good behaviour order with suspended sentence order

- (1) This section applies if—
 - (a) a young offender’s good behaviour order was made under section 644 (3) (Suspended sentences) on the young offender’s conviction for an offence; and
 - (b) a court is satisfied the young offender has breached any of the young offender’s good behaviour obligations.
- (2) The court must cancel the good behaviour order and either—
 - (a) impose the suspended sentence imposed for the offence; or
 - (b) re-sentence the young offender for the offence.

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- (3) This Act applies to the re-sentencing in the same way that it applies to the sentencing of a young offender on conviction for the offence.

Example

The Childrens Court convicted Desmond of an offence. The court sentenced Desmond to commitment for 6 months for the offence and made a suspended sentence order for the entire sentence of commitment. The court also made a good behaviour order for the 6-month period. Desmond breaches the good behaviour order. In re-sentencing Desmond, the court may impose a sentence of commitment.

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).

- (4) To remove any doubt, a young offender re-sentenced by a court under this section has the same right of appeal as the young offender would have had if sentenced by the court on being convicted of the offence.

Division 8.6.6 Good behaviour orders—amendment and discharge

861 Court powers—amendment and discharge of good behaviour orders

- (1) A court may, by order—
 - (a) amend a young offender’s good behaviour order; or
 - (b) discharge a young offender’s good behaviour order.

Example—par (a)

The court may impose or amend an additional condition of the order, or amend the term of the order.

Example—par (b)

The court is satisfied that the conduct of the young offender makes it unnecessary that the young offender continue to be bound by the order.

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

Note 2 **Amend** includes omit or substitute (see Legislation Act, dict, pt 1, def **amend**).

- (2) The court may act under this part—
 - (a) on its own initiative; or
 - (b) on application by an interested person for the good behaviour order.
- (3) The amendment of the good behaviour order takes effect as stated in the court order.
- (4) This section is subject to section 862.

862 Good behaviour orders—limits on amendment and discharge

- (1) A court must not amend a young offender’s good behaviour order—
 - (a) to increase the number of hours of community service work to be done under the order; or
 - (b) for an order mentioned in section 606 (Non-conviction orders—general)—to extend the term of the order beyond 3 years.
- (2) A court may not amend a young offender’s good behaviour order in a way that would be inconsistent with a core condition of the order.
- (3) If the Supreme Court made, or amended, a young offender’s good behaviour order, the Childrens Court must not amend the order in a way that would be inconsistent with the order as made, or amended, by the Supreme Court.
- (4) However, subsection (3) does not apply to a requirement, incidental to a proceeding before the Childrens Court, that is not inconsistent with the substance of the good behaviour order as made, or amended, by the Supreme Court.
- (5) If the Supreme Court made or amended a young offender’s good behaviour order, the Childrens Court must not discharge the order.

Division 8.6.7 Good behaviour—miscellaneous

863 Good behaviour order proceedings—rights of interested people

- (1) An interested person for a good behaviour order may appear before a court in a proceeding under this chapter.
- (2) A court must give each interested person for a good behaviour order (whether or not the person appeared before the court)—
 - (a) written notice of the court’s decision; and
 - (b) a copy of any order or direction by the court.

864 Good behaviour orders—court powers after end

The Childrens Court may act under this part in relation to anything arising during the term of a good behaviour order, even if the term of the order has ended.

Part 8.7 Accommodation orders

865 Accommodation orders—contraventions

A person in relation to whom an accommodation order is in force contravenes the order—

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

866 Accommodation orders—resentencing for breach

- (1) This section applies to a child or young person if—
 - (a) the child or young person is the subject of an accommodation order (the *original order*); and
 - (b) while the order is in force, the child or young person breaches—
 - (i) the order; or
 - (ii) a condition of the order.
- (2) The Childrens Court may resentence the child or young person for the offence in relation to which the original order was made.
- (3) In resentencing a child or young person under subsection (2), the Childrens Court must, in addition to any other matters that the court considers should be taken into account, take into account—
 - (a) the fact that the original order was made; and

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- (b) anything done under the original order; and
 - (c) any other order made for the offence for which the original order was made and anything done under that other order.
- (4) The Childrens Court may only make an order when resentencing the child or young person imposing a penalty that, when taken together with a penalty previously imposed for the offence for which the original order was made, is no greater than the maximum penalty the court could have imposed for that offence.

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Part 8.8 Victim and young offender information

867 Definitions—pt 8.8

In this part:

registered victim, of a young offender, means a victim of the young offender about whom information is entered in the victim's register.

victims register means the register under section 869.

868 Meaning of *victim*—Act

- (1) For this Act, each of the following is a *victim* of a young offender:
 - (a) a person (a *primary victim*) who suffers harm because of an offence by the young offender;
 - (b) if a primary victim dies because of an offence by the young offender—a person who was financially or psychologically dependent on the primary victim immediately before the primary victim's death.
- (2) In this section:

because of, an offence—see section 622.

harm—see section 622.

869 Victims register

- (1) The chief executive must maintain a register of victims of young offenders.

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- (2) The chief executive must enter in the register information about a victim of a young 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 rights of registered victims to information under section 870 about young offenders who are sentenced.
 - (4) If the victim is a child under 15 years old, the chief executive may give the information to someone who has responsibility for day-to-day matters, or long-term matters, for the victim.
 - (5) Subsection (4) does not limit the cases in which the chief executive may give information to a person acting for a victim.

870 Disclosures to registered victims about sentencing and release

- (1) This section applies in relation to a child or young person (the *young person*) who has been charged with an offence if the offence has been dealt with by the Childrens Court.
- (2) The chief executive may disclose non-identifying information about the sentencing, release or non-conviction of the young person to a registered victim of the young person.

Examples of disclosures of non-identifying information about sentencing or release

- 1 any non-association order or place restriction order that applies to the young offender
- 2 if the young offender is under a good behaviour order—the place where the young offender may do community service work or attend a rehabilitation program
- 3 if the young offender is serving a sentence of commitment:
 - (a) the detention place where the young offender is detained
 - (b) the young offender's classification in detention
 - (c) the transfer of the young offender between detention places

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- (d) the death or escape of, or any other exceptional event relating to, the young offender
 - (e) if the young offender is to be released from a detention place—the date of release and the suburb (but not the street or street address) where the young offender intends to live after release

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) If the victim is a child under 15 years old, the chief executive may give the information to someone who has responsibility for day-to-day matters, or long-term matters, for the victim.
- (4) Subsection (3) does not limit the cases in which the chief executive may give information to a person acting for a victim.
- (5) In this section:

identifying information, for a young person, means the young person's name and home address.

non-identifying information, for a young person—

- (a) means information other than identifying information for the young person; and
- (b) includes the young person's suburb.

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Part 8.9 Remissions and pardons

871 Meaning of *remissions advisory board*—pt 8.9

In this part:

remissions advisory board means the Remissions Advisory Board established under section 873.

872 Reduction of time to be spent in detention place

- (1) This section applies if a child or young person has been committed to a detention place for a period (the *period of commitment*).
- (2) The chief executive may reduce the period of commitment by not more than $\frac{1}{3}$.
- (3) However, the chief executive must not reduce the period of commitment, or part of the period of commitment, if the Childrens Court has ordered that the period or part not be reduced.

Note The Childrens Court may order that a period of commitment, or part of a period of commitment, not be reduced under s 613.

- (4) In deciding whether to reduce the period of commitment, the chief executive must ask for, and consider, the recommendations of the remissions advisory board.
- (5) If the chief executive makes a decision in relation to a young offender that is inconsistent with the recommendations of the remissions advisory board, the chief executive must give a written explanation of the decision to—
 - (a) the child or young person; and
 - (b) the child's or young person's lawyer (if any); and

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- (c) someone who has responsibility for day-to-day matters, and long-term matters, for the child or young person; and
 - (d) the remissions advisory board.

873 Remissions advisory board

- (1) The Remissions Advisory Board is established.
- (2) The remissions advisory board consists of 3 members appointed by the Minister.

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

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

- (3) However, the Minister must not appoint a person as a remissions advisory board member unless satisfied that the person has the experience or expertise in relation to the health and welfare of children and young people to allow the person to exercise the functions of a board member.
- (4) An appointment as a member of the remissions advisory board must not be for longer than 2 years.

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

874 Ending appointment of remissions advisory board members

- (1) The Minister may end a person's appointment as a member of the remissions advisory board—
 - (a) if the person contravenes a territory law; or
 - (b) for misbehaviour; or

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- (c) if the person becomes bankrupt or executes a personal insolvency agreement; or
 - (d) if the person is convicted in Australia of an indictable offence; or
 - (e) if the person is convicted outside Australia of an offence that, if it had been committed in the ACT, would be an indictable offence.
- (2) The Minister must end the person's appointment as a member of the remissions advisory board—
- (a) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions; or
 - (b) if the person fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the person's functions.

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

875 Function of remissions advisory board

The function of the remissions advisory board is, if asked, to make recommendations to the chief executive about whether a young person's period of detention should be reduced and, if the board recommends that the period should be reduced, how much it should be reduced.

876 Remission and reduction of certain penalties

If a penalty is imposed on a child or young person convicted or found guilty of an offence, the Executive may, in writing—

- (a) if the penalty is a fine or other financial penalty—reduce or remit the penalty; or

(b) if the penalty is a forfeiture of property or committal sentence—remit the penalty.

Note Reduction of sentences of commitment is dealt with in s 872.

877 Grant of pardons

- (1) The Executive may, in writing, pardon a child or young person in relation to an offence of which the child or young person has been convicted or found guilty.
- (2) The pardon discharges the child or young person from any further consequences of the conviction or finding of guilt for the offence.

878 Prerogative of mercy

The prerogative of mercy is not affected by this Act.

Chapter 9 Criminal matters—transfers

Part 9.1 Transfers within ACT

Division 9.1.1 Important concepts—pt 9.1

900 Definitions—pt 9.1

In this part:

person responsible, in relation to a young detainee, means—

- (a) a person who has responsibility for day-to-day matters, or long-term matters, for the young detainee; or
- (b) a person who has the temporary control of the young detainee (whether or not the person has the custody of the young detainee); or
- (c) a person who had the temporary control of the young detainee immediately before the young detainee was detained under this Act.

transfer direction means a direction for the transfer of a young detainee under section 901.

young detainee means—

- (a) a young offender; or
- (b) a child or young person remanded in custody; or
- (c) a person being dealt with as a child or young person under this Act who has been remanded in custody.

901 Transfer directions

- (1) The chief executive may, in writing, direct that a young detainee be transferred from one place to another.

Example

- 1 direction that a young detainee be transferred from a detention place to a health facility and back from the health facility to the detention place on discharge
- 2 direction that a young detainee be transferred from one detention place to another

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, the chief executive must not make a transfer direction for a young detainee unless—
- (a) the young detainee agrees to the transfer; or
 - (b) this part otherwise allows the chief executive to make the direction.
- (3) A transfer direction is sufficient authority for a police officer or someone else authorised by the chief executive to take the young detainee to the place to which the young detainee is to be transferred.

902 Directions to escort officers

- (1) For this part, the chief executive may give directions to an escort officer in relation to a young detainee, including directions to take the young detainee into custody or to a place stated in the direction.
- (2) Without limiting the authority that may be given by a direction under subsection (1), the direction authorises the escort officer to have custody of, and deal with, the young detainee in accordance with the direction.

903 Orders to bring young detainee before court etc

- (1) This part is additional to, and does not limit, any other power of a court or other entity to require a young detainee or other child or young person to be brought before the court or entity.
- (2) Without limiting subsection (1), the chief executive must arrange for a young detainee or child or young person in the chief executive's custody to be brought before a court or other entity in accordance with any order or direction (however described) of the court or entity.

Division 9.1.2 Escorting young detainees

904 Other powers not limited

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

Examples of other provisions

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

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

Note 2 **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

**905 Escorting arrested children and young people to court
etc**

- (1) This section applies if an arrested child or young person—
 - (a) has not been released on bail; and
 - (b) is in police custody; and
 - (c) is required by law to be brought before a court or tribunal.
- (2) A police officer may require an escort officer to bring the child or young person before the court or tribunal.
- (3) The escort officer must bring the child or young person before the court or tribunal and, for that purpose, may—
 - (a) take the child or young person into custody; and
 - (b) arrange for the child or young person to be detained under this Act until the child or young person is brought before the court or tribunal.

906 Custody etc during proceedings

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

- (a) ensure the safe custody and welfare of the child or young person for the purposes of the proceeding; and
- (b) ensure that the child or young person does not obstruct or hinder the proceeding.

907 Executing warrants of commitment or remand etc

- (1) The chief executive may make escort officers available to attend at a court or tribunal—
 - (a) to take a child or young person into custody; or
 - (b) to arrange for a child or young person to be kept in custody; or
 - (c) to transfer or otherwise deal with a child or young person.
- (2) An order or direction of the court or tribunal addressed to all escorts—
 - (a) is taken to be addressed to each escort; and
 - (b) may be executed by any escort.

908 Custody of escorted children and young people

A child or young person in the custody of an escort officer as mentioned in this part is also taken to be in the chief executive's custody and in detention.

Division 9.1.3 Transfers between detention places

909 Transfers between detention places on application

- (1) A young detainee, or a person responsible for the young detainee, may apply for the transfer of the young detainee from one detention place to another.

Note 1 The chief executive may make a transfer direction under s 901.

Note 2 If a form is approved under s 3210 for this provision, the form must be used.

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- (2) The chief executive may make a transfer direction on the application if the chief executive reasonably believes that the transfer is appropriate, having regard to all the circumstances, including—
- (a) the place or intended place of residence of anyone who has responsibility for day-to-day matters, or long-term matters, for the young detainee; and
 - (b) the present and future education, training or employment of the young detainee; and
 - (c) the medical needs of the young detainee; and
 - (d) the safety, health and welfare of the young detainee.
- (3) In deciding whether to make a transfer direction, the chief executive may, in writing, ask for necessary information from—
- (a) the young detainee; or
 - (b) a person responsible for the young detainee.
- (4) The chief executive may refuse to make a transfer direction if information sought under subsection (3) is not supplied within the time stated by the chief executive.

910 Transfer directions because of behaviour

The chief executive may make a transfer direction for a young detainee at a detention place if the chief executive reasonably believes that the young detainee's behaviour in the detention place places at risk the safety, health or welfare of others detained in the place, or of the staff of the place.

Division 9.1.4 Transfers to health facilities

911 Transfers to health facilities

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

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

- (2) The chief executive must have regard to the advice of a health professional when considering whether to make a direction under subsection (1).
- (3) The chief executive may direct an escort officer to escort the young detainee to or from the health facility, or while at the facility.
- (4) The young detainee may be discharged from the health facility only if—
 - (a) the health professional in charge of the young detainee’s care approves the discharge; or
 - (b) the chief executive directs that the young detainee be removed from the facility.

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

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).

- (5) For chapter 12 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to health care.

Division 9.1.5 Transfers of young offenders who become adults

912 Application—div 9.1.5

This division applies to a young offender serving a sentence of commitment at a detention place who is an adult.

913 Transfers to correctional centres

- (1) The chief executive may, on the chief executive's own initiative or on application, direct that a young offender to whom this division applies be transferred to a correctional centre.
- (2) In deciding whether to direct that a young offender be transferred to a correctional centre, the chief executive must consider the following:
 - (a) the young offender's maturity;
 - (b) the young offender's apparent mental capacity;
 - (c) whether the young offender is likely to be vulnerable in a correctional centre;
 - (d) the availability of services or programs appropriate for the young offender at the correctional centre;
 - (e) whether the young offender is more likely to be rehabilitated in the detention place or correctional centre;
 - (f) the behaviour of the young offender, particularly if it presents a risk to the safety of young detainees and staff at the detention place.

914 Twenty-one year olds etc

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

915 Effect of transfer directions for adult young offenders

- (1) This section applies if the chief executive gives a transfer direction under section 913 for a young offender who is an adult.
- (2) The chief executive may direct an escort officer to escort the young offender from the detention place to the correctional centre.
- (3) The young offender must be dealt with as an adult once the young offender is taken to the correctional centre.

Part 9.2 Interstate transfers

Division 9.2.1 Interstate transfer generally

916 Definitions—pt 9.2

In this part:

Minister of a State, for a provision, includes a person authorised by a Minister of the State to do the thing provided for in the provision.

person responsible, for a young detainee, means—

- (a) a parent of the young detainee or someone else who has responsibility for day-to-day matters, or long-term matters, for the young detainee; or
- (b) a person who has the temporary control of the young detainee (whether or not the person has custody of the young detainee); or
- (c) a person who had temporary control of the young detainee immediately before the young detainee was detained under this Act.

receiving State means the State to which a young detainee is transferred.

sending State means the State from which a young detainee is transferred.

transfer agreement—see section 917.

transfer escort means a person who is authorised under a transfer agreement, transfer arrangement or transfer order to take and keep temporary control of a young detainee.

transfer order—see section 923.

young detainee means—

- (a) a child or young person remanded in custody and not admitted to bail; or
- (b) a young offender.

