

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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Chapter 14 Care and protection—general

Part 14.1 Application of care and protection chapters

Note to pt 14.1

Under s 6, the functions under this Act may be exercised for a child or young person—

- (a) who ordinarily lives in the ACT; or
- (b) who does not ordinarily live in the ACT, but who is in the ACT; or
- (c) about whom a report is made under s 1601 (Voluntary reporting of abuse and neglect) or s 1602 (Offence—mandatory reporting of abuse and neglect) arising from something happening in the ACT.

1500 What are the care and protection chapters?

In this Act:

care and protection chapters means the following chapters:

- (a) Chapter 14 (Care and protection—general);
- (b) Chapter 15 (Care and protection—reporting, investigating and appraising abuse and neglect);
- (c) Chapter 16 (Care and protection—voluntary agreements to transfer or share parental responsibility);
- (d) Chapter 17 (Care and protection—emergency situations);
- (e) Chapter 18 (Care and protection—care and protection orders);
- (f) Chapter 19 (Care and Protection—chief executive has aspect of parental responsibility);
- (g) Chapter 20 (Care and protection—therapeutic protection of children and young people);

-
- (h) Chapter 21 (Care and protection—interstate transfer of orders and proceedings);
 - (i) Chapter 22 (Care and protection—police assistance);
 - (j) Chapter 23 (Care and protection—provisions applying to all proceedings under care and protection chapters).

1501 Age—proof of age to be sought before action taken

If the Childrens Court, the chief executive or a police officer intends to deal with a person under the care and protection chapters as a child or young person, the Childrens Court, chief executive or police officer must make reasonable inquiries to find out the age of the person before dealing with the person as a child or young person.

1502 Age—application of care and protection chapters if no proof of age

- (1) This section applies if—
 - (a) the Childrens Court, chief executive or police officer is unable, after reasonable inquiry, to find out a person’s age; and
 - (b) the person appears, on reasonable grounds, to the Childrens Court, the chief executive or a police officer to be a child or young person.
- (2) The person may be dealt with under the care and protection chapters as if the person were a child or young person and the care and protection chapters applies to the person as if a reference to a child or young person included a reference to the person.

1503 Age—care and protection chapters stop applying if person discovered to be adult

- (1) This section applies if the Childrens Court, the chief executive or a police officer—

-
- (a) has dealt with a person as a child or young person; and
 - (b) finds out that the person is not a child or young person.
 - (2) Any order or agreement under the care and protection chapters applying to the person stops applying to the person.
 - (3) No further proceeding may be taken under the care and protection chapters in relation to the person.
 - (4) If the person is—
 - (a) in a hospital or place of care under a provision of the care and protection chapters—the provision ceases to apply to the person and the person must be released; and
 - (b) being confined in a therapeutic protection place under a therapeutic protection order—the person must be released.

Note An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under this Act or in the reasonable belief that the conduct was in the exercise of a function under this Act. Any liability that would attach to an official attaches instead to the Territory (see s 3203). (*Official* is defined as the chief executive, an official visitor, a person who is exercising, or has exercised, a function under this Act or a person who is, or has been, engaged in the administration of this Act.)

1504 Care and protection chapters stop applying when young person becomes adult

- (1) The care and protection chapters stop applying to a child or young person when the child or young person becomes an adult.
- (2) Any order or agreement under the care and protection chapters applying to the child or young person stops applying to the child or young person when the child or young person becomes an adult.

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- (3) A young person who is confined in a therapeutic protection place under a therapeutic protection order must be released immediately the young person becomes an adult.
 - (4) However, this section does not require the release of a person who has been—
 - (a) convicted of an offence and, for the conviction, is detained under an order or other decision of a court, including a court of a State; or
 - (b) charged with an offence and is detained in relation to the charge.

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Part 14.2 Important concepts for care and protection chapters

1505 Definitions—care and protection chapters

(1) In this Act:

abuse, of a child or young person—see section 1506.

care and protection appraisal—see section 1615.

care and protection principles—see section 1514.

contact, with a person—see section 1512.

family group conference—see section 200.

in need of care and protection, for a child or young person—see section 1509.

neglect, of a child or young person—see section 1507.

professional assessment—see section 1616.

(2) In the care and protection chapters:

at risk of abuse or neglect—see section 1508.

former caregiver, for a child or young person—see section 1511.

party, for an application—see section 2505.

significant harm includes multiple instances of harm that together make up significant harm.

1506 **What is *abuse*?**

In this Act:

abuse, of a child or young person, means—

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

1507 **What is *neglect*?**

In this Act:

neglect, of a child or a young person, means a failure to provide the child or young person with a necessity of life if the failure has caused or is causing significant harm to the wellbeing or development of the child or young person.

Examples of necessities of life

- 1 food
- 2 shelter
- 3 clothing

4 medical care

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

1508 **When are children and young people *at risk of abuse or neglect*?**

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

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

- 1 Jane is 3 months old and the chief executive has already received 5 reports about her. Jane's parents are long-term drug users and Jane was born with neonatal withdrawal syndrome. Jane's parents' relationship is violent and, although Jane herself has not been physically harmed, she has been in her mother's arms when her father assaulted her mother. Police have been called to the family home a number of times because of reports of family violence. This usually results in Jane's parents separating for a short period then reconciling. Jane's mother has 3 older children from earlier relationships who are subject to care and protection orders and are being cared for by kin (under s 31 (1) (b)) because of emotional abuse from witnessing violence between their mother and Jane's father. Jane's parents have agreed to work with the chief executive to address their drug use and violent behaviour. However, they have not actually made the changes they agreed to make. Jane's parents do not have contact with extended family and Jane is not regularly seen by any health professionals or other community support people.
- 2 Michael is 7 years old and in the full-time care of his mother. He has never had any contact with his father. Michael's mother has a mental illness characterised by episodes of psychosis. When Michael's mother has been unwell, she has locked Michael and herself in the home for weeks at a time. Michael sometimes says that 'bad people' are after him and will hurt him and his mother. Michael's mother attempted suicide by driving off a bridge with Michael in the car.

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

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).

1509 When are children and young people *in need of care and protection*?

For the care and protection chapters, a child or young person is *in need of care and protection* if—

- (a) the child or young person—
- (i) has been abused or neglected; or
 - (ii) is being abused or neglected; or
 - (iii) is at risk of abuse or neglect; and

-
- (b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from suffering the abuse or neglect.

Examples of circumstances where child or young person is in need of care and protection

- 1 there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the chief executive) to such an extent that the care and protection of the child or young person is, or is likely to be, seriously disrupted
- 2 the people with parental responsibility for the child or young person are dead, have abandoned the child or young person or cannot be found after reasonable inquiry
- 3 the people with parental responsibility for the child or young person are unwilling or unable to stop him or her from engaging in self-damaging behaviour
- 4 the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or unwilling or unable to keep him or her from being sexually or financially exploited

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).

1510 Incident need not have happened in ACT

- (1) This section applies if a person believes that a child or young person is in need of care and protection under section 1509 because the child or young person—
 - (a) has been abused or neglected; or
 - (b) is being abused or neglected; or
 - (c) is at risk of abuse or neglect.
- (2) It does not matter whether conduct giving rise to the belief happened completely or partly outside the ACT.

1511 Who is a *former caregiver*?

- (1) In the care and protection chapters:

former caregiver means—

- (a) for a child or young person for whom it is proposed to make a voluntary care agreement—the person who is providing care for the child or young person when the agreement is proposed; or
 - (b) for any other child or young person—a person who was providing care for the child or young person immediately before an aspect of parental responsibility for the child or young person was transferred to the chief executive or someone else by order of the Childrens Court or operation of this Act, whether or not the person had that aspect of parental responsibility for the child or young person at that time.
- (2) However, former caregiver does not include a person providing care for the child or young person—
- (a) at a childcare centre, under a family day care service or otherwise for reward; or
 - (b) if the person provides care on a casual basis and is not a relative.

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1512 **What is *contact* with a person?**

In this Act:

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

Examples—direct contact

physical or face to face contact with the person.

Examples—indirect contact

contact by an agent, by telephone or letter or by giving the person something.

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

Part 14.3 Principles and considerations for care and protection chapters

Notes to pt 14.3

In making a decision under the care and protection chapters for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 10).

In making a decision under the care and protection chapters otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 10).

1513 What is in best interests of child or young person?

- (1) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider the following matters:
 - (a) the need to ensure that the child or young person is not at risk of abuse or neglect;
 - (b) any views or wishes expressed by the child or young person;
 - (c) the nature of the child's or young person's relationship with each parent and anyone else;
 - (d) the likely effect on the child or young person of changes to the child's or young person's circumstances, including separation from a parent or anyone else the child has been living with;
 - (e) the practicalities of the child or young person maintaining contact with each parent and anyone else the child has been living with;
 - (f) the capacity of the child's or young person's parents, or anyone else, to provide for the child's or young person's needs including emotional and intellectual needs;

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- (g) that it is important for the child or young person to have settled and permanent living arrangements;
 - (h) the attitude to the child or young person, and to parental responsibilities, demonstrated by each of the child's or young person's parents any anyone else;
 - (i) any abuse or neglect of the child or young person, or a family member of the child or young person;
 - (j) any court order that applies to the child or young person, or a family member of the child or young person.
- (2) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.

1514 Care and protection principles

In making a decision under the care and protection chapters for a child or young person, a decision-maker must apply the following principles (the *care and protection principles*) except when it is, or would be, contrary to the best interests of a child or young person—

- (a) the primary responsibility for providing care and protection for the child or young person lies with the child's or young person's parents and other relatives;
- (b) priority must be given to supporting the child's or young person's parents and other relatives to provide for the wellbeing, care and protection of the child or young person;
- (c) if the child or young person does not live with his or her family because of the operation of this Act—contact with his or her family, and anyone else who is significant in the child's or young person's life, must be encouraged;

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- (d) if the child or young person is in need of care and protection and the child's or young person's parents and other relatives are unwilling or unable to provide the child or young person with adequate care and protection (whether temporarily or permanently)—it is the responsibility of the government to share or take over their responsibility.

Note 1 Under s 8, other general principles also apply. Except when it is, or would be, contrary to the best interests of a child or young person:

- (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
- (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
- (c) delay in the decision-making process is likely to prejudice the child's or young person's wellbeing;
- (d) 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.

Note 2 The Maori children and young people principle may also apply if an order or proceeding is transferred to the ACT from New Zealand (see s 2341).

1515 Helping families understand care and protection procedures

- (1) A decision-maker making a decision under the care and protection chapters for a child or young person must endeavour to ensure that the relevant people for the decision—
- (a) understand what the decision is going to be about; and
 - (b) understand the decision-making process; and
 - (c) know that the child or young person, and people with parental responsibility for the child or young person, may take part in the decision-making process and have their views and wishes heard; and

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(d) are informed of, and understand, the decision.

Note 1 If a child or young person is the subject of a proceeding under this Act, the chief executive must give the child or young person sufficient information about the proceeding, in language and a way that the child or young person can understand, to allow the child or young person to take part fully in the proceeding (see s 316).

Note 2 If the decision-maker is a court, the court must also endeavour to ensure that the child or young person, and any other party present at the hearing of the proceeding, understands the nature and purpose of the proceeding and any orders and knows of their appeal rights (see s 317).

(2) The chief executive must give the relevant people for the decision sufficient information about the decision-making process, in language and a way that they can understand, to allow the child or young person, and people with parental responsibility for the child or young person to take part fully in the decision-making process.

(3) In this section:

relevant people, for a decision for a child or young person, means—

(a) the child or young person or, if the child is represented, the representative of the child or young person; and

Note Representation of children and young people is dealt with in s 323.

(b) each person with parental responsibility for the child or young person.

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

Note 1 A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person (see s 316).

Note 2 A court must also take steps to ensure that the child or young person and other people understand proceedings etc (see s 317).

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1516 Views and wishes of children and young people

- (1) A decision-maker making a decision for a child or young person under the care and protection chapters must give the child or young person a reasonable opportunity to express his or her views and wishes personally to the decision-maker, unless the decision-maker is satisfied that the child or young person is not capable expressing his or her views or wishes.
 - (2) A decision-maker may find out the views and wishes of a child or young person—
 - (a) by having regard to—
 - (i) anything said personally by the child or young person to the decision-maker; or
 - (ii) anything said by a representative of the child or young person about the child's or young person's views or wishes; or

Note Representation of children and young people is dealt with in s 323.

 - (iii) anything about the child's or young person's views or wishes contained in a report given to the decision-maker; or
 - (b) in any other way the decision-maker considers appropriate.
- (3) A decision-maker must not require a child or young person to express the child's or young person's views or wishes about anything.

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Chapter 15 **Care and protection— reporting, investigating and appraising abuse and neglect**

Part 15.1 **Care and protection—reporting abuse and neglect**

Division 15.1.1 **Definitions**

1600 **Definitions—Act**

In this Act:

abuse or neglect report means a voluntary report or a mandatory report.

mandatory report—see section 1602.

prenatal report—see section 1607 (Prenatal reporting—anticipated abuse and neglect).

voluntary report—see section 1601.

Division 15.1.2 **Reporting abuse and neglect of children and young people**

1601 **Voluntary reporting of abuse and neglect**

- (1) This section applies if a person believes or suspects that a child or young person—
 - (a) is being abused; or
 - (b) is being neglected; or

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- (c) is at risk of abuse or neglect.
- (2) The person may report (a *voluntary report*) the belief or suspicion, and the reasons for the belief or suspicion, to the chief executive.

Note 1 A person who gives information honestly and without recklessness under this section does not breach professional ethics etc and is protected from civil liability (see s 3132).

Note 2 Giving false or misleading information to the chief executive is an offence (see Criminal Code s 338).

1602 Offence—mandatory reporting of abuse and neglect

- (1) A person commits an offence if—
- (a) the person is a mandated reporter; and
 - (b) the person is an adult; and
 - (c) the person reasonably believes that a child or young person has suffered, or is suffering—
 - (i) sexual abuse; or
 - (ii) non-accidental physical injury; and
 - (d) the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid); and
 - (e) the person does not, as soon as practicable after forming the belief, report (a *mandatory report*) to the chief executive—
 - (i) the child's or young person's name or description; and

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- (ii) the reasons for the person's belief.

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

Note 1 A person who gives information honestly and without recklessness under this section does not breach professional ethics etc and is protected from civil liability (see s 3132).

Note 2 Giving false or misleading information to the chief executive is an offence (see Criminal Code s 338).

- (2) In this section:

mandated reporter—each of the following people is a ***mandated reporter***:

- (a) a doctor;
- (b) a dentist;
- (c) a person registered under the *Health Professionals Act 2004* as a nurse or midwife;

Note ***Registered*** includes enrolled (see *Health Professionals Act 2004*, dict).

- (d) a teacher at a school;
- (e) a person providing education to a child or young person who is registered, or provisionally registered, for home education under the *Education Act 2004*;
- (f) a police officer;
- (g) a person employed to counsel children or young people at a school;
- (h) a person caring for a child at a childcare centre;
- (i) a person coordinating or monitoring home-based care for a family day care service proprietor;

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- (j) a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families;
 - (k) the public advocate;
 - (l) an official visitor;
 - (m) a person prescribed by regulation for this paragraph.

1603 Exception to s 1602—someone else has made same report

Section 1602 does not apply to a person if the person reasonably believes that—

- (a) someone else has made a report to the chief executive about the same child or young person in relation to the same abuse or neglect; and
- (b) the other person has reported the same reasons for their belief as the person has for their belief.

1604 Reports made to public advocate

- (1) This section applies if—
 - (a) a person believes or suspects that a child or young person—
 - (i) is being abused; or
 - (ii) is being neglected; or
 - (iii) is at risk of abuse or neglect; and
 - (b) the person reports the belief or suspicion, and the reasons for the belief or suspicion, to the public advocate.
- (2) The public advocate must give the chief executive a copy of the report.

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- (3) The report is taken to be a voluntary report.
 - (4) The person who made the report to the public advocate is taken to have made a voluntary report.

Note 1 There are limits on how the report may be used in evidence (see s 3124).

Note 2 If a person gives information honestly and without recklessness to the public advocate, the giving of the information is not a breach of confidence or a breach of professional etiquette or ethics or a breach of a rule of professional conduct. Also, civil or criminal liability is not incurred only because of the giving of the information (see *Public Advocate Act 2005*, s 15).

Note 3 Giving false or misleading information to the public advocate is an offence (see *Criminal Code*, s 338).

1605 Chief executive to record abuse and neglect reports

The chief executive must make and keep a written record of each abuse or neglect report.

Note The chief executive must also keep a record of each care and protection appraisal made because of an abuse or neglect report (see s 1640).

1606 Chief executive to act on abuse and neglect reports

- (1) This section applies if the chief executive receives an abuse or neglect report about a child or young person.
- (2) The chief executive must—
 - (a) consider the report; and
 - (b) take the action that the chief executive considers appropriate in relation to the report.

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- (3) The action that the chief executive may take includes the following:
- (a) carrying out a preliminary investigation of the matters raised in the report;
Note Preliminary investigations are dealt with in pt 15.2 (Care and protection—preliminary investigations).
 - (b) referring the matters raised in the report to a community based service for appropriate assistance;
 - (c) providing support services for the child or young person and, if appropriate, the child's or young person's family;
 - (d) arranging a family group conference in relation to the child or young person;
Note Family group conferences are dealt with in ch 3 and ch 16.
 - (e) assisting a relative to care for the child or young person;
 - (f) entering into a voluntary care agreement in relation to the child or young person;
Note Voluntary care agreements are dealt with in pt 16.3.
 - (g) carrying out a care and protection appraisal of the child or young person;
Note Care and protection appraisals are dealt with in pt 15.3.
 - (h) taking emergency action in relation to the child or young person;
Note Emergency action is dealt with in ch 17.
 - (i) applying to the Childrens Court for a care and protection order for the child or young person.
Note Care and protection orders are dealt with in ch 18.

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Division 15.1.3 Prenatal reporting of anticipated abuse and neglect

1607 Prenatal reporting—anticipated abuse and neglect

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

Note 1 A person who gives information honestly and without recklessness under this section does not breach professional ethics etc and is protected from civil liability (see s 3132).

Note 2 Giving false or misleading information to the chief executive is an offence (see Criminal Code s 338).

1608 Offence—dishonest prenatal report

A person must not dishonestly make a prenatal report.

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

1609 Chief executive to record prenatal reports

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

- (a) each prenatal report; and
- (b) any voluntary assessment made under section 1607 (3) (a) (Prenatal reporting—anticipated abuse and neglect) because of a prenatal report.

Part 15.2 Care and protection—preliminary investigations

1610 Preliminary investigation—visual examination and interview

- (1) This section applies if the chief executive receives an abuse or neglect report about a child or young person.
- (2) To investigate matters raised in the abuse or neglect report, the chief executive may—
 - (a) visually examine the child or young person; and
 - (b) interview the child or young person.

1611 Preliminary investigation—with agreement

- (1) Before the chief executive visually examines or interviews a child or young person under section 1610, the chief executive must seek the agreement of a person who has responsibility for day-to-day matters for the child or young person.

Note Responsibility for day-to-day matters is dealt with in s 19.

- (2) However, the chief executive must not seek the agreement of a person under subsection (1) if satisfied that doing so would be likely to—
 - (a) put the child or young person at risk of abuse or neglect; or
 - (b) jeopardise the investigation; or
 - (c) jeopardise a criminal investigation.

1612 Preliminary investigation—acknowledgement of agreement

- (1) When seeking the agreement of a person under section 1611, the chief executive must—
 - (a) produce his or her identity card; and
 - (b) tell the person—
 - (i) the purpose of the visual examination or interview; and
 - (ii) that agreement may be refused.
- (2) If the person agrees, the chief executive must ask the person to sign a written acknowledgment (an *acknowledgement of agreement*)—
 - (a) that the person was told—
 - (i) the purpose of the visual examination or interview; and
 - (ii) that agreement may be refused; and
 - (b) that the person agreed to the visual examination or interview; and
 - (c) stating the time and date when agreement was given.
- (3) If the person signs an acknowledgment of agreement, the chief executive must immediately give a copy to the person.
- (4) A court must find that the person did not agree to the visual examination or interview of the child or young person by the chief executive under this part if—
 - (a) the question arises in a proceeding in the court whether the person agreed to the visual examination or interview; and
 - (b) an acknowledgment of agreement is not produced in evidence; and

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- (c) it is not proved that the person agreed to the visual examination or interview.

1613 Preliminary investigation—without agreement

- (1) This section applies if the chief executive visually examines or interviews a child or young person under section 1610 without the agreement of a person who has responsibility for day-to-day matters for the child or young person.
- (2) After the chief executive visually examines or interviews the child or young person, the chief executive must tell a person who has responsibility for day-to-day matters for the child or young person that the examination or interview has been carried out.
- (3) However, the chief executive must not tell a person about the examination or interview if satisfied that doing so would be likely to—
- (a) put the child or young person at risk of abuse or neglect; or
 - (b) jeopardise the investigation; or
 - (c) jeopardise a criminal investigation.

1614 Preliminary investigation—entry to schools, health facilities and childcare services

- (1) This section applies if—
- (a) the chief executive proposes to visually examine or interview a child or young person under section 1610 without the agreement of a person who has responsibility for day-to-day matters for the child or young person; and
 - (b) the child or young person is—
 - (i) a student at a school; or

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- (ii) a patient at a health facility; or
 - (iii) being cared for by a childcare service.
- (2) The chief executive may enter the school, health facility or childcare service to visually examine or interview the child or young person.
- (3) When entering the school, health facility or childcare service, the chief executive must—
- (a) produce his or her identity card; and
 - (b) tell the person in charge of the school, health facility or childcare service the purpose of the entry.

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Part 15.3 Care and protection—appraisals

Division 15.3.1 Definitions

1615 What is a *care and protection appraisal*?

In this Act:

care and protection appraisal, of a child or young person—

- (a) means an appraisal of the child's or young person's circumstances; and
- (b) may, but need not, include the chief executive carrying out 1 or more of the following activities:
 - (i) a visual examination of the child or young person or someone else;
 - (ii) an interview of the child or young person or someone else;
 - (iii) giving information to someone;
 - (iv) asking someone to give information to the chief executive;
 - (v) making inquiries about the child or young person or someone else;
 - (vi) arranging for a professional assessment of the child or young person or someone else;
 - (vii) asking the child or young person or someone else to attend a stated place at a stated time for the appraisal or a professional assessment;

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- (viii) asking the child or young person or someone else to comply with any arrangement made by the chief executive for the appraisal or a professional assessment.

1616 What is a *professional assessment*?

In the care and protection chapters:

professional assessment, of a person—

- (a) means any of the following:
- (i) a medical examination or test of the person by a doctor or nurse;
 - (ii) a dental examination or test of the person by a dentist;
 - (iii) a social assessment of the person by a social worker or psychologist;
 - (iv) a paediatric or developmental assessment of the person by a paediatrician;
 - (v) a psychological examination or test of the person by a psychologist;
 - (vi) a psychiatric examination or test of the person by a psychiatrist; but
- (b) does not include an assessment, examination or test that—
- (i) involves surgery; or
 - (ii) is prescribed by regulation for this definition.

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Division 15.3.2 Appraisal with agreement or order

1617 Care and protection appraisal—only with agreement or appraisal order

- (1) This section applies if the chief executive—
 - (a) has received an abuse or neglect report about a child or young person; and
 - (b) reasonably suspects that a child or young person is in need of care and protection.
- (2) The chief executive may carry out a care and protection appraisal of the child or young person.
- (3) However, the chief executive may carry out the care and protection appraisal only if—
 - (a) the following people agree to the appraisal:
 - (i) if the child or young person has capacity to agree—the child or young person;
 - (ii) a person who has responsibility for day-to-day matters for the child or young person; or
 - (b) an appraisal order is in force for the child or young person.

Note Appraisal orders are dealt with in div 15.3.3.

1618 Care and protection appraisal—with agreement

- (1) If the chief executive proposes to carry out an appraisal of a child or young person, the chief executive must seek the agreement of—
 - (a) the child or young person; and
 - (b) a person who has responsibility for day-to-day matters for the child or young person.

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- (2) However, the chief executive need not seek the agreement of the child or young person if satisfied that the child or young person does not have capacity to agree to the appraisal.
- (3) Also, the chief executive must not seek the agreement of a person under subsection (1) (b) if satisfied that doing so would be likely to—
- (a) put the child or young person at risk of abuse or neglect; or
 - (b) jeopardise the appraisal; or
 - (c) jeopardise a criminal investigation.

Note The chief executive may ask the chief police officer for assistance in carrying out a care and protection appraisal. The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 2400).

1619 Care and protection appraisal—acknowledgement of agreement

- (1) When seeking the agreement of a person under section 1618 (1) (a) or (b), the chief executive must—
- (a) produce his or her identity card; and
 - (b) tell the person—
 - (i) the purpose of the appraisal; and
 - (ii) if the appraisal is to include a professional assessment of the child or young person—the kind of professional assessment; and
 - (iii) that agreement may be refused.

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- (2) If the person agrees, the chief executive must ask the person to sign a written acknowledgment (an *acknowledgement of agreement*)—
- (a) that the person was told—
 - (i) the purpose of the appraisal; and
 - (ii) if the appraisal is to include a professional assessment of the child or young person—the kind of professional assessment; and
 - (iii) that agreement may be refused; and
 - (b) that the person agreed to the appraisal; and
 - (c) stating the time and date when agreement was given.
- (3) If the person signs an acknowledgment of agreement, the chief executive must immediately give a copy to the person.
- (4) A court must find that the person did not agree to the appraisal of the child or young person by the chief executive under this part if—
- (a) the question arises in a proceeding in the court whether the person agreed to the appraisal; and
 - (b) an acknowledgment of agreement is not produced in evidence; and
 - (c) it is not proved that the person agreed to the appraisal.

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Division 15.3.3 Appraisal orders

Note to div 15.3.3

The chief executive may ask the chief police officer for assistance in taking action under an appraisal order. The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 2400).

1620 What is an *appraisal order*?

In the care and protection chapters

appraisal order—

- (a) means an order authorising the chief executive to carry out a care and protection appraisal of a child or young person; and

Note A care and protection appraisal may include a professional assessment (see s 1615)

- (b) may, but need not, include 1 or more of the following requirements:
- (i) that a person attend, alone or with someone else, at a stated place at a stated time for the appraisal;
 - (ii) that a person or entity comply with arrangements made by the chief executive for the appraisal;
 - (iii) that a person or entity give the chief executive information about the care, welfare or development of a child or young person;
 - (iv) that something be produced to the court or given to the chief executive or someone else; and
- (c) may, but need not, include a temporary custody provision.

1621 **What is a *temporary custody provision*?**

In the care and protection chapters:

temporary custody provision—

- (a) means a provision in an appraisal order for a child or young person that transfers responsibility for day-to-day matters for the child or young person to the chief executive; and

Note A temporary custody provision must not be longer than 3 days (see s 1633).

- (b) may provide for the chief executive to enter and search any place the chief executive reasonably believes the child or young person is, to find the child or young person.

Note The chief executive may ask the chief police officer for assistance in carrying out a temporary custody provision in an appraisal order. The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 2400).

1622 **Offence—contravene appraisal order**

A person commits an offence if—

- (a) an appraisal order is in force for a child or young person; and
(b) the person has been given a copy of the order; and
(c) the person—
 (i) engages in conduct that contravenes a provision of the order; or
 (ii) fails to comply with a requirement made of the person under the order.

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

1623 Appraisal orders—prevails over care and protection orders

If an appraisal order is made for a child or young person for whom a care and protection order is already in force, the appraisal order prevails to the extent of any inconsistency between the orders.

Note Care and protection orders are made under pt 18.4.

1624 Appraisal orders—application by chief executive

The chief executive may apply for an appraisal order for a child or young person if—

- (a) the chief executive is satisfied that a care and protection appraisal is necessary to assess whether the child or young person is in need of care and protection; and
- (b) the chief executive either—
 - (i) under section 1618 (1) (a), has sought the agreement of the child or young person but the child or young person does not agree; or
 - (ii) under section 1618 (2), need not seek the agreement of the child or young person; and
- (c) for each person who has responsibility for day-to-day matters for the child or young person, the chief executive either—
 - (i) has, under section 1618 (1), sought the agreement of the person to the appraisal but the person does not agree; or
 - (ii) need not, under section 1618 (2), seek the agreement of the person to the appraisal; and

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- (d) the chief executive is satisfied that the appraisal cannot be properly carried out unless the order is made.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

1625 Appraisal orders—urgent applications

An application for extension of an appraisal order may be made by phone, fax or another way if necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances.

1626 Appraisal orders—application to state grounds

An application for an appraisal order must state—

- (a) the grounds on which the order is sought; and
- (b) if the application includes an application for a temporary custody provision—the proposed arrangements for the child’s or young person’s care during the period of temporary custody.

Example of ground

the child or young person has capacity to agree to the appraisal and does not agree

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).

1627 Appraisal orders—who must be given application

- (1) The chief executive must give a copy of an application for an appraisal order for a child or young person to the following people at least 1 working day before the application is to be heard by the court:
 - (a) the child or young person;
 - (b) each parent of the child or young person;
 - (c) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) the public advocate.
- (2) This section does not apply if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under part 17.2 (Emergency care and protection).

Note In that case, the chief executive need only give a copy of the application to people before the application is heard by the court (see s 1813).

1628 Appraisal orders—court to consider application promptly

- (1) The Childrens Court must give initial consideration to an application for an appraisal order on the day the application is filed.
- (2) The Childrens Court must hear and decide the application not later than 2 days after the day the application is filed.

1629 Appraisal orders—no interim orders

The Childrens Court must not make an interim appraisal order.

1630 Appraisal orders—court to consider previous refusal

- (1) This section applies if—
 - (a) the Childrens Court is deciding whether to make an appraisal order for a child or young person; and
 - (b) the court knows that the child or young person has previously refused to agree to a care and protection appraisal or a professional assessment.
- (2) The court must take the steps that the court considers appropriate to—
 - (a) assess the child’s or young person’s capacity to agree; and
 - (b) find out the reasons why the child or young person refused to agree.
- (3) In deciding whether to make the appraisal order, the court must have regard to the child’s or young person’s capacity and reasons.

1631 Appraisal orders—criteria for making

The Childrens Court may make an appraisal order for a child or young person only if satisfied that—

- (a) there are reasonable grounds to suspect that the child or young person is in need of care and protection; and
- (b) either the child or young person—
 - (i) has capacity to agree to the appraisal and does not agree to the appraisal; or
 - (ii) does not have capacity to agree to the appraisal; and
- (c) each person who has responsibility for day-to-day matters for the child or young person either—
 - (i) does not agree to the appraisal; or

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- (ii) under section 1618 (2), must not be asked to agree to the appraisal; and
 - (d) a care and protection appraisal is necessary to assess whether the child or young person is in need of care and protection; and
 - (e) the appraisal cannot be properly carried out unless the order is made; and
 - (f) making the appraisal order is in the best interests of the child or young person.

Note 1 In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1632 Appraisal orders—different provisions and requirements

In making an appraisal order for a child or young person, the Childrens Court may include any of the following regardless of whether it was applied for:

- (a) a requirement that—
 - (i) a person attend, alone or with someone else, at a stated place at a stated time for the appraisal; or
 - (ii) a person or entity comply with arrangements made by the chief executive for the appraisal; or
 - (iii) a person or entity give the chief executive information about the care, welfare or development of a child or young person; or
 - (iv) something be produced to the court or given to the chief executive or someone else;
- (b) a temporary custody provision.

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1633 Appraisal orders—length

- (1) The length of an appraisal order must—
 - (a) be stated in the order; and
 - (b) be no longer than 2 weeks.
- (2) The length of a temporary custody provision in an appraisal order must—
 - (a) be stated in the order; and
 - (b) be no longer than 3 days.

Note 1 Temporary custody provisions are dealt with in s 1621.

Note 2 The length of an appraisal order may be extended (see s 1639).