917 General agreements with other jurisdictions

- (1) The Minister may enter into an agreement (a *transfer agreement*) with a Minister of a State providing generally for the transfer of young detainees—
 - (a) from or to the ACT; or
 - (b) through the ACT from a State to another State.

Note *Minister of a State* has an extended meaning—see s 916.

- (2) A transfer agreement relating to a State must not be entered into unless a declaration under subsection (3) has been notified under the Legislation Act in relation to the State.
- (3) The Minister may, in writing, declare that a State has enacted legislation dealing with the interstate transfer of young detainees.
- (4) Both of the following are notifiable instruments:
 - (a) a transfer agreement;
 - (b) a declaration under subsection (3).

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

918 Transfer arrangements—general

- (1) If a transfer agreement with a Minister of a State is in force, the chief executive may make an arrangement (a *transfer arrangement*) with the Minister for the transfer of a particular young detainee—
 - (a) from the ACT to the State; or

(b) to the ACT from the State.

Note **Minister of a State** has an extended meaning—see s 916.

- (2) The chief executive may also make a transfer arrangement with the Minister to fix a mistake in a transfer arrangement.
- (3) The chief executive may only make a transfer arrangement for a particular young detainee from the ACT to a State in the circumstances mentioned in section 919.

919 Power to arrange for transfers

- (1) The chief executive may make a transfer arrangement for the transfer of a young detainee from the ACT to a State—
 - (a) on application by the young detainee or a person responsible for the young detainee; or
 - (b) if the chief executive has responsibility for day-to-day matters, or long-term matters, for the young detainee.
- (2) However, the chief executive may only make a transfer arrangement for the transfer of a young detainee from the ACT to a State if—
 - (a) the chief executive reasonably believes that the transfer is appropriate, having regard to all the circumstances, including—
 - (i) the place or intended place of residence of the parents of the young detainee and other people (if any) who have responsibility for day-to-day matters, or long-term matters, for the young detainee, or the young detainee's relatives; and
 - (ii) the present and future education, training or employment of the young detainee; and
 - (iii) the medical needs of the young detainee; and

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- (iv) the safety, health and welfare of the young detainee; and
 - (b) either—
 - (i) the young detainee agrees to the transfer; or
 - (ii) the chief executive decides that the particular circumstances of the case indicate that the transfer should be arranged without the young detainee's agreement; and
 - (c) the young detainee has been given independent legal advice about the effect of the transfer arrangement; and
 - (d) the chief executive is satisfied that there is no appeal pending against an order of a Childrens Court to which the young detainee is subject.
- (3) In deciding whether to arrange for the transfer of a young detainee on an application under subsection (1) (a), the chief executive may ask the following people for relevant information:
- (a) the young detainee;
 - (b) a person responsible for the young detainee.
- (4) The chief executive may refuse to make a transfer arrangement if information asked for is not supplied within the reasonable time stated by the chief executive.
- (5) The chief executive may make a transfer arrangement to transfer a young detainee from the ACT to a State other than under subsection (1) if—
- (a) the young detainee is detained in a detention place; and
 - (b) the chief executive reasonably believes that the behaviour of the young detainee in the detention place puts at risk the safety, health or welfare of other people detained in the detention place or of staff of the detention place; and

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- (c) the young detainee has been given independent legal advice about the effect of the transfer arrangement; and
 - (d) the chief executive is satisfied that there is no appeal pending against an order of the Childrens Court to which the young detainee is subject.
- (6) This section does not apply to a transfer arrangement to fix a mistake.

920 Transfer arrangements—facilities must be adequate

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

921 Transfer arrangements—content

- (1) A transfer arrangement for the transfer of a young detainee from or to the ACT must—
- (a) be in writing; and
 - (b) provide for the acceptance of, and means of dealing with, the young detainee in the receiving State; and
 - (c) state each order of a court of the sending State to which the young detainee is subject (including an order required by a previous transfer arrangement with the Territory or with a State to be treated as having been made by a court of the sending State).

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- (2) For each order mentioned in subsection (1) (c), the transfer arrangement must state—
- (a) the way that the order must operate in the receiving State, which must be as similar as possible to the way that it would operate in the sending State if the transfer arrangement were not made; and
 - (b) the maximum time for which the order may operate, which must not be longer than the maximum time for which it could operate in the sending State if the transfer arrangement were not made; and
 - (c) any entitlement of the young detainee to a reduction in detention in the sending State and how that entitlement must operate in the receiving State, which must be as similar as possible to the way that it would operate in the sending State if the transfer arrangement were not made; and
 - (d) that a young detainee who is subject to a nonprobation period may be treated as being subject to an equivalent nonparole period, if the laws of the receiving State do not provide for nonprobation periods.
- (3) A reference in this section to an order of a court is a reference to a sentence, detention, probation, parole or other order, that could be made or imposed by the court.

922 Notice of transfer of young detainees from ACT to State

- (1) This section applies if the chief executive makes a transfer arrangement for the transfer of a young detainee from the ACT to a State.

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- (2) Not later than 2 weeks after the day the chief executive makes the transfer arrangement, the chief executive must prepare a written notice of details of the transfer arrangement and give it to—
- (a) the relevant standing committee; and
 - (b) the Chief Magistrate; and
 - (c) the public advocate.
- (3) In this section:
- relevant standing committee* means—
- (a) the standing committee of the Legislative Assembly nominated by the Speaker for this section; or
 - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the consideration of legal issues.

923 Transfer orders

- (1) If the chief executive makes a transfer arrangement under this Act for the transfer of a young detainee from the ACT to a State in the temporary control of a transfer escort, the chief executive must make a written order (a *transfer order*) that—
- (a) directs the person who has temporary control of the young detainee to deliver the young detainee to the temporary control of the transfer escort; and
 - (b) authorises the transfer escort to take and keep temporary control of the young detainee for the purpose of transferring the young detainee to the place in the receiving State, and to the temporary control, mentioned in the transfer arrangement.

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- (2) The authority given to a transfer escort by a transfer order is given only to a transfer escort who is—
- (a) a police officer; or
 - (b) a corrections officer; or
 - (c) a person appointed by the chief executive; or
 - (d) a person acting as a transfer escort with the approval of the chief executive.

924 Temporary custody pending interstate transfer

If the chief executive makes a transfer arrangement under this Act for the transfer of a young detainee from the ACT to a State in the temporary control of a transfer escort mentioned in section 923 (2), the young detainee may be detained in a detention place until the young detainee is delivered to the transfer escort.

925 Transfer to ACT in temporary control of transfer escort

- (1) This section applies if, under a transfer arrangement for the transfer of a young detainee to the ACT, a transfer escort authorised under the transfer arrangement brings the young detainee into the ACT.
- (2) While in the ACT, the transfer escort is authorised to take and keep temporary control of the young detainee to transfer the young detainee to the place in the ACT, and to the temporary control, stated in the transfer arrangement.

926 Offence—escapes during transfer

- (1) A person commits an offence if—
 - (a) a committal order has been made against the person; and
 - (b) the person is in temporary control under a transfer arrangement made for the person's transfer from the ACT to a State; and

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

Maximum penalty: committal to a detention place for 6 months.

- (2) Absolute liability applies to subsection (1) (a) and (b).

927 Chief executive directions—custody under Act

- (1) For this Act, the chief executive may give a direction to a person who is in the chief executive's custody under this Act.
- (2) Without limiting subsection (1), the chief executive may give a direction that the chief executive considers necessary for any of the following:
 - (a) the welfare or safe custody of the person or anyone else;
 - (b) the security or good order of a detention place;
 - (c) ensuring compliance with any requirement under this Act or any other territory law.
- (3) A direction may be given orally or in writing and may apply to a particular person or 2 or more people.

928 Evidentiary certificates—custody

- (1) A certificate that appears to be signed by the chief executive that states any of the following is evidence of the matter:
 - (a) that a stated person was, or was not, subject to detention on a stated day;
 - (b) that a stated person was, or was not, in the chief executive's custody on a stated day;
 - (c) that a stated young offender subject to full-time detention did not comply with a stated obligation of the detention;

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- (d) that a stated young offender's release from commitment on a stated day was authorised by a licence;
 - (e) that a stated young offender released from commitment on licence did not comply with a stated condition of the release;
 - (f) that the chief executive gave a stated direction to a stated person on a stated day;
 - (g) that a stated person did not comply with a stated direction by the chief executive on a stated day;
 - (h) that a stated decision was made by the board on a stated date;
 - (i) that a stated person did, or did not, occupy a position under this Act on a stated day;
 - (j) that a stated instrument under this Act was, or was not, in force on a stated day;
 - (k) that a stated instrument is a copy of an instrument made, given, issued or received under this Act.
- (2) A certificate mentioned in subsection (1) may state a matter by reference to a date or period.
 - (3) A certificate of the results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate.
Note **Analyst**—see the dictionary.
 - (4) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.

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(5) However, the following certificates must not be admitted in evidence by a court unless the court is satisfied that reasonable efforts have been made to serve a copy of the certificate on the person concerned:

- (a) a certificate about a matter mentioned in subsection (1) (c), (d), (e) or (g) to (i);
- (b) a certificate mentioned in subsection (3).

Division 9.2.2 Transfer of sentence or order

929 Meaning of *sentence*—div 9.2.2

- (1) To remove any doubt, in this division, *sentence* includes a community-based sentence.
- (2) In this section:

***community-based sentence*—**

- (a) for the ACT—any of the following:
 - (i) a good behaviour order;
 - (ii) a sentence declared by regulation to be a community-based sentence; and
- (b) for a participating jurisdiction—a sentence that is a community-based sentence under the corresponding community-based sentence law of the jurisdiction.

***corresponding community-based sentence law*, of a jurisdiction, means—**

- (a) a law of a participating jurisdiction corresponding, or substantially corresponding, to this division; or

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- (b) a law of a participating jurisdiction that is declared by regulation to be a corresponding community-based sentence law, whether or not the law corresponds, or substantially corresponds, to this division.

participating jurisdiction means a State declared by regulation to be a participating jurisdiction.

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

- (3) For the definition of *community-based sentence*, paragraph (a), the following are taken to be a single community-based sentence:
- (a) a suspended sentence order, the good behaviour order for the suspended sentence order and the sentence of imprisonment for the suspended sentence order;
- (b) a combination of 2 or more sentences prescribed by regulation.

930 Transfer from ACT of sentence or order

- (1) This section applies if a young detainee is transferred from the ACT to a State under a transfer arrangement.
- (2) From the time the young detainee arrives in the State, a sentence imposed on, or order made in relation to, the young detainee in the ACT before that time, ceases to have effect in the ACT except for—
- (a) an appeal against or review of a conviction, judgment, sentence or order made, imposed or fixed by a Territory court; and
- (b) taking into account a period of detention served before that time by the young detainee or a reduction of the period of detention granted before that time; and
- (c) taking into account anything done before that time by the young detainee in carrying out the order; and

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

931 Transfer to ACT of sentence or order

- (1) This section applies if a young detainee is transferred to the ACT from a State under a transfer arrangement.
- (2) From the time the young detainee arrives in the ACT—
 - (a) a sentence imposed on, or order made in relation to, the young detainee by a court of the sending State and stated in the transfer arrangement must be considered as having been imposed or made by the Territory court stated in the transfer arrangement; and
 - (b) a sentence or order considered by a previous transfer arrangement with the Territory, or with a State, to have been imposed or made by a court of the sending State, which is a sentence or order stated in the transfer arrangement under which the young detainee is transferred to the ACT, must be considered as having been imposed or made by the Territory court stated in the transfer arrangement; and
 - (c) a direction given or order made by a court of the sending State concerning the time when anything must be done under an order made by a court of that State is, as far as practicable, to be considered as having been given or made by the Territory court stated in the transfer arrangement.
- (3) A sentence, order or direction has effect in the ACT as stated in the transfer arrangement and the laws of the Territory apply as if the Territory court stated in the transfer arrangement—
 - (a) had, at the relevant time, power to impose the sentence and to make or give the order or direction; and

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

Division 9.2.3 Transit through ACT

932 Person in charge may receive young detainees

The chief executive may authorise the person in charge of a detention place to receive, at the detention place, young detainees being transferred through the ACT from a State to another State under a transfer agreement.

933 Lawful custody for transit through ACT

- (1) This section applies if a young detainee is brought into the ACT by a transfer escort authorised by a transfer agreement to have temporary control of the young detainee.
- (2) While in the ACT, the transfer escort is authorised to take and keep temporary control of the young detainee for the transfer.
- (3) A person in charge of a detention place who is authorised under section 932 may, at the request of the transfer escort and on receiving from the transfer escort written authority for the transfer of the young detainee as provided in the transfer agreement—
 - (a) receive and detain the young detainee at the detention place under the temporary control and for the time that the transfer escort requests, if reasonably necessary for the transfer; and
 - (b) at the end of that time, deliver the young detainee into the temporary control of the transfer escort.

934 Escapees may be apprehended without warrant

A young detainee who escapes from the temporary control of a transfer escort while being transferred through the ACT from a State to another State by a transfer escort under a transfer agreement may be apprehended by a person without a warrant.

935 Escapees to be brought before magistrate

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

936 Court may arrange transfer of apprehended escapees

- (1) A young detainee who is apprehended under a warrant under section 935 must, as soon as practicable, be brought before—
 - (a) if the young detainee is 18 years old or older—the Magistrates Court; or
 - (b) in any other case—the Childrens Court.
- (2) The Magistrates Court or Childrens Court may order that the young detainee—
 - (a) be delivered to the temporary control of a transfer escort; or

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- (b) be detained for not longer than 7 days until a transfer escort is available from the sending State to carry out the transfer arrangement or an order made by a court of the State.
- (3) If a young detainee who is the subject of an order made by a magistrate is not, under the order, delivered into the temporary control of a transfer escort not later than 7 days after the day the order is made, the order has no further effect.
- (4) If an order ceases to have further effect under subsection (3), a further order may be made under subsection (2).
- (5) In this section:

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

- (a) the transfer escort authorised by the transfer agreement to have temporary control of the young detainee; or
- (b) if the young detainee has escaped or attempted to escape—1 or more of the following people:
- (i) the transfer escort;
 - (ii) a police officer of the sending State;
 - (iii) a person appointed in writing by the Minister of the sending State, or a person authorised to enter into a transfer agreement for that Minister, to be a transfer escort to carry out an order of a court of the sending State.

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937 Search warrants for escapees

- (1) A transfer escort or police officer may apply to a magistrate for a search warrant if the transfer escort or police officer reasonably believes that a young detainee who has escaped from the temporary control of a transfer escort while being transferred through the ACT from a State to another State under a transfer agreement is at premises.
- (2) The magistrate may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant with the assistance, and with the force, that is necessary and reasonable—
 - (a) to enter stated premises; and
 - (b) to inspect the premises for evidence of the young detainee who has escaped from temporary control; and
 - (c) to observe and converse with a person apparently living there; and
 - (d) to apprehend the young detainee at the premises.
- (3) A warrant issued under this section must state—
 - (a) why the warrant is issued, including the name and description of the young detainee for whom entry and search are authorised; and
 - (b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (c) a date, not being later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.
- (4) A police officer—
 - (a) may accompany a transfer escort executing a search warrant issued under this section; and

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

(5) In this section:

transfer escort means the transfer escort authorised by the transfer agreement to have temporary control of the young detainee.

Division 9.2.4 Revocation of transfer orders

938 Revocation of transfer order—offence during transfer

- (1) The Childrens Court may, on application by the chief executive, revoke a transfer order in relation to a young detainee if the young detainee has, while being transferred, committed—
- (a) the offence of escaping; or
 - (b) another offence.
- (2) This section applies whether—
- (a) the offence was an offence against a law of—
 - (i) the Territory; or
 - (ii) the receiving State; or
 - (iii) a State through which the young detainee was being transferred; or
 - (b) an information has been laid for the offence; or
 - (c) a conviction has been recorded for the offence.

939 Revocation of transfer order by chief executive

- (1) The chief executive may revoke a transfer order in relation to a young detainee at any time before the young detainee is delivered in the receiving State into the temporary control stated in the transfer arrangement for the young detainee.
- (2) If the chief executive revokes a transfer order, the chief executive may make a further transfer arrangement with the receiving State for the return of the young detainee to the ACT.

940 Chief executive may consider reports etc

- (1) In forming an opinion or exercising a discretion under this part, the chief executive may—
 - (a) be informed as the chief executive considers appropriate; and
 - (b) consider reports from—
 - (i) a person responsible for a young detainee in the ACT or a State; or
 - (ii) a person who has had the custody, temporary control, care or supervision of a young detainee in the ACT or a State.
- (2) A report that relates to an ACT young detainee may be sent to a Minister of a State who has entered into a transfer agreement, or on whose behalf a transfer agreement has been entered into, or to a person authorised under a transfer agreement to make transfer arrangements with the chief executive.

Chapter 10 Criminal matters—detention places

Part 10.1 Objects, principles and interpretation

1000 Application—ch 10

This chapter applies to the following (each of whom is a *young detainee*):

- (a) a child or young person remanded in custody;
- (b) a child or young person committed to a detention place;
- (c) any other child or young person while the child or young person is required to be held in custody or detention under a territory law or a law of the Commonwealth or a State.

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

1001 Definitions—ch 10

In this chapter:

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

- (a) the chief executive if the chief executive is a person who has responsibility for day-to-day matters, or long-term matters, for the young detainee;
- (b) a representative of an entity providing a service or program to the young detainee at a detention place;
- (c) a lawyer representing the young detainee;

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- (d) an official visitor;
 - (e) the human rights commissioner;
 - (f) the public advocate;
 - (g) the ombudsman;
 - (h) a person prescribed by regulation.

case management plan, for a young detainee, means the young detainee's case management plan maintained under section 1050.

family member, of a young detainee, means any of the following:

- (a) the young detainee's domestic partner;
- (b) a parent, step-parent or grandparent of the young detainee;
- (c) a child, step-child or grandchild of the young detainee;
- (d) a brother, sister, step-brother or step-sister of the young detainee;
- (e) a guardian or carer of the young detainee.

operating procedure means an operating procedure made by the chief executive under section 1010.

prohibited thing means a thing declared to be a prohibited thing under section 1202.

register of young detainees means the register kept under section 1047.

security classification, for a young detainee, means the young detainee's security classification (if any) under section 1052.

segregation, of a young detainee—see section 1061.

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significant person, in relation to a young detainee, means a family member of the young detainee or someone significant in the young detainee's life.

visiting conditions, at a detention place, means conditions declared under section 1077 (Visiting conditions) in relation to the place.

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

young detainee—see section 1000.

youth detention policy means a youth detention policy made by the chief executive under section 1010.

1002 Main object and principles—ch 10

- (1) The main object of this chapter is to assist children and young people in detention to maximise their potential, through choice and responsibility, to become socially responsible members of the community by increasing meaningful opportunities for rehabilitation within a safe and secure environment.
- (2) Functions under this chapter must be exercised in accordance with the following principles:
 - (a) young detainees should be dealt with in a way that encourages them to maximise their opportunities to reduce offending and to engage with the community;
 - (b) young detainees should be consulted about, and be given the opportunity to take part in making, decisions that affect them, to the extent possible taking into consideration their age, maturity and decision-making ability;
 - (c) decisions about young detainees should be taken in a way that takes into consideration the young detainee's age, maturity, gender, any impairment and cultural beliefs and practices;

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- (d) if practicable and appropriate, Aboriginal and Torres Strait Islander children and young people in detention should be dealt with in a way that involves their community.

1003 Treatment of young detainees generally

Functions under this Act in relation to a young detainee must be exercised as follows:

- (a) to respect and protect the young detainee's human rights;
- (b) to ensure the young detainee's decent, humane and just treatment;
- (c) to preclude torture or cruel, inhuman or degrading treatment;
- (d) to ensure the young detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;
- (e) to ensure the young detainee's conditions in detention comply with section 1005 (Detention places—minimum living conditions);
- (f) if the young detainee is a young offender—to promote, as far as practicable, the young detainee's rehabilitation and reintegration into society.

1004 Treatment of young remandees

- (1) Functions under this Act in relation to a child or young person in detention who is a young remandee must also be exercised to recognise and respect that—
 - (a) the young remandee must be presumed innocent of any offence for which the young remandee is remanded in custody; and
 - (b) the detention is not imposed as punishment of the young remandee.

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- (2) Subsection (1) does not apply if the young remandee—
- (a) has been convicted or found guilty of the offence for which the young remandee is detained; or
 - (b) is under a sentence of committal in relation to another offence.

Example—s (2) (a)

a convicted young person remanded in custody for sentencing

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).

1005 Detention places—minimum living conditions

- (1) To protect the human rights of young detainees at detention at detention places, the chief executive must ensure, as far as practicable, that conditions at detention places meet at least the following minimum standards:
- (a) young detainees must have access to sufficient nutritional food and drink to avoid hunger and poor nourishment;
 - (b) young detainees must have access to sufficient suitable clothing that does not degrade or humiliate young detainees;
 - (c) young detainees must have access to suitable facilities for personal hygiene;
 - (d) young detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort;
 - (e) young detainees must have reasonable access to the open air and exercise;
 - (f) young detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community;

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

Note 1 **Accredited person** and **significant person** are defined in s 1001.

Note 2 A family member may visit for at least 1 hour each week (see s 1040).

Note 3 For further provisions about access, see div 10.6.5.

- (h) young detainees must have the right to refuse visits from anyone;
- (i) young detainees must have reasonable opportunities to communicate with their lawyers;
- (j) young detainees must have reasonable access to news and education services and facilities to maintain contact with society;
- (k) young detainees must have access to suitable health services and health facilities;
- (l) young detainees must have reasonable opportunities to observe the requirements of their religion.

Example of requirements of religion

observances and practices relating to religious or spiritual beliefs, including indigenous spiritual beliefs

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) Part 10.5 applies to living conditions at detention places.

1006 Detention places—right to information

A young detainee has a right to information about the administration of the detention place (other than information excluded under section 1011).

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1007 Detention places—chief executive to provide education and training

The chief executive must ensure that, while detained, a young detainee is given education or training designed to meet the young detainee's individual needs.

1008 Detention places—adequate planning for return to community

The chief executive must ensure that adequate plans are made for each young detainee's return to community life at the end of the detention, taking into account the young detainee's needs.

EXPOSURE DRAFT

Part 10.2 Administration

Division 10.2.1 Administration—general

1009 Detention places—declaration

- (1) The Minister may declare a place to be a detention place.
- (2) A declaration is a notifiable instrument.

Example of declaration

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

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

Note 2 A notifiable instrument must be notified under the Legislation Act.

Note 3 The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

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

1010 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.

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

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

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

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

1011 Exclusion of matters from notified youth detention policies etc

- (1) The chief executive may exclude from a youth detention policy or operating procedure notified or available for inspection in accordance with section 1010 any matter that the chief executive believes, on reasonable grounds, would be likely to disclose—
- (a) information that may endanger public safety or justice or security or good order at a detention place; or
 - (b) anything prescribed by regulation.
- (2) If subsection (1) applies to a youth detention policy or operating procedure—
- (a) the policy or procedure must contain a statement about the effect of this section; and
 - (b) the excluded matter must be available for inspection, on request, by any of the following:
 - (i) a judge or magistrate;

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- (ii) a member of the Legislative Assembly;
 - (iii) the human rights commissioner;
 - (iv) the public advocate;
 - (v) the ombudsman;
 - (vi) an official visitor;
 - (vii) anyone to whom this section applies because of a declaration under subsection (3).
- (3) The minister may declare that this section applies to a stated person.
- (4) The declaration is a notifiable instrument.

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

1012 Copies of Act, policies etc to be available for inspection at detention place

The chief executive must ensure copies of the following are available for inspection by young detainees at each detention place:

- (a) this Act;
- (b) youth detention policies and operating procedures available under section 1010;
- (c) the record of disciplinary action kept under section 1332.

1013 Chief executive directions

- (1) The chief executive may give directions in relation to a young detainee at a detention place.
- (2) Without limiting subsection (1), the chief executive may give a direction that the chief executive considers necessary and reasonable in relation to any of the following:
 - (a) the welfare or safety of the young detainee or anyone else;

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

1014 Prohibited areas

- (1) The chief executive may declare an area of a detention place to be a prohibited area.
- (2) A declaration is a notifiable 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 notifiable instrument must be notified under the Legislation Act.

- (3) As soon as practicable after the chief executive declares an area of a detention place to be a prohibited area, the chief executive must ensure that each detainee at the detention place is told about the prohibited area.

1015 Declaration of emergency

- (1) This section applies if the chief executive believes, on reasonable grounds, that an emergency (including an imminent emergency) exists in relation to a detention place that threatens or is likely to threaten—
 - (a) good order or security at the place; or

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- (b) the safety of anyone at the place or elsewhere.
 - (2) The chief executive may declare that an emergency exists in relation to the detention place for a stated period of not more than—
 - (a) 3 days; or
 - (b) if another period is prescribed by regulation—the period prescribed.
 - (3) To remove any doubt, the chief executive may make declarations for 2 or more consecutive periods under this section in relation to the same emergency.
 - (4) A declaration commences—
 - (a) when it is made; or
 - (b) if it provides for a later commencement—on that later commencement.
 - (5) A declaration—
 - (a) is a notifiable instrument; and
 - (b) must be notified under the Legislation Act no later than the day after the day it is made.

1016 Emergency powers

- (1) While an emergency is declared under section 1015 in relation to a detention place, the chief executive may do 1 or more of the following:
 - (a) restrict any activity at the place;
 - (b) restrict access in, or to or from, the place or any part of the place;
 - (c) restrict communications between a young detainee and anyone else;

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- (d) authorise a police officer or public servant to exercise any function exercisable by an authorised person under this chapter in accordance with any direction by the chief executive.
 - (2) The chief executive must ensure that action taken under this section is necessary and reasonable in the circumstances.

1017 Police assistance

- (1) The chief executive may ask the chief police officer for police assistance in relation to the exercise of functions under this chapter.
- (2) The chief police officer must comply with the request.

1018 Assistance from other chief executives

- (1) The chief executive may ask another chief executive for assistance in relation to the exercise of functions under this chapter.
- (2) The chief executive must comply with the request.

Part 10.3 Inspection at detention places

1019 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) the human rights commissioner;
- (e) the ombudsman.

Note Official visitors must inspect detention places (see s 116).

(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 of time that would not be reasonable

a time that would hinder a search 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).

Part 10.4 Admission to detention places

1020 Meaning of *admission*—pt 10.4

In this part:

admission, of a young detainee to a detention place, means admission of the young detainee to the place for detention.

1021 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.

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

- (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.

1022 Detention—notifying people with responsibility for young detainees

- (1) The chief executive must take reasonable steps to tell someone who has responsibility for day-to-day matters, or long-term matters, for a young detainee about—
 - (a) the young detainee's admission to a detention place; and
 - (b) if the young detainee is required to appear before a court or tribunal—the time and place of each appearance.

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- (2) If the chief executive and someone else share responsibility for day-to-day matters, or long-term matters, for the young detainee, the chief executive must act under subsection (1) in relation to the other person.

1023 Identification of young detainees

- (1) For the identification of a young detainee admitted to a detention place, the chief executive may direct that all or any of the following be taken of or from the young detainee:
- (a) prints of the young detainee's hands or fingers;
 - (b) a photograph or video recording;
 - (c) a buccal swab or saliva sample;
 - (d) anything else prescribed by regulation.
- (2) Anything taken from a young detainee under subsection (1) must be destroyed if—
- (a) the young detainee is found not guilty of any offence to which the detention relates, other than on the ground of unsoundness of mind; or
 - (b) a proceeding for any offence to which the detention relates is discontinued or dismissed.
- (3) However, subsection (2) does not apply if, for any part of the period of detention for an offence, the young detainee was also being detained for another offence—
- (a) of which the young detainee has been convicted; or

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

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

1024 Information—entitlements and obligations

- (1) As soon as practicable after a young detainee is admitted to a detention place, the chief executive must take reasonable steps to explain the following to the young detainee:
- (a) the young detainee's entitlements and obligations under this Act;
 - (b) the case management plan arrangements;
 - (c) the role of official visitors;
 - (d) the procedures for seeking information and making complaints to official visitors;
 - (e) which areas of the detention place are prohibited areas;

Note Prohibited areas are declared under s 1014.

- (f) anything else the chief executive considers necessary or desirable.

Examples—par (f)

- 1 youth detention policies and operating procedures relevant to the young detainee
- 2 the scope and effect of the chief executive's directions

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).

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- (2) The explanation under subsection (1)—
- (a) may be in general terms; and
 - (b) as far as practicable, must be in language the young detainee can readily understand.

1025 Initial assessment

The chief executive must ensure that—

- (a) each young detainee admitted to a detention place is assessed as soon as practicable to identify any immediate—
 - (i) physical or mental health needs or risks; and
 - (ii) safety or security needs or risks; and
- (b) any needs and risks identified by the assessment are addressed.

Note For an initial assessment, the chief executive may direct an authorised person to strip search a young detainee (see s 1210).

1026 Health assessment

- (1) The assessment (the *health assessment*) under section 1025 of a young detainee’s physical and mental health needs and risks must be made within 24 hours after the young detainee’s admission to a detention place.
- (2) The health assessment must—
 - (a) be made by a doctor or nurse who is not an authorised doctor or authorised nurse in relation to the young detainee; and
 - (b) include an assessment (the *self-harm assessment*) of the young detainee’s risk of self-harm.

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- (3) However, the self-harm assessment may be made by a health professional other than the doctor or nurse.

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

- (4) In this section:

authorised doctor—see section 1200.

authorised nurse—see section 1200.

1027 Security classification

The chief executive may arrange a security classification for a young detainee on or after the young detainee's admission to a detention place.

1028 Case management plan

The chief executive must arrange for a case management plan to be prepared for a young detainee as soon as practicable after the young detainee's admission to a detention place.

Note The scope of case management plans is set out in s 1050.

1029 Entries in register of young detainees

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

Note The chief executive must keep a register of young detainees at a detention place (see s 1047).

1030 Telephone call on admission

A young detainee is entitled to make 1 telephone call on admission to a detention place.

1031 Requirements and considerations about placement of young detainees

- (1) In placing a young detainee, the chief executive must ensure that—
 - (a) young remandees are segregated from other young detainees; and
 - (b) male young detainees are segregated from female young detainees; and
 - (c) a young detainee is not placed with an adult.
- (2) When deciding where to place a young detainee, the chief executive must consider the following:
 - (a) the needs and special requirements of the young detainee because of the young detainee's age, sex, emotional or psychological state, physical health or any other matter;
 - (b) if it is proposed that a young detainee be isolated in detention, whether the isolation is in the best interests of the young detainee;
 - (c) the desirability of the care provided to a young detainee being suited to the particular needs of the young detainee in order to protect the young detainee's physical and emotional wellbeing;
 - (d) the desirability of young detainees being separated from co-offenders.

EXPOSURE DRAFT

Part 10.5 **Living conditions at detention places**

Note to pt 10.5

Anything expressed in this part to be an entitlement for ch 12 (Criminal matters—discipline at detention places) is not affected by anything that happens under that chapter.

1032 **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 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) Without limiting section 1010 (Youth detention policies and operating procedures), a 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;

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- (b) the provision of nutritional advice about food and drink provided to young detainees;
 - (c) the appointment of a nutritionist.
- (5) For chapter 12 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to food and drink.

1033 Clothing

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

1034 Personal hygiene

- (1) The chief executive must ensure that—
- (a) toilet facilities and washing or showering facilities are available to young detainees; and
 - (b) the facilities are clean, hygienic and private enough to ensure the dignity and self-respect of young detainees.
- (2) For chapter 12 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to personal hygiene.

EXPOSURE DRAFT

1035 Sleeping areas

- (1) The chief executive must ensure that—
 - (a) young detainees have sleeping places, with beds and bedding, suitable for reasonable privacy and comfort; and
 - (b) sleeping places, including beds and bedding, are clean and hygienic.
- (2) For chapter 12 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to sleeping areas.

1036 Access to open air and exercise

- (1) The chief executive must ensure, as far as practicable, that young detainees—
 - (a) have access to the open air for at least 2 hours each day; and
 - (b) can exercise for at least 2 hours each day.
- (2) The standards under subsection (1) may both be satisfied during the same hour on any day.
- (3) For chapter 12 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to access to the open air and exercise.

1037 Telephone calls

- (1) The chief executive must ensure that each detention place has telephone facilities for young detainees to make and receive telephone calls.

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- (2) A young detainee may make at least—
- (a) 1 telephone call each week to a significant person; and
 - (b) 1 telephone call each week to an accredited person.

Note 1 A young person may also make 1 telephone call on admission to a detention place (see s 1030).