1634 Appraisal orders—extension application

The chief executive may apply to the Childrens Court for an extension of an appraisal order for a child or young person if the chief executive reasonably believes that—

- (a) the appraisal cannot be properly carried out unless the order is extended; and
- (b) the proposed extension is in the best interests of the child or young person.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

1635 Appraisal orders—extension application must state grounds

An application for extension of an appraisal order must state—

- (a) the grounds for the proposed extension; and

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- (b) if the application includes an application for extension of a temporary custody provision—the proposed arrangements for the child’s or young person’s care during the period of temporary custody.

1636 Appraisal orders—urgent extension applications

An application for extension of an appraisal order may be made by phone, fax or another way if necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances.

1637 Appraisal orders—who must be given extension application?

The chief executive must give a copy of an application for extension of an appraisal order to the following people at least 1 working day before the application is to be heard by the court:

- (a) each party to the proceeding in which the order was made;
- (b) the public advocate.

Note Parties to proceedings are dealt with in pt 23.2 (Parties).

1638 Appraisal orders—court to consider extension application promptly

- (1) The Childrens Court must give initial consideration to an application for extension of an appraisal order not later than 2 working days after the day the application is filed.
- (2) After initially considering the application, the Childrens Court may adjourn further consideration of the application only if—
 - (a) satisfied that the adjournment is appropriate considering the urgency of the application; and

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- (b) the adjournment is for no longer than 7 days starting on the day after the adjournment.
 - (3) However, the Childrens Court must start hearing the application not later than 14 days after the day the application is filed.
 - (4) If an appraisal order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided.

1639 Appraisal orders—criteria for extension

The Childrens Court may, by order, extend an appraisal order only if—

- (a) satisfied that—
 - (i) the appraisal cannot be properly carried out unless the order is extended; and
 - (ii) the extension of the order is in the best interests of the child or young person; and
- (b) the total length of the order and the proposed extension will not be longer than 4 weeks.

Note 1 In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

Division 15.3.4 Chief executive's action after appraisal

1640 Chief executive must record appraisal

The chief executive must keep a written record (an *appraisal record*) of each care and protection appraisal made because of an abuse or neglect report.

Note The chief executive must also keep a record of each abuse or neglect report (see s 1605).

1641 Public advocate to be told about some appraisals

- (1) This section applies if—
- (a) the chief executive receives an abuse or neglect report about a child or young person; and
 - (b) because of the report, the chief executive carries out a child protection appraisal for the child or young person; and
 - (c) at the time of the incident that gave rise to the report, the chief executive had responsibility for day-to-day matters for the child or young person and had placed the child or young person with an out-of-home carer under part 19.4 (Chief executive has responsibility for day-to-day matters); and

Note 1 The chief executive may have responsibility for day-to-day matters for a child or young person under any of the following provisions:

- an appraisal order including a temporary custody provision (see div 15.3.3)
- a voluntary care agreement (see pt 16.3)
- emergency action (see pt 17.2)
- a care and protection order including a parental responsibility provision (see pt 18.6).

Note 2 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 pt 19.4).

- (d) the incident that gave rise to the report either—
 - (i) involved the out-of-home carer; or
 - (ii) happened while the child or young person was taking part in a contact visit with someone and the contact was—
 - (A) allowed under a contact provision in a care and protection order; or
 - (B) approved by the chief executive.

Note Contact provisions are dealt with in pt 18.7.

- (2) The chief executive must give the public advocate a report about—
 - (a) the incident; and
 - (b) what action (if any) the chief executive has taken because of the appraisal.

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Chapter 16 Care and protection—voluntary agreements to transfer or share parental responsibility

Part 16.1 Definitions

1700 Definitions—ch 16

(1) In this Act:

voluntary care agreement—see section 1705.

(2) In this chapter:

registered, for a family group conference agreement—means registered under section 1702.

party—see section 1707 (1).

Part 16.2 **Registration of family group conference agreements that transfer or share parental responsibility**

Note to pt 16.2

Family group conferences and family group conference agreements are dealt with in ch 3.

1701 Registered family group conference agreement—application

- (1) This section applies if, in a family group conference agreement about a child or young person, the parties agree that responsibility for day-to-day matters, long-term matters or health care treatment for the child or young person should be—
 - (a) transferred from a person to someone else (other than the chief executive); or
 - (b) shared with a person (other than the chief executive) who would not otherwise have that aspect of parental responsibility for the child or young person.

Note 1 Responsibility for day-to-day matters is dealt with in see s 19.
 Responsibility for long-term matters is dealt with in s 20.
 Responsibility for health care treatment is dealt with in s 21.

Note 2 A family group conference agreement must not transfer to, or share with, the chief executive an aspect of parental responsibility for the child or young person (see s 203).

- (2) The chief executive may apply to the Childrens Court to register the family group conference agreement.

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

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- (3) An application to register a family group conference agreement must be accompanied by—
 - (a) a copy of the family group conference agreement; and
 - (b) a statement signed by each party to the agreement (other than the chief executive) to the effect that the party has had an opportunity to get legal advice about the meaning and effect of the agreement.
 - (4) The chief executive must give the public advocate a copy of the application.

**1702 Registered family group conference agreement—
registration**

- (1) This section applies if the chief executive applies to the Childrens Court under section 1701 (2) to register a family group conference agreement.
- (2) If the Childrens Court is satisfied that it could make an order under this Act with the same effect as the family group conference agreement, the Childrens Court must register the agreement.

Note A family group conference agreement must not transfer to, or share with, the chief executive an aspect of parental responsibility for the child or young person (see s 203).

- (3) If the Childrens Court is not satisfied that it could make an order under this Act to the effect of the proposals in the family group conference agreement, the Childrens Court must refuse to register the agreement.
- (4) If the Childrens Court refuses to register a family group conference agreement, the court must tell the chief executive about the refusal.

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1703 Registered family group conference agreement—notice

- (1) If the Childrens Court registers a family group conference agreement about a child or young person under section 1702 (2), the court must tell the following people about the registration (a *registration notice*):
 - (a) the chief executive;
 - (b) the public advocate.
- (2) If the chief executive is given a registration notice, the chief executive must give a copy of the registration notice to each person who was invited to attend the family group conference.

1704 Registered family group conference agreement—effect and enforcement

A registered family group conference agreement has effect as if it were an order of the Childrens Court and may be enforced accordingly.

Note Care and protection orders are dealt with in ch 18. It is an offence to contravene a care and protection order (see s 1902). See also provisions about police assistance in ch 22 and enforcement generally in ch 27.

Part 16.3 Voluntary agreement to share parental responsibility with chief executive

1705 What is a *voluntary care agreement*?

(1) In this Act:

voluntary care agreement, for a child or young person, means a written agreement—

- (a) between the chief executive and—
 - (i) a parent of the child or young person; or
 - (ii) someone else who has responsibility for day-to-day matters, long-term matters or health care treatment, for the child or young person; and
- (b) for 1 or more of the following aspects of parental responsibility for the child or young person to be shared between the chief executive and the parent or other person:
 - (i) responsibility for day-to-day matters;
 - (ii) responsibility for long-term matters;
 - (iii) responsibility for health care treatment.

Note If 2 or more people have an aspect of parental responsibility for a child or young person, either of them may discharge the responsibility. However, if the chief executive is 1 of the people, no-one else may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 18).

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- (2) A voluntary care agreement may include an arrangement for the person mentioned in subsection (1) (a) (i) or (ii) to pay an amount (the *contribution*) to the chief executive by way of contribution to the cost of the care of the child or young person.
 - (3) The contribution must not be more than the amount paid by the Territory for the care of the child or young person.
 - (4) The contribution is a debt due and payable to the Territory.

1706 Voluntary care agreements—who may initiate

Negotiations for making or ending a voluntary care agreement may be started by any of the following people:

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

1707 Voluntary care agreements—who are parties

- (1) In this part:

party, for a voluntary care agreement, means the following people:

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

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- (2) A voluntary care agreement is not void or voidable because a party to the agreement is not an adult.

1708 Voluntary care agreements—chief executive’s criteria

The chief executive may enter into a voluntary care agreement only if—

- (a) the chief executive has considered whether another form of assistance would be preferable; and

Examples of another form of assistance

- 1 organising for the child or young person to be cared for by someone else with responsibility for day-to-day matters, or long-term matters, for the child or young person
- 2 organising for the child or young person to be cared for by a 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).

- (b) the chief executive is satisfied that a voluntary sharing of responsibility for day-to-day matters, long-term matters or health care treatment, for the child or young person is appropriate; and
- (c) if the chief executive is satisfied that the child or young person is able to understand that it is proposed that the child or young person will be temporarily cared for by a person who is not the child’s or young person’s former caregiver—the chief executive finds out and considers the child’s or young person’s views and wishes; and
- (d) for a voluntary care agreement in relation to a young person who is school-leaving age or older, the chief executive—
- (i) obtains the young person’s agreement to the voluntary care agreement; or

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- (ii) is satisfied that the young person does not have capacity to agree.

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

1709 Voluntary care agreements—start day

If the chief executive has entered into a voluntary care agreement, the chief executive starts sharing responsibility for the child or young person under the voluntary care agreement—

- (a) when the agreement is entered into; or
- (b) if the agreement states a later day—on the later day.

1710 Voluntary care agreements—length

- (1) The length of a voluntary care agreement must be stated in the agreement.
- (2) A voluntary care agreement—
 - (a) for a voluntary care agreement in relation to a young person who is school-leaving age or older—may be longer than 6 months if the young person agrees; and
 - (b) in any other case—must be not longer than 6 months.

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

1711 Voluntary care agreements—extension

- (1) The parties to a voluntary care agreement may agree in writing to extend the agreement if—
 - (a) the total length of the voluntary care agreement and the proposed extension will be no longer than—
 - (i) 6 months; or

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- (ii) if the voluntary care agreement is in relation to a young person who is school-leaving age or older and the young person agrees to a period longer than 6 months—the longer period; or
 - (b) at the end of the proposed extension, the child or young person will not have been cared for under a voluntary care agreement for more than—
 - (i) 6 months in the previous 12 months; or
 - (ii) if the voluntary care agreement is in relation to a young person who is school-leaving age or older and the young person agrees to a period longer than 6 months—the longer period.
- (2) However, the chief executive may agree to extend the voluntary care agreement only if—
- (a) the chief executive—
 - (i) has considered whether another form of assistance would be preferable; and
 - (ii) is satisfied that the voluntary sharing of responsibility for the child or young person under the voluntary care agreement is appropriate; and
 - (iii) if satisfied that the child or young person is able to understand that it is proposed that the child or young person will continue to be temporarily cared for under a voluntary care agreement—finds out and considers the child’s or young person’s views and wishes; and
 - (b) for voluntary care agreement about a young person who is school-leaving age or older—
 - (i) the young person agrees to the extension; or

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(ii) the young person does not have capacity to agree.

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

(3) A voluntary care agreement may be extended more than once.

1712 Voluntary care agreements—early ending

A party to a voluntary care agreement may, before the agreement ends, end the agreement by giving written notice to the other parties.

1713 Voluntary care agreements—return of children and young people

- (1) If a voluntary care agreement ends, the chief executive must return the child or young person as soon as practicable, but not later than 1 working day after the day the voluntary care agreement ends, to a former caregiver of the child or young person or other person as agreed between the parties to the agreement.
- (2) The chief executive shares responsibility for the child or young person under the voluntary care agreement until the child or young person is returned.
- (3) The chief executive's responsibility for the child or young person under the voluntary care agreement ends when the child or young person is returned.
- (4) However, the chief executive is not required to return a child or young person if—
 - (a) emergency action is being taken in relation to the child or young person; or

Note Emergency action may be taken under ch 17.

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- (b) the chief executive has applied to the Childrens Court for a care and protection order including a parental responsibility provision that would give the chief executive responsibility for day-to-day matters or long-term matters, or both, for the child or young person.

Note Parental responsibility provisions are dealt with in div 1.3.2.
Care and protection orders are dealt with in ch 18.

- (5) Subsection (4) does not allow the chief executive to keep responsibility for the child or young person under the voluntary care agreement if the Childrens Court refuses the chief executive's application.

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Chapter 17 **Care and protection— emergency situations**

Part 17.1 **Emergency medical treatment**

1800 **When are children and young people *in need of emergency medical treatment*?**

For the care and protection chapters, a child or young person is *in need of emergency medical treatment* if—

- (a) because of a medical condition or circumstance—
 - (i) the child’s or young person’s life is at risk; or
 - (ii) the child’s or young person’s health is at risk of serious damage; or
- (b) the child or young person is in significant pain; or
- (c) the child or young person has a broken or dislocated bone.

1801 **Emergency medical treatment—must try to get agreement**

- (1) This section applies if—
 - (a) a child or young person is in need of emergency medical treatment; and
 - (b) the child or young person does not have capacity to agree to the emergency medical treatment; and
 - (c) no-one with responsibility for health care treatment for the child or young person has agreed to the emergency medical treatment of the child or young person.

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

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- (2) The chief executive must seek the agreement of a person who has responsibility for health care treatment for the child or young person to the emergency medical treatment of the child or young person.
 - (3) However, the chief executive must not seek the agreement of a person under subsection (2) if satisfied that doing so would—
 - (a) be likely to increase—
 - (i) the risk to the child’s or young person’s life, or health; or
 - (ii) the child’s or young person’s pain; or
 - (b) be impracticable.

1802 Emergency medical treatment—without agreement

- (1) This section applies if the chief executive—
 - (a) seeks the agreement of a person who has responsibility for health care treatment for the child or young person under section 1801 (2) but no-one who has responsibility for health care treatment for the child or young person agrees to the emergency medical treatment; or
 - (b) does not seek the agreement of a person who has responsibility for health care treatment for the child or young person under section 1801 (3).

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

- (2) Responsibility for health care treatment for the child or young person is transferred to the chief executive to the extent that the chief executive may agree to emergency medical treatment of the child or young person to—
 - (a) save the child’s or young person’s life; or
 - (b) prevent serious damage to the child’s or young person’s health; or

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- (c) relieve the child's or young person's pain; or
 - (d) if the child or young person has a broken or dislocated bone—
set or otherwise manage the break or dislocation.
- (3) Responsibility for health care treatment for the child or young person is transferred to the chief executive under subsection (2) only for as long as is necessary for the emergency medical treatment of the child or young person.

Note For other health care, the chief executive may apply for a care and protection order for the child or young person including a parental responsibility provision including a direction that a stated person has, or has not, responsibility for health care treatment for the child or young person (see pt 18.6).

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Part 17.2 Emergency care and protection

Division 17.2.1 Emergency action

1803 **When are children and young people *in need of emergency care and protection*?**

For the care and protection chapters, a child or young person is *in need of emergency care and protection* if the child or young person—

- (a) is in immediate need of care and protection; or
- (b) would be in need of immediate care and protection if emergency action was not taken.

Note *In need of care and protection* is defined in s 1509.

1804 **What is *emergency action*?**

In this part:

emergency action, taken by the chief executive or a police officer, for a child or young person, means—

- (a) transferring responsibility for day-to-day matters for the child or young person to the chief executive or police officer; and

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 pt 19.4).

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- (b) using any force that is reasonably necessary to safeguard the wellbeing of the child or young person (including breaking into premises).

Note An authorised person or police officer may at any time enter premises if the authorised person or police officer reasonably believes that a child or young person at the premises is in need of emergency care and protection and the purpose of the entry is to take emergency action for the child or young person (see s 2904).

1805 Emergency action—criteria for taking emergency action

- (1) The chief executive or a police officer may take emergency action for a child or young person if the chief executive or police officer reasonably believes that—
- (a) the child or young person is in need of emergency care and protection; and
 - (b) taking the emergency action is in the best interests of the child or young person.
- (2) To remove any doubt, the chief executive or police officer may take emergency action for a child or young person if the child or young person is in the care of—
- (a) a parent of the child or young person; or
 - (b) someone else who has responsibility for day-to-day matters for the child or young person under this Act.

Note Parental responsibility, including responsibility for day-to-day matters for a child or young person, is dealt with in div 1.3.2.

1806 Emergency action—assistance

The chief executive or police officer may use whatever assistance is necessary and reasonable to take emergency action.

Note The chief executive may ask the chief police officer for assistance in carrying out emergency action and the chief police officer must assign police officers to assist the chief executive (see pt 22.1).

1807 Emergency action—certain people must be told

- (1) If a police officer takes emergency action for a child or young person, the police officer must—
 - (a) immediately tell the chief executive, in writing—
 - (i) the name of the child or young person; and
 - (ii) what emergency action was taken; and
 - (iii) why the emergency action was taken; and
 - (b) if practicable—tell the following people about the emergency action:
 - (i) the parents of the child or young person;
 - (ii) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person; and
 - (c) deliver the child or young person to the place or person advised by the chief executive.
- (2) However, if it is not practicable for the police officer to tell the chief executive in writing immediately, the police officer may tell the chief executive orally immediately and then in writing as soon as practicable.

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- (3) If the chief executive takes emergency action for a child or young person, or is told that a police officer has taken emergency action for a child or young person, the chief executive must, as soon as practicable, tell the following people that emergency action has been taken for the child or young person:
- (a) if not already told about the emergency action—
 - (i) the parents of the child or young person; and
 - (ii) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (b) the public advocate;
 - (c) the Childrens Court.

1808 Emergency action—parental responsibility after action

- (1) If the chief executive takes emergency action for a child or young person, the chief executive has responsibility for day-to-day matters for the child or young person.
- (2) If a police officer takes emergency action for a child or young person, the police officer has responsibility for day-to-day matters for the child or young person until the police officer tells the chief executive about the emergency action under section 1807.
- (3) After the police officer tells the chief executive about the emergency action, the chief executive has responsibility for day-to-day matters for the child or young person.

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- (4) The chief executive may authorise a police officer to have responsibility for day-to-day matters for a child or young person for the chief executive.

Note If 2 or more people have an aspect of parental responsibility for a child or young person, either of them may discharge the responsibility. However, if the chief executive is 1 of the people, no-one else may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 18).

1809 Emergency action—length of parental responsibility

If the chief executive or a police officer takes emergency action for a child or young person, the chief executive or police officer may keep responsibility for day-to-day matters for the child or young person without an order of the Childrens Court—

- (a) for not longer than 2 working days after the day the emergency action was taken; or
- (b) if the 2 working days are interrupted by a Saturday, a Sunday and a public holiday—until the matter can be brought before the court on the next sitting day of the court.

1810 Emergency action—parental responsibility limited

- (1) The chief executive or a police officer may only exercise responsibility for day-to-day matters for a child or young person under this part for the immediate care and protection of the child or young person.
- (2) This section is subject to the following sections:
 - (a) section 1811 (Emergency action—care and protection appraisal);
 - (b) section 1812 (Emergency action—contact with family).

1811 Emergency action—care and protection appraisal

If the chief executive has responsibility for day-to-day matters for a child or young person under this part, the chief executive may make arrangements for the care and protection of the child or young person including—

- (a) arranging a care and protection appraisal that includes an examination of the circumstance that led to the taking of the emergency action; and

Note Care and protection appraisals are dealt with in pt 15.3.

- (b) placing the child or young person with a person including—
 - (i) a parent of the child or young person; or
 - (ii) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person; or
 - (iii) a former caregiver of the child or young person.

1812 Emergency action—contact with family

- (1) If the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under this part, the chief executive or police officer must allow reasonable contact between the child or young person and all of the following people:
 - (a) his or her siblings;
 - (b) his or her parents;
 - (c) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

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- (2) However, the chief executive or police officer is not required to allow contact if the contact would not be in the best interests of the child or young person.

1813 Emergency action—application for orders

- (1) This section applies if—
- (a) the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under this part; and
 - (b) the chief executive applies for any of the following orders for the child or young person:
 - (i) an appraisal order;
 - (ii) a care and protection order;
 - (iii) a professional assessment order;
 - (iv) a therapeutic protection order.
- (2) The chief executive need only give a copy of the application to people under the following sections before the application is heard by the court:
- (a) section 1627 (Appraisal orders—who must be given application);
 - (b) section 1906 (Care and protection orders—who must be given application);
 - (c) section 1923 (Professional assessment orders—who must be given application);
 - (d) section 2111 (Therapeutic protection orders—who must be given application).

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- (3) The Childrens Court must give initial consideration to the application on the day it is filed.

Division 17.2.2 Emergency action release orders

1814 What is an *emergency action release order*?

In this Act:

emergency action release order, for a child or young person for whom the chief executive or a police officer has responsibility for day-to-day matters under this part, means an order for the release of the child or young person into the care of a stated person.

1815 Emergency action release order—application

- (1) This section applies if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under this part.
- (2) Any of the following people (the *applicant*) may apply to the Childrens Court for an emergency action release order:
- (a) the child or young person;
 - (b) a parent of the child or young person;
 - (c) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) a former caregiver of the child or young person;
 - (e) the public advocate.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

1816 Emergency action release order—application to state grounds

An application for an emergency action release order must state the grounds on which the order is sought.

1817 Emergency action release order—who must be given application

The applicant must give a copy of the application for the emergency action release order to the following people before the application is heard by the court:

- (a) the child or young person;
- (b) each parent of the child or young person;
- (c) each other person (if any) who had responsibility for day-to-day matters, or long-term matters, for the child or young person immediately before the emergency action was taken;
- (d) the chief executive;
- (e) the public advocate.

Note If the chief executive applies for an appraisal order, a care and protection order, a professional assessment order or a therapeutic protection order for the child or young person, the chief executive need only give a copy of the application to people before the application is heard by the court (see s 1813).

1818 Emergency action release order—court to consider application promptly

- (1) The Childrens Court must give initial consideration to an application for an emergency action release order on the day the application is filed.

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- (2) The Childrens Court must hear and decide an application for an emergency action release order not later than 2 days after the day the application is filed.

1819 Emergency action release order—criteria for making

The Childrens Court may make an emergency action release order for a child or young person only if satisfied that proper arrangements exist for the care and protection of the child or young person.

Note 1 In a proceeding for an emergency action release order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1820 Emergency action—return of child or young person

- (1) This section applies if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under this part and, at the end of the period for which the chief executive or police officer may keep responsibility—
- (a) no order about who has responsibility for day-to-day matters for the child or young person has been made; and
 - (b) the chief executive or police officer still has responsibility for day-to-day matters for the child or young person.
- (2) The chief executive or police officer must deliver the child or young person into the care of 1 of the following people:
- (a) a parent of the child or young person;
 - (b) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (c) a former caregiver of the child or young person.

1821 Emergency action—end of parental responsibility

- (1) This section applies if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under this part.
- (2) The chief executive or police officer stops having responsibility for day-to-day matters for the child or young person if—
 - (a) the child or young person is returned to someone mentioned in section 1820 (2); or
 - (b) the Childrens Court makes an order giving responsibility for day-to-day matters for the child or young person to someone else.

1822 Emergency action—chief executive must keep records

The chief executive must keep a written record of any emergency action taken, including details of any notice given under section 1807 (Emergency action—certain people must be told).

Chapter 18 Care and protection—care and protection orders

Part 18.1 Preliminary

1900 Definitions—ch 18

In this chapter:

care and protection order—see section 1901.

contact provision, in a care and protection order—see section 1971.

drug use provision, in a care and protection order—see section 1977.

DVPO protection order—see section 1937.

enduring parental responsibility provision, in a care and protection order—see section 1967.

interim care and protection order—see section 1912.

mental health tribunal provision, in a care and protection order—see section 1982.

parental responsibility provision, in a care and protection order—see section 1954.

provision, in a care and protection order, means any of the following provisions in the care and protection order:

- (a) contact provision;
- (b) drug use provision;
- (c) enduring parental responsibility provision;

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- (d) mental health tribunal provision;
 - (e) parental responsibility provision;
 - (f) short-term parental responsibility provision;
 - (g) specific issues provision;
 - (h) supervision provision.

short-term parental responsibility provision, in a care and protection order—see section 1957.

specific issues provision, in a care and protection order—see section 1984.

supervision provision, in a care and protection order—see section 1979.

1901 What is a *care and protection order*?

In this Act:

care and protection order—

- (a) means an order about the care and protection of a child or young person; and
- (b) may contain any of the following provisions:
 - (i) a parental responsibility provision;
 - (ii) a contact provision;
 - (iii) a drug use provision;
 - (iv) a supervision provision;
 - (v) a mental health tribunal order;
 - (vi) a specific issues provision.

1902 Offence—contravene care and protection order

- (1) A person commits an offence if—
- (a) a care and protection order is in force for the person; and
 - (b) the person has been given a copy of the order; and
 - (c) the person engages in conduct that contravenes a provision of the order.

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

- (2) Strict liability applies to subsection (1) (a).

Note 1 A registered family group conference agreement has effect as if it were an order of the Childrens Court and may be enforced accordingly (see s 1704).

Note 2 If a care and protection order is in force for a child or young person and there are reasonable grounds for suspecting that someone has contravened the order and because of the contravention, the child or young person is in danger, the chief executive or police officer may apply to the Childrens Court for a warrant to have the child or young person taken into safe custody (see s 2406).

Part 18.2 Applications for care and protection orders

1903 Care and protection order—application by chief executive

The chief executive may apply to the Childrens Court for a care and protection order for a child or young person if satisfied that the criteria for making the provisions proposed to be included in the order are met.

Note 1 Criteria for making provisions are in the following sections:

- short-term parental responsibility provision—s 1958
- enduring parental responsibility provision—s 1968
- contact provision—s 1972
- drug use provision—s 1978
- supervision provision—s 1980
- mental health tribunal provision—s 1983
- specific issues provision—s 1985.

Note 2 Statements, documents and reports must be included in the application (see s 2501).

Note 3 Oral applications may also be made (see s 2503).

1904 Care and protection order—application by others

- (1) Someone (an *other applicant*) other than the chief executive may apply to the Childrens Court for a care and protection order for a child or young person if—
- (a) the other applicant reasonably believes that the criteria for making the provisions proposed to be included in the order are met; and
- Note* Criteria for making a care and protection order are in the following sections:
- short-term parental responsibility provision—s 1958
 - enduring parental responsibility provision—s 1968
 - contact provision—s 1972
 - drug use provision—s 1978
 - supervision provision—s 1980
 - mental health tribunal provision—s 1983
 - specific issues provision—s 1985.
- (b) if the chief executive has not applied for a care and protection order for the child or young person—the other applicant has consulted with the chief executive about the application; and
- (c) the other applicant has the leave of the Childrens Court to make the application.
- (2) If the other applicant seeks the leave of the Childrens Court to make the application, the Childrens Court—
- (a) must hear the other applicant and the chief executive; and
- (b) may give the other applicant leave to make the application.

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- (3) If the other applicant applies for a care and protection order for a child or young person, the chief executive and the public advocate may each appear and be heard in the proceeding.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

1905 Care and protection order—application must state provisions sought and grounds

An application for a care and protection order must state—

- (a) the provisions proposed to be included in the order; and
- (b) the grounds on which each provision is sought.

Note The Childrens Court may also include a provision in a care and protection order regardless of whether anyone applied, or cross-applied, for it (see s 1632).

1906 Care and protection orders—who must be given application

- (1) The applicant for a care and protection order for a child or young person must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:
 - (a) the child or young person;
 - (b) each parent of the child or young person;
 - (c) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) if the applicant is not the chief executive—the chief executive;
 - (e) the public advocate.

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- (2) This section does not apply if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under part 17.2 (Emergency care and protection).

Note In that case, the chief executive need only give a copy of the application to people before the application is heard by the court (see s 1813).

1907 Care and protection order—cross-application for different provisions

- (1) A party to a proceeding for a care and protection order for a child or young person may cross-apply for a different provision to be included in the order if the party—
- (a) reasonably believes that the criteria for making the different provision are met; and
 - (b) has leave of the Childrens Court to cross-apply.
- (2) If a party seeks the leave of the Childrens Court to cross-apply, the court may give leave only if satisfied that there are reasonable grounds for believing that the criteria for making the different provision are met.

Note 1 Criteria for making provisions are in the following sections:

- short-term parental responsibility provision—s 1958
- enduring parental responsibility provision—s 1968
- contact provision—s 1972
- drug use provision—s 1978
- supervision provision—s 1980
- mental health tribunal provision—s 1983
- specific issues provision—s 1985.

Note 2 Statements, documents and reports must be included in the application (see s 2501).

Note 3 Oral applications may also be made (see s 2503).

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1908 Care and protection order—cross-application must state provisions sought and grounds

A cross-application for a care and protection order must state—

- (a) the provisions that the applicant proposes to have included in the order; and
- (b) the grounds on which each provision is sought.

Note The Childrens Court may also include a provision in a care and protection order regardless of whether anyone applied, or cross-applied, for it (see s 1632).

1909 Care and protection order—court to consider application and cross-application promptly

- (1) The Childrens Court must give initial consideration to an application, or cross-application, for a care and protection order not later than 5 working days after the day the application, or cross-application, is filed.
- (2) After initially considering the application or cross-application, the Childrens Court must—
 - (a) if satisfied that there is sufficient reason to adjourn the hearing—set a date to start hearing the application, or cross-application, that is not later than 10 weeks after the day the application was filed, and adjourn the application or cross-application; or
 - (b) if not satisfied that there is sufficient reason to adjourn the hearing—decide the application or cross-application.
- (3) If the Childrens Court does not start hearing the application or cross-application until later than the 10 weeks, any order or direction made before the proceeding was last adjourned continues in force until the application or cross-application is decided.

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- (4) This section does not apply if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under part 17.2 (Emergency care and protection).

Note In that case, the court must give initial consideration to the application on the day it is filed (see s 1813).

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Part 18.3 Interim care and protection matters

Division 18.3.1 General

1910 Interim matters—Court action before adjournment

- (1) Before adjourning an application or cross-application under this part, the Childrens Court must—
- (a) identify the matters in dispute and consider the length of hearing required; and
 - (b) make whatever directions are necessary to facilitate the hearing.

Examples of directions to facilitate hearing

- 1 a direction about when evidence must be filed
- 2 a direction about when further directions may be made

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

- (2) Also, before adjourning an application or cross-application under this part, the Childrens Court may do any of the following:
- (a) order that a conference (a *pre-orders conference*) be held to identify or resolve matters in dispute;
 - (b) make a professional assessment order;

Note Pre-orders conferences are dealt with in s 1911.

Note Professional assessment orders are dealt with in s 1916.

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- (c) make an interim care and protection order for the child or young person;

Note Interim care and protection orders are dealt with in s 1912.

- (d) if a care and protection order including a supervision provision, parental responsibility provision or specific issues provision is in force for the child or young person—
 - (i) extend the length of the order and provision so that they remain in force until the end of the adjournment; or
 - (ii) revoke the provision or both the order and the provision.

1911 Interim matters—pre-orders conference

- (1) A pre-orders conference for a care and protection order for a child or young person—
 - (a) must be attended by—
 - (i) the chief executive; and
 - (ii) someone who has responsibility for day-to-day matters for the child or young person; and
 - (iii) someone who has responsibility for long-term matters for the child or young person; and
 - (b) may be attended by—
 - (i) any party to the proceeding; and
 - (ii) the representative of any party to the proceeding; and

Note Representation of children and young people is dealt with in s 323.

 - (iii) anyone else who was given a copy of the application under section 1906 (Care and protection orders—who must be given application); and

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- (iv) with the leave of the court—anyone who has an interest in the proceeding.
 - (2) The Childrens Court must appoint someone mentioned in subsection (1) who is attending the pre-orders conference to preside at the pre-orders conference.
 - (3) The person presiding at a pre-orders conference must report the outcome of the pre-orders conference to the Childrens Court.

Division 18.3.2 Interim care and protection orders

1912 Interim matters—interim care and protection orders

- (1) The Childrens Court may make an order (an *interim care and protection order*) for a child or young person if—
 - (a) an application for a care and protection order for the child or young person has been made to the court but not finally decided; and
 - (b) the court is satisfied that the chief executive reasonably believes that the child or young person is in need of care and protection or would be in need of care and protection if the interim care and protection order was not made.
- (2) The Childrens Court may include in an interim care and protection order any of the following provisions that the court considers appropriate:
 - (a) a contact provision;
 - (b) a supervision provision;
 - (c) a parental responsibility provision;
 - (d) a specific issues provision.

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- (3) The length of an interim care and protection order must be stated in the order and the order must end on, or before, the day the application or cross application is decided.
 - (4) Before making an interim care and protection order for a child or young person, the Childrens Court may require the chief executive to give the court a care plan for the child or young person for the period of the interim order.