Note 2 **Accredited person** and **significant person** are defined in s 1001.

- (3) A young detainee may also make and receive further telephone calls for necessary contact with a significant person, accredited person, friend or associate.
- (4) For chapter 12 (Criminal matters—discipline at detention places), subsections (2) and (3) are taken to provide entitlements for each young detainee in relation to telephone calls.
- (5) However, the chief executive may give directions denying or limiting the use of a telephone by a young detainee for a call mentioned in subsection (2) or (3) if the chief executive suspects, on reasonable grounds, that the call may—
- (a) undermine security or good order at a detention place; or
 - (b) revictimise a victim; or
 - (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
 - (d) cause community distress.
- (6) Also, subsection (2) and (3) are subject to—
- (a) section 1059 (Monitoring telephone calls etc); and
 - (b) any operating procedure mentioned in subsection (7).

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- (7) An operating procedure may include provision regulating the following in relation to young detainees' telephone calls:
- (a) the times for making or receiving calls;
 - (b) the frequency and length of calls;
 - (c) payment for the cost of calls made.

1038 Mail

- (1) The chief executive must ensure, as far as practicable, that young detainees can send and receive as much mail as they wish.
- (2) A young detainee may send mail to, and receive mail from—
 - (a) a significant person nominated by the young detainee by written notice given to the chief executive; and
 - (b) an accredited person.

Note **Accredited person** and **significant person** are defined in s 1001.

- (3) For chapter 11 (Criminal matters—search and seizure at detention places), subsection (2) is taken to provide entitlements for each young detainee in relation to mail.
- (4) However, the chief executive may give directions denying or limiting the sending or receiving of mail by a young detainee if the chief executive suspects, on reasonable grounds, that the mail may—
 - (a) undermine security or good order at a detention place; or
 - (b) revictimise a victim; or
 - (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
 - (d) cause community distress.

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- (5) Also, subsection (1) and (2) are subject to—
 - (a) section 1060 (Monitoring mail); and
 - (b) any operating procedure mentioned in subsection (6).
 - (6) An operating procedure may include provision regulating the following in relation to young detainees' mail:
 - (a) the way mail is sent or received;
 - (b) the provision of writing and other material for sending mail.

1039 News and education

- (1) The chief executive must ensure, as far as practicable, that young detainees have reasonable access to—
 - (a) newspapers, radio and television broadcasts and other mass media (including the internet) for news and information; and
 - (b) a library or library service.
- (2) The chief executive may, as part of a young detainee's case management plan, approve a young detainee participating in academic, vocational or cultural education or training if satisfied it would benefit the young detainee in any of the following ways:
 - (a) by providing the young detainee with suitable vocational skills;
 - (b) by promoting the young detainee's rehabilitation or reintegration into society;
 - (c) by contributing satisfactorily to the young detainee's personal development.
- (3) For chapter 12 (Criminal matters—discipline at detention places), participation in education or training approved under subsection (2) is taken to be an entitlement for the young detainee in relation to news and education.

EXPOSURE DRAFT

1040 Visits by family members etc

- (1) The chief executive must ensure that each detention place has suitable facilities for young detainees to receive visits from family members and other people.

Example of non-family member visitor

a person, other than a family member, who is a long-term friend or a friend who normally lives with 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).

- (2) One significant person may visit a young detainee for at least 1 hour each week.

Note **Significant person**—see s 1001. A young detainee has a right to reasonable opportunities to receive visits from significant people (see s 1001 (1) (g)).

- (3) For chapter 12 (Discipline at detention places), subsection (2) is taken to provide an entitlement for each young detainee in relation to visits by family members.

- (4) However, the chief executive may give directions denying or limiting a visit mentioned in subsection (1) if the chief suspects, on reasonable grounds, that the visit may—

- (a) undermine security or good order at a detention place; or
- (b) revictimise a victim; or
- (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
- (d) cause community distress.

- (5) Also, this section is subject to division 10.6.5 (Access to detention places).

1041 Visits by accredited people

- (1) An accredited person may visit a young detainee.

Note **Accredited person**—see s 1001.

- (2) For chapter 12 (Criminal matters—discipline at detention places), subsection (1) is taken to provide an entitlement for each young detainee in relation to visits by an accredited person.
- (3) However, the chief executive may give directions denying or limiting a visit to a young detainee by an accredited person if the chief executive suspects, on reasonable grounds, that the visit may—
 - (a) undermine security or good order at a detention place; or
 - (b) revictimise a victim; or
 - (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
 - (d) cause community distress.
- (4) Also, this section is subject to division 10.6.5 (Access to detention places).

1042 Health care

- (1) The chief executive must ensure, as far as practicable, that—
 - (a) young detainees retain a standard of health care equivalent to that available to other children and young people in the ACT; and
 - (b) arrangements are made to ensure the provision of appropriate health services for young detainees; and
 - (c) conditions in detention promote the health and wellbeing of young detainees; and

(d) young detainees are not exposed to risks of infection.

Note The chief executive may direct that a young detainee be transferred to a health facility (see s 911).

(2) In particular, the chief executive must ensure, as far as practicable, that young detainees have access to—

- (a) regular health checks; and
- (b) timely treatment where necessary, particularly in urgent circumstances; and
- (c) specialist health services from health professionals; and
- (d) hospital care where necessary; and
- (e) necessary health care programs, including rehabilitation programs.

Note The chief executive may also ask for a health report about a young detainee (see s 1048).

(3) A regulation may make provision in relation to health services for young detainees, including provision about the following:

- (a) the appointment of health professionals for this Act;
- (b) the provision of health service clinics for young detainees;
- (c) appointments for young detainees with health professionals;
- (d) rehabilitation for young detainees who suffer personal injury arising out of or in the course of their detention;
- (e) security arrangements for young detainees visiting health professionals or health facilities, particularly outside detention places.

(4) For chapter 12 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to health care.

EXPOSURE DRAFT

1043 Chief executive’s consent to medical treatment for young detainees

- (1) This section applies if—
 - (a) a young detainee is a child or young person; and
 - (b) the young detainee needs medical treatment that requires the consent of a person who has responsibility for day-to-day matters, long-term matters or health care treatment for the young detainee; and
 - (c) the chief executive does not have responsibility for health care treatment for the young detainee; and
 - (d) despite reasonable inquiries, the chief executive is unable to locate a person who has responsibility for health care treatment for the young detainee.
- (2) The chief executive may consent to medical treatment for the young detainee if delaying the treatment until a person who has responsibility for health care treatment for the young detainee can be located would be detrimental to the young detainee’s health.

1044 Notifying person with parental responsibility about injury etc

- (1) The chief executive must take reasonable steps to tell a person who has responsibility for day-to-day matters, long-term matters or health care treatment for a young detainee about any condition of the young detainee that requires—
 - (a) clinical care for not less than 48 hours; or
 - (b) the young detainee’s transfer under section 911 (Transfers to health facilities); or
 - (c) anything else prescribed by regulation.

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- (2) If the chief executive and another person share responsibility for day-to-day matters, long-term matters or health care treatment for the young detainee, the chief executive must act under subsection (1) in relation to the other person.

1045 Religious observance etc

- (1) The chief executive must ensure, as far as practicable, that provision is made at detention places for young detainees to be able to observe the requirements of their religion.

Example of requirements of religion

observances and practices relating to religious or spiritual beliefs, including indigenous spiritual beliefs

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) In particular, the chief executive must ensure, as far as practicable, that young detainees have reasonable access to—
- (a) ministers of religion whom young detainees wish to see for religious instruction or guidance; and
 - (b) religious services at the detention place; and
 - (c) religious books and other articles for practising their religion.
- (3) However, the chief executive may give directions denying or limiting a young detainee's access under subsection (1) or (2) if the chief executive believes, on reasonable grounds, that it may—
- (a) undermine security or good order at a detention place; or
 - (b) revictimise a victim; or
 - (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
 - (d) cause community distress.

EXPOSURE DRAFT

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- (4) A young detainee must not be required to receive a visit from a minister of religion, or attend a religious service, if the young detainee does not wish to be visited, or to attend the service.
- (5) For chapter 12 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to religious observance.
- (6) In this section:
- minister of religion* means—
- (a) a person registered under the *Marriage Act 1961* (Cwlth), part 4, division 1 (Authorised celebrants); or
 - (b) a person prescribed by regulation.

EXPOSURE DRAFT

Part 10.6 Management and security

Division 10.6.1 Management and security—general

1046 Compliance with chief executive’s directions

A young detainee must comply with any direction given under this Act to the young detainee by the chief executive.

1047 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) full name, including any assumed name;
 - (b) age and date of birth;
 - (c) sex;

Note For transgender and intersex young detainees, see s 1051.
 - (d) authority for detention;
 - (e) period of authorised detention;
 - (f) for a young detainee under a sentence of committal—details of—
 - (i) the sentence, including any combination sentence; and
 - (ii) any remission in relation to the sentence;
 - (g) security classification (if any);
 - (h) case management plan;

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- (i) details of any known condition of the young detainee that requires, or is likely to require, a health service;
 - (j) details of anything taken from the young detainee under section 1023 (Identification of young detainees);
 - (k) details of any medicine approved by the chief executive under section 1049 for use by the detainee;
 - (l) details of property the young detainee has at the detention place;
 - (m) details of people who have responsibility for day-to-day matters, or long-term matters, for the young detainee and details of notifications under this Act of those people;
 - (n) anything else the chief executive considers necessary or prudent for the proper management of the young detainee.

Examples of other things chief executive may consider necessary or prudent for proper management of young detainee

- 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).

1048 Health reports

- (1) For this Act, 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.

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- (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) In this section:

health record—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

personal health information—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

relevant chief executive means a chief executive whose administrative unit is responsible for any provision of the following Acts:

- (a) the *Disability Services Act 1991*;
- (b) the *Health Act 1993*;
- (c) the *Mental Health (Treatment and Care) Act 1994*.

Note Compliance with a request under this section does not involve a contravention of a privacy principle under the *Health Records (Privacy and Access) Act 1997* (see that Act, s 5).

1049 Use of medicines

- (1) The chief executive may approve the use of a medicine, other than a prescription medicine, by a young detainee.

Note The taking of an unauthorised medicine by a young detainee is a disciplinary breach (see s 1302).

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- (2) If the chief executive approves the use of a medicine by a young detainee, the chief executive must ensure that the details of the approval, and the reasons for it, are recorded in relation to the young detainee in the register kept under section 1047.
- (3) In this section:
- prescription medicine*—see the *Medicines and Poisons Act 2007*, section 13.

1050 Case management plans—scope etc

- (1) The chief executive—
- (a) must maintain an individual case management plan for each young detainee other than a young remandee; and
 - (b) may maintain an individual case management plan for a young detainee who is a young remandee.
- (2) A case management plan for a young detainee must—
- (a) outline work and activities for the young detainee; and
 - (b) be based on an assessment of the needs, capacities and disposition of the young detainee; and
 - (c) be consistent with the resources available to the chief executive to manage the young detainee; and
 - (d) if the young detainee is a young offender—outline how the young detainee is to be prepared for lawful release and reintegration into society at the earliest possible time.
- (3) A case management plan may deal with any matter relating to a young detainee, including the following:
- (a) provision for the safe, secure and humane treatment of the young detainee;

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- (b) an outline of how the young detainee can make constructive use of the time in detention, including participation in work and activities;
 - (c) provision for access to health services;
 - (d) for a young detainee at risk of self-harm—strategies to minimise the risk;
 - (e) for a young detainee with a physical, mental or educational disability—strategies for extra assistance to minimise any disadvantage suffered by the young detainee because of the disability, particularly in relation to suitability for work and release from detention;
 - (f) for a young detainee serving a sentence of commitment—requirements for the young detainee to be told the young detainee’s release date under the sentence;
 - (g) anything else prescribed by regulation or directed by the chief executive.

1051 Transgender and intersex young detainees—sexual identity

- (1) This section applies to a transgender or intersex young detainee.
- (2) For this Act, the sex of the young detainee is taken to be—
 - (a) the sex chosen under subsection (3); or
 - (b) if subsection (4) applies—the sex chosen with approval under subsection (4).
- (3) On admission to a detention place—
 - (a) the young detainee may tell the chief executive the sex the young detainee chooses to be identified with; or

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- (b) if the young detainee fails to make a choice under paragraph (a)—the chief executive may choose the sex the young detainee is to be identified with having regard to the presentation of the young detainee on admission to the place.

Note **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (4) The chief executive may, on application by the young detainee, approve a change in the sex the young detainee chooses to be identified with, having regard to any report obtained under subsection (5).
- (5) Before making a decision under subsection (3) or (4), the chief executive may obtain a report by a doctor or other health professional about the young detainee's sexual identity.
- (6) The chief executive must—
- (a) give the young detainee written notice of a decision by the chief executive under subsection (3) or (4); and
 - (b) must ensure that the young detainee's sex chosen under this section is entered in the register of young detainees.

Examples of 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 chosen sex.

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).

1052 Security classification—basis etc

- (1) The chief executive may—
- (a) give a young detainee a security classification; and
 - (b) review the classification at any time.

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

1053 Property of young detainees

- (1) The chief executive may allow a young detainee's property to be brought into a detention place.
- (2) However, the chief executive may give directions imposing conditions in relation to the young detainee's property brought into a detention place, including conditions in relation to—
 - (a) the nature, amount and location of property that may be held by a young detainee at the place; and
 - (b) the use of the property.

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- (3) The chief executive must ensure that the register of young detainees includes details of the property each young detainee has at a detention place.
 - (4) A youth detention policy may make provision in relation to 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 Pt 11.9 (Seizing property) provides generally for the seizure, forfeiture and return of property.

1054 Trust accounts of young detainees

- (1) The chief executive must ensure that money belonging to a young detainee is held for the detainee in a trust account.
- (2) The chief executive may deduct amounts from a young detainee's trust account for payment of any fine or reparation that must be paid as disciplinary action against the young detainee.
- (3) A regulation may make provision in relation to the operation or maintenance of trust accounts.
- (4) In this section:

disciplinary action—see section 1328.

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Division 10.6.2 Monitoring

1055 Disapplication of Listening Devices Act

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

1056 Monitoring—general considerations

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

- (a) the need to protect the safety of young detainees, authorised people, other people who work at or visit detention places, and the community;
- (b) the need for security and good order at detention places;
- (c) the benefits of young detainees maintaining contact with the community outside detention places;
- (d) the need to protect the privacy of young detainees;
- (e) the need to detect prohibited things entering, at, or leaving detention places.

1057 Notice of monitoring

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

1058 Monitoring at detention places

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

Examples of monitoring

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

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).

1059 Monitoring telephone calls etc

- (1) The chief executive may monitor and record an electronic communication with a young detainee, other than a protected electronic communication.
- (2) The chief executive must take reasonable steps to tell the parties to an electronic communication, other than a protected electronic communication, that the communication might be monitored or recorded.
- (3) If an electronic communication reveals information about the commission of an offence, the chief executive must give the information to the chief police officer.
- (4) In this section:

electronic communication means communication by—

- (a) telephone, email or fax; or
- (b) any other electronic means.

protected electronic communication means an electronic communication between a young detainee and any of the following:

- (a) a lawyer representing the young detainee;

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- (b) an official visitor;
 - (c) the human rights commissioner;
 - (d) the public advocate;
 - (e) the ombudsman;
 - (f) a person prescribed by regulation.

1060 Monitoring mail

- (1) The chief executive may open and search a young detainee's mail, other than protected mail.
- (2) 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.
- (3) However, the chief executive must not read a young detainee's protected mail without the young detainee's written consent.
- (4) Subject to section 1236 (Seizing mail etc), a young detainee's mail, once searched, must be delivered to the addressee as soon as practicable.
- (5) 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.
- (6) In this section:

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

- (a) a lawyer representing the young detainee;

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- (b) an official visitor;
 - (c) the human rights commissioner;
 - (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.

Division 10.6.3 Segregation

1061 Definitions—div 10.6.3

In this division:

adjudicator means a person appointed as an adjudicator under section 1320.

health segregation direction means a segregation direction given under section 1065.

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 direction under section 1063 (Segregation—safety and security), section 1064 (Segregation—protective custody) or section 1065 (Segregation—health etc) that a young detainee be segregated.

1062 Purpose of segregation under div 10.6.3

To remove any doubt, segregation under this division must not be used for punishment or disciplinary purposes.