Note Care plans are dealt with in s 1935.

1913 Offence—contravene interim care and protection order

- (1) A person commits an offence if—
 - (a) an interim care and protection order is in force for a child or young person; and
 - (b) the person has been given a copy of the order; and
 - (c) the person engages in conduct that contravenes a provision of the order.

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

- (2) Strict liability applies to subsection (1) (a).

1914 Interim care and protection orders—amendment

- (1) This section applies if, during the hearing of an application for a care and protection order, the Childrens Court makes an interim care and protection order for a child or young person.
- (2) A party (the *applicant*) to the proceeding for the care and protection order may apply to the Childrens Court for amendment of the interim care and protection order.

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- (3) The applicant must give a copy of the application to the following people at least 3 working days before the application heard by the court:
 - (a) each party to the proceeding;
 - (b) the public advocate.
 - (4) The Childrens Court must hear and decide the application not later than 5 working days after the day the application is filed.
 - (5) After hearing the application, the Childrens Court must—
 - (a) amend the interim care and protection order; or
 - (b) substitute a provision in the interim care and protection order for a different provision; or
 - (c) dismiss the application.
 - (6) If an interim care and protection order is in force on the day an application for an amendment is filed, but would end before the application is heard, the interim care and protection order continues in force until the application is heard and decided.

1915 Interim care and protection orders—appeals

- (1) This section applies if the Childrens Court makes an interim care and protection order that includes 1 or more of the following provisions:
 - (a) a supervision provision;
 - (b) a parental responsibility provision;
 - (c) a specific issues provision.
- (2) The order may be appealed as if it were a care and protection order.

Note Care and protection orders may be appealed under s 3005.

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Division 18.3.3 Professional assessment orders

Note to div 18.3.3

The chief executive may ask the chief police officer for assistance in taking action under a professional assessment order. The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 2400).

1916 Interim matters—what is a *professional assessment order*?

In the care and protection chapters:

professional assessment order—

- (a) means an order authorising the chief executive to arrange for the professional assessment of a child or young person; and

Note *Professional assessment* is defined in s 1616.

- (b) may, but need not, include 1 or more of the following requirements:
- (i) that a person attend, alone or with someone else, at a stated place at a stated time for the professional assessment;
 - (ii) that a person or entity comply with arrangements made by the chief executive for the professional assessment;
 - (iii) that a person or entity give the court information about the care, welfare or development of a child or young person;
 - (iv) that something be produced to the court.

1917 Offence—contravene professional assessment order

- (1) A person commits an offence if—
- (a) a professional assessment order is in force for a child or young person; and
 - (b) the person has been given a copy of the order; and
 - (c) the person engages in conduct that contravenes a provision of the order.

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

- (2) Strict liability applies to subsection (1) (a).

1918 Professional assessment orders—prevails over care and protection order

If a professional assessment order is made for a child or young person for whom a care and protection order is already in force, the professional assessment order prevails to the extent of any inconsistency between the orders.

Note Care and protection orders are made under pt 18.4.

1919 Professional assessment orders—court's own initiative

In a proceeding for a care and protection order for a child or young person, the Childrens Court may make a professional assessment order for the child or young person on application by a party to the proceeding or on its own initiative.

1920 Professional assessment orders—application by party

A party to a proceeding for a care and protection order for a child or young person may apply for a professional assessment order for the child or young person if the person reasonably believes that—

- (a) a professional assessment is necessary to assess whether the child or young person is in need of care and protection; and
- (b) the professional assessment cannot be properly carried out unless the order is made; and
- (c) the professional assessment is in the best interests of the child or young person; and
- (d) if a professional assessment of the child or young person has been carried out previously—the further professional assessment of the child or young person is in the best interests of the child or young person.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

Note 3 Parties to proceedings are dealt with in pt 23.2.

1921 Professional assessment orders—urgent applications

An application for extension of a professional assessment order may be made by phone, fax or another way if necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances.

1922 Professional assessment orders—application to state grounds

An application for a professional assessment order must state the grounds on which the order is sought.

1923 Professional assessment orders—who must be given application

- (1) The applicant for a professional assessment order for a child or young person must give a copy of the application to the following people at least 1 working day before the application is to be heard by the court:
 - (a) the child or young person;
 - (b) each parent of the child or young person;
 - (c) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) the public advocate.
- (2) However, the applicant need only give a copy of the application to the people mentioned in subsection (1) before the application is heard by the court if the following people agree to the court making the order proposed in the application:
 - (a) the parties to the proceeding for the care and protection order;
 - (b) the people mentioned in subsection (1).
- (3) This section does not apply if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under part 17.2 (Emergency care and protection).

Note In that case, the chief executive need only give a copy of the application to people before the application is heard by the court (see s 1813).

1924 Professional assessment orders—court to consider application promptly

- (1) The Childrens Court must give initial consideration to an application for a professional assessment order on the day the application is filed.

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- (2) The Childrens Court must hear and decide the application not later than 2 days after the day the application is filed.

1925 Professional assessment orders—no interim order

The Childrens Court must not make an interim professional assessment order.

1926 Professional assessment orders—court to consider previous refusal

- (1) This section applies if—
- (a) the Childrens Court is deciding whether to make a professional assessment order for a child or young person; and
 - (b) the court knows that the child or young person has previously refused to agree to a professional assessment.
- (2) The court must take the steps that the court considers appropriate to—
- (a) assess the child’s or young person’s capacity to agree; and
 - (b) find out the reasons why the child or young person refused to agree.
- (3) In deciding whether to make the professional assessment order, the court must have regard to the child’s or young person’s capacity and reasons.

1927 Professional assessment orders—criteria for making

The Childrens Court may make a professional assessment order for a child or young person only if satisfied that—

- (a) a professional assessment is necessary to assess whether the child or young person is in need of care and protection; and

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- (b) the professional assessment cannot be properly carried out unless the order is made; and
 - (c) making the professional assessment order is in the best interests of the child or young person; and
 - (d) if a professional assessment of the child or young person has been carried out previously—the further professional assessment of the child or young person is in the best interests of the child or young person.

Note 1 In a proceeding for a professional assessment order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1928 Professional assessment orders—length

The length of a professional assessment order must—

- (a) be stated in the order; and
- (b) be no longer than 8 weeks.

Note The length of a professional assessment order may be extended (see s 1934).

1929 Professional assessment orders—extension application

The chief executive may apply to the Childrens Court for extension of a professional assessment order for a child or young person if the chief executive reasonably believes that—

- (a) the professional assessment cannot be properly carried out unless the order is extended; and

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- (b) the proposed extension is in the best interests of the child or young person.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

1930 Professional assessment orders—extension application must state grounds

An application for extension of a professional assessment order must state the grounds for the proposed extension.

1931 Professional assessment orders—urgent applications

An application for extension of a professional assessment order may be made by phone, fax or another way if necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances.

1932 Professional assessment orders—who must be given extension application?

- (1) The applicant for extension of a professional assessment order must give a copy of the application to the following people at least 1 working day before the application is to be heard by the court:
 - (a) each party to the proceeding in which the order was made;
 - (b) the public advocate.

Note Parties to proceedings are dealt with in pt 23.2 (Parties).

- (2) However, the applicant need only give a copy of the application before the application is heard by the court if the people mentioned in subsection (1) agree to the court extending the order as proposed in the application.

1933 Professional assessment orders—court to consider extension application promptly

- (1) The Childrens Court must give initial consideration to an application for extension of a professional assessment order not later than 2 working days after the day the application is filed.
- (2) After initially considering the application, the Childrens Court may adjourn further consideration of the application only if—
 - (a) satisfied that the adjournment is appropriate considering the urgency of the application; and
 - (b) the adjournment is for no longer than 7 days starting on the day after the adjournment.
- (3) However, the Childrens Court must start hearing the application not later than 14 days after the day the application is filed.
- (4) If a professional assessment order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided.

1934 Professional assessment orders—criteria for extension

The Childrens Court may, by order, extend a professional assessment order only if—

- (a) satisfied that—
 - (i) the professional assessment cannot be properly carried out unless the order is extended; and
 - (ii) the extension of the order is in the best interests of the child or young person; and

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- (b) the total length of the order and the proposed extension will not be longer than 16 weeks.

Note 1 In a proceeding for a professional assessment order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

Division 18.3.4 Care plans

1935 What is a *care plan*?

In this Act:

care plan, for a child or young person who is, or is proposed to be, in out-of-home care—

- (a) means a written plan of the chief executive's proposals for the care and protection of the child or young person; and
- (b) may, but need not, include proposals about the following:
- (i) who the chief executive considers would be the best person to have a stated aspect of parental responsibility for the child or young person;
 - (ii) if the chief executive proposes to place the child or young person in kinship care or foster care—the kind of placement that will be sought or provided for the child or young person including any interim placement arrangements;

Note Placement of children and young people in kinship care and foster care is dealt with in div 19.4.3.
 - (iii) how the chief executive proposes to ensure the living arrangements for the child or young person are as stable as possible;

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- (iv) whether the chief executive considers restoration of the child or young person to his or her parents is a realistic possibility and, if the chief executive believes it is, a description of the changes at the home or by the parents that the chief executive believes would need to occur before the chief executive would consider it safe for the child or young person to return to his or her parents;
 - (v) contact between the child or young person and his or her parents (and anyone else as appropriate);
 - (vi) services to be provided for the child or young person.

1936 Care plans—who must be consulted

- (1) This section applies if the chief executive is preparing a care plan for a child or young person.
- (2) The chief executive must—
 - (a) tell the following people about the proposals the chief executive intends to include in the care plan:
 - (i) the child or young person;
 - (ii) the parents of the child or young person;
 - (iii) each other person who has responsibility for day-to-day matters for the child or young person;
 - (iv) anyone else who would be involved in implementing a proposal; and
 - (b) give the people opportunity to make submissions to the chief executive about the proposals.
- (3) If a person makes a submission to the chief executive about a proposal, the chief executive must consider the submission.

EXPOSURE DRAFT

Division 18.3.5 Orders under Domestic Violence and Protection Orders Act

1937 Definitions—div 18.3.5

In this division:

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

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

DVPO protection order means an DVPO interim protection order or a DVPO final protection order.

1938 DVPO interim protection orders

- (1) The Childrens Court may make an DVPO interim protection order for a child or young person if—
 - (a) an application for a care and protection order for the child or young person has been made but not yet finally decided; and
 - (b) satisfied that it is necessary to make the DVPO interim protection order to ensure the child’s or young person’s safety until the application for the care and protection order is decided.

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

- (2) The Childrens Court may make the DVPO interim protection order—
 - (a) on its own initiative; or
 - (b) on application by a party to the proceeding for the care and protection order; or

(c) on application by the public advocate.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

Note 3 In the proceeding, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 4 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

- (3) To remove any doubt, the Childrens Court must not make a DVPO interim protection order that the Magistrates Court could not make on an application for a DVPO final protection order under the *Domestic Violence and Protection Orders Act 2001*.

Example

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

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).

1939 DVPO final protection orders

- (1) The Childrens Court may make a DVPO final protection order for a child or young person if—
- (a) an application for a care and protection order for the child or young person has been made but not yet finally decided; and
 - (b) satisfied that the person against whom the DVPO final protection order is proposed to be made has engaged in—
 - (i) domestic violence in relation to the child or young person; or

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- (ii) personal violence towards the child or young person and may engage in personal violence towards the child or young person during the time for which the order is proposed to be made if the order is not made.

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

- (2) The Childrens Court may make the DVPO final protection order—
- (a) on its own initiative; or
- (b) on application by a party to the proceeding for the care and protection order; or
- (c) on application by the public advocate.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

Note 3 In the proceeding, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 4 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

- (3) To remove any doubt, the Childrens Court must not make a DVPO final protection order that the Magistrates Court could not make on an application for a DVPO final protection order made under the *Domestic Violence and Protection Orders Act 2001*.

- (4) In this section:

domestic violence—

- (a) see the *Domestic Violence and Protection Orders Act 2001*, section 9 (1); and
- (b) includes psychological abuse of a child or young person.

EXPOSURE DRAFT

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

1940 What is *psychological abuse* of a child or young person?

- (1) For this division, a person *psychologically abuses a child or young person* if the person—
 - (a) causes or allows the child or young person to see or hear the physical, sexual, or psychological abuse of a person with whom the child or young person has a domestic relationship; or
 - (b) puts the child or young person, or allows the child or young person to be put, at real risk of seeing or hearing that abuse occurring.
- (2) However, for this definition, the person who suffers that abuse is not regarded as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.
- (3) To remove any doubt—
 - (a) a single act may amount to psychological abuse of a child or young person; and
 - (b) a number of acts that form part of a pattern of behaviour may amount to psychological abuse of a child or young person, even though some or all of the acts, when viewed in isolation, may appear to be minor or trivial.

1941 No DVPO protection order if no proceeding under care and protection chapters

- (1) This section applies if—
 - (a) someone wants to apply for a DVPO protection order for a child or young person; and

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- (b) no application for a care and protection order for the child or young person has been made.

Note A care and protection order does not include a DVPO protection order (see s 1900, def *care and protection order*).

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

1942 Effect of making DVPO protection order under this Act

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

Examples

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

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

- (2) The making of the DVPO protection order on an application for a care and protection order does not affect the validity of the protection order.
- (3) In applying the *Domestic Violence and Protection Orders Act 2001*, section 13 (Who may apply to amend or revoke a protection order?) to the DVPO protection order, the public advocate is taken to have been a party to the application for the DVPO protection order.

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- (4) In applying the *Domestic Violence and Protection Orders Act 2001* to an DVPO interim protection order made under this Act—
- (a) a reference in that Act to a final order is taken to be a reference to a care and protection order; and
 - (b) a reference in that Act to the application or proceeding is taken to be a reference to the application or proceeding under this Act for which the DVPO interim protection order was made.

Example—par (a)

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

EXPOSURE DRAFT

Part 18.4 Making care and protection orders

Notes to pt 18.4

An appraisal order prevails over a care and protection order (see s 1623).

A professional assessment order prevails over a care and protection order (see s 1918).

1943 Care and protection order—criteria for making

- (1) The Childrens Court may make a care and protection order for a child or young person if the court—
 - (a) is satisfied that the child or young person is in need of care and protection; and
 - (b) has considered the care plan prepared by the chief executive for the child or young person; and
 - (c) is satisfied that—
 - (i) the criteria for making each provision included in the order are met; and

Note Criteria for making provisions are in the following sections:

- short-term parental responsibility provision—s 1958
- enduring parental responsibility provision—s 1968
- contact provision—s 1972
- drug use provision—s 1978
- supervision provision—s 1980
- mental health tribunal provision—s 1983
- specific issues provision—s 1985.

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- (ii) the provisions included in the order are necessary to ensure the care and protection of the child or young person; and
 - (iii) making the order is in the best interests of the child or young person.
- (2) Unless the Childrens Court orders otherwise, the chief executive must give a copy of a care plan provided for a proceeding to each other party to the proceeding.
- (3) The Childrens Court—
- (a) must not merely accept the admission of the parties to the proceeding that the child or young person is in need of care and protection; but
 - (b) must satisfy itself that the child or young person is in need of care and protection.

Note 1 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

The Childrens Court may include a provision in a care and protection order on application by a party to the proceeding or on its own initiative.

1944 Care and protection order—length

- (1) The length of a care and protection order is the length of the longest provision in the order.

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- (2) The length of each provision included in a care and protection order must be stated in the order.

Note 1 The length of parental responsibility provisions is dealt with in:

- short-term parental responsibility provision—s 1957 (not longer than 2 years)
- enduring parental responsibility provision—s 1967 (until the child or young person is 18 years old).

Note 2 The length of a care and protection order may be extended (see s 1951).

EXPOSURE DRAFT

Part 18.5 **Extending, amending and revoking care and protection orders**

1945 Care and protection order—extension and amendment applications

- (1) A person may apply to the Childrens Court for extension or amendment of a provision in a care and protection order if the person—
 - (a) reasonably believes that—
 - (i) the extension or amendment is necessary to ensure the care and protection of the child or young person; and
 - (ii) the criteria for making the provision as proposed to be extended or amended are met; and
 - (b) has the leave of Childrens Court to make the application.
- (2) The Childrens Court must give leave to someone who was a party to the proceeding in which the care and protection order was made.
- (3) However, the court may give leave to someone to apply more than once in a 12 month period only if satisfied that there are exceptional circumstances to justify the application.

Note 1 Criteria for making provisions are in the following sections:

- short-term parental responsibility provision—s 1958
- enduring parental responsibility provision—s 1968
- contact provision—s 1972
- drug use provision—s 1978
- supervision provision—s 1980
- mental health tribunal provision—s 1983

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- specific issues provision—s 1985.

Note 2 Statements, documents and reports must be included in the application (see s 2501).

Note 3 Oral applications may also be made (see s 2503).

1946 Care and protection order—revocation applications

- (1) A person may apply to the Childrens Court for revocation of a provision in a care and protection order if the person—
 - (a) reasonably believes that the child or young person would not be in need of care and protection if the order was revoked; and
 - (b) has the leave of Childrens Court to make the application.
- (2) The Childrens Court must give leave to someone who was a party to the proceeding in which the care and protection order was made.
- (3) However, the court may give leave to someone to apply more than once in a 12 month period only if satisfied that there are exceptional circumstances to justify the application.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

1947 Care and protection order—application to state what sought and grounds

An application for extension, amendment or revocation of a provision in a care and protection order must state—

- (a) the provision proposed to be extended, amended or revoked; and
- (b) how the provision is proposed to be extended or amended; and
- (c) the grounds on which the extension, amendment or revocation is proposed.

1948 Care and protection order—who must be given extension, amendment or revocation

The applicant for extension, amendment or revocation of a provision in a care and protection order must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:

- (a) each party to the proceeding in which the order was made;
- (b) the public advocate.

Note Parties to proceedings are dealt with in pt 23.2.

1949 Care and protection orders—directions hearing for amendment and revocation applications

- (1) On receiving an application for amendment or revocation of a care and protection order, the Childrens Court must list the application so that there is a directions hearing for the application not later than 5 working days after the day the application is filed.
- (2) At the directions hearing, the court—
 - (a) must deal with the application in the same way as it would deal with an application for a care and protection order at a directions hearing; and
 - (b) may take any action for the application that it could take if the application were an application for a care and protection order.

Note Action that the court could take for a care and protection order includes action about interim matters under s 1910.

1950 Care and protection order—court to consider extension, amendment and revocation applications promptly

- (1) The Childrens Court must give initial consideration to an application for extension, amendment or revocation of a provision in a care and protection order not later than 5 working days after the day the application is filed.
- (2) After initially considering the application, the Childrens Court must—
 - (a) if satisfied that there is sufficient reason to adjourn the hearing—set a date to start hearing the application that is not later than 10 weeks after the day the application was filed, and adjourn the application; or
 - (b) if not satisfied that there is sufficient reason to adjourn the hearing—decide the application.
- (3) If the Childrens Court doesn't start hearing the application until later than the 10 weeks, any order or direction made before the proceeding was last adjourned continues in force until the application is decided.
- (4) If a care and protection order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided.

EXPOSURE DRAFT

1951 Care and protection order—criteria for extensions and amendments

- (1) The Childrens Court may, by order, extend or amend a provision in a care and protection order if satisfied that—
- (a) the criteria for making the provision as proposed to be extended or amended are met; and
- Note* Criteria for making provisions are in the following sections:
- short-term parental responsibility provision—s 1958
 - enduring parental responsibility provision—s 1968
 - contact provision—s 1972
 - drug use provision—s 1978
 - supervision provision—s 1980
 - mental health tribunal provision—s 1983
 - specific issues provision—s 1985.
- (b) the provision as proposed to be extended or amended is necessary to ensure the care and protection of the child or young person; and
- (c) extending or amending the order as proposed is in the best interests of the child or young person.
- (2) The court may extend a provision in a care and protection order for as long as the court considers appropriate.
- (3) The court may amend a provision in a care and protection order in any way the court considers appropriate, including—
- (a) substituting a provision with a different provision; or

(b) including an additional provision.

Note 1 The length of a care and protection order may be extended if the Childrens Court makes an annual review report order about an annual review report for a child or young person who is subject to a care and protection order (see s 1988 to s 1995).

Note 2 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 3 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1952 Care and protection order—criteria for revocation

The Childrens Court may, by order, revoke a care and protection order, or a provision in a care and protection order, if satisfied that—

- (a) the child or young person would not be in need of care and protection if the order or provision was revoked; and
- (b) revoking the order or provision is in the best interests of the child or young person.

Note In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

1953 Care and protection orders—financial burdens

Unless the Childrens Court orders otherwise, if the court makes a care and protection order involving a financial cost to a person, the person is responsible for the cost.

Part 18.6 Parental responsibility provisions

Division 18.6.1 General

1954 What is a *parental responsibility provision*?

In the care and protection chapters:

parental responsibility provision, in a care and protection order for a child or young person—

- (a) means a provision about who has, or has not, a stated aspect of parental responsibility for the child or young person; and
- (b) may, but need not, include 1 or more of the following directions:
 - (i) that a stated person has, or has not, responsibility for day-to-day matters for the child or young person;

Note Responsibility for day-to-day matters is dealt with in s 19. The person who has responsibility for day-to-day matters for the child or young person has responsibility for—

- deciding where and with whom the child or young person is to live
- care of the child or young person, including, for example, personal appearance and grooming
- temporary care of the child or young person by someone else (whether in the ACT or elsewhere)
- assessment of the child's or young person's physical or mental wellbeing (including admission to hospital), 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)

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- the people with whom the child or young person may, or must not, have contact, however, this is subject to a contact provision in the care and protection order
 - day-to-day matters about education, training and employment.
- (ii) that a stated person has, or has not, responsibility for long-term matters for the child or young person;

Note Responsibility for long-term matters is dealt with in s 20.

- (iii) that a stated person has, or has not, responsibility for health care treatment for the child or young person;

Note 1 **Health care treatment** means treatment of an illness, disability, disorder or condition by a health professional (see dict). Responsibility for health care treatment is dealt with in s 21.

Note 2 Emergency medical treatment is dealt with in pt 17.1.

- (iv) that a stated person has, or has not, any other aspect of parental responsibility for the child or young person;
- (v) that an aspect of parental responsibility for the child or young person is shared between stated people;
- (vi) that a stated person who has an aspect of parental responsibility for the child or young person must exercise the aspect in a stated way.

Note If a care and protection order is in force for a child or young person and the chief executive or a police officer reasonably believes that there are reasonable grounds for suspecting that someone has contravened the order and because of the contravention, the child or young person is in danger, the chief executive or police officer may apply to the Childrens Court for a warrant to have the child or young person taken into safe custody (see s 2406).

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1955 Parental responsibility provision—only suitable entities

- (1) This section applies if the Children’s Court proposes to include a parental responsibility provision in a care and protection order for a child or young person that—
- (a) transfers an aspect of parental responsibility for the child or young person to someone; or
 - (b) shares an aspect of parental responsibility for the child or young person with someone.
- (2) The court may make the provision only if the person is—
- (a) the chief executive; or
 - (b) a suitable entity to have the aspect of parental responsibility for the child or young person.

Note 1 If a care and protection order including a parental responsibility provision is in force for the child or young person for longer than 6 months and the order gives an aspect of parental responsibility for the child or young person to the chief executive, the chief executive must prepare an annual review report for the child or young person under pt 18.12.

Note 2 Par (b)—Suitable entities are dealt with in pt 2.4.

1956 Parental responsibility provision—short or enduring

A parental responsibility provision must be—

- (a) a short-term parental responsibility provision; or
- (b) a long-term parental responsibility provision; or
- (c) an enduring parental responsibility provision.

Division 18.6.2 Short-term parental responsibility provisions

1957 What is a *short-term parental responsibility provision*?

In the care and protection chapters:

short-term parental responsibility provision means a parental responsibility provision that is not longer than 2 years.

Note The length of a care and protection order is dealt with in s 1944.

1958 Short-term parental responsibility provision—criteria for making

The Childrens Court may, on application or on its own initiative, include a short-term parental responsibility provision in a care and protection order for a child or young person if satisfied that—

- (a) the child or young person would be in need of care and protection if the order was not made; and
- (b) including the provision is in the best interests of the child or young person; and
- (c) including an enduring parental responsibility provision would not be in the best interests of the child or young person.

Note 1 A short-term parental responsibility provision may be extended, amended or revoked under pt 18.5.

Note 2 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 3 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1959 Short-term parental responsibility provision—sharing responsibility

- (1) This section applies if—
 - (a) the Childrens Court includes a short-term parental responsibility provision in a care and protection order for a child or young person; and
 - (b) the provision directs that an aspect of parental responsibility for the child or young person is shared between 2 or more people.
- (2) The court may also order that 1 of the people must, if practicable, consult another of the people before exercising the responsibility.

Note Sharing of aspects of parental responsibility is further dealt with in s 18.

1960 Short-term parental responsibility provision—extension

- (1) The Childrens Court may extend a short-term parental responsibility provision in a care and protection order if satisfied that—
 - (a) extending the provision is in the best interests of the child or young person; and
 - (b) making an enduring parental responsibility provision would not be in the best interests of the child or young person.

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- (2) However, the Childrens Court must not extend a short-term parental responsibility provision in a care and protection order for longer than 2 years unless satisfied that a parent of the child or young person, or someone else who has had parental responsibility for the child or young person, is likely to be able to resume care of the child or young person during the period of the extension.

Note 1 A short-term parental responsibility provision may be extended, amended or revoked under pt 18.5.

Note 2 If an application has been made to the Childrens Court for a care and protection order and the application is adjourned, any parental responsibility provision that is in force at the time of the adjournment may be extended until the end of the adjournment or revoked (see s 1910).

1961 Short-term parental responsibility provision—financial contribution

- (1) This section applies if the Children’s Court includes a short-term parental responsibility provision in a care and protection order for a child or young person and the provision—
- (a) transfers an aspect of parental responsibility for the child or young person to the chief executive; or
 - (b) shares an aspect of parental responsibility for the child or young person with to the chief executive.
- (2) The court may order a parent of the child or young person to pay an amount (the *contribution*) to the chief executive as a contribution to the cost of the care of the child or young person.
- (3) In deciding the amount of the contribution, the court must have regard to the financial circumstances of the parent.
- (4) The contribution is a debt due and payable to the Territory.

EXPOSURE DRAFT

Division 18.6.3 Long-term parental responsibility provisions

1962 What is a *long-term parental responsibility provision*?

In the care and protection chapters:

long-term parental responsibility provision means a parental responsibility provision that—

- (a) transfers responsibility for day-to-day matters, long-term matters and health care treatment for the child or young person to the chief executive or another stated person; and
- (b) is in force until the child or young person is 18 years old.

Note The length of a care and protection order is dealt with in s 1944.

1963 Long-term parental responsibility provision—criteria for making

The Childrens Court may, on application or on its own initiative, include a long-term parental responsibility provision in a care and protection order for a child or young person if satisfied that—

- (a) the child or young person would be in need of care and protection if the order was not made; and
- (b) including the provision is in the best interests of the child or young person.

Note 1 A long-term parental responsibility provision may be amended or revoked under pt 18.5.

Note 2 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 3 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1964 Long-term parental responsibility provision—sharing responsibility

- (1) This section applies if—
 - (a) the Childrens Court includes a long-term parental responsibility provision in a care and protection order for a child or young person; and
 - (b) the provision directs that an aspect of parental responsibility for the child or young person is shared between 2 or more people.
- (2) The court may also order that 1 of the people must, if practicable, consult another of the people before exercising the responsibility.

Note Sharing of aspects of parental responsibility is further dealt with in s 18.

1965 Long-term parental responsibility provision—financial contribution by chief executive

- (1) This section applies if—
 - (a) the Childrens Court includes a long-term parental responsibility provision in a care and protection order for a child or young person; and
 - (b) immediately before the order was made, the chief executive had responsibility for day-to-day matters for the child or young person.
- (2) The chief executive may provide financial or other assistance to the person to whom the provision transfers responsibility for day-to-day matters for the child or young person.

1966 Long-term parental responsibility provision—financial contribution by parents

- (1) This section applies if the Children’s Court includes a long-term parental responsibility provision in a care and protection order for a child or young person and the provision—
 - (a) transfers an aspect of parental responsibility for the child or young person to the chief executive; or
 - (b) shares an aspect of parental responsibility for the child or young person with the chief executive.
- (2) The Childrens Court may order a parent of the child or young person to pay an amount (the *contribution*) to the chief executive as a contribution to the cost of the care of the child or young person.
- (3) In deciding the amount of the contribution, the Childrens Court must have regard to the financial circumstances of the parent.
- (4) The contribution is a debt due and payable to the Territory.

Division 18.6.4 Enduring parental responsibility provisions

1967 What is an *enduring parental responsibility provision*?

In the care and protection chapters:

enduring parental responsibility provision means a parental responsibility provision that—

- (a) transfers responsibility for day-to-day matters, long term matters and health care treatment for the child or young person to a stated person; and
- (b) does not transfer an aspect of parental responsibility to the chief executive; and

(c) is in force until the child or young person is 18 years old.

Note The length of a care and protection order is dealt with in s 1944.

1968 **Enduring parental responsibility provision—criteria for making**

The Childrens Court may, on application or on its own initiative, include an enduring parental responsibility provision in a care and protection order for a child or young person if—

- (a) the court is satisfied that the child or young person would be in need of care and protection if the order was not made; and
- (b) neither parent of the child or young person has had responsibility for day-to-day matters, or long-term matters, for the child or young person—
 - (i) in the 2 years immediately before the order is made, or
 - (ii) for a total of more than 1 year in the 3 years immediately before the order is made; and
- (c) the child or young person has been living with the stated person under a care and protection order for—
 - (i) the 2 years immediately before the order is made, or
 - (ii) a total of more than 2 years in the 3 years immediately before the order is made; and
- (d) the court is satisfied that—
 - (i) neither parent of the child or young person is able or willing to exercise responsibility for day-to-day matters, long-term matters or health care treatment for the child or young person; or

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- (ii) it is not in the best interests of the child or young person for either parent to exercise those responsibilities for the child or young person; and
 - (e) the court is satisfied that—
 - (i) it is unlikely that either parent of the child or young person will be able or willing to exercise responsibility for day-to-day matters, long-term matters or health care treatment for the child or young person before the child or young person is 18 years old; or
 - (ii) it is unlikely that it would be in the best interests of the child or young person for either parent to exercise those responsibilities for the child or young person before the child or young person is 18 years old; and
 - (f) the court is satisfied that the stated person is willing and able to exercise responsibility for day-to-day matters, long-term matters and health care treatment for the child or young person; and
 - (g) the court is satisfied that including the provision is the best way to meet the child's or young person's need for emotional security in the long term; and
 - (h) for an indigenous child or young person—the court has given any relevant indigenous organisation a reasonable opportunity to provide a written report about the making of the proposed provision; and
 - (i) the court is satisfied that including the provision is in the best interests of the child or young person.

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(2) In this section:

stated person means the person to whom the court proposes to transfer responsibility for day-to-day matters, long-term matters and health care treatment for the child or young person under the proposed enduring parental responsibility provision.

Note 1 An enduring parental responsibility provision may be amended or revoked under pt 18.5.

Note 2 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 3 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1969 Enduring parental responsibility provision—sharing responsibility

(1) This section applies if—

- (a) the Childrens Court includes an enduring parental responsibility provision in a care and protection order for a child or young person; and
- (b) the provision directs that an aspect of parental responsibility for the child or young person is shared between 2 or more people.

(2) 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.

Note Usually, if an aspect of parental responsibility is shared between 2 or more people, either of them may discharge the responsibility (see s 18).

1970 Enduring parental responsibility provision—financial contribution

- (1) This section applies if—
 - (a) the Childrens Court includes an enduring parental responsibility provision in a care and protection order for a child or young person; and
 - (b) immediately before the order was made, the chief executive had responsibility for day-to-day matters for the child or young person.
- (2) The chief executive may provide financial or other assistance to the person to whom the provision transfers responsibility for day-to-day matters for the child or young person.

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Part 18.7 Contact provisions

1971 What is a *contact provision*?

In the care and protection chapters:

contact provision, in a care and protection order for a child or young person—

- (a) means a provision about who may, or must not, have contact with the child or young person; and

Note *Contact*, with a person, is defined in s 1512.

- (b) may, but need not, include 1 or more of the following directions:

- (i) that a stated person must be allowed to have contact with the child or young person;
- (ii) that the stated person may have contact with the child or young person only in accordance with the conditions in the provision;
- (iii) that a stated person must have not have contact with the child or young person.

Example of directions in contact provision in care and protection order

that a stated person must not live with the child but must be allowed to have face-to-face contact with the child for at least 4 hours each week if they comply with the drug use provision in 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).

1972 Contact provision—criteria for making

- (1) This section applies if—
 - (a) an application for a care and protection order including another provision for a child or young person is being heard by the Childrens Court; or
 - (b) a care and protection order is in force for the child or young person and an application about the order, or a provision of the order, is being heard by the Childrens Court.
- (2) The court may, on application or on its own initiative, include a contact provision in the order if satisfied that—
 - (a) the order, or a provision of the order, may have the effect of separating the child or young person from a significant person in his or her life; and
 - (b) the child or young person would be in need of care and protection if the order was not made; and
 - (c) including the provision is in the best interests of the child or young person.

Note 1 A contact provision may be extended, amended or revoked under pt 18.5.

Note 2 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 3 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1973 Contact provision—presumption about contact with family

- (1) This section applies if someone applies for a contact provision to be included in a care and protection order for a child or young person.

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- (2) There is a rebuttable presumption that it is in the best interests of the child or young person for the child or young person to have contact with his or her parents and siblings.

1974 Contact provision—burden of proof if not family

- (1) This section applies if—
- (a) someone applies for a contact provision to be included in a care and protection order for a child or young person; and
 - (b) the contact provision would allow contact between the child or young person and another person who—
 - (i) is not a parent of the child or young person; and
 - (ii) is not a sibling of the child or young person.
- (2) The applicant has the burden of proving that contact between the person and the child or young person is in the best interests of the child or young person.

1975 Contact provision—sibling may join proceeding without leave

If someone applies for a contact provision to be included in a care and protection order for a child or young person, a sibling of the child or young person does not need the leave of the Childrens Court to be joined as a party to the proceeding on the application.

1976 Contact provision—making, amending or extending direction

- (1) This section applies to a care and protection order for a child or young person that includes a contact provision including a direction that a stated person must not have contact with the child or young person.

Note If this direction is included it is an offence to engage in conduct that contravenes the direction (see s 1902).

- (2) If the Childrens Court makes, amends or extends the care and protection order, the court must give a copy of the order or revised order to the following people:
- (a) the stated person, by personal service on the person;
 - (b) the chief executive;
 - (c) the public advocate;
 - (d) the chief police officer;
 - (e) each other person who was a party to the proceeding;
 - (f) any other person the court considers appropriate.
- (3) However, if the court considers personal service on the stated person is impracticable, the court may give the copy of the order or revised order to the stated person in another way.

Note Under the Legislation Act s 247, a document may also be served on an individual—

- by sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or
- by faxing it to a fax number of the individual; or
- by emailing it to an email address of the individual; or
- by leaving it, addressed to the individual, at a home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.

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- (4) If the court considers it appropriate, the court may direct that a police officer give the copy of the order or revised order to someone.
- (5) If the court directs that a police officer give the copy of the order or revised order to someone, the chief police officer must, if asked by the registrar, arrange for the copy of the order or revised order to be given by a police officer.
- (6) In this section:

revised order means—

- (a) if the order is amended—the order as amended; or
- (b) if the order is extended—the order as extended.

Note 1 A contact provision may be extended, amended or revoked under pt 18.5.

Note 2 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 3 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

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Part 18.8 Drug use provisions

1977 What is a *drug use provision*?

In the care and protection chapters:

drug use provision, for a stated person, in a care and protection order for a child or young person—

- (a) means a provision about usage of drugs by the stated person; and
- (b) may, but need not, include 1 or more of the following directions:
 - (i) that the stated person must not use a stated drug;
 - (ii) that the stated person may use a stated drug only in accordance with the conditions in the provision;
 - (iii) that the stated person undergo drug testing in accordance with the drug testing standards.

Note The Minister may make drug testing standards under s 3211.

1978 Drug use provision—criteria for making

The Childrens Court may, on application or on its own initiative, include a drug use provision, for a stated person, in a care and protection order for a child or young person if satisfied that—

- (a) the stated person (under the order or otherwise)—
 - (i) has an aspect of parental responsibility for the child or young person; or
 - (ii) may have contact with the child or young person; and

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- (b) the child or young person would be in need of care and protection if the provision was not included; and
 - (c) the chief executive has—
 - (i) tried less intrusive ways to provide care and protection for the child or young person but the less intrusive ways have not been successful; or
 - (ii) considered less intrusive ways to provide care and protection for the child or young person but the less intrusive ways were not appropriate; and
 - (d) there are no less intrusive ways to provide care and protection for the child or young person;
 - (e) including the provision is in the best interests of the child or young person.

Note 1 If an application has been made to the Childrens Court for a care and protection order and the application is adjourned, any drug use provision that is in force at the time of the adjournment may be extended until the end of the adjournment or revoked (see s 1910).

Note 2 A drug use provision may be extended, amended or revoked under pt 18.5.

Note 3 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 4 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

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Part 18.9 Supervision provisions

1979 What is a *supervision provision*?

- (1) In the care and protection chapters:

supervision provision, in a care and protection order for a child or young person, means a provision placing the child or young person, for the period stated in the order, under the supervision of—

- (a) the chief executive; or
- (b) another person stated in the order.

supervisor, for a supervision provision in a care and protection order for a child or young person, means the person under whose supervision the child or young person is placed by the supervision provision.

Note If a care and protection order including a supervision provision is in force for the child or young person for longer than 6 months, the chief executive must prepare an annual review report for the child or young person (see pt 18.12).

- (2) A supervision provision may, but need not, include 1 or more of the following requirements:
- (a) that 1 or more of the following people must report to the supervisor at the time and place stated by the supervisor:
 - (i) the child or young person;
 - (ii) a parent of the child or young person;
 - (iii) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person;

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- (b) that 1 or more of the following people must take part in discussions with the supervisor about the child's or young person's welfare, in particular whether the child or young person should receive some form of educational, vocational or recreational activity or other activity, having as its object the child's or young person's welfare:
- (i) the child or young person;
 - (ii) a parent of the child or young person;
 - (iii) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.
- (3) Subsection (2) does not limit the matters for which the Childrens Court may make a supervision provision.

1980 Supervision provision—criteria for making

The Childrens Court may, on application or on its own initiative, include a supervision provision in a care and protection order for a child or young person if satisfied that—

- (a) the child or young person would be in need of care and protection if the provision was not included; and
- (b) including the provision is in the best interests of the child or young person.

Note 1 If an application has been made to the Childrens Court for a care and protection order and the application is adjourned, any supervision provision that is in force at the time of the adjournment may be extended until the end of the adjournment or revoked (see s 1910).

Note 2 A supervision provision may be extended, amended or revoked under pt 18.5.

Note 3 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

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Note 4 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1981 Supervision provision—meetings with supervisor

If a care and protection order including a supervision provision is in force for a child or young person, the supervisor may meet and talk with the child or young person alone or otherwise.

Part 18.10 Mental health tribunal provisions

1982 What is a *mental health tribunal provision*?

In this Act:

mental health tribunal provision, in a care and protection order for a child or young person means a provision directing the child or young person to submit to the jurisdiction of the mental health tribunal to allow the tribunal—

- (a) to decide whether the child or young person has a mental impairment; and
- (b) if the tribunal decides that the child or young person has a mental impairment—to make recommendations to the Childrens Court about how the child or young person should be dealt with.

Note *Mental impairment* is defined in the Criminal Code, s 27 to include senility, intellectual disability, mental illness, brain damage and severe personality disorder (see dict).

1983 Mental health tribunal provision—criteria for making

The Childrens Court may, on application or on its own initiative, include a mental health tribunal provision in a care and protection order for a child or young person if satisfied that including the provision is in the best interests of the child or young person.

Note 1 If an application has been made to the Childrens Court for a care and protection order and the application is adjourned, any mental health tribunal provision that is in force at the time of the adjournment may be extended until the end of the adjournment or revoked (see s 1910).

Note 2 A mental health tribunal provision may be extended, amended or revoked under pt 18.5.

Note 3 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 4 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

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Part 18.11 **Specific issues provisions**

1984 What is a *specific issues provision*?

In this Act:

specific issues provision, in a care and protection order for a child or young person—

- (a) means a provision about the care and protection of the child or young person; and
- (b) may, but need not, include 1 or more of the following directions:
 - (i) that a stated person must do a stated thing;
 - (ii) that a stated person must not do a stated thing;
 - (iii) that a stated person must comply with a stated condition.

Example of direction to do a stated thing

that a parent of the child or young person attend a stated parenting course

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).

1985 Specific issues provision—criteria for making

The Childrens Court may, on application or on its own initiative, include a specific issues provision in a care and protection order for a child or young person that the court considers appropriate if satisfied that—

- (a) the child or young person would be in need of care and protection if the provision was not included; and

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- (b) including the provision is in the best interests of the child or young person.

Note 1 If an application has been made to the Childrens Court for a care and protection order and the application is adjourned, any specific issues provision that is in force at the time of the adjournment may be extended until the end of the adjournment or revoked (see s 1910).

Note 2 A specific issues provision may be extended, amended or revoked under pt 18.5.

Note 3 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 4 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

1986 Specific issues provisions—making, amending or extending directions

- (1) This section applies to a care and protection order for a child or young person that includes 1 or more of the following specific issues provisions:

- (a) a direction that a stated person must not live at the same premises as the child or young person;

Note If this direction is included it is an offence to engage in conduct that contravenes the direction (see s 1902).

- (b) a direction that a stated person must—

(i) do a stated thing; or

(ii) not do a stated thing; or

(iii) comply with a stated condition.

- (2) If the Childrens Court makes, amends or extends the care and protection order, the court must give a copy of the order or revised order to the following people:

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- (a) the stated person by personal service on the stated person;
 - (b) the chief executive;
 - (c) the public advocate;
 - (d) the chief police officer;
 - (e) each other person who was a party to the proceeding;
 - (f) any other person the court considers appropriate.
- (3) However, if the court considers personal service on the stated person is impracticable, the court may give the copy of the order or revised order to the stated person in another way.

Note Under the Legislation Act s 247, document may also be served on an individual—

- by sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or
 - by faxing it to a fax number of the individual; or
 - by emailing it to an email address of the individual; or
 - by leaving it, addressed to the individual, at a home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.
- (4) If the court considers it appropriate, the court may direct that a police officer give the copy of the order or revised order to someone.
- (5) If the court directs that a police officer give the copy of the order or revised order to someone, the chief police officer must, if asked by the registrar, arrange for the copy of the order or revised order to be given by a police officer.
- (6) In this section:
- revised order*** means—
- (a) if the order is amended—the order as amended; or

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(b) if the order is extended—the order as extended.

Note A specific issues provision may be extended, amended or revoked under pt 18.5.

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Part 18.12 **Annual review reports—parental responsibility provisions and supervision provisions**

1987 **Who is a *reviewable child or young person*?**

In this chapter:

reviewable child or young person means a child or young person for whom a care and protection order is in force if the order—

- (a) has been in force for longer than 6 months; and
- (b) includes—
 - (i) a parental responsibility provision giving an aspect of parental responsibility for the child or young person to the chief executive; or

Note Parental responsibility provisions are dealt with in pt 18.6.

- (ii) a supervision provision.

Note Supervision provisions are dealt with in pt 18.9.

1988 **What is an *annual review report*?**

In this chapter:

annual review report, for a reviewable child or young person, means a report about—

- (a) the child's or young person's circumstances and living arrangements; and
- (b) the chief executive's performance of the chief executive's obligations under the care and protection order; and

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- (c) whether the chief executive considers the existing arrangements for the care and protection of the child or young person are in the best interests of the child or young person.

1989 Annual review report—prepared at least annually

The chief executive must prepare an annual review report for a care and protection order for a child or young person—

- (a) each year; or
- (b) if the order is in force for less than 1 year—at least 1 month, but not earlier than 2 months, before the order expires.

1990 Annual review report—consultation

- (1) This section applies if the chief executive is preparing an annual review report for a child or young person.
- (2) Before the chief executive finalises the report, the chief executive must arrange a meeting with the following people to discuss the matters that the chief executive proposes to include in the report:
 - (a) if the chief executive is satisfied that the child or young person can understand and take part in the meeting—the child or young person;
 - (b) the parents of the child or young person;
 - (c) if the child is placed in out-of-home care—the out-of-home carers for the child or young person;
 - (d) if the child or young person is placed with a foster carer—the foster care service for the foster carer.
- (3) The matters discussed at the meeting may include sensitive information.

Note *Sensitive information* is defined in s 3104.

1991 Annual review report—must be given to certain people

- (1) The chief executive must give an annual review report for a care and protection order for a child or young person to each of the following people:
- (a) the child or young person;
 - (b) each parent of the child or young person;
 - (c) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) each kinship carer or foster carer caring for the child or young person;
 - (e) the public advocate;
 - (f) the Childrens Court.
- Note* If a provision requires a person to act in relation to a parent of a child or young person, the person is not required to act in relation to the parent if the person cannot, after reasonable inquiry, find the parent (see s 22).
- (2) The chief executive may also give the annual review report to someone else so that the other person can give the report to a person mentioned in subsection (1).
- (3) Before giving an annual review report to someone mentioned in subsection (1) (a), (b), (c) or (d) or subsection (2), the chief executive may make minor alterations to the report to protect the privacy and confidentiality of a person named in the report.

1992 Annual review report—application for waiver of obligation to give report to someone

- (1) The chief executive may apply to the Childrens Court for an order waiving the need to give an annual review report about a child or young person to someone mentioned in section 1991 (1) (a), (b), (c) or (d) (a *waiver order*) if the chief executive considers that giving the report to the person would not be in the best interests of the child or young person.
- (2) The chief executive must give a copy of the application to each person mentioned in section 1991 (1).

1993 Annual review report—waiver of obligation to give annual review report to someone

- (1) This section applies if the Childrens Court has received an application for a waiver order.
- (2) The application may be heard in the absence of a party.
- (3) The Childrens Court must make the waiver order if satisfied that giving the annual review report to the person mentioned in the application would not be in the best interests of the child or young person.
- (4) If the court is not satisfied under subsection (3), the court—
 - (a) must order the chief executive to give the person mentioned in the application with a copy of the annual review report, either in full or in part; and
 - (b) may make any other order about the provision of the annual review report that the court considers appropriate.

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1994 Annual review report—public advocate may require chief executive to give annual review report to someone

- (1) This section applies if the chief executive—
 - (a) must give an annual review report to someone under section 1991 (1) (Annual review report—must be given to certain people); and
 - (b) has not given the report to the person; and
 - (c) has not obtained a waiver order for the person.
- (2) The public advocate may apply to the Childrens Court for an order requiring the chief executive to give the annual review report to the person (an *annual review report order*).
- (3) The public advocate must give the chief executive a copy of the application.
- (4) The Childrens Court may make an annual review report order.
- (5) If the court makes an annual review report order, the chief executive must give the annual review report to the person not later than 14 days after the day the court makes the order.

1995 Annual review report—extension of care and protection order

- (1) This section applies if the Childrens Court makes an annual review report order about an annual review report for a child or young person who is subject to a care and protection order.
- (2) If the care and protection order ends less than 1 month after the day the annual review report order is made, the court may extend the length of the care and protection order so that it ends not more than 1 month after the day the annual review report order is made.

Chapter 19 Care and Protection—chief executive has aspect of parental responsibility

Note to ch 19

An aspect of parental responsibility for a child or young person may be transferred to, or shared with, the chief executive under—

- an appraisal order including a temporary custody provision (see div 15.3.3); or
- a voluntary care agreement (see pt 16.3); or
- emergency action (see pt 17.2); or
- a care and protection order including a parental responsibility provision (see pt 18.6); or
- a court order (under this Act or another law in force in the Territory);
- a provision of another law in force in the Territory.

(See s 17 and s 18.)

Part 19.1 General

2000 Definitions—Act and ch 19

In this Act:

foster carer—see section 2011.

foster care service—see section 2017.

general parental authority—see section 2017.

in therapeutic protection—see section 2145.

kinship carer—see section 2010.

out-of-home carer—see section 2009.

out-of-home carer authorisation—see section 2017.

residential care service—see section 2012.

specific parental authority—see section 2017.

2001 Chief executive must encourage family relationships

If the chief executive has an aspect of parental responsibility for a child or young person, the chief executive must encourage the maintenance and development of child's or young person's family, cultural and other significant relationships.

2002 Chief executive may provide assistance

- (1) If the chief executive has an aspect of parental responsibility for a child or young person, the chief executive may provide any of the following for the child or young person:
 - (a) accommodation with a kinship carer or foster carer (whether inside or outside the ACT);
 - (b) financial support;
 - (c) counselling;
 - (d) appropriate education, training and employment opportunities;
 - (e) health care treatment;
 - (f) recreational opportunities;
 - (g) regular care planning and review that—
 - (i) fully involves the child or young person so that the child or young person can take part in the care planning; and
 - (ii) considers the views and wishes of parents and anyone else who is involved with the care, welfare and development of the child or young person;

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-
- (h) an explanation, in a way the child or young person can understand, of the aim of care plans.
- (2) If the chief executive stops having an aspect of parental responsibility for a child or young person (for any reason), the chief executive may arrange for financial or other assistance to be provided to, or for, the child or young person on the conditions the chief executive considers appropriate.

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Part 19.2

Chief executive has responsibility for health care treatment

2003 Chief executive sharing responsibility for health care treatment

- (1) This section applies if the chief executive shares with another person responsibility for health care treatment for a child or young person.
- (2) No-one may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility.

Note Usually, if an aspect of parental responsibility is shared between 2 or more people, either of them may discharge the responsibility (see s 18).

Part 19.3 Chief executive has responsibility for long-term matters

2004 Chief executive must not authorise anyone else to exercise responsibility

- (1) If the chief executive has responsibility for long-term matters for a child or young person, the chief executive must not authorise anyone else to exercise the responsibility for the chief executive.
- (2) However, this section does not apply to a delegation by the chief executive under the *Public Sector Management Act 1994*, s 36 (Delegation by commissioner or chief executives).

2005 Chief executive sharing responsibility for long-term matters

- (1) This section applies if the chief executive shares with another person responsibility for long-term matters for a child or young person.
- (2) In making a decision about a long-term matter 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.
- (3) If another person who has responsibility for long-term matters for the child or young person disagrees with the chief executive's proposed decision, the chief executive—
 - (a) must not make the decision; and

(b) may apply to the Childrens Court for a care and protection order including a specific issues provision about the matter.

Note Usually, if an aspect of parental responsibility is shared between 2 or more people, either of them may discharge the responsibility (see s 18).

2006 Chief executive must consult about long-term matters

If the chief executive has responsibility for long-term matters for a child or young person, the chief executive must, as far as practicable, have regard to the views and wishes of any person who previously had responsibility for long-term matters for the child or young person.

Note Under s 20, responsibility for long-term matters includes responsibility for making decisions about the following matters for the child or young person:

- (a) the 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) the issuing (and opposing the issuing) of a passport for the child or young person;
- (d) long-term matters about education, training and employment.

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Part 19.4 Chief executive has responsibility for day-to-day matters

Division 19.4.1 Application

2007 Pt 19.4 applies to care and protection chapters

- (1) This part applies if the chief executive has responsibility for day-to-day matters for a child or young person under the care and protection chapters.

Note An aspect of parental responsibility for a child or young person may be transferred to, or shared with, the chief executive under the following provisions:

- an appraisal order including a temporary custody provision (see div 15.3.3);
- a voluntary care agreement (see pt 16.3);
- emergency action (see pt 17.2);
- a care and protection order including a parental responsibility provision (see pt 18.6);
- a safe custody warrant (see s 2404);
- a court order (under this Act or another law in force in the Territory);
- a provision of another law in force in the Territory.

(See s 17 and s 18.)

- (2) However, this part does not apply if responsibility for day-to-day matters for a child or young person is transferred to the chief executive under a therapeutic protection order or an interim therapeutic protection order.

Note Therapeutic protection orders are dealt with in pt 20.2. Interim therapeutic protection orders are dealt with in div 20.2.3.

Division 19.4.2 Sharing responsibility for day-to-day matters

2008 Chief executive sharing responsibility for day-to-day matters

- (1) This section applies if the chief executive shares with another person responsibility for day-to-day matters for a child or young person.
- (2) No-one may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility.

Division 19.4.3 Placement with out-of-home carer

2009 Who is an *out-of-home carer*?

In this Act:

out-of-home carer, for a child or young person, means—

- (a) a kinship carer for the child or young person; or
- (b) a foster carer for the child or young person; or
- (c) a residential care service for the child or young person.

2010 Who is a *kinship carer*?

In this Act:

kinship carer, for a child or young person, means a person—

- (a) authorised by the chief executive under section 2018 (Authorisation of kinship carer—particular child or young person) for the child or young person; and

-
- (b) with whom the chief executive has placed the child or young person under section 2013 (Chief executive must place child or young person with out-of-home carer).

2011 Who is a *foster carer*?

In this Act:

foster carer, for a child or young person, means a person—

- (a) authorised by the chief executive under—
- (i) section 2019 (Authorisation of foster carer—particular child or young person) for the child or young person; or
 - (ii) section 2020 (Authorisation of foster carer—any child or young person); and
- (b) with whom the chief executive has placed the child or young person under section 2013 (Chief executive must place child or young person with out-of-home carer).

2012 What is a *residential care service*?

In this Act:

residential care service, for a child or young person, means an entity—

- (a) authorised by the chief executive under—
- (i) section 2021 (Authorisation of residential care service—particular child or young person) for the child or young person; or
 - (ii) section 2022 (Authorisation of residential care service—any child or young person); and
- (b) with whom the chief executive has placed the child or young person under section 2013.

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2013 Chief executive must place child or young person with out-of-home carer

- (1) 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.
- (2) If the chief executive is placing an indigenous child or young person with an out-of-home carer, the placement must be in accordance with section 2014.

Note An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 2013 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 2905).

2014 Priorities for placement with out-of-home carer—indigenous child or young person

- (1) If the chief executive must place an indigenous child or young person with an out-of-home carer under section 2013, the chief executive must place the child or young person with the first of the options mentioned in subsection (2) that—
 - (a) is available; and
 - (b) to which the child or young person does not object; and
 - (c) is consistent with any indigenous cultural plan in force for the child or young person.
- (2) The chief executive may place an indigenous child or young person with any of the following out of home carers:
 - (a) a kinship carer;

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- (b) a foster carer who is a member of the child's or young person's indigenous community in a relationship of responsibility for the child or young person according to local custom and practice;
 - (c) a foster carer who is a member of the child's or young person's community;
 - (d) an indigenous foster carer;
 - (e) a non-indigenous a foster carer who—
 - (i) the chief executive reasonably believes is sensitive to the child's or young person's needs; and
 - (ii) the chief executive reasonably believes is capable of promoting the child's or young person's ongoing contact with the child's or young person's indigenous family, community and culture; and
 - (iii) if family reunion or continuing contact with the child's or young person's indigenous family, community or culture is a consideration in the placement—lives near the child's or young person's indigenous family or community;
 - (f) a residential care service.
- (3) In this section:
- indigenous cultural plan*, for an indigenous child or young person, means a plan—
- (a) to preserve and enhance the identity of the child or young person as an Aboriginal or Torres Strait Islander person; and
 - (b) that is developed by the chief executive in consultation with—
 - (i) the child or young person (taking into consideration the age and maturity of the child or young person); and

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- (ii) any indigenous people who have an interest in the wellbeing of the child or young person; and
 - (iii) any relevant indigenous organisation.

2015 Chief executive shares responsibility with out-of-home carer

If the chief executive places a child or young person with an out-of-home carer under section 2013 (Chief executive must place child or young person with out-of-home carer), the chief executive shares responsibility for day-to-day matters for the child or young person with the out-of-home carer.

Note The out-of-home carer must not discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 2008).

2016 Residential care service may accommodate child or young person at place of care

A residential care service may, but need not, accommodate a child or young person at a place of care.

Note 1 The Minister may approve a place as a place of care for this Act under s 2027.

Note 2 An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 2013 (Chief executive must place child or young person with out-of-home carer) and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 2905).

Note 3 An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see pt 2.3).

**Division 19.4.4 Authorisation of out-of-home carers
and approval of places of care**

2017 Definitions

In this Act:

foster care service means an entity that—

- (a) recruits people to become foster carers; and
- (b) provides support for foster carers.

general parental authority means—

- (a) for a foster carer—an authorisation under section 2020 (Authorisation of foster carer—any child or young person); or
- (b) for a residential care service—an authorisation under section 2022 (Authorisation of residential care service—any child or young person).

out-of-home carer authorisation means an authorisation of—

- (a) a person as a kinship carer under section 2018 (Authorisation of kinship carer—particular child or young person); or
- (b) a person as a foster carer under—
 - (i) section 2019 (Authorisation of foster carer—particular child or young person); or
 - (ii) section 2020 (Authorisation of foster carer—any child or young person); or
- (c) an entity as a residential care service under—
 - (i) section 2021 (Authorisation of residential care service—particular child or young person); or

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- (ii) section 2022 (Authorisation of residential care service—any child or young person).

specific parental authority means—

- (a) for a kinship carer—an authorisation under section 2018 (Authorisation of kinship carer—particular child or young person); or
- (b) for a foster carer—an authorisation under section 2019 (Authorisation of foster carer—particular child or young person); or
- (c) for a residential care service—an authorisation under section 2021 (Authorisation of residential care service—particular child or young person).

support, a foster care service supporting a person at a time, means the foster care service that recruited the person to be a foster carer at the time.

2018 Authorisation of kinship carer—particular child or young person

- (1) This section applies if the chief executive has responsibility for day-to-day matters for a child or young person.
- (2) The chief executive may authorise, orally or in writing, a relative, or significant person, of the child or young person to exercise the responsibility for the chief executive.
- (3) However, the chief executive may authorise a relative, or significant person, only if satisfied that the relative or significant person—
- (a) is a suitable entity to have responsibility for day-to-day matters for the child or young person; and
- Note* Suitable entities are dealt with in s 136.
- (b) agrees to exercise the responsibility for the chief executive.

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(4) In this section:

significant person, for a child or young person, means a person who the chief executive is satisfied has a significant relationship with the child or young person.

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

2019 Authorisation of foster carer—particular child or young person

- (1) This section applies if the chief executive has responsibility for day-to-day matters for a child or young person.
- (2) The chief executive may authorise, orally or in writing, a person to exercise the responsibility for the chief executive.
- (3) However, the chief executive may authorise a person only if satisfied that—

- (a) the person is a suitable entity to have responsibility for day-to-day matters for the child or young person; and

Note Suitable entities are dealt with in s 136.

- (b) the foster care service supporting the person—
 - (i) is a suitable entity to facilitate foster care services; and
 - (ii) complies with, and is likely to continue to comply with, the out-of-home care standards; and

Note The Minister may make out-of-home care standards under s 3211.

EXPOSURE DRAFT

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- (c) the person agrees to exercise the responsibility for the chief executive.

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

2020 Authorisation of foster carer—any child or young person

- (1) The chief executive may authorise, orally or in writing, 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.
- (2) However, the chief executive may authorise a person only if satisfied that—
- (a) the person is a suitable entity to have responsibility for day-to-day matters for any child or young person; and

Note Suitable entities are dealt with in s 136.

- (b) the foster care service supporting the person—
- (i) is a suitable entity to facilitate foster care services; and
- (ii) complies with, and is likely to continue to comply with, the out-of-home care standards; and

Note The Minister may make out-of-home care standards under s 3211.

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- (c) the person agrees to exercise the responsibility for the chief executive for any child or young person.

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

2021 Authorisation of residential care service—particular child or young person

- (1) This section applies if the chief executive has responsibility for day-to-day matters for a child or young person.
- (2) The chief executive may authorise, orally or in writing, an entity to exercise the responsibility for the chief executive.
- (3) However, the chief executive may authorise an entity only if satisfied that—
- (a) the entity is a suitable entity to have responsibility for day-to-day matters for the child or young person; and

Note Suitable entities are dealt with in s 136.

- (b) the entity complies with, and is likely to continue to comply with, the out-of-home care standards; and

Note The Minister may make out-of-home care standards under s 3211.

- (c) the entity agrees to exercise the responsibility for the chief executive.

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

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2022 Authorisation of residential care service—any child or young person

- (1) The chief executive may authorise, in writing, 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.
- (2) However, the chief executive may authorise an entity only if satisfied that—

- (a) the entity is a suitable entity to have responsibility for day-to-day matters for any child or young person; and

Note Suitable entities are dealt with in s 136.

- (b) the entity complies with, and is likely to continue to comply with, the out-of-home care standards; and

Note The Minister may make out-of-home care standards under s 3211.

- (c) the entity agrees to exercise the responsibility for the chief executive for any child or young person.

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

2023 Out-of-home carer must be given copy of authorisation

- (1) If the chief executive orally authorises a person or entity as an out-of-home carer, the chief executive must also, as soon as practicable, authorise the person or entity in writing.
- (2) If the chief executive authorises, in writing, a person or entity as an out-of-home carer, the chief executive must give the person or entity a copy of the authorisation.

2024 Revocation of kinship carer’s authorisation

- (1) The chief executive may revoke a person’s authorisation under section 2018 as a kinship carer if—
 - (a) satisfied that the person—
 - (i) is not a suitable entity to have responsibility for day-to-day matters for the child or young person mentioned in the authorisation; or
 - (ii) has not provided adequate care or protection for the child;
or
 - (b) the person asks the chief executive to revoke the authorisation.
- (2) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

Note 3 An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 2013 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 2905).

2025 Revocation of foster carer’s authorisation

- (1) The chief executive may revoke a person’s authorisation under section 2019 or section 2020 as a foster carer if—
- (a) satisfied that the person—
 - (i) for an authorisation under section 2019—is not a suitable entity to have responsibility for day-to-day matters for the child or young person mentioned in the authorisation; or
 - (ii) for an authorisation under section 2020—is not a suitable entity to have responsibility for day-to-day matters for any child or young person; or
 - (iii) has not provided adequate care or protection for the child; or
 - (b) satisfied that the foster care service supporting the foster carer—
 - (i) is not a suitable entity to facilitate foster care services; or
 - (ii) has not complied with the out-of-home care standards; or
- Note* The Minister may make out-of-home care standards under s 3211.
- (c) the person asks the chief executive to revoke the authorisation.

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- (2) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

Note 3 An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 2013 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 2905).

2026 Revocation of residential care service's authorisation

- (1) The chief executive may revoke an entity's authorisation under section 2021 or section 2022 as a residential care service if—

(a) satisfied that the entity—

(i) for an authorisation under section 2021—is not a suitable entity to have responsibility for day-to-day matters for the child or young person mentioned in the authorisation; or

(ii) for an authorisation under section 2022—is not a suitable entity to have responsibility for day-to-day matters for any child or young person; or

(iii) has not provided adequate care or protection for the child; or

(iv) has not complied with the out-of-home care standards; or

Note The Minister may make out-of-home care standards under s 3211.

(b) the person asks the chief executive to revoke the authorisation.

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- (2) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

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

Note 2 A decision under this section is a reviewable decision (see s 3008).

Note 3 An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 2013 (Chief executive must place child or young person with out-of-home carer) and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 2905).

Note 4 An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see pt 2.3).

2027 Approval of places of care

- (1) The Minister may approve a place operated by a residential care service as a place of care for this Act if satisfied that—
- (a) the residential care service complies with, and is likely to continue to comply with, the out-of-home care standards; and
 - (b) the place complies with, and is likely to continue to comply with, the out-of-home care standards.

Note 1 The Minister may make out-of-home care standards under s 3211.

Note 2 Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

Note 3 A decision under this section is a reviewable decision (see s 3008).

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- (2) The Minister may ask the residential care service to allow the Minister to inspect the place where the residential care service proposes to operate the place of care.

Note An authorised person may, at any reasonable time, enter a place operated by a residential care service if the Minister is deciding whether to approve the place as a place of care under this section and has asked the residential care service to allow the Minister to inspect the place and the residential care service has agreed to allow the Minister to inspect the place (see s 2907).