1063 Segregation—safety and security

- (1) The chief executive may direct that a young detainee be segregated from other young detainees if the chief executive believes, on reasonable grounds, that the segregation is necessary or prudent to protect—
 - (a) the safety of anyone else at a detention place; or
 - (b) security or good order at a detention place.
- (2) When making a direction under this section, the chief executive must also have regard, as far as practicable, to any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young detainee.
- (3) The chief executive must give the young detainee prompt notice of the direction, why it was given, when it takes effect and the provisions for its duration and review under this division.
- (4) The chief executive must revoke the direction if the chief executive believes, on reasonable grounds, that the protection mentioned in subsection (1) is no longer necessary or prudent.

1064 Segregation—protective custody

- (1) The chief executive may direct that a young detainee be segregated from other young detainees if the chief executive believes, on reasonable grounds, that the segregation is necessary or prudent to protect the young detainee's safety.
- (2) The chief executive may give the direction at any time, on the chief executive's own initiative or on request by the young detainee.
- (3) The chief executive must give the young detainee prompt notice of the direction, why it was given, when it takes effect and the provisions for its duration and review under this division.
- (4) The chief executive must revoke the direction if the chief executive believes, on reasonable grounds, that the protection mentioned in subsection (1) is no longer necessary or prudent.

1065 Segregation—health etc

- (1) The chief executive may direct that a young detainee be segregated from other young detainees if the chief executive believes, on reasonable grounds, that the segregation is necessary or prudent—
 - (a) to assess the young detainee's physical or mental health; or
 - (b) to protect anyone (including the young detainee) from harm because of the young detainee's physical or mental health; or
 - (c) to prevent the spread of disease.
- (2) The chief executive must give the young detainee prompt notice of the direction, why it was given, when it takes effect and the provisions for its duration and review under this part.
- (3) The chief executive must revoke the direction if the chief executive believes, on reasonable grounds, that the purpose mentioned in subsection (1) for making the direction is no longer necessary or prudent.

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- (4) When acting under subsection (1) or subsection (3), the chief executive must have regard to any advice by a doctor given in relation to the segregation of the young detainee.

1066 Notice of segregation directions

- (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
 - (c) stating when the direction takes effect; and
 - (d) stating how long the direction lasts; and
 - (e) explaining that the direction may be reviewed or revoked under this division.
- (2) A notice under subsection (1) must be promptly given to—
- (a) the young detainee; and
 - (b) a parent or someone who has responsibility for day-to-day matters, or long-term matters, for the young detainee; and
 - (c) the public advocate.

1067 Review of segregation directions

- (1) The chief executive—
- (a) may review a segregation direction (the *original segregation direction*) at any time, on the chief executive's own initiative or on request by the young detainee; and
 - (b) must review the direction before any transfer of the young detainee to another ACT detention place; and

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- (c) must review the direction at least once every 21 days while it remains in force; and
 - (d) for a health segregation direction—must review the direction on request by a doctor.
- (2) After reviewing the original segregation direction, the chief executive may—
- (a) confirm the direction; or
 - (b) make a further segregation direction under the same provision that the original segregation direction was made under if the grounds for making the direction exist; or
 - (c) revoke the original segregation direction under section 1063 (4), section 1064 (4) or section 1065 (3).
- (3) When acting under subsection (2) in relation to a health segregation direction, the chief executive must have regard to any advice by a doctor given in relation to the segregation.
- (4) To remove any doubt, the chief executive may make more than 1 further segregation direction after a review.

1068 End of segregation directions

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

- (a) 28 days after the day it is given; or
- (b) if a further segregation direction has been given after review under section 1067—90 days after the day the further segregation direction, or latest further segregation direction, is given.

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1069 Segregation not to affect minimum living conditions

- (1) The segregation of a young detainee under this part is not to affect the standards applying to the young detainee under section 1005 (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.

1070 Application for review of segregation directions

- (1) A young detainee may apply to an adjudicator for a review of a segregation direction.
- (2) The application must be made not later than 7 days after the day the chief executive gives the young detainee notice of the segregation direction.

Note If a form is approved under s 3210 for an application, the form must be used.

- (3) Subject to any decision by the adjudicator under section 1071, the application does not affect the segregation of the young detainee under the segregation direction under review.

1071 Review of segregation directions

- (1) On application by a young detainee under section 1070 in relation to a segregation direction (the *original segregation direction*), an adjudicator may—
 - (a) conduct an inquiry (the *segregation inquiry*) to review the direction; or
 - (b) refuse to review the direction.

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- (2) Chapter 13 (Conduct of disciplinary inquiries) applies to the segregation inquiry, with any necessary changes, as if it were an inquiry under that chapter.
 - (3) After completing a segregation inquiry, the adjudicator may—
 - (a) confirm the original segregation direction; or
 - (b) give any segregation direction the chief executive may give under the section the original segregation direction was made under, either by—
 - (i) amending the original segregation direction; or
 - (ii) setting aside the original segregation direction and substituting a new segregation direction.

1072 Notice of decision about segregation direction

- (1) This section applies if an adjudicator has made a decision under section 1071 in relation to an application by a young detainee to review a segregation direction.
- (2) The adjudicator must give prompt written notice of the adjudicator's decision to—
 - (a) the young detainee; and
 - (b) a parent or someone else who has responsibility for day-to-day matters, or long-term matters, for the young detainee.
- (3) If the adjudicator 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 affect the operation of the decision or prevent its implementation (see s 16).

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1073 Other separation of young detainees

A youth detention policy or operating procedure may make provision in relation to the management of young detainees, including provision in relation to the separation of young detainees for—

- (a) accommodation; and
- (b) use of facilities; and
- (c) participation in education or other activities.

Division 10.6.4 Use of force

1074 Managing use of force

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

Example

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

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 must also ensure, as far as practicable, that—
 - (a) authorised people do not use force in relation to a young detainee without first considering the following in relation to the use of force:
 - (i) the young detainee's age, sex, physical and mental health and any history of abuse;

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- (ii) if the proposed force involves any restraint of the young detainee—the physical and mental capacity of the young detainee; and
 - (b) the use of force in relation to a young detainee is not observed by any other young detainee.
 - (3) However, an authorised person 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 officer, the young detainee or anyone else.
 - (4) To remove any doubt, the chief executive must also make arrangements to ensure that a young detainee receives any appropriate health assessment or treatment necessary because of the use of force in relation to the young detainee.

1075 Authority to use force

An authorised person may use force that is necessary and reasonable for any of the following:

- (a) to compel compliance with a direction given in relation to a young detainee by the chief executive;
- (b) to prevent or stop the commission of an offence;
- (c) to prevent unlawful damage, destruction or interference with property;
- (d) to defend the person or someone else;
- (e) to prevent a young detainee from inflicting self-harm;
- (f) anything else prescribed by regulation.

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1076 Application of force

- (1) An authorised person may use force under section 1075 only if the person—
 - (a) believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way; and
 - (b) gives a clear warning of the intended use of force; and
 - (c) allows enough time for the warning to be observed; and
 - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
- (2) However, the authorised person need not comply with subsection (1) (b) or (c) if, in urgent circumstances, the person believes, on reasonable grounds, that doing so would create a risk of injury to the person, the young detainee or anyone else.

Example of urgent circumstances

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

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

- (3) In applying force under section 1075, the authorised person may use either body contact or a restraining device.

Division 10.6.5 Access to detention places

1077 Visiting conditions

- (1) The chief executive may declare conditions that apply in relation to visits to a detention place.

Examples of 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.

1078 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.

1079 Taking prohibited things etc into detention place

- (1) A person commits an offence if—
 - (a) the person—
 - (i) takes a prohibited thing into a detention place; or
 - (ii) gives a prohibited thing to a young detainee; or
 - (iii) removes a prohibited thing from a detention place; and
 - (b) the person does not have the chief executive's approval to do so.

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

- (2) To remove any doubt, in this section, *person* is not limited to a person who is a visitor to a detention place.
- (3) In this section:
give includes send.

prohibited thing includes something the person intends a young detainee to use for making, or in relation to, a prohibited thing.

1080 Directions to visitors

- (1) The chief executive may, orally or in writing, give a direction to a visitor at a detention place to do, or not do, something if the chief executive believes, on reasonable grounds, that the direction is necessary and reasonable—
 - (a) to ensure compliance with the visiting conditions; or
 - (b) for security or good order at a detention place.

Note The chief executive may also direct an authorised person to search a visitor (see s 1230).

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- (2) A person must take all reasonable steps to comply with a direction given to the person under this section.

Maximum penalty: 50 penalty units.

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

1081 Directions to leave detention place etc

- (1) The chief executive may direct a person at a detention place—

(a) not to enter the place; or

(b) if the person is already in the place—to leave the place.

- (2) However, the chief executive may give the direction only if satisfied that the direction is necessary and reasonable—

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

(b) to promote or safeguard the physical or mental wellbeing of a young detainee.

- (3) To remove any doubt, this section applies to a significant person for a young detainee, even if the person has been visiting the young detainee for less than an hour.

- (4) A person must take all reasonable steps to comply with a direction given to the person under subsection (1).

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

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

1082 Removing people from detention place

- (1) The chief executive may direct an authorised person to enforce a direction under section 1081 if the person given the direction contravenes the direction.

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- (2) The authorised person may use force that is necessary and reasonable to enforce the direction.

Division 10.6.6 Maintenance of family relationships

1083 Application—div 10.6.6

This division applies in relation to a young detainee if—

- (a) the young detainee has a child (the *young child*); and
- (b) the child is under 6 years old and not enrolled in school; and
- (c) before being detained, the young detainee was the primary caregiver for the child.

1084 Definitions—div 10.6.6

In this division:

young child—see section 1083 (a).

1085 Chief executive may allow young child to stay with young detainee

- (1) The chief executive may, by direction, allow a young detainee to whom this division applies to have contact with, or care for, the young detainee's young child in a detention place.
- (2) However, the chief executive must not give a direction under subsection (1) unless the chief executive—
 - (a) has carried out a care and protection appraisal of the young child; and
 - (b) is satisfied that it is in the best interests of the young child for the young detainee to have contact with, or care for, the young child in the detention place.

(3) The chief executive may give directions about the arrangements to apply in relation to a young child being kept with a young detainee at a detention place.

(4) A direction under subsection (3) is a notifiable instrument.

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

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Part 10.7 Alcohol and drug testing

Division 10.7.1 General

1086 Definitions—pt 10.7

In this part:

drug does not include any of the following:

- (a) a drug lawfully supplied, and taken as prescribed or directed, by a health professional;
- (b) a drug lawfully supplied and self-administered;
- (c) a drug exempted under section 1087 (3).

positive test sample—see section 1087.

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

1087 Positive test samples

- (1) A person is taken to provide a *positive test sample* for alcohol or a drug if, when directed under this Act to provide a test sample—
 - (a) the person fails to provide a test sample in accordance with the direction; or
 - Note* *Fail* includes refuse, see the Legislation Act, dict, pt 1.
 - (b) the person provides an invalid test sample; or
 - (c) for a young detainee—the young detainee provides a test sample that shows that the young detainee has taken alcohol or a drug.

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- (2) However, subsection (1) (a) does not apply if the person has a reasonable excuse for failing to provide the test sample within a reasonable time of the direction being given.

Examples of reasonable excuse

- 1 a medical condition that prevents the person from providing a test sample as directed
- 2 prescribed medication that may affect test results

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

- (3) The chief executive may exempt a drug from the application of this part.
- (4) An exemption is a notifiable instrument.

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

- (5) In this section:

invalid—a test sample provided by a person is *invalid* if—

- (a) the person tampers, or attempts to tamper, with the test sample;
or
- (b) the person otherwise changes, or attempts to change, the results of the test sample.

Division 10.7.2 Alcohol and drug testing—detainees

1088 Alcohol and drug testing of young detainees

- (1) The chief executive may direct a young detainee to provide a stated kind of test sample.
- (2) The chief executive, a doctor or a nurse may give a young detainee a direction about the way the young detainee must provide the test sample.

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- (3) However—
- (a) a direction under this section must be consistent with any requirement prescribed by an operating procedure for this section; and
 - (b) only a doctor or nurse may take a blood sample.
- (4) A doctor or nurse who takes a test sample from a young detainee must give the sample to an authorised person.
- (5) The chief executive must, as soon as practicable after the chief executive receives the results of any test conducted on the test sample, give notice of the results to—
- (a) the young detainee; and
 - (b) a person who has responsibility for day-to-day matters, long-term matters or health care treatment, for the young detainee.

1089 Effect of positive test sample by young detainee

- (1) This section applies if—
- (a) a young detainee is directed under this Act to provide a test sample; and
 - (b) the test sample provided by the young detainee is positive.

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- (2) The chief executive may have regard to the positive test sample in making any decision in relation to the management of the young detainee under this Act.

Examples of decisions—s (2)

- 1 decisions under s 1050 (Case management plans—scope etc) or s 1052 (Security classification—basis etc)
- 2 decisions under ch 12 (Criminal matters—discipline at detention places)

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

Note 2 The taking of alcohol or a drug (in any way) into the body is a disciplinary breach (see s 1302). The results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate (see s 1090).

1090 Evidentiary certificates—alcohol and drug testing

- (1) A certificate that appears to be signed by or for the chief executive, and states any matter relevant to anything done or not done under this Act in relation to a detainee, is evidence of the matter.
- (2) Without limiting subsection (1), a certificate under subsection (1) may state any of the following:
- (a) that a stated person did, or did not, occupy a position under this Act;
 - (b) that a stated person was, or was not, a young detainee;
 - (c) that a stated instrument under this Act was, or was not, in force;
 - (d) that a stated disciplinary breach by a stated young detainee was, or was not, admitted by the young detainee or found proven at an inquiry under chapter 11 (Criminal matters—search and seizure at detention places);

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- (e) that a stated instrument is a copy of an instrument made, given, issued or received under this Act.
- (3) A certificate mentioned in subsection (1) or (2) may state a matter by reference to a date or period.
- (4) A certificate of the results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate.
- (5) A certificate signed by or for the chief executive that states any matter prescribed by regulation for this section is evidence of the stated matter.
- (6) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.
- (7) However, an instrument mentioned in subsection (2) (c), or certificate mentioned in subsection (4), must not be admitted in evidence by a court unless the court is satisfied that reasonable efforts have been made to serve a copy of the instrument or certificate on the person concerned.

Division 10.7.3 Alcohol and drug testing—authorised people

1091 Alcohol and drug testing of authorised people

- (1) A regulation may make provision in relation to alcohol and drug testing of authorised people whose duties bring them into contact with detainees.

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

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Part 10.8 Young detainees—leave

Division 10.8.1 Local leave

1092 Chief executive may give leave of absence from detention

- (1) The chief executive may, in writing, give a leave of absence to a young detainee who has been committed to a detention place.
- (2) The chief executive may give the leave of absence for any reason the chief executive considers appropriate, including 1 or more of the following reasons:
 - (a) the young detainee’s education and training;
 - (b) the young detainee’s employment;
 - (c) a compassionate reason;
 - (d) the young detainee’s health;
 - (e) the young detainee’s pregnancy;
 - (f) the young detainee’s recreation;
 - (g) the participation by the young detainee in a community project.
- (3) The leave of absence may be subject to any conditions the chief executive considers appropriate.
- (4) The time spent by the young detainee outside a detention place on a leave of absence is, for this Act, taken to be time spent in the detention place.

1093 Leave authority

- (1) This section applies if the chief executive gives a young detainee a leave of absence under section 1092.

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- (2) The chief executive must give the young detainee a written authority (a ***leave authority***) for the leave of absence.

Note 1 If a form is approved under s 3210 for this provision, the form must be used.

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

- (3) The leave authority must state the following:
- (a) the purpose for which the leave is granted;
 - (b) the period, not longer than 7 days, for which the leave is granted; and
 - (c) any conditions to which the leave is subject.
- (4) The young detainee must carry the leave authority at all times while on the leave of absence.

1094 Contravention of condition

- (1) This section applies if—
- (a) a young detainee has been given a leave of absence under section 1092; and
 - (b) the leave has been given subject to a condition; and
 - (c) the young detainee contravenes a condition of the leave.
- (2) The leave of absence is, by force of this section, revoked.
- (3) If the chief executive is aware of the contravention, the chief executive must tell the chief police officer about the contravention.

Division 10.8.2 Interstate leave

Subdivision 10.8.2.1 General

1095 Definitions—div 10.8.2

In this division:

corresponding chief executive, of a participating State, means the person responsible for the administration of detention places (however described) for detention in the participating State.

corresponding leave law means a law of a State or another Territory declared to be a corresponding leave law under section 1096.

escape, in relation to an interstate young detainee, includes fail to return to lawful custody at the end of the period to which the young detainee's interstate leave permit applies.

interstate escort officer—see section 1102.

interstate young detainee means a person to whom an interstate leave permit under a corresponding leave law applies.

participating State means a State or another Territory where a corresponding leave law is in force.