- (3) If the Minister asks the residential care service to allow the Minister to inspect the place but the residential care service does not allow the chief executive to inspect the place, the Minister need not decide whether to approve the place as a place of care.
- (4) An approval remains in force until revoked by the Minister.
- (5) If the Minister approves a place operated by a residential care service as a place of care, the residential care service may care for and accommodate children and young people there.
- (6) An approval is a notifiable instrument.

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

Note 2 An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 2013 and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 2905).

Note 3 An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see pt 2.3).

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Division 19.4.5 Information to be kept by foster carers and residential care services

2028 Definitions—div 19.4.5

In this division:

care entities, for a child or young person for a placement, means the following entities:

- (a) for a child or young person placed with a foster carer—
 - (i) the foster carer; and
 - (ii) the foster care service supporting the foster carer;
- (b) for a child or young person placed with a residential care service—the residential care service.

personal information, about a child or young person—

- (a) means all information about the child or young person; and
- (b) includes the following items:
 - (i) the birth certificate for the child or young person;
 - (ii) school reports about the child or young person;
 - (iii) medical reports about the child or young person;
 - (iv) photographs of the child or young person.

placement, for a child or young person, means placement of the child or young person by the chief executive with a foster carer or a residential care service under section 2013 (Chief executive must place child or young person with out-of-home carer).

2029 Information must be kept during placement

- (1) This section applies if the chief executive places a child or young person with a foster carer or a residential care service under section 2013 (Chief executive must place child or young person with out-of-home carer).
- (2) Each care entity for the child or young person for the placement, must keep the following things during the placement:
 - (a) personal information about the child or young person that the care entity possesses because of the placement;
 - (b) records made by the care entity about the child or young person because of the placement.

2030 Information must be kept after placement ends

- (1) This section applies if a care entity for a child or young person for a placement keeps personal information or records under section 2029.
- (2) The care entity must keep the personal information or records until the care entity gives the personal information or records to the chief executive under subsection (3).
- (3) The care entity must give the personal information or records to the chief executive if—
 - (a) the chief executive asks the care entity to give the personal information or records to the chief executive; or
 - (b) the care entity stops being a care entity; or
 - (c) 7 years has elapsed since the placement ended.
- (4) If personal information or records are given to the chief executive under subsection (3), the personal information or records are a record of an agency.

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(5) In this section:

record, of an agency—see the *Territory Records Act 2002*, section 9 (Meaning of *record* of an agency).

2031 Child or young person must have access to information

(1) This section applies if—

(a) a care entity for a child or young person for a placement keeps personal information or records under section 2029 (Information must be kept during placement); and

(b) the care entity has not given the personal information or records to the chief executive under section 2030.

(2) The care entity must give the child or young person access to the personal information and records.

EXPOSURE DRAFT

Chapter 20 Care and protection— therapeutic protection of children and young people

Part 20.1 Preliminary

2100 Definitions

(1) In this Act:

harmful conduct—see section 2103.

interim therapeutic protection order—see section 2113.

scanning search—see section 2157.

therapeutic protection history—see section 2107.

therapeutic protection order—see section 2102.

therapeutic protection place—see section 2105.

therapeutic protection plan—see section 2106.

(2) In this chapter:

authorised doctor means a doctor authorised under section 2204.

authorised health professional means a health professional authorised under section 2204.

authorised nurse means a nurse authorised under section 2204.

risk assessment—see section 2104.

transition plan—see section 2108.

2101 Therapeutic protection only under therapeutic protection order

The chief executive may confine a child or young person at a therapeutic protection place only under a therapeutic protection order.

Part 20.2 Therapeutic protection orders

Note to pt 20.2

The Childrens Court may hear an application in relation to a child or young person only if the child or young person has a lawyer or the court is satisfied that the child or young person has had a reasonable opportunity to get legal representation and the best interests of the child or young person will be adequately represented in the proceeding (see s 323). Legal representation of children and young people is further dealt with in s 324 and s 325.

Division 20.2.1 Definitions—pt 20.2

2102 What is a *therapeutic protection order*?

In this Act:

therapeutic protection order, for a child or young person, means an order that—

- (a) directs that the child or young person be confined—
 - (i) for a period of time (the *period of confinement*) starting on a stated day (the *start day*); and
 - (ii) at a therapeutic protection place; and
 - (iii) for implementation of a stated therapeutic protection plan; and
- (b) transfers responsibility for day-to-day matters for the child or young person to the chief executive for the period of confinement; and

Note Pt 19.4 (Chief executive has responsibility for day-to-day matters) does not apply if responsibility for day-to-day matters for a child or young person is transferred to the chief executive under a therapeutic protection order (see s 2007).

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- (c) includes any conditions the court considers necessary to prevent the child or young person from engaging in harmful conduct.

Note The chief executive or a police officer may apply to a magistrate for a safe custody warrant if a therapeutic protection order or interim therapeutic protection order is in force for a child or young person and the chief executive or police officer reasonably believes that—

- (a) someone has contravened the order and, because of the contravention, the child or young person is in danger; or
- (b) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order (see s 2406).

2103 What is *harmful conduct*?

In this Act:

harmful conduct, engaged in by a child or young person, means conduct which leads to a significant risk of significant harm to the child or young person or someone else.

2104 What is a *risk assessment*?

- (1) For this chapter:

risk assessment, for a child or young person, means an assessment by the chief executive about whether—

- (a) there will be a significant risk of significant harm to—
- (i) the child or young person; or
- (ii) someone else; and
- (b) the risk of harm arises from the child's or young person's conduct; and
- (c) the risk of harm will be imminent.

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- (2) The chief executive may make risk assessment guidelines.
 - (3) A risk assessment guideline is a notifiable instrument.
Note A notifiable instrument must be notified under the Legislation Act.
 - (4) A risk assessment must be carried out in accordance with the risk assessment guidelines.

2105 What is a *therapeutic protection place*?

In this Act:

therapeutic protection place, means a place declared by the Minister under section 2195 (Therapeutic protection place—declaration) to be a therapeutic protection place.

Note Therapeutic protection places are further dealt with in div 20.4.1.

2106 What is a *therapeutic protection plan*?

- (1) In this Act:

therapeutic protection plan, for a child or young person for whom the chief executive has applied for a therapeutic protection order—

- (a) means a plan arranged by the chief executive to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and
- (b) includes written details of the following for the proposed period of confinement:
 - (i) when the period of confinement is to start and end;
 - (ii) the therapy, counselling or other service that is proposed for the child or young person;
 - (iii) the expected results of the therapy, counselling or other service;

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- (iv) the education that is proposed for the child or young person;
 - (v) the supervision that is proposed for the child or young person;
 - (vi) the proposed arrangements for child's or young person's contact with—
 - (A) relatives; and
 - (B) significant people for the child or young person; and
 - (C) other people.

Note **Relative**, of a child or young person, is defined in s 14.

(2) In this section:

significant person, for a child or young person, means a person who the chief executive is satisfied has a significant relationship with the child or young person.

Note If the public advocate or an official visitor asks the chief executive for a therapeutic protection plan for a child or young person, the chief executive must provide a copy promptly (see s 2198).

2107 What is *therapeutic protection history*?

In this Act:

therapeutic protection history, for a child or young person who has been confined under a therapeutic protection order, means written details of the following for each period of confinement:

- (a) when the period of confinement started and ended;
- (b) where the child or young person was confined;
- (c) the therapy, counselling or other service that was provided to the child or young person;

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- (d) the results of the therapy, counselling or other service;
 - (e) the education that was provided to the child or young person;
 - (f) the supervision that was provided to the child or young person;
 - (g) the arrangements for child's or young person's contact with, and the child's or young person's contact with—
 - (i) family members; and
 - (ii) significant people for the child or young person; and
 - (iii) other people.

2108 **What is a *transition plan*?**

In this chapter:

transition plan, for a child or young person, means a plan developed by the chief executive—

- (a) for when the child or young person leaves therapeutic protection; and
- (b) to help the child or young person—
 - (i) integrate into the community; and
 - (ii) stop engaging in harmful conduct.

Division 20.2.2 **Applications for therapeutic protection orders**

2109 **Therapeutic protection order—application by chief executive**

- (1) Only the chief executive may apply for a therapeutic protection order.

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- (2) The chief executive may apply to the Childrens Court for a therapeutic protection order for a child or young person if satisfied that the criteria for making the order are met.

Note 1 Criteria for making a therapeutic protection order are in s 2118.

Note 2 Oral applications may also be made (see s 2503).

2110 Therapeutic protection order—application to state grounds etc

An application for a therapeutic protection order for a child or young person must—

- (a) state the grounds on which the order is sought; and
- (b) include—
 - (i) a risk assessment for the child or young person; and
 - (ii) a copy of previous therapeutic protection orders for the child or young person (if any); and
 - (iii) the therapeutic protection history for the child or young person (if any); and
- (c) state the less restrictive ways that the chief executive has—
 - (i) tried to prevent the child or young person from engaging in harmful conduct and how the less restrictive ways were not successful (if any); and
 - (ii) considered to prevent the child or young person from engaging in harmful conduct and how the less restrictive ways were not appropriate (if any); and
- (d) include—
 - (i) a therapeutic protection plan for the child or young person; and

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- (ii) a transition plan for the child or young person; and
 - (iii) information about how the therapeutic protection order is part of the overall care plan for the child or young person.

Note Statements, documents and reports must be included in the application (see s 2501).

2111 Therapeutic protection orders—who must be given application

- (1) The chief executive must give a copy of the application for the therapeutic protection order for the child or young person to the following people at least 1 working day before the application is to be heard by the court:
 - (a) the child or young person;
 - (b) each parent of the child or young person;
 - (c) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) the public advocate.
- (2) This section does not apply if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under part 17.2 (Emergency care and protection).

Note In that case, the chief executive need only give a copy of the application to people before the application is heard by the court (see s 1813).

2112 Therapeutic protection order—court to consider application promptly

- (1) The court must list an application for a therapeutic protection order for hearing not later than 2 working days after the day the application is filed.

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- (2) The court must decide the application not later than 2 weeks after the latest of the following:
- (a) the day the application is filed;
 - (b) the day the application is given to—
 - (i) the child or young person; or
 - (ii) each parent of the child or young person; or
 - (iii) each other person (if any) who has responsibility for day-to-day matters, or long-term matters, for the child or young person; or
 - (iv) the public advocate.
- (3) This section does not apply if the chief executive or a police officer has responsibility for day-to-day matters for a child or young person under part 17.2 (Emergency care and protection).

Note In that case, the court must give initial consideration to the application on the day it is filed (see s 1813).

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Division 20.2.3 Interim therapeutic protection orders

2113 What is an *interim therapeutic protection order*?

In this Act:

interim therapeutic protection order, for a child or young person, means a therapeutic protection order if the period of confinement is not longer than 2 weeks.

Note The chief executive or a police officer may apply to a magistrate for a safe custody warrant if a therapeutic protection order or interim therapeutic protection order is in force for a child or young person and the chief executive or police officer reasonably believes that—

- (a) someone has contravened the order and, because of the contravention, the child or young person is in danger; or
- (b) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order (see s 2406).

2114 Interim therapeutic protection order—criteria

A court may make an interim therapeutic protection order for a child or young person if—

- (a) an application for a therapeutic protection order for the child or young person has been made but not finally decided; and
- (b) satisfied that the criteria for making a therapeutic protection order for the child or young person are met.

Note Criteria for making a therapeutic protection order are in s 2118.

2115 Interim therapeutic protection order—mental health referral

A court must make an interim therapeutic protection order for a child or young person if—

- (a) an application for a therapeutic protection order for the child or young person has been made but not finally decided; and
 - (b) the court suspects, on reasonable grounds, that the child or young person is suffering from a mental illness.
- (2) The order must contain a provision directing the child or young person to submit to the jurisdiction of the mental health tribunal to allow the tribunal—
- (a) to decide whether the child or young person is suffering from a mental illness; and
 - (b) if the tribunal decides that the child or young person is suffering from a mental illness—to make recommendations to the court about how the child or young person should be dealt with.

Note The Childrens Court may make a therapeutic protection order for a child or young person only if satisfied that the child or young person is not suffering from a mental illness (see s 2118).

- (3) In this section:

mental illness—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

Note The *Mental Health (Treatment and Care) Act 1994*, dictionary defines ***mental illness*** as a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;

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- (d) a severe disturbance of mood;
 - (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d).

2116 Interim therapeutic protection order—length

- (1) The length of an interim therapeutic protection order must—
 - (a) be stated in the order; and
 - (b) be not longer than 2 weeks.
- (2) However, if the interim therapeutic protection order would end before the application for the therapeutic protection order is decided, the interim order continues in force until the application is decided.
- (3) An interim therapeutic protection order must end on, or before, the day the application for the therapeutic protection order is decided.

2117 Interim therapeutic protection order—no extension, amendment, revocation or appeal

- (1) An interim therapeutic protection order must not be extended, amended or revoked.
- (2) An interim therapeutic protection order cannot be appealed.

Division 20.2.4 Making a therapeutic protection order

2118 Therapeutic protection order—criteria for making

The Childrens Court may make a therapeutic protection order for a child or young person only if satisfied that—

- (a) if the order is not made—
 - (i) there will be a significant risk of significant harm to—
 - (A) the child or young person; or

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- (B) someone else; and
 - (ii) the risk of harm arises from the child's or young person's conduct; and
 - (iii) the risk of harm will be imminent; and
- (b) the chief executive has—
- (i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or
 - (ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and
- (c) there are no less restrictive ways for the chief executive to prevent the child or young person from engaging in harmful conduct; and
- (d) the child or young person is at least—
- (i) 12 years old; or
 - (ii) 10 years old, but not yet 12 years old, and the public advocate agrees to the therapeutic protection order for the child; and
- (e) the child or young person—
- (i) is not suffering from a mental illness; or

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- (ii) is suffering from a mental illness but the court is satisfied that making a therapeutic protection order for the child or young person is the best way to deal with the child or young person; and

Note A court must make an interim therapeutic protection order for a child or young person if an application for a therapeutic protection order for the child or young person has been made but not finally decided and the court suspects, on reasonable grounds, that the child or young person is suffering from a mental illness. The order must direct the child or young person to submit to the jurisdiction of the mental health tribunal (see s 2115).

- (f) no-one who has an aspect of parental responsibility for the child or young person (other than the chief executive) is able and willing to prevent the child or young person from engaging in harmful conduct; and

Note Parental responsibility is dealt with in div 1.3.2.

- (g) confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and
- (h) the chief executive has developed a therapeutic protection plan for the child or young person; and
- (i) the therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and

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- (j) making the order is in the best interests of the child or young person.

Note 1 In a proceeding for a therapeutic protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

Examples of other ways to prevent a child or young person from engaging in harmful conduct for paragraph (b) and (c)

- 1 The chief executive provided Alex's family with intensive family support services.
- 2 The chief executive sought a care and protection order including a parental responsibility provision for Bonny. Under the order, Bonny was placed with a foster carer and provided with intensive support services.
- 3 The chief executive provided Colin with the same services that are provided under a therapeutic protection plan but Colin was not confined at a therapeutic protection place.

Note 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).

2119 Therapeutic protection order—length

The length of a therapeutic protection order must—

- (a) be stated in the order; and
- (b) be not longer than 8 weeks.

Note A therapeutic protection order may be extended (see div 20.2.6 and div 20.2.7).

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2120 Therapeutic protection order—statement of reasons

If the Childrens Court hears and decides an application for a therapeutic protection order, the court must record a written statement of reasons for the decision.

Note A party may apply for the statement of reasons (see s 2526).

Division 20.2.5 Review of therapeutic protection orders

2121 Initial review within 4 weeks

- (1) This section applies if a therapeutic protection order is in force for a child or young person.
- (2) The chief executive must review the operation of the order (the *initial review*) not later than 4 weeks after the order is made.

2122 Ongoing review at least each 8 weeks

- (1) This section applies if a therapeutic protection order is in force for a child or young person.
- (2) The chief executive must review the operation of the order (an *ongoing review*) not later than 8 weeks after—
 - (a) the initial review; and
 - (b) each ongoing review.

2123 Therapeutic protection review panel recommendations

- (1) This section applies if the chief executive is carrying out an initial review or an ongoing review of the operation of a therapeutic protection order.

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- (2) The chief executive must ask the therapeutic protection review panel to give the chief executive recommendations about the operation of the order.

Note The therapeutic protection review panel is established and further dealt with in div 20.4.3.

2124 Therapeutic protection review panel considerations

- (1) This section applies if the chief executive asks the therapeutic protection review panel to give the chief executive recommendations about the operation of a therapeutic protection order.
- (2) In preparing the recommendations, the panel must consider the views of the following people:

- (a) the child or young person;
- (b) each person who has an aspect of parental responsibility for the child or young person (other than the chief executive);

Note **Parental responsibility** is dealt with in div 1.3.2.

- (c) each person who had responsibility for day-to-day matters for the child or young person immediately before the order was made;

Note Responsibility for day-to-day matters is dealt with in s 19.

- (d) each official visitor who has visited the child or young person;
- (e) the public advocate.

- (3) The review panel may make any recommendation to the chief executive that the review panel considers appropriate, including a recommendation that—

- (a) the therapeutic protection order should, or should not, be extended, amended or revoked; or

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- (b) a condition of the therapeutic protection order should, or should not, be extended, amended or revoked.

2125 Chief executive must consider recommendations

- (1) This section applies if the chief executive has been given recommendations by the review panel about the operation of a therapeutic protection order.
- (2) In reviewing the operation of the order, the chief executive must consider the recommendations made by the therapeutic protection review panel.
- (3) In reviewing the operation of the order, the chief executive must decide whether the order should be should be unchanged, extended, amended or revoked.

2126 Chief executive to prepare review report

- (1) This section applies if the chief executive has carried out an initial review, or ongoing review, of the operation of a therapeutic protection order.
- (2) The chief executive must prepare a report about the review (a *review report*).
- (3) The review report must include—
- (a) the recommendations made by the review panel to the chief executive about the operation of the therapeutic protection order; and
 - (b) if the chief executive proposes not to implement a recommendation—the chief executive’s reasons for proposing not to implement the recommendation; and
 - (c) the chief executive’s decision about whether the order should be unchanged, extended, amended or revoked.

2127 Review report to be given to certain people

- (1) This section applies if the chief executive has prepared a review report about the operation of a therapeutic protection order that is in force for a child or young person.
- (2) The chief executive must give a copy of the review report to the following people:
 - (a) the child or young person;
 - (b) each person who has an aspect of parental responsibility for the child or young person (other than the chief executive);

Note **Parental responsibility** is dealt with in div 1.3.2.

- (c) each person who had responsibility for day-to-day matters for the child or young person immediately before the order was made;

Note Responsibility for day-to-day matters is dealt with in s 19.

- (d) each official visitor who has visited the child or young person;
- (e) the public advocate.

2128 Chief executive's action after review

- (1) This section applies if the chief executive has carried out an initial review, or ongoing review, of the operation of a therapeutic protection order.
- (2) If the chief executive decides that the order should be extended, the chief executive must apply to the appropriate court for the order to be extended.

Note The Childrens Court may extend the order under div 20.2.6.
The Supreme Court may extend the order under s 2130.

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- (3) If the chief executive decides that the order should be amended, the chief executive must apply to the appropriate court for the order to be amended.

Note Amending a therapeutic protection order is dealt with in div 20.2.7

- (4) If the chief executive decides that the order should be revoked, the chief executive must apply to the appropriate court for the order to be revoked.

Note Revoking a therapeutic protection order is dealt with in div 20.2.7.

Division 20.2.6 Extending a therapeutic protection order

2129 Therapeutic protection order—extension application up to 6 months

The chief executive may apply to the Childrens Court for extension of a therapeutic protection order only if—

- (a) the chief executive reasonably believes that the criteria for extending the order are met; and
- (b) the total length of the order and the proposed extension will not be longer than 6 months.

Note 1 Criteria for extending the order is in s 2134.

Note 2 Statements, documents and reports must be included in the application (see s 2501).

Note 3 Oral applications may also be made (see s 2503).

2130 Therapeutic protection order—extension application longer than 6 months

The chief executive may apply to the Supreme Court for extension of a therapeutic protection order only if—

- (a) the chief executive reasonably believes that the criteria for extending the order are met; and
- (b) the total length of the order and the proposed extension will be longer than 6 months; and
- (c) the public advocate agrees to the proposed extension.

Note 1 Criteria for extending the order is in s 2135.

Note 2 Statements, documents and reports must be included in the application (see s 2501).

Note 3 Oral applications may also be made (see s 2503).

2131 Therapeutic protection order—extension application must state grounds etc

An application for extension of a therapeutic protection order must—

- (a) state the grounds for the proposed extension; and
- (b) include—
 - (i) the therapeutic protection history for the child or young person; and
 - (ii) a further therapeutic protection plan for the child or young person for the period of the proposed extension; and
 - (iii) a further risk assessment for the child or young person.

2132 Therapeutic protection order—who must be given extension application

The chief executive must give a copy of an application for extension of a therapeutic protection order to the following people at least 1 working day before the application is to be heard by the court:

- (a) each party to the proceeding in which the order was made;
- (b) the public advocate.

Note Parties to proceedings are dealt with in pt 23.2.

2133 Therapeutic protection order—court to consider extension application promptly

- (1) The court must list an application for extension of a therapeutic protection order for hearing not later than 2 working days after the day the application is filed.
- (2) The court must hear and decide the application not later than 2 weeks after the day the application is filed.

2134 Therapeutic protection order—criteria for extension up to 6 months

- (1) The Childrens Court may, by order, extend a therapeutic protection order only if satisfied that—
 - (a) if the order is not extended—
 - (i) there will be a significant risk of significant harm to—
 - (A) the child or young person; or
 - (B) someone else; and
 - (ii) the risk of harm arises from the child’s or young person’s conduct; and
 - (iii) the risk of harm will be imminent; and

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- (b) the chief executive has—
- (i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or
 - (ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and
- (c) there are no less restrictive ways for the chief executive to prevent the child or young person from engaging in harmful conduct; and
- (d) if the child or young person is at least 10 years old, but not yet 12 years old—the public advocate agrees to the extension; and
- (e) if the child or young person is suffering from a mental illness—extending the order is the best way to deal with the child or young person; and
- (f) no-one who has an aspect of parental responsibility for the child or young person (other than the chief executive) is able and willing to prevent the child or young person from engaging in harmful conduct; and

Note Parental responsibility is dealt with in div 1.3.2.

- (g) further confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and
- (h) the chief executive has developed a further therapeutic protection plan for the child or young person; and
- (i) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and

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- (j) extending the order is in the best interests of the child or young person.

Note 1 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

- (2) The Childrens Court may extend a therapeutic protection order for as long as a further 8 weeks.
- (3) However, the Childrens Court must not extend a therapeutic protection order if the total length of the order and the proposed extension will be longer than 6 months.

2135 Therapeutic protection order—criteria for extension longer than 6 months

- (1) The Supreme Court may, by order, extend a therapeutic protection order only if satisfied that—
 - (a) if the order is not extended—
 - (i) there will be a significant risk of significant harm to—
 - (A) the child or young person; or
 - (B) someone else; and
 - (ii) the risk of harm arises from the child’s or young person’s conduct; and
 - (iii) the risk of harm will be imminent; and
 - (b) the chief executive has—
 - (i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or

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- (ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and
 - (c) there are no less restrictive ways for the chief executive to prevent the child or young person from engaging in harmful conduct; and
 - (d) if the child or young person is at least 10 years old, but not yet 12 years old—the public advocate agrees to the extension; and
 - (e) if the child or young person is suffering from a mental illness—extending the order is the best way to deal with the child or young person; and
 - (f) no-one who has an aspect of parental responsibility for the child or young person (other than the chief executive) is able and willing to prevent the child or young person from engaging in harmful conduct; and

Note Parental responsibility is dealt with in div 1.3.2.

- (g) further confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and
- (h) the chief executive has developed a further therapeutic protection plan for the child or young person; and
- (i) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and

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- (j) extending the order is in the best interests of the child or young person.

Note 1 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

- (2) In making a decision under subsection (1) (c), (g) and (i), the court must consider the views of a health professional who is not the chief executive.
- (3) The Supreme Court may extend a therapeutic protection order for up to 1 year.
- (4) This section does not limit the number of times the Supreme Court may extend a therapeutic protection order.

2136 Therapeutic protection order extension—statement of reasons

If a court hears and decides an application for extension of a therapeutic protection order, the court must record a written statement of reasons for the decision.

Note A party may apply for the statement of reasons (see s 2526).

Division 20.2.7 Amending or revoking a therapeutic protection order

2137 Therapeutic protection order—application for amendment or revocation

- (1) The following people may apply for amendment, or revocation, of a therapeutic protection order for a child or young person if the person reasonably believes that the criteria for amending, or revoking, the order are met:
 - (a) the chief executive;
 - (b) the child or young person;
 - (c) someone who has an aspect of parental responsibility for the child or young person;
 - (d) a former caregiver of the child or young person;
 - (e) the public advocate.

Note Criteria for amending the order are in s 2142.
 Criteria for revoking the order are in s 2143.

- (2) The application must be made to—
 - (a) if the total length of the therapeutic protection order and any extension is not longer than 6 months—the Childrens Court; or
 - (b) if the total length of the therapeutic protection order and any extension is longer than 6 months—the Supreme Court

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

2138 Therapeutic protection order—application for amendment must state grounds etc

- (1) An application for amendment of a therapeutic protection order must—
 - (a) state—
 - (i) how the provision is proposed to be amended; and
 - (ii) the grounds for the proposed amendment; and
 - (b) if the applicant is the chief executive, include—
 - (i) the therapeutic protection history for the child or young person; and
 - (ii) a revised therapeutic protection plan for the child or young person that takes into account the proposed amendment; and
 - (iii) a further risk assessment for the child or young person.
- (2) If the applicant is not the chief executive, after the chief executive receives a copy of the application, the chief executive must file with the court—
 - (a) the therapeutic protection history for the child or young person; and
 - (b) a revised therapeutic protection plan for the child or young person that takes into account the proposed amendment; and
 - (c) a risk assessment for the child or young person.

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2139 Therapeutic protection order—application for revocation must state grounds etc

- (1) An application for revocation of a therapeutic protection order must—
 - (a) state the grounds for the proposed revocation; and
 - (b) if the applicant is the chief executive, include—
 - (i) the therapeutic protection history for the child or young person; and
 - (ii) a further risk assessment for the child or young person.
- (2) If the applicant is not the chief executive, after the chief executive receives a copy of the application, the chief executive must file with the court—
 - (a) the therapeutic protection history for the child or young person; and
 - (b) a further risk assessment for the child or young person.

2140 Therapeutic protection order—who must be given application for amendment or revocation

The applicant for amendment or revocation of a therapeutic protection order must give a copy of the application to the following people at least 1 working day before the application is to be heard by the court:

- (a) each party to the proceeding in which the order was made;
- (b) the public advocate.

Note Parties to proceedings are dealt with in pt 23.2 (Parties).

2141 Therapeutic protection order—court to consider application for amendment or revocation promptly

- (1) The court must list an application for amendment or revocation of a therapeutic protection order for hearing not later than 2 working days after the day the application is filed.
- (2) The court must hear and decide the application not later than 2 weeks after the day the application is filed.

2142 Therapeutic protection order—criteria for amendment

The court may, by order, amend a therapeutic protection order only if satisfied that—

- (a) if the order is not amended—
 - (i) there will be a significant risk of significant harm to—
 - (A) the child or young person; or
 - (B) someone else; and
 - (ii) the risk of harm arises from the child's or young person's conduct; and
 - (iii) the risk of harm will be imminent; and
- (b) the chief executive has developed a further therapeutic protection plan for the child or young person; and
- (c) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and

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- (d) amending the order is in the best interests of the child or young person.

Note 1 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

2143 Therapeutic protection order—criteria for revocation

The court may, by order, revoke a therapeutic protection order only if satisfied that—

- (a) if the order is revoked, there will be no imminent, significant risk of significant harm to the child or young person or someone else arising from the child's or young person's conduct; and
- (b) revoking the order is in the best interests of the child or young person.

Note 1 In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 2516).

Note 2 The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 2523).

2144 Therapeutic protection order amendment or revocation—statement of reasons

If a court hears and decides an application for amendment or revocation of a therapeutic protection order, the court must record a written statement of reasons for the decision.

Note A party may apply for the statement of reasons (see s 2526).

Part 20.3 Children and young people in therapeutic protection

Division 20.3.1 Preliminary

2145 When is a child or young person *in therapeutic protection*?

In this Act:

in therapeutic protection—a child or young person is *in therapeutic protection* if the child or young person is confined at a therapeutic protection place under a therapeutic protection order.

2146 Effect of therapeutic protection order

A therapeutic protection order for a child or young person requires the chief executive to—

- (a) take the child or young person into therapeutic protection at a therapeutic protection place; and
- (b) keep the child or young person confined at a therapeutic protection place until the order is revoked or otherwise ceases to have effect.

Division 20.3.2 Supervision

2147 Therapeutic protection—supervision

The chief executive may closely or constantly supervise a child or young person in therapeutic protection if the supervision is reasonably necessary to safeguard the child's or young person's wellbeing.

Note An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 2906).

2148 Therapeutic protection—escort outside therapeutic protection place

- (1) A child or young person in therapeutic protection may leave a therapeutic protection place only if escorted by the chief executive.
- (2) A child or young person who leaves a therapeutic protection place, under escort by the chief executive, is taken to be in therapeutic protection.

Division 20.3.3 Visits by accredited people

2149 Who is an *accredited person*?

In this division:

accredited person, for a child or young person in therapeutic protection, means each of the following:

- (a) the chief executive;
- (b) a representative of an entity providing a service or program to the child or young person at a therapeutic protection place;
- (c) a lawyer representing the child or young person;
- (d) an official visitor;

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- (e) the human rights commissioner;
 - (f) the public advocate;
 - (g) the ombudsman;
 - (h) a person prescribed by regulation for this definition.

2150 Therapeutic protection—visits by accredited people must be allowed

To protect the human rights of children and young people in therapeutic protection at therapeutic protection places, the chief executive must ensure, as far as practicable, that children and young people in therapeutic protection have reasonable opportunities to receive visits from accredited people.

2151 Therapeutic protection—visits by accredited people

An accredited person may visit a child or young person in therapeutic protection.

Division 20.3.4 Use of force

2152 Therapeutic protection—managing use of force

- (1) The chief executive must ensure, as far as practicable, that the use of force in relation to the management of a child or young person in therapeutic protection is always—
 - (a) a last resort; and
 - (b) in accordance with this part.

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- (2) Without limiting section 2197 (Therapeutic protection place—policies and procedures), the chief executive must make a therapeutic protection place policy or operating procedure in relation to the use of force, including provision in relation to the following:

- (a) the circumstances, and by whom, force may be used;
- (b) the kinds of force that may be used.

Note The power to make a therapeutic protection place policy or operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

2153 Therapeutic protection—authorised use of force

- (1) The chief executive may use force that is necessary and reasonable for any of the following:
- (a) to prevent unlawful damage, destruction or interference with property;
 - (b) to prevent a child or young person in therapeutic protection from inflicting self-harm or harming someone else.
- (2) However, the chief executive may use force only if the chief executive believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

2154 Therapeutic protection—application of force

- (1) The chief executive may use force under this division only if the chief executive—
- (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.
- (2) However, the chief executive need not comply with subsection (1) (b) if, in urgent circumstances, the chief executive believes, on reasonable grounds, that doing so would create a risk of injury to the chief executive, the child or young person in therapeutic protection or anyone else.

Example of urgent circumstances

the child or young person 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).

2155 Therapeutic protection—medical examination after use of force

The chief executive must ensure that any child or young person in therapeutic protection injured by the use of force under this division is examined as soon as practicable by a doctor and that appropriate health care is available to the child or young person.

Division 20.3.5 Searches

Subdivision 20.3.5.1 Application and definitions—div 20.3.5

2156 Application—div 20.3.5

This division applies to a child or young person who is in therapeutic protection.

2157 **What is a *scanning search*?**

In this part:

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

Examples of scanning searches

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

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).

2158 **What is a *frisk search*?**

In this part:

frisk search, of a child or young person, means—

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

2159 **What is an *ordinary search*?**

In this part:

ordinary search, of a child or young person, means a search of the child or young person or of anything in the child's or young person's possession, and may include—

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

2160 **What is a *body search*?**

In this part:

body search, of a child or young person, means a search of the child's or young person's body, including an examination of an orifice or cavity of the child's or young person's body.

2161 **What is a *strip search*?**

In this part:

strip search, of a child or young person, means a search of the child or young person, or of articles in the child's or young person's possession, under section 2170 (Strip searches—authorisation) that may include—

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

2162 **What is a *dangerous thing*?**

In this part:

dangerous thing means a thing that, if used by, or allowed to remain with, a child or young person, may—

- (a) cause serious damage to the health of the child or young person or someone else; or
- (b) threaten the life of the child or young person or someone else.

Subdivision 20.3.5.2 Searches generally

2163 **Searches—intrusiveness**

A person carrying out a search of a child or young person under this part must ensure, as far as practicable, that—

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

Example

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

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).

2164 **Searches—transgender or intersex child or young person**

- (1) This section applies if a transgender or intersex child or young person is to be searched under this part.
- (2) The child or young person may require that either a male or a female carry out the search.

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- (3) If the child or young person requires that a male carry out the search, the child or young person is taken, for this part, to be male.
 - (4) If the child or young person requires that a female carry out the search, the child or young person is taken, for this part, to be female.

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

2165 Searches—use of force

- (1) The chief executive may use force—
 - (a) to carry out a search under this division; or
 - (b) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- (2) However, the chief executive may use force only in accordance with division 20.3.4.

Subdivision 20.3.5.3 Scanning, frisk and ordinary searches

2166 Scanning, frisk and ordinary searches—authorisation

- (1) The chief executive may, at any time, carry out a scanning search, frisk search or ordinary search of a child or young person if the chief executive believes, on reasonable grounds, the search is prudent for security or good order at a detention centre.
- (2) Also, the chief executive may carry out a scanning search, frisk search or ordinary search of a child or young person if the chief executive suspects, on reasonable grounds, that the child or young person is carrying—
 - (a) a dangerous thing; or

-
- (b) something that may be used by the child or young person in a way that may involve—
 - (i) an offence; or
 - (ii) a risk to the personal safety of the child or young person or someone else; or
 - (iii) a risk to security or good order at a therapeutic protection place.

2167 Scanning, frisk and ordinary searches—requirements before search

- (1) This section applies if the chief executive proposes to carry out a scanning, frisk or ordinary search of a child or young person.
- (2) Before the search is carried out, the chief executive must tell the child or young person—
 - (a) about the search; and
 - (b) the reasons for the search.
- (3) If the child or young person asks why the search is to be carried out in a particular way, the chief executive must tell the child or young person the reasons.
- (4) The chief executive must ask for the child’s or young person’s cooperation for the search.

2168 Frisk and ordinary searches—privacy

- (1) A frisk search or ordinary search of a child or young person may only be carried out in—
 - (a) a private area; or
 - (b) an area that provides reasonable privacy for the child or young person.

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- (2) A frisk search or ordinary search of a child or young person must not be carried out in the presence or sight of—
 - (a) another child or young person; or
 - (b) someone whose presence is not necessary for the search or for the safety of anyone present.
 - (3) A frisk search of a child or young person must be carried out by an authorised person of the same sex as the child or young person.
 - (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 child or young person or someone else; and
 - (b) compliance with subsection (3) would exacerbate the threat.

2169 Scanning, frisk and ordinary searches—clothing

If clothing from a child or young person is seized during a scan search, frisk search or ordinary search, the chief executive must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

Note Seizure of things found during the search is dealt with in div 20.3.6.

Subdivision 20.3.5.4 Strip searches

2170 Strip searches—authorisation

- (1) The chief executive may strip search a child or young person only if—
 - (a) the chief executive suspects, on reasonable grounds, that the child or young person has a dangerous thing concealed on the child or young person; and

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- (b) a scanning search, frisk search or ordinary search of the child or young person has failed to detect the thing.
 - (2) In making a decision under subsection (1), the chief executive must have regard to the child's or young person's age, maturity and any known history.

2171 Strip searches—requirements before search

- (1) This section applies if the chief executive proposes to strip search a child or young person.
- (2) Before the search is carried out, the chief executive must tell the child or young person—
 - (a) about the search; and
 - (b) the reasons for the search; and
 - (c) whether the child or young person will be required to remove clothing during the search; and
 - (d) if the child or young person will be required to remove clothing—why the removal is necessary.
- (3) If the child or young person asks why the search is being carried out in a particular way, the chief executive must tell the child or young person the reasons.
- (4) The chief executive must ask for the child's or young person's cooperation for the search.

2172 Strip searches—second authorised person must be present

- (1) A strip search of a child or young person must be carried out—
 - (a) by an authorised person of the same sex as the child or young person; and

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- (b) in the presence of 1 or more other authorised people, each of whom must be the same sex as the child or young person.
 - (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.
 - (3) The person carrying out the search may direct someone else mentioned in subsection (1) (b) to provide the assistance that the person believes, on reasonable grounds, is necessary and reasonable for the search.
 - (4) The requirement in subsection (1) (b) that a person be the same sex as the child or young person does not apply if the chief executive believes on reasonable grounds that—
 - (a) there is an imminent and serious threat to the personal safety of the child or young person or someone else; and
 - (b) compliance with the requirement would exacerbate the threat.

2173 Strip searches—support person must be present

The chief executive must ensure that the strip search is carried out 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 child or young person; and
- (b) the child or young person agrees should be present at the search.

2174 Strip searches—directing support person to leave

- (1) This section applies if a child or young person is being strip searched in the presence of a support person under section 2173.

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- (2) The chief executive may direct the support person to leave if the chief executive believes, on reasonable grounds, that the support person is preventing or hindering the search.
 - (3) If the support person leaves, the search may continue in the absence of the support person.

2175 Strip searches—general rules

If the chief executive is strip searching a child or young person, the chief executive must carry out the search—

- (a) in a way that is appropriate, having regard as far as practicable, to the child's or young person's sexuality and any known impairment, condition or history; and
- (b) as quickly as practicable.

2176 Strip searches—privacy

- (1) A strip search of a child or young person may only be carried out in—
 - (a) a private area; or
 - (b) an area that provides reasonable privacy for the child or young person.
- (2) If the chief executive is strip searching a child or young person, the chief executive must carry out the search in a way that provides reasonable privacy for the child or young person.
- (3) A strip search of a child or young person must not be carried out—
 - (a) in the presence of anyone of the opposite sex to the child or young person, other than—
 - (i) a person present under section 2172 (Strip searches—second authorised person must be present); or

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- (ii) a support person present under section 2173 (Strip searches—support person must be present); or
 - (b) in the presence or sight of someone whose presence is not necessary for the search or for the safety of anyone present.

2177 Strip searches—no touching body

A strip search must not involve touching the child's or young person's body.

2178 Strip searches—visual inspection of body

- (1) If the chief executive is strip searching a child or young person, the chief executive must not visually inspect the following areas of the child or young person unless the officer suspects, on reasonable grounds, that it is necessary to do so for the search:
 - (a) the genital area;
 - (b) for a female child or young person—the breasts.
- (2) A strip search of a child or young person must not involve more visual inspection of the child's or young person's body than is necessary and reasonable for the search.
- (3) Without limiting subsection (2), during the strip search of the child or young person, any visual inspection of the following areas of the child or young person must be kept to a minimum:
 - (a) the genital area;
 - (b) the anal area;
 - (c) the buttocks;
 - (d) for a female child or young person—the breasts.

2179 Strip searches—clothing

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

Note Seizure of things found during the search is dealt with in div 20.3.6.

Subdivision 20.3.5.5 Body searches**2180 Body searches—directions**

- (1) The chief executive may direct an authorised doctor to carry out a body search of a child or young person only if the chief executive suspects, on reasonable grounds, that the child or young person has ingested or inserted something that may jeopardise the child's or young person's health or wellbeing.
- (2) In making a decision under subsection (1), the chief executive must have regard to the child's or young person's age, maturity and any known history.

2181 Body searches—requirements before search

- (1) This section applies if the chief executive has directed an authorised doctor to carry out a body search of a child or young person.
- (2) Before the search is carried out, the chief executive must tell the child or young person—
 - (a) about the search; and
 - (b) the reasons for the search; and
 - (c) whether the child or young person will be required to remove clothing during the search; and
 - (d) if the child or young person will be required to remove clothing—why the removal is necessary.
- (3) If the child or young person asks why the search is to be carried out in a particular way, the chief executive must tell the child or young person the reasons.
- (4) The chief executive must ask for the child’s or young person’s cooperation for the search.

2182 Body searches—authorised nurse must be present

- (1) An authorised nurse must be present during the body search of a child or young person.
- (2) If the authorised doctor carrying out the body search is not the same sex as the child or young person, the authorised nurse present must be the same sex as the child or young person.

2183 Body searches—another person may be present

- (1) The chief executive may direct another person to be present during the body search of a child or young person.

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- (2) However, the number of 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.

2184 Body searches—support person must be present

The chief executive must ensure that the body search is carried out 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 child or young person; and
- (b) the child or young person agrees should be present at the search.

2185 Body searches—directing support person to leave

- (1) This section applies if a child or young person is being body searched in the presence of a support person under section 2184.
- (2) The chief executive may direct the support person to leave if the chief executive believes, on reasonable grounds, that the support person is preventing or hindering the search.
- (3) If the support person leaves, the search may continue in the absence of the support person.

2186 Body searches—touching body

- (1) This section applies to—
 - (a) an authorised doctor who is—
 - (i) body searching a child or young person; and
 - (ii) the same sex as the child or young person; and
 - (b) an authorised nurse who is—
 - (i) present at a body search of a child or young person; and

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- (ii) the same sex as the child or young person.
- (2) The authorised doctor or authorised nurse may touch the young child or young person and examine the child's or young person's body orifices and cavities for the search.

2187 Body searches—clothing

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

2188 Body searches—assistance

- (1) This section applies if an authorised doctor who is body searching a child or young person asks the chief executive for the assistance that the doctor believes on reasonable grounds is necessary and reasonable for the search.
- (2) The chief executive may direct or authorise someone else present at the search (the *assistant*) to assist in the search.

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- (3) However, the assistant must, unless the seriousness and urgency of the circumstances make it impracticable, be the same sex as the child or young person.

2189 Body searches—authorised doctor may seize things

- (1) An authorised doctor who is body searching a child or young person may seize anything that the child or young person has ingested or inserted that may jeopardise the child's or young person's health or wellbeing that is discovered during the search.
- (2) However, the authorised doctor may seize the thing only if seizing the thing would not be likely to cause injury to the child or young person or someone else.
- (3) The authorised doctor must give the thing seized to the chief executive as soon as practicable.

Note Seizure of things found during the search is further dealt with in div 20.3.6.

Division 20.3.6 Seizing dangerous things

2190 Seizing property—who is the owner?

In this division:

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

2191 Seizing property—dangerous things may be seized

- (1) The chief executive may seize a dangerous thing found on a child or young person or in a child's or young person's custody or possession, unless the child or young person has the written approval of the chief executive to possess the thing.

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- (2) To remove any doubt, this section applies to any dangerous thing found in a search under this division.

2192 Seized property—must tell owner

- (1) As soon as practicable, but not later than 1 week, after the day a thing is seized under section 2191, the chief executive must tell the following people, in writing (a *seizure notice*), about the seizure:
- (a) the owner of the thing seized;
 - (b) if the owner cannot be identified after reasonable efforts (considering the thing's apparent value)—the person from whom the thing was seized.
- (2) The seizure notice must—
- (a) identify the thing seized; and
 - (b) outline the grounds for the seizure; and
 - (c) include a statement about the effect of section 2193; and
 - (d) include anything else prescribed by regulation.

2193 Seized property—forfeiture

- (1) A thing seized under section 2191 (Seizing property—dangerous things may be seized) is forfeited to the Territory if—
- (a) after making reasonable efforts (considering the thing's apparent value), the chief executive is satisfied that—
 - (i) the owner of the thing cannot be found; or
 - (ii) the thing cannot be returned to the owner; or
 - (b) the chief executive is satisfied that—
 - (i) possession of the thing by the child or young person is an offence; or

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- (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 the chief executive
- 2 dumping a forfeited thing of little value

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

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

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

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

2194 Seized property—return

- (1) If a thing seized under section 2191 (Seizing property—dangerous things may be seized) is not forfeited to the Territory, the chief executive must return the thing to its owner—
- (a) at the end of the 6 months after the day the thing was seized; or
 - (b) if a proceeding for an offence involving the thing is started not later than the 6 months—at the end of the proceeding and any appeal from the proceeding.

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- (2) However, if the thing was being kept as evidence of an offence and the chief executive believes, on reasonable grounds, that keeping the thing as evidence is no longer necessary, the chief executive must return the thing immediately to its owner.

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Part 20.4 Therapeutic protection— administration

Division 20.4.1 Therapeutic protection places

2195 Therapeutic protection place—declaration

- (1) The Minister may declare (a *therapeutic protection place declaration*) a place to be a therapeutic protection place for this Act.
- (2) However, the Minister may declare a place to be a therapeutic protection place only if the place—
 - (a) is not used to accommodate detainees; and
 - (b) complies with the therapeutic protection place standards.

Note The Minister may make therapeutic protection place standards under s 3211.

- (3) A therapeutic protection place declaration is a notifiable instrument.

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

- (4) In this section:

detainee includes a detainee under the *Crimes (Sentence Administration) Act 2005*, dictionary.

Note An authorised person may, at any reasonable time, enter a place if the chief executive is deciding whether to declare the place as a therapeutic protection place under this section (see s 2906).

2196 Therapeutic protection place—exclusion of matters from declaration

The chief executive may exclude from a therapeutic protection place declaration any matter that the chief executive believes, on reasonable grounds, would be likely to disclose the location of a therapeutic protection place.

2197 Therapeutic protection place—policies and procedures

- (1) The chief executive may make therapeutic protection place policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of therapeutic protection places.
- (2) Each therapeutic protection place policy or operating procedure is a notifiable instrument.

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

Note 2 The amendment or repeal of a therapeutic protection place policy or operating procedure is also a notifiable instrument (see Legislation Act, s 46 (Power to make instrument includes power to amend or repeal)).

Note 3 The chief executive must make a therapeutic protection place policy or operating procedure in relation to the use of force, including provision in relation to the circumstances, and by whom, force may be used and the kinds of force that may be used (see s 2152).

Note 4 An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 2906).

Division 20.4.2 Therapeutic protection plan

2198 Public advocate and official visitor may be given therapeutic protection plan

If the public advocate or an official visitor asks the chief executive for a therapeutic protection plan for a child or young person, the chief executive must promptly give the public advocate or official visitor a copy of the plan.

Note The therapeutic protection plan is protected information (see ch 29).

Division 20.4.3 Therapeutic protection review panel

2199 Therapeutic protection review panel—establishment

The therapeutic protection review panel is established.

Note Members of the panel are protected from liability under s 3203.

2200 Therapeutic protection review panel—functions

The therapeutic protection review panel has the following functions:

- (a) to review the operation of therapeutic protection orders;
- (b) to make recommendations to the chief executive about the operation of therapeutic protection orders;
- (c) to provide advice to the chief executive about therapeutic protection orders.

2201 Therapeutic protection review panel—guidelines

- (1) The chief executive may make guidelines about—
 - (a) appointment of members of the therapeutic protection review panel; and

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- (b) how the therapeutic protection review panel may exercise its functions; and
 - (c) anything else about the therapeutic protection review panel that the chief executive considers appropriate.
- (2) The guidelines are a notifiable instrument.

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

2202 Therapeutic protection review panel—members

The therapeutic protection review panel has at least 3 members.

2203 Therapeutic protection review panel—appointment of members

- (1) The chief executive may appoint the members of the therapeutic protection review panel.

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).

- (2) The chief executive must ensure that there is always at least 1 member who is not—
- (a) the chief executive; or
 - (b) statutory office holder.
- (3) The appointment of a member is for the term stated in the appointment.
- (4) The conditions of appointment of a member are the conditions stated in the appointment.

Division 20.4.4 Authorised health professionals

2204 Authorised health professionals

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

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

- (2) However, the chief executive must ensure, as far as practicable, that a child's or young person's treating health professional is not asked to exercise a function as an authorised health professional under this chapter in relation to the child or young person.
- (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 child or young person or someone else; and
 - (b) compliance with subsection (2) would exacerbate the threat.
- (4) In this section:

treating health professional, in relation to a child or young person, means a health professional who has a professional relationship with the child or young person for the provision of health services.

Division 20.4.5 Therapeutic protection register

2205 Therapeutic protection register

- (1) The chief executive must establish a register (the **therapeutic protection register**) of children and young people for whom the Childrens Court makes an interim therapeutic protection order or a therapeutic protection order.

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- (2) The therapeutic protection register must include the following details for each child or young person for whom the Childrens Court makes an interim therapeutic protection order or a therapeutic protection order:
- (a) name, sex and date of birth;
 - (b) details of the therapeutic protection order;
 - (c) the therapeutic protection plan for each proposed period of confinement;
 - (d) if the therapeutic protection order is reviewed by a therapeutic protection review panel—
 - (i) when the order was reviewed; and
 - (ii) the members of the therapeutic protection review panel; and
 - (iii) a copy of the review report;
 - (e) the therapeutic protection history for each period of confinement;
 - (f) if the child or young person is strip searched or body searched during a period of confinement—
 - (i) the reason for the search; and
 - (ii) when and where the search was carried out; and
 - (iii) the name of each person present at any time during the search; and
 - (iv) details of anything seized during the search; and
 - (v) details of any force used for carrying out the search, and why force was used;

Note Strip searches are authorised under s 2170.
Body searches are authorised under s 2180.

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- (g) if force was used on the child or young person during the period of confinement—the reason why force was used;
 - (h) where and with whom the child or young person lived before the period of confinement;
 - (i) anything else prescribed by regulation for this section.

Note Information in the therapeutic protection register is protected information (see ch 29).

- (3) The register may contain anything else the chief executive considers relevant.

2206 Therapeutic protection register—who may have access?

- (1) The following people may have access to the therapeutic protection register:
 - (a) a person authorised by the chief executive;
 - (b) a magistrate;
 - (c) a judge;
 - (d) a member of the Legislative Assembly;
 - (e) the ombudsman;
 - (f) an official visitor;
 - (g) the human rights commissioner;
 - (h) the privacy commissioner;
 - (i) the public advocate;
 - (j) anyone else prescribed by regulation for this section.

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- (2) The chief executive must ensure that the therapeutic protection register is only accessed by the people mentioned in subsection (1).

Note An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 2906).

2207 Therapeutic protection register—public advocate to inspect

The public advocate must inspect the therapeutic protection register at least once every 3 months.

2208 Therapeutic protection register—monthly report

- (1) The chief executive must, each month, give a therapeutic protection register report to—
- (a) the Minister; and
 - (b) the public advocate; and
 - (c) the human rights commissioner.
- (2) In this section:

therapeutic protection register report, for a month, means a summary of the details in the therapeutic protection register for the month.

Chapter 21 Care and protection—interstate transfer of orders and proceedings

Part 21.1 Preliminary

2300 Object of ch 21

The object of this chapter is to provide for the transfer of care and protection orders and proceedings between the ACT and a State or between the ACT and New Zealand—

- (a) so that children and young people who are in need of protection may be protected despite moving from one jurisdiction to another; and
- (b) to facilitate the quick finalisation of court proceedings for the protection of a child or young person.

2301 Definitions—ch 21

In this chapter:

child welfare law—see section 2304.

child welfare order, for a child or young person—see section 2302.

child welfare proceeding—see section 2303.

government agency, of a State, includes a department or statutory authority of the State.

interim child welfare order—see section 2324.

interstate law—see section 2305.

interstate officer—see section 2306.

participating State means a State where an interstate law is in force.

sending State, for a child welfare order or child welfare proceeding, means the State from which the order or proceeding is transferred under this chapter or an interstate law.

State includes New Zealand.

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

welfare body, for a State, means—

- (a) a Minister of the State; or
- (b) a government agency of the State; or
- (c) the chief executive (however described) of a government agency of the State; or
- (d) a person who holds another position in, or is employed by, a government agency of the State; or
- (e) an organisation, or the chief executive (however described) of an organisation, in the State.

2302 What is a *child welfare order*?

In this chapter:

child welfare order, for a child or young person, means an order (other than an interim child welfare order) under a child welfare law for the child or young person if the order—

- (a) relates to an aspect of parental responsibility (however described) for the child or young person; and

(b) either—

- (i) gives the aspect of parental responsibility (however described) to a welfare body; or
- (ii) shares the aspect of parental responsibility (however described) with a welfare body.

2303 What is a *child welfare proceeding*?

In this chapter:

child welfare proceeding means a proceeding brought in a court under a child welfare law for—

- (a) the making of a child welfare order or an interim child welfare order; or
- (b) the amendment, extension or revocation of a child welfare order or an interim child welfare order.

2304 What is a *child welfare law*?

(1) In this chapter:

child welfare law means—

- (a) the care and protection chapters; or
 - (b) a law of a State that corresponds to the care and protection chapters; or
 - (c) a law of a State declared by the Minister under subsection (2) to be a child welfare law for this chapter.
- (2) The Minister may, in writing, declare a law of a State to be a child welfare law for this chapter if satisfied that the law corresponds, or substantially corresponds, to the care and protection chapters.

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- (3) A declaration is a notifiable instrument.

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

2305 What is an interstate law?

- (1) In this chapter:

interstate law means—

- (a) a law of a State that corresponds to this chapter; or
 - (b) a law declared by the Minister under subsection (2) to be an interstate law for this chapter.
- (2) The Minister may, in writing, declare a law of a State to be an interstate law for this chapter if satisfied that the law corresponds or substantially corresponds to this chapter.
- (3) A declaration is a notifiable instrument.

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

2306 Who is an *interstate officer*?

- (1) In this chapter:

interstate officer, for a State, means—

- (a) the person holding the position that has the main responsibility, under the child welfare law of the State, for the protection of children and young people in the State; or
 - (b) the holder of a position in the State that is declared by the Minister under subsection (2) to be an interstate officer position for the State for this chapter.
- (2) The Minister may, in writing, declare a position in a State to be an interstate officer position for the State for this chapter.

(3) A declaration is a notifiable instrument.

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

EXPOSURE DRAFT

Part 21.2 Interstate transfer of ACT child welfare orders

Division 21.2.1 Transfers of orders by chief executive

2307 Chief executive may transfer child welfare order

- (1) The chief executive may transfer a child welfare order (the *home order*) for a child or young person to a participating State if—
 - (a) in the chief executive’s opinion, a child welfare order to the same or a similar effect as the home order could be made under the child welfare law of the State; and
 - (b) the home order is not subject to an appeal to the Supreme Court or affected by a proceeding for judicial review; and
 - (c) the relevant interstate officer has agreed to the transfer and to the proposed terms of the child welfare order to be transferred (the *interstate order*); and
 - (d) if the chief executive is satisfied that the child or young person is able to understand the proposal to transfer the order—the chief executive has sought and considered the child’s or young person’s views and wishes; and
 - (e) anyone whose agreement to the transfer is required under section 2308 has agreed.
- (2) The chief executive may include in the interstate order any condition that could be included in a child welfare order of that kind made in the relevant participating State.
- (3) In making a decision under subsection (1) (a), the chief executive must not take into account the period for which it is possible to make a child welfare order of that kind in the State.

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- (4) The period for which an interstate order is to remain in force must be decided by the chief executive and stated in the interstate order.
 - (5) The period must be—
 - (a) if the remaining period of the home order at the date of registration of the interstate order in the participating State is a period for which an order may be made under the child welfare law of the State—the remaining period; or
 - (b) in any other case—as similar a period as may be made under that law but no longer than the period of the home order.

2308 Chief executive transfer—certain people must agree

- (1) For section 2307 (1) (e), agreement to the transfer of the order for the child or young person is required from—
 - (a) if the child or young person is school-leaving age or older—the child or young person; and
 - Note* School-leaving age is 15 years old (see dict).
 - (b) each parent of the child or young person; and
 - (c) each person who has responsibility for day-to-day matters for the child or young person under a parental responsibility provision in a care and protection order for the child or young person; and
 - Note* Parental responsibility provisions are dealt with in pt 18.6.
 - (d) each other person with responsibility for day-to-day matters, or long-term matters, for the child or young person; and
 - (e) each person who is allowed contact with the child or young person under a contact provision in a care and protection order for the child or young person.

Note Contact provisions are dealt with in pt 18.7.

EXPOSURE DRAFT

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- (2) If the child or young person lives in a State with a person who has responsibility for day-to-day matters for the child or young person under a parental responsibility provision in a care and protection order in force for the child or young person, it is sufficient if each person required to agree agrees to the child or young person living in the State and their agreement to the transfer is not required.
- (3) If a relevant person lives in or is intending to live in the relevant participating State, it is sufficient if each other relevant person agrees to the child or young person living in the State and the agreement of the person to the transfer is not required.
- (4) However, a person's agreement is not required if—
- (a) the person cannot be found after reasonable inquiry; or
 - (b) the person does not have capacity to agree.
- (5) In this section:
- relevant person*, for a child or young person, means—
- (a) a parent of the child or young person; and
 - (b) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person (under a parental responsibility provision in a care and protection order or otherwise).

2309 Chief executive transfer—certain people must be told

- (1) This section applies if the chief executive decides to transfer a child welfare order for a child or young person to a participating State under this subdivision.

EXPOSURE DRAFT

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- (2) As soon as practicable, but not later than 3 working days, after the day the chief executive makes the decision, the chief executive must tell the following people about the decision:
 - (a) the child or young person;
 - (b) the parents of the child or young person;
 - (c) each other person who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) the public advocate.

2310 Chief executive transfer—limited time for review

- (1) A proceeding for judicial review of a decision of the chief executive to transfer a child welfare order to a participating State must be started, and originating process given to the chief executive, not later than 10 working days after the day the chief executive decided to transfer the order.
- (2) A proceeding for judicial review must comply with the relevant rules of court.
- (3) However, the Supreme Court must not extend the 10 working days mentioned in subsection (1).
- (4) The lodging (or filing) and service on the chief executive of an originating process mentioned in subsection (1) stays the operation of the decision until the proceeding is determined.

Division 21.2.2 Transfer of orders by Childrens Court

2311 Childrens Court transfer—application

- (1) The chief executive may apply to the Childrens Court for an order (a *child welfare order transfer order*) transferring a child welfare order to a participating State.

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- (2) The chief executive must give a copy of the application to each person to whom the chief executive would have been required under the care and protection chapters to give a copy of an application by the chief executive for amendment of the child welfare order.

2312 Childrens Court transfer—criteria

The Childrens Court may, on application by the chief executive, make a child welfare order transfer order for a child welfare order if—

- (a) the child welfare order is not subject to an appeal to the Supreme Court; and
- (b) the relevant interstate officer has agreed to—
- (i) the transfer; and
 - (ii) the proposed terms of the child welfare order.

2313 Childrens Court transfer—interstate orders

- (1) If the Childrens Court decides to transfer a child welfare order (the *home order*), the kind of child welfare order to be transferred (the *interstate order*) must be a child welfare order that—
- (a) could be made under the child welfare law of the participating State; and
- (b) the court believes to be—
- (i) to the same or a similar effect as the home order; or
 - (ii) otherwise in the best interests of the child or young person.
- (2) The Childrens Court may include in the interstate order any condition that could be included in a child welfare order of that kind made in the relevant participating State.

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- (3) In deciding under subsection (1) whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Childrens Court must not take into account the period for which it is possible to make a child welfare order of that kind in the State.
 - (4) The period for which an interstate order is to remain in force must be decided by the Childrens Court and stated in the interstate order.
 - (5) The period must be a period—
 - (a) for which a child welfare order of the kind of the interstate order may be made under the child welfare law of the participating State; and
 - (b) that the Childrens Court considers appropriate.

2314 Childrens Court transfer—considerations

In deciding what order to make on an application under this subdivision, the Childrens Court must have regard to—

- (a) whether the chief executive or an interstate officer is in the better position to exercise powers and responsibilities under a child welfare order for the child or young person; and
- (b) the desirability of a child welfare order being an order under the child welfare law of the State where the child or young person lives.

2315 Childrens Court transfer—care plans

- (1) The Childrens Court may make a child welfare order transfer order only if it has received and considered a care plan prepared by the chief executive for the proposed transfer.
- (2) Unless the Childrens Court orders otherwise, the chief executive must provide a copy of the care plan to each person who was a party to the proceeding in which the original order was made.

EXPOSURE DRAFT

2316 Childrens Court transfer—appeal applications

- (1) This section applies if the Childrens Court has made a final child welfare order transfer order (the *final order*).
- (2) A party to the application for the order may appeal on a question of law to the Supreme Court.
- (3) The appeal must be started, and originating process must be given to the chief executive, not later than 10 working days after the day the final order was made.
- (4) The appeal operates as stay of the final order.
- (5) The appeal must comply with the relevant rules of court.
- (6) However, the Supreme Court must not extend the 10 working days mentioned in subsection (3).

2317 Childrens Court transfer—appeals

- (1) The Supreme Court must hear and decide the appeal as quickly as possible.
- (2) After deciding the appeal, the Supreme Court may make any order it considers appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.
- (3) An order, other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.
- (4) The Supreme Court may make any interim care and protection order pending the hearing of the appeal that the Childrens Court has jurisdiction to make.

Note Interim care and protection orders are dealt with in div 18.3.2.

Division 21.2.3 Interstate registration of ACT orders

2318 Interstate registration of ACT orders—effect

- (1) A child welfare order made by the Childrens Court under the care and protection chapters for a child or young person ceases to have effect when an order for the child or young person is registered in a participating State under an interstate law.
- (2) However, if the registration is revoked in the participating State under the interstate law, the order that ceased to have effect is revived and has effect in accordance with its terms.

2319 Interstate registration of ACT orders—revocation

- (1) This section applies if the registrar of the Childrens Court is told under a provision of an interstate law equivalent to section 2330 that the registration of a child welfare order transfer order has been revoked.
- (2) The registrar must tell the chief executive about the revocation.
- (3) The chief executive must tell the following people about the revocation:
 - (a) the child or young person who is the subject of the transferred order or proceeding;
 - (b) the parents of the child or young person;
 - (c) each other person who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) the parties to the proceeding in which the decision to transfer the order or proceeding was made.

2320 Interstate registration of ACT orders—Childrens Court file

- (1) This section applies if, under this division—
 - (a) a child welfare order is transferred to a State Childrens Court—
 - (i) by the chief executive under division 21.2.1; or
 - (ii) by the Childrens Court under division 21.2.2; and
 - (b) the transfer decision or child welfare order transfer order is not subject to appeal or review or a stay; and
 - (c) the time for starting an appeal or seeking a review has ended.
- (2) The registrar of the Childrens Court must give the following things to the State Childrens Court of the participating State:
 - (a) all documents filed in the Childrens Court for the child welfare proceeding for the child welfare order;
 - (b) an extract from any part of the register that relates to the child welfare proceeding for the child welfare order.

EXPOSURE DRAFT

Part 21.3 Interstate transfer of ACT child welfare proceedings

2321 Transfer of ACT proceedings—applications

- (1) The chief executive may apply to the Childrens Court for an order (a *child welfare proceeding transfer order*) transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State.
- (2) The chief executive must give a copy of the application to—
 - (a) the child or young person; and
 - (b) the parents of the child or young person; and
 - (c) each other person who has responsibility for day-to-day matters, or long-term matters, for the child or young person; and
 - (d) the public advocate.

2322 Transfer of ACT proceedings—criteria

- (1) The Childrens Court may, on application by the chief executive, make a child welfare proceeding transfer order if the relevant interstate officer has agreed to the transfer.
- (2) The proceeding is discontinued in the Childrens Court when the child welfare proceeding transfer order is registered in the State Childrens Court of the participating State under the interstate law.