1096 Declaration of corresponding leave laws

- (1) The Minister may declare that a law of a State or another Territory is a corresponding leave law.
- (2) The Minister may make the declaration only if satisfied that the law substantially corresponds to this division.
- (3) A declaration under this section is a notifiable instrument.

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

Subdivision 10.8.2.2 ACT permits for interstate leave

1097 Interstate leave permits

- (1) The chief executive may, by written notice (an *interstate leave permit*) given to a young detainee, give the young detainee leave to travel to and from, and remain in, a participating State.
- (2) An interstate leave permit must state the following:
 - (a) the State or Territory to which the permit applies;
 - (b) the purpose for which the leave is granted;
 - (c) the period, not longer than 7 days, for which the leave is granted.

Note 1 If a form is approved under s 3210 for this provision, the form must be used.

Note 2 Power given under an Act to make a statutory instrument (including an interstate leave permit) includes power to amend or revoke the instrument (see Legislation Act, s 46 (1)).

- (3) An interstate leave permit is subject to the following conditions:
 - (a) any condition prescribed by regulation;
 - (b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—
 - (i) the chief executive believes, on reasonable grounds, is necessary and reasonable; and
 - (ii) is stated in the permit.

Examples of 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

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- 3 a condition that an indigenous young detainee travelling interstate to mark the birth or death of a relative be escorted by an indigenous elder or relative

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).

1098 Effect of ACT permit for interstate leave

- (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 participating State stated in the permit (whether or not through any other jurisdiction); and
 - (b) back to the detention place.

1099 Notice to participating States

The chief executive must give written notice of an interstate leave permit given to a young detainee, and the period of the permit, to each of the following:

- (a) the corresponding chief executive of the participating State to which the permit applies;

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- (b) the chief of police (however described) of the participating State to which the permit applies;
 - (c) the chief of police (however described) of any other State or Territory through which the young detainee may travel under the permit.

1100 Powers of escort officers—interstate leave

- (1) An escort officer escorting a young detainee under an interstate leave permit may, to keep custody of the young detainee under the permit or to arrest the young detainee if the young detainee has escaped—
 - (a) give the young detainee any direction that the officer believes, on reasonable grounds, is necessary and reasonable; and
 - (b) use force in accordance with division 10.6.4 (Use of force).
- (2) An escort officer escorting a young detainee under an interstate leave permit may conduct a scanning search, frisk search or ordinary search of the young detainee if the officer suspects on reasonable grounds the young detainee may be carrying a prohibited thing.
- (3) Chapter 11 (Criminal matters—search and seizure at detention places) applies, with any necessary changes, in relation to a scanning search, frisk search or ordinary search under this section.

1101 Liability for damage etc

- (1) The Territory is liable for any damage or loss sustained by anyone in a participating State that is caused by the conduct of a young detainee or an escort officer while in the participating State under an interstate leave permit.
- (2) This section does not affect any right the Territory may have against the young detainee or escort officer for the damage or loss.

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Subdivision 10.8.2.3 Interstate leave under corresponding leave laws

1102 Effect in ACT of interstate leave permit under corresponding leave law

- (1) This section applies to a person (an *interstate escort officer*) who is authorised under an interstate leave permit issued under a corresponding leave law to escort an interstate young detainee to or from, or in, the ACT.
- (2) The interstate escort officer is authorised, in the ACT, to escort the interstate young detainee in accordance with the interstate leave permit.

1103 Powers of interstate escort officers

- (1) This section applies if an interstate escort officer uses force, or a means of restraint, in the ACT for—
 - (a) keeping custody of an interstate young detainee under an interstate leave permit issued under a corresponding law; or
 - (b) arresting an interstate young detainee who has escaped.
- (2) The use of force, a weapon or means of restraint is lawful in the ACT if it would have been lawful in the participating State where the interstate leave permit was issued.

1104 Escape of interstate young detainee

- (1) This section applies to an interstate young detainee in the ACT under an interstate leave permit issued under a corresponding leave law.

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- (2) If the interstate young detainee escapes from lawful custody, the young detainee may be arrested without warrant by—
- (a) an interstate escort officer for the young detainee; or
 - (b) a police officer.
- (3) A police officer who arrests the young detainee may return the young detainee to an interstate escort officer for the young detainee.

Note A police officer may also arrest without a warrant a person who has escaped from lawful custody or who is unlawfully at large (see *Crimes Act 1900*, s 212 and s 214).

1105 Return of escaped interstate young detainee

- (1) This section applies if, in the ACT, an interstate young detainee attempts to escape or is arrested after an escape.
- (2) The interstate young detainee may be taken before a magistrate.
- (3) Despite the terms of the interstate young detainee's interstate leave permit issued under a corresponding leave law, the magistrate may by warrant (a **return warrant**)—
- (a) order the return of the young detainee to the participating State where the permit was issued; and
 - (b) order the interstate young detainee to be delivered into the custody of a police officer or interstate escort officer for that purpose.
- (4) If a return warrant is issued for the interstate young detainee, the young detainee may be kept in detention until the earlier of the following events:
- (a) the young detainee is delivered into the custody of a police officer or interstate escort officer in accordance with the warrant;

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- (b) the end of 14 days after the day the warrant was issued.
 - (5) The return warrant ends if the interstate young detainee is not delivered into the custody of a police officer or interstate escort officer, in accordance with the warrant, before the end of 14 days after the day the warrant is issued.

Division 10.8.3 Leave—miscellaneous

1106 Lawful temporary absence from detention place

- (1) This section applies to a young detainee who is absent from a detention place under any of the following:
 - (a) a direction by the chief executive, including a direction under section 911 (Transfers to health facilities);
 - (b) a leave authority under section 1093;
 - (c) an interstate leave permit;
 - (d) any other authority (however described) prescribed by regulation.
- (2) To remove any doubt, the young detainee is—
 - (a) taken to be in the chief executive’s custody; and
 - (b) if under escort by an escort officer—also taken to be in the escort’s custody.

1107 Personal injury management—young detainees etc

- (1) This section applies if a young detainee suffers injury that arises out of, or in the course of, the young detainee’s detention.
- (2) A regulation may make provision in relation to the injury, including provision in relation to the following:
 - (a) injury management;

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- (b) compensation for a permanent injury;
 - (c) death benefits.
- (3) In this section:
- injury* includes—
- (a) disease; and
 - (b) aggravation, acceleration and recurrence of an injury or disease.

1108 Declaration of corresponding law

- (1) The Minister may declare that a law of a State or another Territory is a corresponding detention place law.
- (2) The Minister may make the declaration only if satisfied that the law substantially corresponds to this chapter.
- (3) A declaration under this section is a notifiable instrument.

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

Chapter 11 Criminal matters—search and seizure at detention places

Part 11.1 Preliminary—ch 11

1200 Definitions—ch 11

In this chapter:

authorised doctor means a doctor authorised under section 1203 (Authorised health professionals).

authorised health professional means a health professional authorised under section 1203.

authorised nurse means a nurse authorised under section 1203.

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

frisk search, of a young detainee, means—

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

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

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

prohibited thing means a thing declared to be a prohibited thing under section 1202.

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

Examples of scanning searches

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

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).

strip search, of a young detainee, means a search of the young detainee, or of anything in the young detainee's possession, under section 1210 (Strip search on admission to detention place) or section 1214 (Strip searches directed by chief executive) and may include—

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

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- (ii) the young detainee's clothing.

young detainee means a child or young person detained at a detention place, whether or not the child or young person has been convicted, or found guilty, of an offence.

1201 Relationship with other laws

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

1202 Prohibited things

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

Examples of prohibited things

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

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

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

- (2) A declaration is a notifiable instrument.

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

1203 Authorised health professionals

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

treating health professional, in relation to a young detainee, means a health professional who has a professional relationship with the young detainee for the provision of health services.

Part 11.2 Searches generally

1204 Intrusiveness of searches

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).

1205 Register of searches

- (1) This section applies to a search under any of the following sections:
 - (a) section 1210 (Strip searches on admission to detention place);
 - (b) section 1214 (Strip searches directed by chief executive);
 - (c) section 1220 (Body searches directed by chief executive);
 - (d) section 1231 (Searches—premises and property generally);
 - (e) section 1232 (Searches of young detainee cells—privileged material);
 - (f) section 1233 (Searches of young detainee cells—suspected privileged material).

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

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1206 Searches of transgender and intersex young detainees

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

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

1207 Notice of strip and body searches—person with parental responsibility for detainee

The chief executive must ensure, as far as practicable, that a person who has responsibility for day-to-day matter, or long-term matters for a young detainee (other than the chief executive) is told about any strip search or body search of the young detainee—

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

Note 1 In some circumstances the chief executive is a person with responsibility for day-to-day matters, or long term matters, for a young detainee (see div 1.3.2).

Note 2 A proposed strip or body search need not be conducted in the presence of the person notified (see s 1210, s 1213 and s 1222).

Part 11.3 Scanning, frisk and ordinary searches

1208 Directions for scanning, frisk and ordinary searches

- (1) The chief executive may, at any time, direct an authorised person 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, an authorised person may conduct a scanning search, frisk search or ordinary search of a young detainee if the person 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.

1209 Requirements for scanning, frisk and ordinary searches

- (1) The authorised person 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

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

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Part 11.4 Strip searches—young detainees

1210 Strip searches on admission to detention place

- (1) The chief executive may direct an authorised person to strip search a young detainee if the chief executive believes, on reasonable grounds, that the strip search is necessary or prudent for an assessment under section 1025 (Initial assessment).
- (2) The strip search must be conducted in the presence of a person with responsibility for day-to-day matters, or long-term matters, for the young detainee if—
 - (a) the chief executive believes, on reasonable grounds, that it is necessary for the person to be present; and
 - (b) the young detainee agrees to the person being present.
- (3) In making a decision under subsection (1) or (2), the chief executive must have regard to the young detainee's age, maturity and any known history.

1211 Strip searches if no-one with responsibility for young detainee available

- (1) This section applies in relation to a strip search of a young detainee under section 1210 if—
 - (a) a person who has responsibility for day-to-day matters, or long-term matters, 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 1207.

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- (b) no-one who has responsibility for day-to-day matters, or long-term matters, 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 responsibility for day-to-day matters, or long term matter, 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 responsibility for day-to-day matters, or long-term matters, for a young detainee (see div 1.3.2).
- (3) However, the 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 1212.

1212 Strip searches on admission—directing person to leave

- (1) This section applies if a strip search of a young detainee under section 1210 (Strip search on admission to detention place) is being conducted in the presence of—
- (a) a person who has responsibility for day-to-day matters, or long-term matters, for the young detainee; or
 - (b) a support person under section 1211 (2).

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- (2) The chief executive may direct the person to leave if the chief executive believes, on reasonable grounds, that the person is preventing or hindering the conduct of the search.

1213 Removing people from search area

- (1) The chief executive may direct an authorised person to enforce a direction under section 1212 (2) if the person given the direction contravenes the direction.
- (2) The authorised person may use force that is necessary and reasonable to enforce the direction.

1214 Strip searches directed by chief executive

- (1) The chief executive may direct an authorised person to strip search a young detainee only if—
- (a) the chief executive suspects, on reasonable grounds, that the young detainee has something concealed on the young detainee that—
 - (i) is a prohibited thing; or
 - (ii) may be used by the young detainee in a way that may involve an offence, a risk to the personal safety of the young detainee or someone else, or a risk to the security or good order at a detention place; and
 - (b) a scanning search, frisk search or ordinary search of the young detainee has failed to detect the thing.
- (2) To remove any doubt, the strip search need not be conducted in the presence of a person who has responsibility for day-to-day matters, or long-term matters, for the young detainee.
- (3) This section does not apply to a strip search under section 1210 (Strip search on admission to detention place).

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1215 Obligations on authorised person before strip searches

- (1) This section applies if an authorised person proposes to strip search a young detainee.
- (2) The authorised person must tell the young detainee—
 - (a) whether the young detainee will be required to remove clothing during the search; and
 - (b) if the young detainee will be required to remove clothing, why the removal is necessary.
- (3) If the young detainee asks why the search is being conducted in a particular way, the authorised person must tell the young detainee the reasons.
- (4) The authorised person must ask for the young detainee's cooperation for the search.

1216 Authorised people and strip searches

- (1) A strip search of a young detainee must be conducted—
 - (a) by an authorised person of the same sex as the young detainee; and
 - (b) in the presence of 1 or more other authorised people, each of whom must be the same sex as the young detainee.
- (2) However, the number of authorised people present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.

1217 Strip searches—general rules

- (1) The authorised person conducting a strip search of a young detainee must conduct the strip search—
 - (a) in a way that—
 - (i) provides reasonable privacy for the young detainee; and
 - (ii) is appropriate, having regard as far as practicable, to the young detainee’s sexuality and any known impairment, condition or history; and
 - (b) as quickly as practicable.
- (2) The strip search must be conducted in a private area or an area that provides reasonable privacy for the young detainee.
- (3) The strip search must not be conducted—
 - (a) in the presence of someone of the opposite sex to the young detainee, other than—
 - (i) a person present under section 1210 (2) (Strip searches on admission to detention place) or section 1211 (Strip searches if no-one with responsibility for young detainee available); or
 - (ii) another authorised person present under section 1216; or
 - (b) in the presence or sight of someone else whose presence is not necessary for the search or for the safety of anyone present.
- (4) Subject to Part 11.8 (Searches—use of force), the strip search must not involve touching the young detainee’s body orifices or cavities.

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1218 Strip searches—rules about visual inspection of young detainee’s body

- (1) An authorised person conducting a strip search of a young detainee must not visually inspect the genital area of the young detainee and, for a female young detainee, the young detainee’s breasts, unless the person suspects, on reasonable grounds, that it is necessary to do so for the search.
- (2) A strip search of a young detainee must not involve more visual inspection of the young detainee’s body than is necessary and reasonable for the search.
- (3) Without limiting subsection (2), during the strip search of the young detainee, any visual inspection of the young detainee’s genital area, anal area, buttocks and, for a female young detainee, breasts must be kept to a minimum.

1219 Strip searches—rules about young detainees’ clothing

- (1) A strip search of a young detainee must not involve—
 - (a) the removal from the young detainee of more clothes than is necessary and reasonable for the search; or
 - (b) the removal from the young detainee of more clothes at any time than is necessary and reasonable for the search; or
 - (c) without limiting paragraph (b), both the upper and lower parts of the young detainee’s body being uncovered at the same time.
- (2) A young detainee who has been strip-searched must be allowed to dress in private as soon as the search is finished.

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- (3) If clothing from a young detainee is seized during a strip search, the authorised person conducting the search must ensure that the young detainee is left with, or given, reasonably appropriate clothing to wear.

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Part 11.5 Body searches—young detainees

1220 Body searches directed by chief executive

- (1) The chief executive may direct an authorised 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 and any known history.

1221 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 1220.
- (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.

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

1222 People present at body searches

- (1) An authorised nurse must be present during the body search of a young detainee.
- (2) If the authorised doctor conducting the body search is not the same sex as the young detainee, the authorised nurse present must be the same sex as the young detainee.

Note If the doctor is not the same sex as the young detainee, the doctor cannot touch the young detainee or examine the young detainee's body orifices or cavities (see s 1228).

- (3) The chief executive may direct 1 or more authorised people to be present during the search, each of whom must be the same sex as the young detainee.
- (4) However, the number of authorised people present during the search must be no more than is necessary and reasonable to ensure the search is carried out as safely and effectively as possible.
- (5) The requirement in subsection (3) that an authorised person be the same sex as the young detainee does not apply if the chief executive believes on reasonable grounds that—
 - (a) there is an imminent and serious threat to the personal safety of the young detainee or someone else; and
 - (b) compliance with that requirement would exacerbate the threat.

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- (6) The search must be conducted in the presence of a person who has responsibility for day-to-day matters, or long-term matters, for the young detainee if—
- (a) the chief executive believes that it is necessary or prudent for the person to be present; and
 - (b) the young detainee agrees to the person being present.
- (7) In making a decision under subsection (6), the chief executive must have regard to the young detainee’s age, maturity and any known history.

1223 Body searches if no-one with parental responsibility available

- (1) This section applies in relation to a body search of a young detainee if—
- (a) a person who has responsibility for day-to-day matters, or long-term matters, 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 1207.
- (b) no-one who has responsibility for day-to-day matters, or long-term matters, 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 responsibility for day-to-day matters, or long-term matters, for the young detainee being present at the search.
- (2) The chief executive must ensure that the body search is conducted in the presence of someone (a **support person**) who—
- (a) the chief executive believes, on reasonable grounds, can support and represent the interests of the young detainee; and

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

Note In some circumstances the chief executive may be a person who has responsibility for day-to-day matters, or long-term matters, for a young detainee (see div 1.3.2).