2323 Transfer of ACT proceedings—considerations

In deciding whether to make a child welfare proceeding transfer order, the Childrens Court must have regard to—

- (a) whether another proceeding for the child or young person is pending, or has previously been heard and decided, under the child welfare law in the participating State; and
- (b) where any matter giving rise to the proceeding in the court happened; and
- (c) where any of the following people lives or is likely to live:
 - (i) the child or young person;
 - (ii) the parents of the child or young person;
 - (iii) each other person who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (iv) anyone else who is significant to the child or young person.

2324 Transfer of ACT proceedings—interim orders

- (1) If the Childrens Court makes a child welfare proceeding transfer order, the court must also make an interim order (an *interim child welfare order*) for the care, welfare or development of the child or young person.
- (2) An interim child welfare order may do any of the following:
 - (a) give an aspect of parental responsibility for the child or young person to someone;
 - (b) allow contact between the child or young person and someone;

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- (c) give responsibility for the supervision of the child or young person to—
 - (i) the interstate officer in the participating State; or
 - (ii) another person in that State to whom responsibility for the supervision of a child or young person could be given under the child welfare law of that State.
 - (3) The length of an interim child welfare order must—
 - (a) be stated in the order; and
 - (b) be not longer than 30 days.
 - (4) The State Childrens Court of the participating State may amend, extend or revoke the interim child welfare order.

2325 Transfer of ACT proceedings—appeal applications

- (1) This section applies if the Childrens Court has made a final child welfare proceeding transfer order (the *final order*).
- (2) A party to the application for the order may appeal on a question of law to the Supreme Court.
- (3) The appeal must be started, and originating process must be given to the chief executive, not later than 3 working days after the day the final order was made.
- (4) The appeal operates as stay of the final order but not of any interim child welfare order made at the same time as the final order.
- (5) The appeal must comply with the relevant rules of court.
- (6) However, the Supreme Court must not extend the 3 working days mentioned in subsection (3).

EXPOSURE DRAFT

2326 Transfer of ACT proceedings—appeals

- (1) The Supreme Court must hear and decide the appeal as quickly as possible.
- (2) After deciding the appeal, the Supreme Court may make any order it considers appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.
- (3) An order, other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.
- (4) The Supreme Court may—
 - (a) make an order staying the operation of an interim child welfare order made at the same time as the appealed order; or
 - (b) amend, extend or revoke an interim child welfare order made at the same time as the appealed order; or
 - (c) make any interim care and protection order pending the hearing of the appeal that the Childrens Court has jurisdiction to make.

Note Interim care and protection orders are dealt with in div 18.3.2.

2327 Transfer of ACT proceedings—revocation of registration

- (1) This section applies if the registrar of the Childrens Court is told under a provision of an interstate law equivalent to section 2336 that the registration of a child welfare proceeding transfer order has been revoked.
- (2) The registrar must tell the chief executive about the revocation.
- (3) The chief executive must tell the following people about the revocation:
 - (a) the child or young person who is the subject of the transferred order or proceeding;

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- (b) the parents of the child or young person;
 - (c) each other person who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) the parties to the proceeding in which the decision to transfer the order or proceeding was made.

2328 Transfer of ACT proceedings—Childrens Court file

- (1) This section applies if, under this division—
 - (a) a child welfare proceeding is transferred to a State Childrens Court by the Childrens Court under part 21.3 (Interstate transfer of ACT child welfare proceedings); and
 - (b) the child welfare proceeding transfer order is not subject to appeal or review or a stay; and
 - (c) the time for starting an appeal or seeking a review has ended.
- (2) The registrar of the Childrens Court must give the following things to the State Childrens Court of the participating State:
 - (a) all documents filed in the Childrens Court for the child welfare proceeding;
 - (b) an extract from any part of the register that relates to the child welfare proceeding.

EXPOSURE DRAFT

Part 21.4 ACT registration of interstate child welfare orders

2329 ACT registration—interstate child welfare orders

- (1) If a child welfare order (an *interstate child welfare order*) is transferred to the ACT under an interstate law, the chief executive must file a copy of the interstate child welfare order in the Childrens Court for registration.
- (2) The chief executive must not file an interstate child welfare order if, under the interstate law—
 - (a) the decision or order to transfer the interstate child welfare order is subject to appeal or review or a stay; or
 - (b) the time for instituting an appeal or seeking a review has not expired.
- (3) If the chief executive files an interstate child welfare order for registration in the court, the court must register the interstate child welfare order.

2330 ACT registration of interstate orders—interstate registrar

If an interstate child welfare order is registered in the Childrens Court under section 2329, the registrar of the court must tell the following people about the registration:

- (a) the appropriate officer of the State Childrens Court of the sending State;
- (b) the interstate officer in that State.

2331 ACT registration of interstate orders—effect

- (1) If an interstate child welfare order is registered in the Childrens Court under section 2329—
- (a) the order is for all purposes (except for appeal) a care and protection order of the relevant kind made by the court on the day it is registered; and
- Note* Care and protection orders are dealt with in ch 18.
- (b) the order may be amended, extended or revoked under this Act; and
 - (c) a contravention of the order may be dealt with under this Act.
- (2) If an interstate interim child welfare order is registered in the Childrens Court under section 2329 (ACT registration—interstate child welfare orders)—
- (a) the order is for all purposes (except for appeal) an interim care and protection order made by the court on the day it is registered; and
- Note* Interim care and protection orders are dealt with in div 18.3.2.
- (b) the order may be amended, extended or revoked under this Act; and
 - (c) a contravention of the order may be dealt with under this Act.

2332 ACT registration of interstate orders—application for revocation

- (1) This section applies if an interstate child welfare order for a child is registered in the Childrens Court under section 2329 (ACT registration—interstate child welfare orders).

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- (2) Any of the following people may apply to the court for revocation of the registration of the order:
- (a) the chief executive;
 - (b) the child or young person;
 - (c) a parent of the child or young person;
 - (d) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (e) a party to the proceeding in the State Childrens Court in the sending State in which the decision to transfer the child welfare order was made.
- (3) If a person applies for revocation of registration of the order, the registrar of the court must give a copy of the application to—
- (a) the relevant interstate officer; and
 - (b) each person, other than the applicant, who could have made an application.

2333 ACT registration of interstate orders—revocation

- (1) The Childrens Court may revoke the registration of an interstate child welfare order registered under section 2329 only if satisfied that it was inappropriately registered because, under the interstate law—
- (a) the decision of the interstate officer or the order of the State Childrens Court of the sending State to transfer the order was subject to appeal or review, or a stay, at the time of registration; or
 - (b) the time for starting an appeal or seeking a review had not ended.

EXPOSURE DRAFT

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- (2) If the registration of an interstate child welfare order is revoked, the registrar of the Childrens Court must give the interstate child welfare order to the State Childrens Court of the sending State.
 - (3) The revocation of the registration of an interstate child welfare order does not prevent the later re-registration of the order.

2334 ACT registration of interstate orders—interstate registrar

If the registration of an interstate child welfare order is revoked under section 2333, the registrar of the court must tell the following people about the revocation:

- (a) the appropriate officer of the State Childrens Court of the sending State;
- (b) the interstate officer in that State.

EXPOSURE DRAFT

Part 21.5

ACT registration of interstate child welfare proceedings

2335 ACT registration—interstate child welfare proceedings

- (1) If a child welfare proceeding is transferred to the ACT under an order (an *interstate proceedings transfer order*) under an interstate law, the chief executive must file a copy of the following documents in the Childrens Court for registration:
 - (a) the interstate proceedings transfer order;
 - (b) any interim child welfare order made at the same time as the interstate proceedings transfer order (the *interim order*).
- (2) The chief executive must not file an interstate proceedings transfer order if, under the interstate law—
 - (a) the interstate proceedings transfer order or interim order is subject to appeal or review or a stay; or
 - (b) the time for instituting an appeal or seeking a review has not expired.
- (3) If the chief executive files an interstate proceedings transfer order or interim order for registration in the court, the court must register the interstate proceedings transfer order or interim order.

2336 ACT registration of interstate proceedings—interstate registrar

If an interstate proceedings transfer order or interim order is registered in the Childrens Court under section 2335, the registrar of the court must tell the following people about the registration:

- (a) the appropriate officer of the State Childrens Court of the sending State;

(b) the interstate officer in that State.

2337 ACT registration of interstate proceedings—effect

- (1) If an interstate proceedings transfer order for a proceeding is registered in the Childrens Court under section 2335, the proceeding is taken to have been started in the Childrens Court on the day the order is registered.
- (2) However, in deciding the proceeding, the court—
 - (a) is not bound by a finding of fact made in the proceeding in the State Childrens Court of the sending State before its transfer; and
 - (b) may have regard to the transcript of, or evidence presented in, the proceeding in the State Childrens Court of the sending State before its transfer.

2338 ACT registration of interstate proceedings—application for revocation

- (1) This section applies if an interstate proceedings transfer order or interim order for a child is registered in the Childrens Court under section 2335 (ACT registration—interstate child welfare proceedings).
- (2) Any of the following people may apply to the court for revocation of the registration of the order:
 - (a) the chief executive;
 - (b) the child or young person;
 - (c) a parent of the child or young person;
 - (d) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person;

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- (e) a party to the proceeding in the State Childrens Court in the sending State in which the decision to transfer the interstate proceedings transfer order or interim order was made.
 - (3) If a person applies for revocation of registration of the order, the registrar of the court must give a copy of the application to—
 - (a) the relevant interstate officer; and
 - (b) each person, other than the applicant, who could have made an application.

2339 ACT registration of interstate proceedings—revocation

- (1) This section applies if an interstate proceedings transfer order or interim order is registered in the Childrens Court under section 2335.
- (2) The Childrens Court may revoke the registration of the interstate proceedings transfer order or interim order only if satisfied that the order was inappropriately registered because, under the interstate law—
 - (a) the order of the State Childrens Court of the sending State to transfer the order was subject to appeal or review, or a stay, at the time of registration; or
 - (b) the time for starting an appeal or seeking a review had not ended.
- (3) If the registration of an interstate proceedings transfer order or interim order is revoked, the registrar of the Childrens Court must give the interstate proceedings transfer order or interim order to the State Childrens Court of the sending State.
- (4) The revocation of the registration of an interstate proceedings transfer order or interim order does not prevent the later re-registration of the order.

EXPOSURE DRAFT

2340 ACT registration of interstate proceedings—interstate registrar

If the registration of an interstate proceedings transfer order or interim order is revoked under section 2339, the registrar of the court must tell the following people about the revocation:

- (a) the appropriate officer of the State Childrens Court of the sending State;
- (b) the interstate officer in that State.

Part 21.6 Interstate transfer of child welfare orders and proceedings—miscellaneous

2341 ACT registration of interstate orders and proceedings—Maori children and young people

- (1) This section applies if—
 - (a) a child welfare order or child welfare proceeding for a child or young person is transferred under an interstate law to the ACT from New Zealand; and
 - (b) the child or young person is a Maori child or young person.
- (2) In deciding what finding or order to make in a proceeding for the child or young person under this Act, the Childrens Court must have regard to the principle that, if practicable, the relationship between the child or young person and his or her family, whanau, hapu, iwi, family groups and community group must be maintained and strengthened.

2342 Interstate transfer of orders and proceedings—giving information

The chief executive may give protected information and sensitive information to an interstate officer if the chief executive considers that giving the information is necessary to allow the interstate officer to exercise functions under a child welfare law or an interstate law.

Note **Protected information** is defined in s 3103.
Sensitive information is defined in s 3104.

Part 21.7 **Interstate transfer of child welfare orders and proceedings—non-participating States**

2343 **Object of pt 21.7**

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

- (a) interstate orders from non-participating States to the Territory; and
- (b) orders made under the care and protection chapters to non-participating States.

2344 **Definitions—pt 21.7**

For this part:

interstate child welfare order—see section 2345.

interstate child welfare order declaration—see section 2347.

non-participating State means a State that is not a participating State.

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

2345 **What is an *interstate child welfare order*?**

In this part:

interstate child welfare order, for a child or young person, means an order about the welfare, care or protection of the child or young person if the order—

- (a) relates to an aspect of parental responsibility for the child or young person; and
- (b) either—
 - (i) gives the aspect of parental responsibility, to a welfare body of a non-participating State; or
 - (ii) shares the aspect of parental responsibility, with a welfare body of a non-participating State.

2346 **Interstate order declaration—application**

A welfare body in a non-participating state may ask the chief executive to have an aspect of parental responsibility for a child or young person if—

- (a) there is an interstate child welfare order in force for the child or young person—
 - (i) giving an aspect of parental responsibility, for the child or young person to the welfare body; or
 - (ii) sharing an aspect of parental responsibility, for the child or young person with the welfare body; and
- (b) the child or young person is—
 - (i) in the ACT; or
 - (ii) about to enter the ACT; and

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- (c) either—
- (i) the time for appealing against the welfare body’s decision to ask the chief executive to have an aspect of parental responsibility in the non-participating State has ended; or
 - (ii) if an appeal is made against the decision—the appeal has been decided.

2347 Interstate order declaration—contents

- (1) The chief executive may, on application, make a written declaration (an *interstate child welfare order declaration*) for an interstate child welfare order.
- (2) The interstate child welfare order declaration must state—
 - (a) that there is a care and protection order for the child or young person; and
Note Care and protection orders are dealt with in s 1901.
 - (b) the terms of the care and protection order; and
 - (c) whether the order includes a parental responsibility provision for the child or young person; and
Note Parental responsibility provisions are dealt with in pt 18.6.
 - (d) if the order includes a parental responsibility provision—the terms of the parental responsibility provision; and
 - (e) that an aspect of parental responsibility, for the child or young person is—
 - (i) given to the chief executive; or
 - (ii) shared with the chief executive.

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- (3) The chief executive must endeavour to ensure that the effect of the order mentioned in the declaration is as close as possible to the effect of the interstate child welfare order, subject to any changes the chief executive considers necessary or desirable to allow the order to operate in the ACT.

2348 Interstate order declaration—effect

- (1) If an interstate child welfare order declaration is made for an interstate child welfare order, the care and protection order and parental responsibility provision (if any) mentioned in the declaration are taken to have been made under this Act in the terms set out in the declaration.
- (2) The care and protection order and parental responsibility provision (if any) remain in force—
- (a) for the remainder of the length of the interstate child welfare order; or
 - (b) until the child or young person who is the subject of the order turns 18 years old.

2349 Interstate order declaration—certain people must be told

- (1) This section applies if the chief executive makes an interstate child welfare order declaration for a child or young person under section 2347 (Interstate order declaration—contents).
- (2) As soon as practicable after making the interstate child welfare order declaration, the chief executive must give a copy of the declaration to the following people:
- (a) the child or young person;
 - (b) the parents of the child or young person;
 - (c) each other person who has responsibility for day-to-day matters, or long-term matters, for the child or young person;

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- (d) the public advocate.
 - (3) Before giving a copy of the declaration to a parent of the child or young person or another person who has responsibility for day-to-day matters, or long-term matters, for the child or young person, the chief executive may omit material from the copy if—
 - (a) the chief executive reasonably believes that it would not be in the best interests of the child or young person for the person to be given the material; and
 - (b) the omission does not prevent the person being given adequate notice of the declaration.
 - (4) If the chief executive gives a copy of the declaration to a parent of the child or young person or another person who has responsibility for day-to-day matters, or long-term matters, for the child or young person, the chief executive must also give the person a written notice that explains, in general terms, the effect of the declaration.

2350 Interstate order declaration—State becomes participating State

- (1) This section applies if—
 - (a) an interstate child welfare order declaration is made for an interstate child welfare order; and
 - (b) the State that made the interstate child welfare order later becomes a participating State.
- (2) An order mentioned in the interstate child welfare order declaration is not affected by the State becoming a participating State.

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2351 Chief executive transfer—proposal

- (1) The chief executive may propose (the *proposal*) to ask a welfare body in a non-participating State to have an aspect of parental responsibility for a child or young person for whom the chief executive has an aspect of parental responsibility.
- (2) The chief executive must give written notice of the proposal (a *proposal notice*) to the following people:
 - (a) the child or young person;
 - (b) the parents of the child or young person;
 - (c) each other person who has responsibility for day-to-day matters, or long-term matters, for the child or young person;
 - (d) if the child is in the care of a carer who has moved or is moving to the non-participating State—the carer.
- (3) The proposal notice must state the following:
 - (a) the reason for the proposal, including any relevant fact giving rise to the reason;
 - (b) that the person given the notice may, not later than the period stated in the notice, make a written submission to the chief executive about why the proposal should not go ahead.
- (4) The period for making submissions stated in the notice must be at least 14 days after the person is given the notice.

2352 Chief executive transfer—parental responsibility

- (1) The chief executive may ask a welfare body to have an aspect of parental responsibility for a child or young person only if the chief executive—
 - (a) has given a proposal notice for the proposal to people under section 2351; and

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- (b) has considered any written submission made in accordance with the notice; and
 - (c) considers an adequate ground for going ahead with the proposal exists.
- (2) However, the chief executive may give an aspect of parental responsibility to the welfare body only when—
- (a) the time for appealing against the decision to go ahead with the proposal has ended; or
 - (b) if an appeal is made against the decision—the appeal is decided.

Note A person whose rights are affected by the decision of the chief executive to ask the welfare body to have an aspect of parental responsibility for the child or young person has a right to appeal to the administrative appeals tribunal (see s 3011).

2353 Expiry of pt 21.7 and related provisions

The following provisions expire on the day after the last non-participating State becomes a participating State:

- (a) this part;
- (b) section 3009;
- (c) dictionary, definitions of *interstate child welfare order*, *interstate child welfare order declaration* and *non-participating state*;
- (d) dictionary, definition of *parental responsibility*, paragraph (b).

EXPOSURE DRAFT

Chapter 22 Care and protection—police assistance

Note to ch 22

A registered family group conference agreement has effect as if it were an order of the Childrens Court and may be enforced accordingly (see s 1704).

Part 22.1 Assistance in carrying out orders etc

2400 Police assistance

- (1) The chief executive may ask the chief police officer for assistance in carrying out any of the following actions (the *action*):

- (a) an appraisal order;

Note Appraisal orders are dealt with in s 1620.

- (b) a care and protection appraisal;

Note Care and protection appraisals are dealt with in s 1615.

- (c) emergency action;

Note Emergency action is dealt with in pt 17.2.

- (d) a professional assessment;

Note Professional assessments are dealt with in s 1616.

- (e) a professional assessment order.

Note Professional assessment orders are dealt with in div 18.3.3.

- (2) The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action.

2401 Police powers

- (1) A police officer assisting the chief executive in carrying out an action may do any of the following if authorised by a warrant:
 - (a) enter or break into, remain in and search any premises or place;
 - (b) seize and remove anything that the police officer reasonably believes may provide evidence relevant to the action;
 - (c) take photographs or audio or video recordings, or make sketches, of anything relevant to the action;
 - (d) require a person who may be able to give information relevant to the action to answer a question.

Note The Legislation Act, s 170 and s 171 deals with the application of the privilege against selfincrimination and client legal privilege.

- (2) However, a police officer may do something mentioned in subsection (1) without a warrant if the police officer reasonably believes that the delay involved in getting a warrant would prejudice the action or the safety of a child or young person.
- (3) A police officer assisting the chief executive in carrying out an action may be accompanied by other police officers or authorised people if it is reasonable and necessary.

2402 Seized things may be kept until matter completed

If something is seized under section 2401 (1) (b), the chief police officer or the chief executive may keep the thing until the action is completed and any proceeding arising out of the action is finalised.

2403 Offence—failure to answer police questions

A person commits an offence if—

- (a) the person is required by a police officer under section 2401 (1) (d) (Police powers) to answer a question; and

(b) the person does not take reasonable steps to answer the question.

Maximum penalty: 50 penalty units.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 A person who gives information honestly and without recklessness does not breach professional ethics etc and is protected from civil liability (see s 3132).

Note 3 Giving false or misleading information to the police officer is an offence (see Criminal Code s 338).

Part 22.2 Safe custody

2404 Safe custody—parental responsibility to chief executive

If a child or young person is taken into safe custody under a safe custody warrant, the chief executive has responsibility for day-to-day matters for the child or young person.

Note 1 The provisions of pt 19.4 apply if the chief executive has responsibility for day-to-day matters for a child or young person. In particular, the chief executive must place the child or young person with an out-of-home carer (see s 2013).

Note 2 If a child or young person is taken into safe custody under a safe custody warrant, the chief executive must ensure that the matter is brought before the Childrens Court as soon as practicable, but not later than 1 working day, after the day the child or young person is taken into safe custody (see s 2414).

2405 What is a *safe custody warrant*?

In this Act:

safe custody warrant means a warrant to enter stated premises to take a child or young person into safe custody.

2406 Safe custody warrant—application

- (1) The chief executive or a police officer may apply to a magistrate for a safe custody warrant if the chief executive or police officer reasonably believes that the criteria for issuing the safe custody warrant are satisfied.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the chief executive or police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Note 1 Statements, documents and reports must be included in the application (see s 2501).

Note 2 Oral applications may also be made (see s 2503).

2407 Safe custody warrant—criteria

- (1) The magistrate may issue a safe custody warrant for a child or young person, for stated premises, if satisfied that—
 - (a) any of the following orders are in force for the child or young person:
 - (i) an appraisal order;
 - (ii) an interim care and protection order;
 - (iii) a professional assessment order;

Note Appraisal orders are dealt with in s 1620.

Note Interim care and protection orders are dealt with in s 1912.

Note Professional assessment orders are dealt with in s 1916.

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- (iv) a care and protection order;

Note Care and protection orders are dealt with in s 1901.

- (v) a therapeutic protection order;

Note Therapeutic protection orders are dealt with in s 2102.

- (vi) an interim therapeutic protection order; and

Note Interim therapeutic protection orders are dealt with in div 20.2.3.

- (b) there are reasonable grounds for suspecting that—

- (i) someone has contravened the order; and
- (ii) because of the contravention, the child or young person is in danger; and
- (iii) the child or young person is at the premises or may be at the premises within the next 14 days.

- (2) The magistrate may also issue a safe custody warrant for a child or young person, for stated premises, if satisfied that—

- (a) a therapeutic protection order, or an interim therapeutic protection order, is in force for the child or young person; and

Note Therapeutic protection orders are dealt with in pt 20.2.
Interim therapeutic protection orders are dealt with in div 20.2.3.

- (b) there are reasonable grounds for suspecting that—

- (i) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order; and
- (ii) the child or young person is at the premises or may be at the premises within the next 14 days.

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2408 Safe custody warrant—content

A safe custody warrant must state—

- (a) the name of the child or young person who may be taken into safe custody under the warrant; and
- (b) the order for which the safe custody warrant is issued; and
- (c) that the chief executive or police officer may, with any necessary assistance and force, enter the premises and exercise the chief executive's or police officer's powers under this part; and
- (d) the hours when the premises may be entered; and
- (e) the date, not later than 14 days after the day the warrant is issued, that the warrant ends; and
- (f) the date that the transfer of responsibility for day-to-day matters for the child or young person to the chief executive or police officer ends (the *safe custody period*).

2409 Safe custody warrant—application made other than in person

- (1) The chief executive or a police officer may apply for a warrant by phone, fax, radio or other form of communication if the chief executive or police officer considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the chief executive or police officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The chief executive or police officer may apply for the warrant before the application is sworn.

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- (4) After issuing the warrant, the magistrate must immediately fax a copy to the chief executive or police officer if it is practicable to do so.
 - (5) If it is not practicable to fax a copy to the chief executive or police officer—
 - (a) the magistrate must—
 - (i) tell the chief executive or police officer the terms of the warrant; and
 - (ii) tell the chief executive or police officer the date and time the warrant was issued; and
 - (b) the chief executive or police officer must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
 - (6) The faxed copy of the warrant, or the warrant form properly completed by the chief executive or police officer, authorises the entry and the exercise of the chief executive or police officer's powers under this part.
 - (7) The chief executive or police officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the chief executive or police officer completed a warrant form—the completed warrant form.
 - (8) On receiving the documents, the magistrate must attach them to the warrant.

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- (9) A court must find that a power exercised by the chief executive or police officer was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

2410 Safe custody warrant—announcement before entry

- (1) An chief executive or police officer must, before anyone enters premises under a safe custody warrant—
- (a) announce that the chief executive or police officer is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The chief executive or police officer is not required to comply with subsection (1) if the chief executive or police officer believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the chief executive or police officer or a person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

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2411 Safe custody warrant—details of warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a safe custody warrant is being executed, the chief executive or police officer or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

2412 Safe custody warrant—occupier entitled to be present etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a safe custody warrant is being executed, the person is entitled to observe the warrant being executed.
- (2) However, the person is not entitled to observe the warrant being executed if—
 - (a) to do so would impede the execution of the warrant; or
 - (b) the person is under arrest, and allowing the person to observe the warrant being executed would interfere with the objectives of the warrant.
- (3) This section does not prevent the warrant being executed at 2 or more areas of the premises at the same time.

2413 Offence—remove child or young person

- (1) A person commits an offence if—
 - (a) a child or young person has been taken into safe custody and is subject to a safe custody placement; and

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- (b) the person removes the child or young person from a place;
and
 - (c) the removal is in contravention of the safe custody placement;
and
 - (d) the person knows the removal is in contravention of the safe custody placement.

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

- (2) Strict liability applies to subsection (1) (a).
- (3) A prosecution for an offence against this section may only be started after the chief executive has been consulted.

2414 Safe custody—matter must be brought to court promptly

- (1) If a child or young person is taken into safe custody under a safe custody warrant, the chief executive must ensure that the matter is brought before the Childrens Court as soon as practicable, but not later than 1 working day, after the day the child or young person is taken into safe custody.
- (2) However, the child or young person is required to be brought before the Childrens Court only if the court directs it.

Note When the matter is brought before the court under this section, the court may exercise any of its powers in relation to the child or young person including:

- making or extending an appraisal order under div 15.3.3;
- making, extending, amending or revoking an interim care and protection order under div 18.3.2;
- making, extending, amending or revoking a professional assessment order under div 18.3.3;

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- making, extending, amending or revoking a care and protection order under pt 18.5;
 - making, extending, amending or revoking a therapeutic protection order under pt 20.2.

EXPOSURE DRAFT

Chapter 23 Care and protection— provisions applying to all proceedings under care and protection chapters

Part 23.1 Applications

2500 Application—including cross-application

In this chapter:

application includes a cross-application.

2501 Application—must include statements, documents and reports

An application to a court under the care and protection chapters must be accompanied by the following:

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

2502 Application—statements and reports to be signed etc

Unless otherwise directed by the Childrens Court, a statement or report prepared for use in a proceeding under the care and protection chapters—

- (a) must be in the form of an affidavit; or

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- (b) must—
- (i) be signed and dated by the person making the statement or report; and
 - (ii) contain a declaration to the effect that the maker of the statement or report believes it to be true and understands that it may be used in court.

2503 Application—oral applications

- (1) A person may, with the leave of the Childrens Court, make an oral application under this Act for a proceeding before, during or after the hearing of the proceeding.
- (2) Subsection (1) applies regardless of any requirement about service in this Act.
- (3) If an oral application is made, the Childrens Court must direct the applicant about—
 - (a) which (if any) of the requirements for service or notice of the making of an application are to apply to the oral application and how they are to apply; and
 - (b) whether a written application is required; and
 - (c) whether service of a written application is required.
- (4) If the Childrens Court does not give directions under subsection (3) for an oral application, no service is required under this Act.

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2504 Application—withdrawal or discontinuance

- (1) A person who has applied to the Childrens Court for an order under the care and protection chapters may withdraw or discontinue the application before the end of the proceeding by—
 - (a) telling, in writing, each person who was given the application;
and
 - (b) filing a notice of withdrawal or discontinuance with the court.
- (2) If another party to the proceeding agrees with the withdrawal or discontinuance, the notice of withdrawal or discontinuance must have the agreement endorsed on it.

Part 23.2 Parties

2505 Parties—who are *parties* to an application?

- (1) The following people are parties to an application under the care and protection chapters:
 - (a) the applicant;
 - (b) the child or young person;
 - (c) someone given a copy of the application who takes part in the proceeding (other than as a witness or representative);

Note Representation of children and young people is dealt with in s 323.
 - (d) someone who is a participant in the proceeding (other than as a witness or representative) who has been—
 - (i) asked to attend by the Childrens Court and been joined as a party to the proceeding; or
 - (ii) joined as a party to the proceeding on the person’s own application.
- (2) However, the public advocate is a party to a proceeding under the care and protection chapters only if the public advocate applies to be joined as a party.

2506 Parties—hearing in party’s absence

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

2507 Parties—failure to attend proceeding

- (1) This section applies if someone—
 - (a) is required to attend a proceeding for an application under the care and protection chapters; and
 - (b) has been given a copy of the application.
- (2) If the person does not attend the proceeding, the Childrens Court must—
 - (a) adjourn the proceeding and make any order about further service of the person that the court considers appropriate; or
 - (b) make any other order or direction that it considers appropriate, including an order or direction that is binding on the person.

2508 Parties—court may join affected party

- (1) This section applies to a proceeding under the care and protection chapters.
- (2) If the Childrens Court is satisfied that it should make an order binding on or affecting someone who is not a party to the proceeding, the court may join the person as a party to the proceeding.
- (3) However, the court must give the person a reasonable opportunity to make representations to the court about why the order should not be made—
 - (a) before making the order; or
 - (b) if, because of the urgency of the case it is not possible to do so before making the order—not later than a reasonable time after making the order.

2509 Parties—application to join party

- (1) This section applies to a proceeding for a child or young person under the care and protection chapters.
- (2) If someone (the *applicant*) applies to the Childrens Court to be joined as a party to the proceeding, the court may order the person be joined as a party to the proceeding if it considers it appropriate to do so.
- (3) If the applicant is the public advocate, the court must join the public advocate as a party to the proceeding.
- (4) If the applicant has been caring for the child or young person continuously for 2 years or more, there is a rebuttable presumption that it is appropriate to join the applicant as a party to the proceeding.
- (5) An application may be made orally without notice to the parties to the proceeding, but the court must give each party an opportunity to be heard on the application before deciding whether to join the applicant as a party.

2510 Parties—filed material to be given to joined parties

If the Childrens Court joins a person as a party to a proceeding under section 2508 or section 2509—

- (a) the person is entitled to material already filed in the proceeding only if the court directs it; and
- (b) the court must direct what material already filed in the proceeding must be given to the person, and by whom; and
- (c) the court may make any further orders or directions about the conduct of the proceeding that the court considers appropriate.

2511 Parties—application for removal of party

- (1) A party to a proceeding under the care and protection chapters (the *applicant*) may apply to the Childrens Court for an order that another party to the proceeding be removed as a party.
- (2) The applicant must give a copy of the application to the following people before the application is heard by the court:
 - (a) each party to the proceeding;
 - (b) the public advocate.

2512 Parties—court may remove party

- (1) This section applies if the Childrens Court is satisfied that a party to a proceeding under the care and protection chapters—
 - (a) has been improperly or unnecessarily joined; or
 - (b) is no longer a proper or necessary party.
- (2) The court may, on application by a party to a proceeding or on its own initiative—
 - (a) order that the party is no longer a party; and
 - (b) make any other orders or directions for the conduct of the proceeding that the Childrens Court considers appropriate.
- (3) Before making an order under this section, the court must provide each party to the proceeding with an opportunity to be heard on the application or motion.

2513 Parties—notice of address for service

A party to a proceeding under the care and protection chapters must file with the Childrens Court, and give to each other party to the proceeding, a written statement of the party's name and address for service of documents.

2514 Parties—representation

- (1) A party to a proceeding under the care and protection chapters may appear before the Childrens Court—
 - (a) in person; or
 - (b) represented by a lawyer; or
 - (c) with the leave of the court, represented by someone else.

Note Representation of children and young people is dealt with in s 323.

- (2) Also, the chief executive may appear before the Childrens Court by the chief executive's delegate or someone authorised to appear on the chief executive's behalf.
- (3) If a party to a proceeding under the care and protection chapters (the ***represented party***) is represented by a lawyer in the proceeding, the lawyer must file with the Childrens Court, and give to each other party to the proceeding, a written statement that the lawyer acts for the represented party and an address in the ACT for service of documents.
- (4) A lawyer may stop representing a party to a proceeding under the care and protection chapters only if the lawyer files with the Childrens Court, and gives to each other party to the proceeding, a written statement to that effect.