- (3) However, the body search may continue in the absence of a support person if—
- (a) the young detainee does not agree to a support person being present; or
 - (b) the chief executive directs the support person to leave under section 1224 (2).

1224 Body searches—directing people to leave

- (1) This section applies if a body search of a young detainee is being conducted in the presence of—
- (a) a person who has responsibility for day-to-day matters, or long-term matters, for the young detainee; or
 - (b) a support person under section 1223.
- (2) The chief executive may direct the person to leave if the chief executive believes, on reasonable grounds, that the person is preventing or hindering the conduct of the search.

1225 Removing people from search area

- (1) The chief executive may direct an authorised person to enforce a direction under section 1224 (2) if the person given the direction contravenes the direction.
- (2) The authorised person may use force that is necessary and reasonable to enforce the direction.

1226 Help for body searches

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

1227 Body searches—rules about young detainees’ clothing

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

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- (3) If clothing from a young detainee is seized during a body search, the chief executive must ensure that the young detainee is left with, or given, appropriate clothing to wear.

1228 Body searches—rules about touching young detainees

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

1229 Seizing things discovered during body searches

- (1) An authorised doctor conducting a body search of a young detainee may seize anything mentioned in section 1220 (Body searches directed by chief executive) that is discovered during the search if seizing the thing would not be likely to cause injury to the young detainee or someone else.
- (2) The doctor must give the thing seized to an authorised person as soon as practicable.

Part 11.6 Searching people other than detainees

1230 Searches of people other than detainees

- (1) The chief executive may direct an authorised person 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 11.3 (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 11.8 (Searches—use of force) does not apply to a search under this section.

Part 11.7 Searches of premises and property

1231 Searches—premises and property generally

- (1) The chief executive may, at any time, direct an authorised person 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:

- any area or building or part of a building (including a cell) at a detention place
- any storage area, including an area used by young detainees or authorised people, at a detention place
- 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.

1232 Searches of young detainee cells—privileged material

- (1) This section applies if a young detainee has privileged material at a detention place.
- (2) An authorised person may search the young detainee’s cell under section 1231 in the absence of the young detainee if—
 - (a) the young detainee removes the privileged material from the cell; or
 - (b) the privileged material is stored in accordance with arrangements under subsection (3).
- (3) The chief executive may make arrangements for the secure storage at a detention place of privileged material for young detainees.

1233 Searches of young detainee cells—suspected privileged material

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

Part 11.8 Searches—use of force

1234 Searches—managing use of force

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

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

1235 Searches—authorised use of force

- (1) An authorised person 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 1226 (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) An authorised person may use force in relation to a young detainee under this chapter only if the authorised person—
 - (a) gives a clear warning of the intended use of force; and
 - (b) allows enough time for the warning to be observed; and
 - (c) uses no more force than is necessary and reasonable in the circumstances; and
 - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
- (3) However, the authorised person need not comply with subsection (2) (b) if the authorised person believes, on reasonable grounds, that urgent circumstances exist and that compliance with subsection (2) (b) would create a risk of injury to the authorised person, the detainee or anyone else.

Example of urgent circumstances

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

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

Part 11.9 Seizing property

1236 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 risk to the personal safety of someone else or a risk to security or good order at a detention place; or
 - (b) to stop threatening or otherwise inappropriate correspondence entering or leaving a detention place; or
 - (c) to stop a young detainee obtaining or buying goods without the chief executive's approval.

Example of inappropriate correspondence—par (b)

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

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

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

mail means postal mail.

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

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

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1237 Seizing property—general

- (1) The chief executive may seize—
 - (a) a prohibited thing found on a young detainee or in a young detainee’s custody or possession, unless the young detainee has the written approval of the chief executive to possess the thing; or
 - (b) anything found at a detention place, whether or not in a person’s custody or possession, that the chief executive suspects, on reasonable grounds—
 - (i) is being used, or is intended, for the commission of an offence; or
 - (ii) jeopardises, or is likely to jeopardise, security or good order at a detention place or the safety of anyone at a detention place or elsewhere.
- (2) To remove any doubt, this section extends to anything found in a search under this chapter.
- (3) The chief executive may seize a document under this section only if the chief executive believes, on reasonable grounds, that the document is not privileged.
- (4) If the chief executive believes, on reasonable grounds, that a document seized under subsection (3) is privileged, the chief executive must return the document to the young detainee immediately.

1238 Notice of seizure

- (1) The chief executive must prepare written notice of a seizure under section 1236 or section 1237.

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- (2) Not later than 7 days after the day of the seizure, the chief executive must give written notice of the seizure to—
- (a) the owner of the thing seized; or
 - (b) if the owner cannot be identified after reasonable inquiries (given the thing's apparent value)—the person from whom the thing was seized.
- (3) The notice must—
- (a) identify the thing seized; and
 - (b) outline the grounds for the seizure; and
 - (c) include a statement about the effect of section 1239; and
 - (d) include anything else prescribed by regulation.
- (4) In this section:
- owner*, of a thing, includes a person entitled to possession of the thing.

1239 Forfeiture of things seized

- (1) A thing seized under section 1236 (Seizing mail etc) or section 1237 (Seizing property—general) is forfeited to the Territory if the chief executive decides, on reasonable grounds—
- (a) that—
 - (i) after making reasonable inquiries (given the thing's apparent value), the owner of the thing cannot be found; or
 - (ii) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner; or

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- (b) that—
- (i) possession of the thing by a young detainee is an offence; or
 - (ii) it is necessary to keep the thing to stop it being used for the commission of an offence; or
 - (iii) the thing is inherently unsafe.
- (2) The chief executive may deal with a thing forfeited to the Territory under this section, or dispose of it, as the chief executive considers appropriate.

Examples

- 1 giving a forfeited weapon to an authorised person
- 2 dumping a forfeited thing of little value

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

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

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

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

- (4) In this section:
- owner**, of a thing, includes a person entitled to possession of the thing.

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1240 Return of things seized but not forfeited

- (1) If a thing seized under section 1236 (Seizing mail etc) or section 1237 (Seizing property—general) is not forfeited, the chief executive must return it to its owner—
 - (a) at the end of the 6 months after the day it was seized; or
 - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) However, if the thing was being kept as evidence of an offence and the chief executive believes, on reasonable grounds, that its retention as evidence is no longer necessary, the chief executive must return it immediately.
- (3) In this section:

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

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Chapter 12 Criminal matters—discipline at detention places

Part 12.1 General

1300 Application—ch 12

This chapter applies in relation to a disciplinary breach committed, or allegedly committed, by a young detainee.

1301 Definitions—ch 12

In this chapter:

accused detainee means a young detainee charged with a disciplinary breach.

administrative penalty—see section 1329.

administrator means an authorised person to whom the chief executive has delegated functions of an administrator under this chapter.

allegation report means a report by an authorised person under section 1306 (2) (d).

charge means a disciplinary charge under section 1312.

charge notice—see section 1312.

disciplinary action—see section 1328.

disciplinary breach—see section 1302.

hearing, for an inquiry, means a hearing under part 13.3.

inquiry means an inquiry to which chapter 13 (Conduct of disciplinary inquiries) applies.

investigator—see section 1303.

investigator's report means a report by an investigator under section 1310 in relation to an allegation report.

privilege, in relation to a young detainee—see section 1304.

1302 Meaning of *disciplinary breach*

(1) Each of the following is a *disciplinary breach*:

(a) contravening a direction by the chief executive under this Act;

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

(b) being in a prohibited area without the chief executive's approval;

Note An area may be prohibited under s 1014.

(c) smoking;

(d) taking (in any way) alcohol, a prohibited substance or an unauthorised medicine into the young detainee's body;

(e) providing a positive test sample for alcohol or a drug when directed, under this Act, to provide a test sample;

(f) making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the chief executive's approval;

(g) gambling;

(h) being disrespectful or abusive towards an authorised person in a way that undermines the person's authority;

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- (i) being disrespectful or abusive towards someone in a way that is likely to provoke a person to be violent;
 - (j) intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the young detainee or anyone else;
 - (k) fighting;
 - (l) assaulting someone else;
 - (m) theft;
 - (n) possessing stolen property;
 - (o) possessing or dealing in things without the chief executive's approval;
 - (p) intentionally or recklessly damaging or destroying property belonging to someone else;
 - (q) interfering with property belonging to someone else, without approval by the owner of the property;
 - (r) creating or participating in a disturbance, or other activity, likely to endanger security or good order at a detention place;
 - (s) contravening a condition of any of the following:
 - (i) a leave authority under section 1093;
 - (ii) an interstate leave permit;
 - (t) doing anything for the purpose of escaping, or assisting a young detainee to escape, from detention;
 - (u) offering, giving or taking a bribe;
 - (v) attempting, or assisting anyone else attempting, to commit another disciplinary breach;

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(w) threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (r);

(x) anything else prescribed by regulation.

Example of 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).

(2) In this section:

medicine—see the *Medicines and Poisons Act 2007*, section 13.

prohibited substance—see the *Medicines and Poisons Act 2007*, section 15.

unauthorised medicine—a medicine is an ***unauthorised medicine*** for a young detainee if—

- (a) the medicine is not prescribed for the young detainee; and
- (b) the chief executive has not approved the use of the medicine by the young detainee under section 1049.

1303 Meaning of *investigator*

(1) An ***investigator*** is—

- (a) an authorised person to whom the chief executive has delegated functions of an investigator; or
- (b) a person engaged under subsection (2).

(2) The chief executive may, on behalf of the Territory, engage a person to exercise the functions of an investigator.

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- (3) The chief executive may engage a person under subsection (2) only if satisfied the person has appropriate qualifications or experience to exercise the functions of an investigator.

1304 Meaning of *privilege*

A *privilege*, in relation to a young detainee—

- (a) is any amenity, facility or opportunity the young detainee may have the benefit of in detention; but
- (b) does not include anything that is, for this chapter, an entitlement for the young detainee.

Examples of privileges

- 1 using common areas at a detention place for mixing with other young detainees
- 2 participating in activities other than those forming part of a young detainee's case management plan
- 3 using phones, email or the internet other than for entitled usage
- 4 buying non-essential goods from money in a young detainee's trust account
- 5 using a radio, television, compact disc, MP3 player or DVD player or other electronic equipment for recreational purposes
- 6 pursuing hobbies and crafts
- 7 keeping personal property in a cell

Examples of expressed entitlements

- things expressed in pt 10.5 (Living conditions at detention places) to be entitlements for young detainees
- an entitlement to health care under s 911

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).

1305 Overlapping disciplinary breaches and criminal offences

- (1) This section applies if a young detainee engages, or is alleged to have engaged, in conduct that is both—

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- (a) a disciplinary breach; and
 - (b) an offence (a *criminal offence*) against a territory law, including this Act.
- (2) The young detainee must not be prosecuted for the criminal offence if an administrative penalty has been imposed on the young detainee because of the disciplinary breach.
 - (3) The young detainee must not be charged with the disciplinary breach under section 1312, or the charge must not be continued with under this chapter, if a prosecution for the criminal offence has been started in a court.
 - (4) Disciplinary action for the disciplinary breach must not be taken against the young detainee if a court has convicted the young detainee, or the young detainee has been found guilty, of the criminal offence.

Note For the kinds of disciplinary action that may be taken, see s 1328.

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Part 12.2 Disciplinary investigations

Division 12.2.1 Investigation of disciplinary breaches

1306 Report etc by authorised people

- (1) This section applies if an authorised person believes, on reasonable grounds, that a young detainee has committed a disciplinary breach.
- (2) The authorised person may do 1 or more of the following if the person believes, on reasonable grounds, that it is appropriate in the circumstances:
 - (a) counsel the young detainee;
 - (b) warn the young detainee about committing a disciplinary breach;
 - (c) reprimand the young detainee;
 - (d) give an investigator a report (an *allegation report*) about the alleged disciplinary breach.
- (3) An allegation report must be given to an investigator as soon as possible, and must set out the following:
 - (a) details of the alleged disciplinary breach;
 - (b) the authorised person's reasons for believing the young detainee has committed the disciplinary breach;
 - (c) anything else prescribed by regulation.
- (4) To remove any doubt, if the authorised person is also an investigator or administrator, the authorised person must give an allegation report to another investigator and must not exercise any function of an investigator or administrator in relation to the report.

1307 Notice to young detainee of allegation report

- (1) This section applies if an investigator is given an allegation report about an alleged disciplinary breach by a young detainee.
- (2) The investigator must, in language and a way that the young detainee can understand—
 - (a) tell the young detainee about the allegation report; and
 - (b) tell the young detainee that the young detainee has the right to contact the public advocate about the report; and
 - (c) tell the young detainee that the young detainee has the right to contact an advocate under section 1308; and
 - (d) invite the young detainee to respond to the report in writing within a stated reasonable time.
- (3) The investigator must also give the young detainee a written copy of the report.
- (4) If the young detainee cannot write, the chief executive must take all reasonable steps to provide help for the detainee to respond to the report.

1308 Right to contact advocate—internal inquiry

- (1) This section applies if an investigator gives a young detainee a notice under section 1307 about an allegation report.

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- (2) The young detainee has a right to contact someone (an *advocate*) to respond to the allegation report on the young detainee's behalf.

Examples of advocates

- 1 a lawyer
- 2 the public advocate
- 3 a person from a body that represents young detainees
- 4 a close friend of the young detainee who is capable of responding to the 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).

- (3) The chief executive must ensure that the young detainee has access to facilities to contact an advocate.

1309 Investigator's response to allegation report etc

- (1) This section applies if—
- (a) an investigator has been given an allegation report in relation to a young detainee; and
 - (b) the investigator has invited the young detainee to respond to the report under section 1307; and
 - (c) the investigator has made any investigation the investigator considers appropriate.
- (2) After considering the allegation report, any response given in accordance with the invitation and the results of any investigation in relation to the allegation reported, the investigator may do 1 or more of the following if the investigator believes, on reasonable grounds, that it is appropriate in the circumstances:
- (a) take no further action in relation to the report;
 - (b) counsel the young detainee;

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- (c) warn the young detainee about committing a disciplinary breach;
 - (d) reprimand the young detainee;
 - (e) refer the allegation reported to the chief police officer.
- (3) A referral under subsection (2) (e) must be in writing and be accompanied by the investigator's report.

1310 Investigator to report to administrator

- (1) An investigator must, as soon as possible after taking action under section 1309 (2), give an administrator a report (the *investigator's report*) about what the investigator has done.
- (2) The investigator's report must include the following:
- (a) details (or a copy) of the allegation report to which the investigator's report relates;
 - (b) if the investigator referred the allegation reported to the chief police officer—details of the referral;
 - (c) a recommendation for action by the administrator under section 1311;
 - (d) anything else prescribed by regulation.
- (3) To remove any doubt, if the investigator is also an administrator, the investigator must give the investigator's report to another administrator and must not exercise any function of an administrator in relation to the report.

1311 Action by administrator

- (1) This section applies if an administrator is given a report under section 1310 about an alleged disciplinary breach by a young detainee.

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- (2) After considering the report and making any further investigation the administrator considers appropriate, the administrator may do 1 or more of the following if the administrator believes, on reasonable grounds, that it is appropriate in the circumstances:
- (a) take no further action in relation to the report;
 - (b) counsel the young detainee;
 - (c) warn the young detainee about committing a disciplinary breach;
 - (d) reprimand the young detainee;
 - (e) refer the allegation to—
 - (i) the chief police officer; or
 - (ii) the director of public prosecutions;
 - (f) charge the young detainee under section 1312;
 - (g) anything else prescribed by regulation.
- (3) A referral under subsection (2) (e) must be in writing and be accompanied by the investigator's report.

1312 Disciplinary charge

To charge a young detainee with a disciplinary breach, an administrator must give the young detainee written notice (the *charge notice*) of the charge, including details of the following:

- (a) the disciplinary breach charged;
- (b) a brief statement of the conduct to which the charge applies and when, or the period during which, it happened;
- (c) the option of having the charge dealt with by consent under division 12.3.1 (Disciplinary action—with accused detainee's consent);

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- (d) the election available under section 1314 (Disciplinary breach admitted by accused detainee) to accept the disciplinary action proposed by the administrator;
 - (e) the disciplinary action the administrator believes, on reasonable grounds, would be appropriate if the charge were dealt with under section 1315 (Presiding officer's powers—breach admitted by accused detainee).

Note If a form is approved under s 3210 for a charge, the form must be used.

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Part 12.3 Discipline on breach

Division 12.3.1 Disciplinary action—with accused detainee's consent

1313 Meaning of *presiding officer*—div 12.3.1

In this division:

presiding officer means an authorised person to whom the chief executive has delegated functions of a presiding officer under this division.

1314 Disciplinary breach admitted by accused detainee

- (1) An accused detainee may elect to have a charge dealt with under this division by giving the administrator written notice—
 - (a) admitting the disciplinary breach charged; and
 - (b) accepting the proposed disciplinary action stated in the administrator's notice of the charge under section 1312.

Example of election

a signed admission and acceptance on the charge form under s 1312

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

Note 2 If a form is approved under s 3210 for an election under this section, the form must be used.

- (2) The election must be given to the administrator—
 - (a) no later than the day after the day the administrator gives the accused detainee notice of the charge under section 1312; or
 - (b) within any extended period allowed under subsection (3).

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- (3) On written application by the accused detainee, the administrator may extend the period for making the election if the administrator believes, on reasonable grounds, that it is appropriate to extend the period.

Note The administrator may extend the period for making the election after the period given in the notice has expired (see Legislation Act, s 151C).

- (4) The administrator must give the accused detainee written notice of a decision under subsection (3) to extend the period.

1315 Presiding officer's powers—breach admitted by accused detainee

- (1) This section applies if the accused detainee elects under section 1314 to have a charge dealt with under this division.
- (2) A presiding officer may, without further investigation or inquiry, counsel the accused detainee and take disciplinary action against the accused detainee in accordance with division 12.3.4.
- (3) However, the only disciplinary action the presiding officer may take under this section is the disciplinary action stated as the appropriate action in the charge notice given to the accused detainee.
- (4) The presiding officer must give the accused detainee written notice of a decision to take disciplinary action made under this section.

Division 12.3.2 Internal disciplinary inquiry

1316 Meaning of *presiding officer*—div 12.3.2

In this division:

presiding officer means an authorised person to whom the chief executive has delegated functions of a presiding officer under this division.

1317 Disciplinary inquiry into charge

- (1) This section applies if an accused detainee—
 - (a) is given a charge notice; and
 - (b) does not elect under section 1314 to have the charge dealt with under division 12.3.1 (Disciplinary action—with accused detainee’s consent).
- (2) A presiding officer must conduct an inquiry into the disciplinary breach charged in the charge notice.
- (3) An authorised person must not exercise any function of a presiding officer under this division in relation to the disciplinary charge if the authorised person—
 - (a) made an allegation report or investigator’s report in relation to the alleged disciplinary breach to which the charge relates; or
 - (b) charged the young detainee under section 1312.
- (4) Chapter 13 (Conduct of disciplinary inquiries) applies, with any necessary changes, in relation to an inquiry under this division.

1318 Presiding officer’s powers after internal inquiry

- (1) This section applies if a presiding officer has completed an inquiry under section 1317.
- (2) If the presiding officer is satisfied, on the balance of probabilities, that a disciplinary breach charged has been proven, the presiding officer may take disciplinary action against the accused detainee in accordance with division 12.3.4.
- (3) The presiding officer must dismiss the charge if—
 - (a) not satisfied, on the balance of probabilities, that the disciplinary breach charged has been proven; or

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- (b) satisfied, on reasonable grounds, that it would otherwise be appropriate to do so.
- (4) If the presiding officer believes, on reasonable grounds, that it is necessary or desirable to do so, the presiding officer may refer the charge to—
- (a) the chief police officer; or
- (b) the director of public prosecutions.
- (5) The presiding officer must give the accused detainee prompt written notice of the presiding officer’s decision under this section, including—
- (a) a statement of the reasons for the decision; and
- (b) a statement indicating that the accused detainee has a right to contact someone else to apply for review of the decision on the detainee’s behalf.

Note 1 If a form is approved under s 3210 for the notice, the form must be used.

Note 2 For the meaning of a statement of reasons, see the Legislation Act, s 179.

Division 12.3.3 External review of inquiry decisions

1319 Definitions—div 12.3.3

In this division:

adjudicator means a person appointed as an adjudicator under section 1320.

advocate, of an accused detainee—see section 1321 (2).

1320 Appointment of adjudicators

- (1) The Minister may appoint at least 1 adjudicator.

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- (2) A person may be appointed as an adjudicator only if the person is a magistrate and consents, in writing, to the appointment.
 - (3) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do other work) does not apply to the appointment of a magistrate as an adjudicator.

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

- (4) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of an adjudicator.
- (5) An appointment is a notifiable instrument.

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

1321 Right to contact advocate—external review

- (1) This section applies if a decision under section 1318 (Presiding officer’s powers after internal inquiry) has been made in relation to an accused detainee.
- (2) The accused detainee has a right to contact someone else (an *advocate*) to apply for a review of the decision on the detainee’s behalf.

Examples of advocates

- 1 a lawyer
- 2 the public advocate
- 3 a person from a body that represents young detainees
- 4 a close friend of the accused detainee who is capable of applying for the review

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

- (3) The chief executive must ensure that the accused detainee has access to facilities to contact an advocate.

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1322 Application for review by adjudicator

- (1) An accused detainee, or the detainee's advocate, may apply to an adjudicator for a review of a decision under section 1318 (Presiding officer's powers after internal inquiry) in relation to the accused detainee.

Example of application for review

a signed application on the presiding officer's notice under s 1318

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 1318.
- (3) Subject to any decision by the adjudicator under section 1325, the making of the application does not affect the taking of disciplinary action under the decision under review.

1323 Review by adjudicator

- (1) On application under section 1322, an adjudicator may—
 - (a) conduct an inquiry to review a decision under section 1318; or
 - (b) refuse to review the decision.
- (2) Chapter 13 (Conduct of disciplinary inquiries) applies, with any necessary changes, in relation to an inquiry under this division.

1324 Refusal to review s 1318 decision

- (1) This section applies if, under section 1323, an adjudicator refuses to review a decision under section 1318 in relation to an accused detainee.

(2) The adjudicator must give the accused detainee, and any advocate of the accused detainee about whom the adjudicator has notice, prompt written notice of the refusal, including—

- (a) a statement of the reasons for the refusal; and
- (b) notice that a person aggrieved by the refusal may apply for a review of the refusal under the *Administrative Decisions (Judicial Review) Act 1989*.

Note 1 If a form is approved under s 3210 for the notice, the form must be used.

Note 2 For the meaning of a statement of reasons, see the Legislation Act, s 179.

Note 3 Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the Court, the making of the application does affect the operation of the decision or prevent its implementation (see s 16).

1325 Adjudicator's powers after review

(1) After completing an inquiry under section 1323, the adjudicator may—

- (a) confirm the decision under review; or
- (b) exercise any function of a presiding officer under 1318 (Presiding officer's powers after internal inquiry) in relation to the accused detainee, either by—
 - (i) amending the decision under review; or
 - (ii) setting aside the decision under review and making a decision in substitution for the decision set aside.

(2) The adjudicator must give the accused detainee, and any advocate of the accused detainee about whom the adjudicator has notice, prompt written notice of the adjudicator's decision under this section, including—

- (a) a statement of the reasons for the decision; and
- (b) notice that a person aggrieved by the decision may apply for the review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.

Note 1 If a form is approved under s 3210 for the notice, the form must be used.

Note 2 For the meaning of a statement of reasons, see the Legislation Act, s 179.

Note 3 Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the Court, the making of the application does affect the operation of the decision or prevent its implementation (see s 16).

Division 12.3.4 Disciplinary action generally

1326 Application—div 12.3.4

This division applies to a young detainee against whom disciplinary action may be taken under this chapter.

1327 Meaning of *relevant residing officer*—div 12.3.4

In this division:

relevant presiding officer means any of the following:

- (a) a presiding officer under division 12.3.1 (Disciplinary charge—with accused detainee's consent);

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- (b) a presiding officer under division 12.3.2 (Internal disciplinary inquiry);
 - (c) an adjudicator under division 12.3.3 (External review of inquiry decisions).

1328 Disciplinary action by relevant presiding officer

- (1) A relevant presiding officer may do 1 or more of the following (each of which is *disciplinary action*) in relation to a young detainee:
 - (a) warn the young detainee about committing a disciplinary breach;
 - (b) reprimand the young detainee;
 - (c) impose an administrative penalty, or a combination of administrative penalties, on the young detainee.
- (2) The relevant presiding officer must ensure that the disciplinary action against a young detainee for a disciplinary breach is proportionate to the breach.

1329 Administrative penalties

Each of the following is an *administrative penalty*:

- (a) a fine, not exceeding \$500;
- (b) a withdrawal of privileges, for not longer than 180 days;
- (c) anything declared by regulation to be an administrative penalty.

1330 Maximum administrative penalties

- (1) This section applies if—
 - (a) a young detainee is charged with 2 or more disciplinary breaches; and
 - (b) the charges arise out of the same conduct.
- (2) The total of the administrative penalties imposed for the breaches must not, for any particular kind of penalty, be more than the maximum penalty that may be imposed for any 1 of the breaches.

1331 Privileges and entitlements—impact of discipline

To remove any doubt—

- (a) anything expressed in part 10.5 (Living conditions at detention places) to be an entitlement for this chapter is not affected by anything that happens under this chapter, including disciplinary action; and
- (b) anything else mentioned in part 10.5 is, for this chapter, a privilege.

1332 Record of disciplinary action

- (1) The chief executive must keep a record of any disciplinary action taken against a young detainee.

Note The record must be available for inspection under s 1012.

- (2) The record must include details of the following:
 - (a) the young detainee's name;
 - (b) the disciplinary breach;
 - (c) a brief statement of the conduct to which the disciplinary breach applies and when, or the period during which, it happened;

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- (d) the disciplinary action taken against the young detainee;
 - (e) anything else prescribed by regulation.
- (3) The record must also include details of any finding by a relevant presiding officer that a disciplinary breach is proven against the young detainee if the relevant presiding officer decides not to take disciplinary action against the young detainee.

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Chapter 13 Conduct of disciplinary inquiries

Part 13.1 Conduct of disciplinary inquiries—general

1400 Application—ch 13

This chapter applies to an inquiry under any of the following:

- (a) division 12.3.2 (Internal disciplinary inquiry);
- (b) division 12.3.3 (External review of inquiry decisions).

1401 Definitions—ch 13

In this chapter:

advocate, of an accused detainee—see section 1321 (2).

presiding officer, for an inquiry, means the relevant presiding officer under division 12.3.4 (Disciplinary action generally) for the inquiry.

Part 13.2 Disciplinary inquiry procedures

1402 Nature of disciplinary inquiries

- (1) To remove any doubt, an inquiry is an administrative process.
- (2) At an inquiry—
 - (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 disciplinary breach must be decided on the balance of probabilities.

1403 Notice of disciplinary inquiry etc

- (1) The presiding officer for an inquiry in relation to an accused detainee must give written notice of the inquiry to the accused detainee and the public advocate.
- (2) The notice must include the following:
 - (a) a statement about where and when the inquiry is to start;
 - (b) details of the disciplinary charge or disciplinary action to which the inquiry relates;
 - (c) a statement about the effect of section 1402;
 - (d) a statement about the effect of subsection (3) and subsection (4);
 - (e) a statement to the effect that the presiding officer may hold a hearing for the inquiry in accordance with part 13.3 (Disciplinary hearing procedures).

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- (3) The accused detainee may make written submissions to the presiding officer for the inquiry and, for this purpose, is entitled to receive reasonable assistance from any advocate.
 - (4) However, the accused detainee is entitled to reasonable assistance from the chief executive to put the submissions into writing.

Examples—when assistance would be reasonable

- 1 if the accused detainee cannot put the submissions in writing
- 2 if the accused detainee has difficulty putting the submissions in writing

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).

- (5) The presiding officer must consider any written submission given to the presiding officer by the accused detainee before the closing date for submissions stated in the notice of the inquiry given to the accused detainee.

1404 Conduct of disciplinary inquiries

- (1) An inquiry in relation to a charge must be conducted with as little formality and technicality, and as quickly as the requirements of this Act and a proper consideration of the charge allow.
- (2) The presiding officer at an inquiry may hold a hearing for the inquiry.
- (3) A hearing for an inquiry must be held in accordance with part 13.3.
- (4) Proceedings at an inquiry are not open to the public, unless the presiding officer decides otherwise in a particular case.
- (5) A decision of the presiding officer at an inquiry is not invalid only because of any informality or lack of form.

1405 Presiding officer may require official reports

- (1) For an inquiry, the presiding officer may, by written notice given to any of the following, require the person to give the presiding officer a written report about the accused detainee:
 - (a) the chief executive;
 - (b) the director of public prosecutions;
 - (c) a public servant.
- (2) The person given the notice must comply with it.

1406 Presiding officer may require information and documents

- (1) For an inquiry, the presiding officer may, by written notice given to a person, require the person—
 - (a) to provide stated information to the presiding officer relevant to the inquiry; or
 - (b) to produce to the presiding officer a stated document or thing relevant to the inquiry.
- (2) This section does not require a person to give information, or produce a document or other thing, to the presiding officer if the Minister certifies in writing that giving the information, or producing the document or other thing—
 - (a) may endanger a young detainee or anyone else; or
 - (b) is contrary to the public interest.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

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1407 Possession of inquiry documents etc

The presiding officer may have possession of a document or other thing produced to the presiding officer for an inquiry for as long as the presiding officer considers necessary for the inquiry.

1408 Record of inquiry

The presiding officer for an inquiry must keep a written record of proceedings at the inquiry.

Part 13.3 Disciplinary hearing procedures

1409 Notice of disciplinary hearing

- (1) The presiding officer for an inquiry in relation to an accused detainee must give written notice of a hearing for the inquiry to the accused detainee and the chief executive.
- (2) The notice must include the following:
 - (a) a statement about where and when the hearing is to be held;
 - (b) a statement about the accused detainee's entitlements under section 1410 and section 1411 (Rights of accused detainee at disciplinary hearing);
 - (c) a statement about the effect of section 1412 (Exclusion of accused detainee from hearing) and section 1413 (Hearing in accused detainee's absence).
- (3) To remove any doubt, the hearing may be held at the detention place where the accused detainee is detained.

1410 Presiding officer's powers at inquiry

- (1) For a hearing for an inquiry in relation to an accused detainee, the presiding officer may, by written notice given to the accused detainee or anyone else, require the person to appear before the presiding officer, at a stated time and place, to do either or both of the following:
 - (a) answer questions;

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- (b) produce a stated document or other thing relevant to the inquiry.
- (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 presiding officer before the time stated in the notice for its production.
- (3) The presiding officer at a hearing for an inquiry may require the accused detainee, or a witness, appearing before the presiding officer to do 1 or more of the following:
- (a) answer a question relevant to the inquiry;
 - (b) produce a document or other thing relevant to the inquiry.
- (4) The presiding officer at the hearing may disallow a question put to a person if the presiding member considers the question is unfair or unduly prejudicial.
- Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.
- (5) The presiding officer may allow an authorised person or anyone else to be present, and to be heard, at a disciplinary hearing.

1411 Rights of accused detainee at disciplinary hearing

- (1) The accused detainee is entitled to be present at a hearing for an inquiry in relation to the accused detainee.
- Note* However, the accused detainee may be excluded (see s 1412) and the hearing may be conducted if the accused detainee fails to attend (see s 1413).
- (2) If the accused detainee appears at a hearing for an inquiry in relation to the accused detainee, the accused detainee is entitled—
- (a) to be heard, to examine and cross-examine witnesses and to make submissions for the inquiry; and

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- (b) to have an advocate or lawyer present to make submissions on the accused detainee's behalf.

1412 Exclusion of accused detainee from hearing

The presiding officer may, by written order, exclude the accused detainee from a hearing for the inquiry if the accused detainee—

- (a) unreasonably interrupts, interferes with or obstructs the hearing; or
- (b) contravenes a reasonable direction by the presiding officer about the conduct of hearing.

1413 Hearing in accused detainee's absence

If the accused detainee fails to attend a hearing for the inquiry, the presiding officer may conduct the hearing, and make a decision on the charge, in the accused detainee's absence.

1414 Appearance at disciplinary hearing by audiovisual or audio link

- (1) This section applies if, in relation to a hearing for an inquiry, or part of the hearing, the presiding officer has given a direction under the following sections of the *Evidence (Miscellaneous Provisions) Act 1991*:
 - (a) section 20 (Territory courts may take evidence and submissions from outside ACT);
 - (b) section 32 (Use of link in proceedings).
- (2) A person may appear and take part in the hearing in accordance with the direction, if the person—
 - (a) is required or entitled to appear personally, whether as the accused detainee or as a witness; or

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- (b) is entitled to appear for someone else.
- (3) A person who appears at the hearing under this section is taken to be before the presiding officer.

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