2515 Exclusion of people from hearings

- (1) This section applies to a proceeding for a child or young person under the care and protection chapters.
- (2) The Childrens Court may order that someone must not be present in the courtroom during all or part of the hearing of the proceeding if the court considers it appropriate.

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- (3) This section applies to everybody including—
- (a) the child or young person; and
 - (b) the parents of the child or young person; and
 - (c) anyone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.

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Part 23.3 Burden of proof

2516 Burden of proof

In a proceeding under the care and protection chapters, a fact is proved if it is proved on the balance of probabilities.

Part 23.4 Witnesses and evidence

2517 Procedures at hearings to be informal

- (1) A proceeding under the care and protection chapters must be carried out as informally and quickly as—
 - (a) the requirements of this or any other Act allows; and
 - (b) a proper consideration of the matter allows.
- (2) This section does not apply if another provision of this Act provides otherwise.

2518 Court may call witnesses

- (1) This section applies to a proceeding under the care and protection chapters.
- (2) The Childrens Court may, on its own initiative, call a person as a witness whose evidence may, in the court's opinion, be of assistance to the court.

2519 Court may summons people to attend

- (1) This section applies if, in a proceeding under the care and protection chapters—
 - (a) someone must be given an application; and
 - (b) the person has been given the application; and
 - (c) the person has not attended a hearing for the application.

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- (2) If the Childrens Court considers that the attendance of the person is necessary to allow the court to hear and decide the application, the court may do any of the following that it considers appropriate to bring about the attendance of the person:
 - (a) give a direction;
 - (b) issue a summons;
 - (c) issue a warrant.
 - (3) A summons must include a statement to the effect that—
 - (a) if the person does not attend the court, a warrant may be issued to bring the person before the court; and
 - (b) there is a penalty for not taking all reasonable steps to attend court in answer to the summons.
 - (4) The court may issue a warrant to bring a person before the court if—
 - (a) a summons has been given to the person under this section; and
 - (b) the person does not attend the court to answer to the summons.

2520 Child or young person as witness

- (1) A child or young person may be called as a witness in a proceeding under the care and protection chapters only with the leave of the Childrens Court.
- (2) If the Childrens Court gives leave for a child or young person to be called as a witness, the court may prohibit cross-examination of the child or young person if satisfied that it is in the best interests of the child or young person to do so.

2521 Childrens Court not bound by rules of evidence

- (1) In a proceeding under the care and protection chapters, the Childrens Court—
 - (a) is not bound by the rules of evidence; and
 - (b) may inform itself of a matter in any way that it considers appropriate.
- (2) Also, if the court is making, extending, amending or revoking an order under the care and protection chapters, the court may—
 - (a) admit and act on hearsay evidence; and
 - (b) take submissions from someone who is not a party.

2522 Restriction on taking evidence

If it appears to the Childrens Court to be necessary or convenient for the proper determination of the matters at issues in a proceeding, the court may restrict the way or the extent to which someone, including a child or young person, is to be examined or cross-examined for the proceeding.

Part 23.5 Orders

2523 Orders—obligations on people

- (1) A court making an order under the care and protection chapters may make an order imposing an obligation on a person only if the person—
 - (a) agrees to the order being made; or
 - (b) has been given an opportunity to be heard about the proposed order; or
 - (c) cannot, after reasonable inquiry, be found.
- (2) The court gives a person an opportunity to be heard about a proposed order if the court has directed the person, in writing, to attend the proceeding to be heard about the proposed making of an order (regardless of whether the person attends the proceeding).

2524 Orders—by agreement

- (1) The parties to an application under the care and protection chapters may file with the Childrens Court a draft order (the *draft consent order*) that, if made, would have the agreement of the parties.
- (2) The draft order must be signed by—
 - (a) each party to the application; and
 - (b) each person who will be—
 - (i) required to comply with the order; or
 - (ii) directly affected by the order.

2525 Orders—must be given to people

As soon as practicable after making an order under the care and protection chapters in a proceeding, the Childrens Court must give a copy of the order to—

- (a) the chief executive; and
- (b) the public advocate; and
- (c) each lawyer representing a party to the proceeding who has, before the date of the order, filed a notice of address for service; and
- (d) if a party to the proceeding is not represented by a lawyer and has, before the date of the order, filed a notice of address for service—the party.

2526 Orders—statement of reasons

- (1) This section applies if a court—
 - (a) makes an order under the care and protection chapters in a proceeding; or
 - (b) hears and decides an application for—
 - (i) extension of a therapeutic protection order under—
 - (A) section 2134 (Therapeutic protection order—criteria for extension up to 6 months); or
 - (B) section 2135 (Therapeutic protection order—criteria for extension longer than 6 months); or
 - (ii) amendment of a therapeutic protection order under section 2142 (Therapeutic protection order—criteria for amendment); or

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- (iii) revocation of a therapeutic protection order under section 2143 (Therapeutic protection order—criteria for revocation).

Note The court must record a written statement of reasons for these decisions (see s 2136 and s 2144).

- (2) Not later than 28 days after the day the order is made, a party to the proceeding may ask the court, in writing, to give the party a statement of reasons for making, extending, amending or revoking the order.
- (3) The court must give a written statement of reasons as soon as practicable, but not later than 28 days, after the day the court receives the request.

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Part 23.6 Costs

2527 Costs—parties bear own unless court orders otherwise

- (1) This section applies to a proceeding under the care and protection chapters including—
 - (a) an interlocutory proceeding; and
 - (b) an appeal from a decision made under the care and protection chapters.
- (2) The parties to a proceeding must bear their own costs unless a court exercising jurisdiction under this Act orders otherwise.

2528 Costs—frivolous, vexatious, dishonest application

- (1) This section applies to a proceeding under the care and protection chapters including—
 - (a) an interlocutory proceeding; and
 - (b) an appeal from a decision made under the care and protection chapters.
- (2) A court exercising jurisdiction under this Act may, on application or on its own initiative, order the payment of costs in a proceeding if satisfied that—
 - (a) an application in the proceeding is frivolous, vexatious or dishonest; or
 - (b) there are exceptional circumstances that justify the order.
- (3) A person who applies for an order for costs under this section must give a copy of the application to the party from whom the costs are sought.

2529 Costs—parties bear own costs unless order otherwise

- (1) This section applies to a proceeding under the care and protection chapters including—
 - (a) an interlocutory proceeding; and
 - (b) an appeal from a decision made under the care and protection chapters.
- (2) A court exercising jurisdiction under this Act may, on application or on its own initiative, order someone’s costs be paid if the hearing of a proceeding is adjourned because—
 - (a) someone else required to attend the hearing did not attend; or
 - (b) someone else contravened a direction or order of the court.
- (3) A person who applies for an order for costs under this section must give a copy of the application to the party from whom the costs are sought.

2530 Costs—how court may share costs

- (1) This section applies if a court exercising jurisdiction under this Act has made an order about costs under section 2528 or section 2529.
- (2) The court may order costs be paid by or shared between the parties in the way the court orders.
- (3) However, if the Childrens Court makes an order for the payment of costs in a proceeding, the costs allowed are up to 50% of the costs that would be allowed if the proceeding had been heard in the Supreme Court.

Chapter 24 Childcare services

Part 24.1 Childcare services—preliminary

2600 Definitions—ch 24

(1) In this Act:

childcare centre—see section 2606.

childcare service—see section 2605.

family day care service—see section 2607.

(2) In this chapter:

cancellation notice—see section 2639.

childcare service licence, for a childcare service, means a licence under section 2620 (Childcare service licence—decision on application) to operate the childcare service.

childcare worker, for a childcare service, means a person who cares for a child for the childcare service.

compliance notice—see section 2633 (2).

compliance suspension notice—see section 2634 (2).

controlling person, for a childcare service—see section 2609.

intention to cancel notice—see section 2637 (2).

licensed childcare service means a childcare service operated by a licensed proprietor for the childcare service.

licensed proprietor, of a childcare service, means a proprietor of the childcare service who holds a childcare service licence to operate the childcare service.

proposed controlling person, for a childcare service, means a person who intends to be a controlling person for the childcare service.

proposed proprietor, for a childcare service, means a person who intends to own or operate the childcare service.

proprietor, for a childcare service—see section 2608.

responsible person, for a childcare service—see section 2611.

2601 Objects—ch 24

The objects of this chapter include—

- (a) providing an effective licensing system for childcare services; and
- (b) imposing standards for childcare services.

Note The Minister may make childcare services standards under s 3211.

2602 Principles—ch 24

In making a decision or taking action under this chapter for a childcare service, the following childcare services principles should be applied:

- (a) childcare services must provide care that is safe, positive and nurturing;

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- (b) childcare services must promote the educational, social and developmental wellbeing of children.

Note In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 10).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 10).

2603 Application—ch 24

- (1) This chapter does not apply to care provided for a child—
- (a) at a playgroup; or
 - (b) in conjunction with a meeting, function or similar activity that involves a person who has responsibility for day-to-day matters for the child, at the same or adjacent premises (unless provided in conjunction with the person's usual employment); or
 - (c) by a relative (unless provided as part of a family day care service); or
 - (d) by an out-of-home carer with whom the chief executive has placed the child or young person under section 2013 (Chief executive must place child or young person with out-of-home carer); or

Note If 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 pt 19.4).

- (e) by a government school or non-government school under the *Education Act 2004*, whether provided during or outside school hours; or

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- (f) by a person providing home education to the child if the child is registered, or provisionally registered, for home education under the *Education Act 2004*; or
 - (g) that is incidental to the child's participation in religious instruction, sporting, educational, recreational or cultural events or activities; or
 - (h) that is incidental to activities by the child as a member, or while training to become a member, of a club or class sponsored by a non-profit community organisation; or
 - (i) while the child is a patient in a hospital, including a day hospital.

(2) In this section:

day hospital—see the *Health Act 1993*, dictionary.

2604 Exemption—ch 24

- (1) The Minister may exempt a childcare service from this chapter.
- (2) An exemption may be conditional.
- (3) An exemption is given for the term stated in the exemption.
- (4) An exemption is a disallowable instrument.

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

Part 24.2 Childcare services—important concepts

2605 What is a *childcare service*?

In this Act:

childcare service means—

- (a) a childcare centre; or
- (b) a family day care service.

2606 What is a *childcare centre*?

(1) In this Act:

childcare centre means a service, operated from premises, that provides care—

- (a) for at least the minimum number of children; and
- (b) for payment or other material benefit.

(2) For this section, when working out how many children care is being provided for by a service operated from premises—

- (a) a child for whom care is provided on an emergency basis, or in unexpected or exceptional circumstances, must not be counted unless the child is cared for at the premises for 2 or more consecutive days; and
- (b) if a child of a carer is being cared for at the premises, the child must be counted.

(3) In this section:

minimum number, of children, means—

- (a) 5 young children; or
- (b) 8 children, if no more than 4 children are young children.

young child means a child who is not yet either—

- (a) attending school as required under the *Education Act 2004*; or
- (b) registered, or provisionally registered, for home education under the *Education Act 2004*.

2607 What is a *family day care service*?

(1) In this Act:

family day care service means a service that organises, coordinates and monitors home-based care for children.

(2) In this section:

home-based care, for a child, means care provided by a person for the child if—

- (a) the care is provided at a home that is not the child's home; and
- (b) the care is provided for payment or other material benefit; and
- (c) the person does not have—
 - (i) responsibility for day-to-day matters for the child; or
 - (ii) responsibility for long-term matters for the child; or

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(iii) responsibility for health care treatment for the child.

Note 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.

Examples of schemes that are not family day care services

- 1 a scheme that organises, coordinates and monitors nannies
- 2 a scheme that organises, coordinates and monitors babysitters

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).

2608 Who is the *proprietor* of a childcare service?

In this chapter:

proprietor, of a childcare service, means—

- (a) for a licensed childcare service—the licensed proprietor of the childcare service; or
- (b) in any other case—the person who owns or operates the childcare service.

2609 Who is a *controlling person* for a childcare service?

In this chapter:

controlling person, for a childcare service, means a person (other than the proprietor) who exercises control or may exercise control over the childcare service.

2610 Offence—fail to notify change of controlling person

- (1) A licensed proprietor of a childcare service commits an offence if—
 - (a) someone stops being a controlling person for the childcare service; and

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- (b) the licensed proprietor does not tell the chief executive, in writing, that the person has stopped being a controlling person not later than 30 days after the day the person stops being a controlling person.

Maximum penalty: 5 penalty units.

- (2) A licensed proprietor of a childcare service commits an offence if—
 - (a) someone becomes a controlling person for the childcare service; and
 - (b) the licensed proprietor does not tell the chief executive, in writing, that the person has become a controlling person not later than 30 days after the day the person becomes a controlling person.

Maximum penalty: 5 penalty units.

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

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Part 24.3 Childcare services—offences

Note to pt 24.3

An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

2611 Who is a *responsible person* for a childcare service?

In this chapter:

responsible person, for a childcare service—each of the following is a *responsible person*:

- (a) a proprietor of the childcare service;
- (b) a controlling person for the childcare service;
- (c) a person caring for a child for the childcare service.

Note A person may be a proprietor or controlling person for a childcare service whether or not the childcare service is a licensed childcare service (see s 2608 and s 2609).

2612 Offence—fail to protect child from injury

- (1) A person commits an offence if—
 - (a) the person is a responsible person for a childcare service; and
 - (b) the person does not ensure that every reasonable precaution is taken to protect a child being cared for by the service from a hazard likely to cause injury.

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

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- (2) This section does not apply to a person caring for a child for a childcare service if the person is—
- (a) unable to take the precaution; and
 - (b) unable to ensure that the precaution is taken by someone else.

2613 Offence—fail to supervise child

A person commits an offence if—

- (a) the person is a responsible person for a childcare service; and
- (b) the person does not take all reasonable steps to ensure that a child being cared for by the service is adequately supervised.

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

2614 Offence—unreasonably discipline child

A person commits an offence if—

- (a) the person is a responsible person for a childcare service; and
- (b) the person subjects a child being cared for by the service to unreasonable discipline.

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

2615 Offence—fail to maintain buildings, equipment etc

A person commits an offence if—

- (a) the person is a responsible person for a childcare service; and

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- (b) the person does not take all reasonable steps to ensure that the buildings, grounds, equipment and furnishings used in operating the service are maintained in a safe, clean and hygienic condition and in good repair.

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

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Part 24.4 Childcare services—childcare service licences

Division 24.4.1 Childcare service licences— application, eligibility, etc

2616 Childcare service licence—proprietor may apply

- (1) A proposed proprietor of a childcare service may apply for a childcare service licence to operate the childcare service.
- (2) The application must—
 - (a) be made in writing to the chief executive; and
 - (b) include complete details of suitability information about—
 - (i) the proposed proprietor; and
 - (ii) each proposed controlling person for the childcare service.

Note 1 *Suitability information* is defined in s 140.

Note 2 Giving false or misleading information is an offence against the Criminal Code, s 338.

Note 3 A fee may be determined under s 3209 for this provision.

Note 4 If a form is approved under s 3210 for this provision, the form must be used.

2617 Childcare service licence—further information

- (1) This section applies if the chief executive has received an application for a childcare service licence under section 2616.

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- (2) The chief executive may ask the proposed proprietor to give the chief executive more information about—
- (a) the application, including information about the proposed proprietor and any proposed controlling person; and
 - (b) the premises proposed to be used for operating the childcare service.
- (3) The chief executive may ask the proposed proprietor to allow the chief executive to inspect the premises where the proposed proprietor proposes to operate the childcare service.

Note An authorised person may, at any reasonable time, enter premises if the chief executive has received an application under s 2616 and asked the proposed proprietor to allow the chief executive to inspect the premises under s 2617 and the proposed proprietor has agreed to allow the chief executive to inspect the premises (see s 2907).

2618 Childcare service licence—chief executive need not decide if no information or inspection

- (1) This section applies if, under section 2617—
- (a) the chief executive asks the proposed proprietor to give the chief executive more information but the proposed proprietor does not give the chief executive the information; or
 - (b) the chief executive asks the proposed proprietor to allow the chief executive to inspect premises but the proposed proprietor does not allow the chief executive to inspect the premises.
- (2) The chief executive need not decide whether the proposed proprietor is eligible for a childcare service licence.

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2619 Childcare service licence—eligibility

A proposed proprietor of a childcare service is eligible for a childcare service licence to operate the childcare service only if the chief executive is satisfied that—

- (a) the proposed proprietor is a suitable entity to provide the childcare service; and
- (b) each proposed controlling person for the childcare service is a suitable entity to provide the childcare service; and
- (c) the proposed proprietor complies, and is likely to continue to comply, with the childcare services standards; and
- (d) the premises where the childcare service is to be operated comply with the childcare services standards.

Note 1 Suitable entities to provide services are dealt with in 136.

Note 2 The Minister may make childcare services standards under s 3211.

2620 Childcare service licence—decision on application

- (1) This section applies if the chief executive has received an application for a childcare service licence under section 2616.
- (2) If the proposed proprietor is eligible under section 2619 for a childcare service licence to operate the childcare service, the chief executive must give the proposed proprietor a licence to operate the childcare service.
- (3) If the proposed proprietor is not eligible under section 2619 for a childcare service licence to operate the childcare service, the chief executive must refuse to give the proposed proprietor a licence to operate the childcare service.

Note A decision under this subsection is a reviewable decision (see s 3009).

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- (4) The chief executive must, not later than the required time—
- (a) decide the application; and
 - (b) tell the proposed proprietor about the decision on the application.
- (5) For subsection (4), the *required time* is the latest of the following:
- (a) if the chief executive requires a proposed proprietor or proposed controlling person to provide a reference or report under section 143 (2) (a)—30 days after the day the chief executive receives the reference or report;
 - (b) if the chief executive requires a proposed proprietor or proposed controlling person to undergo a test or medical examination under section 143 (2) (b)—30 days after the day the chief executive receives the results of the test or examination;
 - (c) if the chief executive asks the proposed proprietor to give the chief executive more information under section 2617 (2)—30 days after the day the chief executive receives the information;
 - (d) if the chief executive asks the proposed proprietor to allow the chief executive to inspect premises under section 2617 (3)—30 days after the day the chief executive is allowed to inspect the premises;
 - (e) in any other case—30 days after the day the chief executive receives the application.

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

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2621 Childcare service licence—revocation

The chief executive may revoke a childcare service licence if satisfied that—

- (a) the licensed proprietor is not a suitable entity to provide the childcare service; or
- (b) a controlling person for the childcare service is not a suitable entity to provide the childcare service.

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

2622 Childcare service licence—content

A childcare service licence must state—

- (a) the name of the proprietor of the childcare service; and
- (b) the kind of childcare service for which the licence is given; and
- (c) the length of the licence; and
- (d) for a licence to operate a childcare centre—
 - (i) the premises where the childcare centre may operate; and
 - (ii) the maximum number of children that may be cared for at the childcare centre; and
 - (iii) the age of the children who may be cared for at the childcare centre.

2623 Childcare service licence—childcare service standards

A childcare service licence is subject to the condition that the service must be operated in a way that complies with the childcare services standards.

Note 1 The Minister may make childcare services standards under s 3211.

Note 2 An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

2624 Childcare service licence—length

- (1) The chief executive must not give a childcare service licence for longer than 3 years.
- (2) However, if a licensed proprietor of a childcare service has applied for renewal of the licence under section 2627, the chief executive may extend the licence until the application is decided.

2625 Childcare service licence—extensions

- (1) If a childcare service licence is shorter than 3 years, the licensed proprietor may apply for an extension of the licence.

Note 1 A fee may be determined under s 3209 for this provision.

Note 2 If a form is approved under s 3210 for this provision, the form must be used.

- (2) If the licensed proprietor would be eligible under this chapter for the licence as extended, the chief executive must—
 - (a) extend the licence; and
 - (b) tell the licensed proprietor, in writing, about the extension.

(3) If the licensed proprietor would not be eligible under this chapter for the licence as extended, the chief executive must—

- (a) refuse to extend the licence; and
- (b) tell the licensed proprietor, in writing, about the refusal.

Note A decision under this subsection is a reviewable decision (see s 3009).

(4) The chief executive must decide the application, and tell the proprietor about the decision, not later than 30 days after the day the chief executive receives the application.

2626 Childcare service licence—transfer

- (1) A childcare service licence must not be transferred.
- (2) However, if a childcare service licence is given to 2 or more proprietors, a licensed proprietor may apply for a licensed proprietor to be removed from the licence.

Note 1 A fee may be determined under s 3209 for this provision.

Note 2 If a form is approved under s 3210 for this provision, the form must be used.

(3) If the remaining licensed proprietors would be eligible under this chapter for the licence, the chief executive must remove the licensed proprietor from the licence.

(4) If the remaining licensed proprietors would not be eligible under this chapter for the licence, the chief executive must refuse to remove the licensed proprietor from the licence.

Note A decision under this subsection is a reviewable decision (see s 3009).

(5) The chief executive must, not later than 30 days after the day the chief executive receives the application—

- (a) decide the application; and

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- (b) tell the licensed proprietors (including a licensed proprietor removed because of the application) about the decision on the application.
- (6) The removal takes effect—
- (a) 30 days after the day the chief executive tells the licensed proprietors, in writing, about the decision on the application; or
 - (b) if the licensed proprietors agree to another time for the removal to take effect—the time agreed.

Division 24.4.2 Childcare service licences—renewal

2627 Childcare service licence renewal—licensed proprietor may apply

- (1) A licensed proprietor of a childcare service may apply for renewal of the licence.
- (2) The application must be—
 - (a) made in writing to the chief executive; and
 - (b) received by the chief executive at least 30 days, but no more than 60 days, before the childcare service licence ends.
- (3) However, the chief executive may extend the time for making an application.

Note 1 A licensed proprietor may apply to the chief executive for the time to be extended, and the chief executive may extend the time, even though the time has ended (see Legislation Act, s 151C).

Note 2 A fee may be determined under s 3209 for this provision.

Note 3 If a form is approved under s 3210 for this provision, the form must be used.

2628 Childcare service licence renewal—further information

- (1) This section applies if the chief executive has received an application for renewal of a childcare service licence under section 2627.
- (2) The chief executive may ask the licensed proprietor to give the chief executive more information about—
 - (a) the application, including information about the licensed proprietor and any controlling person; and
 - (b) the premises used for operating the childcare service.
- (3) The chief executive may ask the licensed proprietor to allow the chief executive to inspect the premises where the licensed proprietor operates the childcare service.

Note An authorised person may, at any reasonable time, enter premises if the chief executive has received an application for renewal of a childcare service licence under s 2627 and asked the proposed proprietor to allow the chief executive to inspect the premises under this section and the proposed proprietor has agreed to allow the chief executive to inspect the premises (see s 2907).

2629 Childcare service licence renewal—chief executive need not decide no information or inspection

- (1) This section applies if, under section 2628—
 - (a) the chief executive asks the proposed proprietor to give the chief executive more information but the proposed proprietor does not give the chief executive the information; or
 - (b) the chief executive asks the proposed proprietor to allow the chief executive to inspect premises but the proposed proprietor does not allow the chief executive to inspect the premises.
- (2) The chief executive need not decide whether the proposed proprietor is eligible for renewal of a childcare service licence.

2630 Childcare service licence renewal—eligibility

A licensed proprietor of a childcare service is eligible for renewal of the licence only if the chief executive is satisfied that—

- (a) the licensed proprietor is eligible for a childcare service licence under section 2619 (Childcare service licence—eligibility); and
- (b) the licensed proprietor has complied with the childcare services standards during the period of the childcare service licence.

Note 1 The proprietor and each controlling person must tell the chief executive not later than 7 days after any of their suitability information changes (see s 145).

Note 2 The Minister may make childcare services standards under s 3211.

2631 Childcare service licence renewal—decision on application

- (1) This section applies if the chief executive receives an application for renewal of a childcare service licence under section 2627.
- (2) If the licensed proprietor is eligible under section 2630 for renewal of the childcare service licence, the chief executive must give the licensed proprietor a new childcare service licence.
- (3) If the licensed proprietor is not eligible under section 2630 for renewal of the childcare service licence, the chief executive must refuse to renew the childcare service licence.

Note A decision under this subsection is a reviewable decision (see s 3009).

- (4) The chief executive must, not later than the required time for an application—
 - (a) decide the application; and
 - (b) tell the licensed proprietor about the decision on the application.

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- (5) For subsection (4), the required time for an application is the latest of the following:
- (a) if the chief executive requires the licensed proprietor or a controlling person to provide a reference or report under section 143 (2) (a)—30 days after the day the chief executive receives the reference or report;
 - (b) if the chief executive requires the licensed proprietor or a controlling person to undergo a test or medical examination under section 143 (2) (b)—30 days after the day the chief executive receives the results of the test or examination;
 - (c) if the chief executive asks the licensed proprietor to give the chief executive more information under section 2628 (2)—30 days after the day the chief executive receives the information;
 - (d) if the chief executive asks the licensed proprietor, to allow the chief executive to inspect premises under section 2628 (3)—30 days after the day the chief executive is allowed to inspect the premises;
 - (e) in any other case—30 days after the day the chief executive receives the application.

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

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Division 24.4.3 Childcare service licences— suspension and cancellation

2632 Who is an *affected child*?

In this division:

affected child, for an event, for a childcare service, includes—

- (a) a child who is being cared for by the childcare service when the event happens; and
- (b) a child who is enrolled at the childcare service, whether or not the child attends the childcare service on the day the event happens.

2633 Childcare service licence—compliance notices

- (1) This section applies if the chief executive reasonably believes that the licensed proprietor of a childcare service has operated the childcare service in a way that does not comply with—
 - (a) this chapter; or
 - (b) a childcare services standard.

Note 1 The Minister may make childcare services standards under s 3211.

Note 2 In these circumstances, the chief executive may also give an intention to cancel notice (see s 2637).

Note 3 An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

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- (2) The chief executive may give a written notice (a ***compliance notice***) to the licensed proprietor of the childcare service—
- (a) directing the licensed proprietor to take the steps stated in the notice to stop the contravention not later than the day stated in the notice; and
 - (b) telling the licensed proprietor that the licensed proprietor may make a submission, orally or in writing, to the chief executive about the notice not later than 7 days after the day the notice is given to the licensed proprietor.
- (3) If the licensed proprietor does not make a submission in accordance with the compliance notice, the chief executive must take reasonable steps to tell a person with responsibility for day-to-day matters for each affected child about the compliance notice.
- Note* A parent of a child has responsibility for day-to-day matters for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Responsibility for day-to-day matters for a child may also be shared with someone else (see s 18).
- (4) If the licensed proprietor makes a submission in accordance with the compliance notice, the chief executive must consider the submission and must either—
- (a) confirm the compliance notice; or
 - (b) amend the compliance notice; or
 - (c) revoke the compliance notice.
- Note* A decision under this subsection is a reviewable decision (see s 3009).
- (5) After making a decision under subsection (4), the chief executive must tell the licensed proprietor about the decision.

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- (6) If the licensed proprietor makes a submission in accordance with the compliance notice and the chief executive decides to confirm or amend the compliance notice, the chief executive must take reasonable steps to tell a person with responsibility for day-to-day matters for each affected child about the compliance notice and the decision to confirm or amend it.

2634 Childcare service licence—suspension for noncompliance

- (1) This section applies if—
- (a) the chief executive gives the licensed proprietor of a childcare service a compliance notice under section 2633; and
 - (b) the licensed proprietor does not take the steps stated in the notice not later than the day stated in the notice or, if the chief executive allows further time, the further time.

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

- (2) The chief executive may give a written notice (a ***compliance suspension notice***) to the licensed proprietor—
- (a) suspending the childcare service licence on and from the date stated in the notice; and
 - (b) telling the licensed proprietor that the licensed proprietor may make a submission, orally or in writing, to the chief executive about the notice not later than 30 days after the day the notice is given to the licensed proprietor.

Note A decision under this subsection is a reviewable decision (see s 3009).

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- (3) If the chief executive gives a compliance suspension notice to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with responsibility for day-to-day matters for each affected child about the suspension.
- (4) The compliance suspension notice has effect until either—
- (a) the suspension is ended under section 2635; or
 - (b) the notice is revoked by the chief executive by written notice given to the licensed proprietor.

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

2635 Childcare service licence—ending noncompliance suspension

- (1) This section applies if—
- (a) the chief executive gives the licensed proprietor of a childcare service a compliance suspension notice under section 2634; and
 - (b) the licensed proprietor makes a submission in accordance with the notice.
- (2) The chief executive must consider the submission.
- (3) After considering the submission, the chief executive may consider any other relevant matter and must decide to either—
- (a) confirm the suspension and decide the length of the suspension; or

Note A decision under this paragraph is a reviewable decision (see s 3009).

- (b) end the suspension.

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- (4) The chief executive must tell—
- (a) the licensed proprietor about the decision under subsection (3); and
 - (b) anyone else about the decision who was told under section 2634 about the suspension.

2636 Childcare service licence—suspension if children unsafe

- (1) This section applies if the chief executive reasonably believes that—
- (a) children being cared for by a licensed childcare service are unsafe; and
 - (b) the exercise of the chief executive’s powers under this section is necessary to protect the children.

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

- (2) The chief executive may give a written notice (a ***safety suspension notice***) to the licensed proprietor, immediately suspending the childcare service licence.

Note A decision under this subsection is a reviewable decision (see s 3009).

- (3) If the chief executive gives a ***safety suspension notice*** to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with responsibility for day-to-day matters for each affected child about the suspension.

Note A parent of a child has responsibility for day-to-day matters for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Responsibility for day-to-day matters for a child may also be shared with someone else (see s 18).

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- (4) The safety suspension notice has effect until revoked by the chief executive by written notice given to the licensed proprietor.

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

2637 Childcare service licence—notice of intention to cancel

- (1) This section applies if—
- (a) the licensed proprietor of a childcare service is convicted or found guilty of an offence against this chapter; or
- (b) the chief executive reasonably believes that—

- (i) a childcare service licence was obtained improperly; or
- (ii) the licensed proprietor of a childcare service has operated the childcare service in a way that does not comply with a childcare services standard; or

Note 1 The Minister may make childcare services standards under s 3211.

Note 2 In these circumstances, the chief executive may instead give a compliance notice (see s 2633).

- (iii) the licensed proprietor of a childcare service is not a suitable entity to provide the childcare service; or
- (iv) a controlling person for a childcare service is not a suitable entity to provide the childcare service.

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

- (2) The chief executive may give a written notice (an *intention to cancel notice*) to the licensed proprietor telling the licensed proprietor—
- (a) that the chief executive intends to cancel the childcare service licence; and

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- (b) the reasons for the intended cancellation; and
 - (c) that the licensed proprietor may make a submission, orally or in writing, to the chief executive about the intended cancellation not later than 21 days after the day the notice is given to the licensed proprietor.
- (3) If the chief executive gives an intention to cancel notice to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with responsibility for day-to-day matters for each affected child about the notice.

Note A parent of a child has responsibility for day-to-day matters for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Responsibility for day-to-day matters for a child may also be shared with someone else (see s 18).

2638 Childcare service licence—cancellation

- (1) This section applies if the chief executive gives a licensed proprietor of a childcare service an intention to cancel notice under section 2637.
- (2) If the licensed proprietor makes a submission in accordance with the intention to cancel notice, the chief executive must consider the submission.
- (3) After considering the submission, the chief executive may consider any other relevant matter and must decide to either—
- (a) cancel the childcare service licence; or
- Note* A decision under this paragraph is a reviewable decision (see s 3009).
- (b) revoke the intention to cancel notice.
- (4) If the licensed proprietor does not make a submission in accordance with the notice, the chief executive must decide to cancel the childcare service licence.

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- (5) If the chief executive decides to revoke the intention to cancel notice the chief executive must—
- (a) tell the licensed proprietor about the decision; and
 - (b) tell anyone else about the decision who was told under section 2637 (3) about the intention to cancel notice.

2639 Childcare service licence—cancellation notice

- (1) This section applies if the chief executive decides to cancel a licensed proprietor’s childcare service licence.
- (2) The chief executive must give a written notice (a *cancellation notice*) to the licensed proprietor, cancelling the childcare service licence on and from the date stated in the notice (the *cancellation date*).
- (3) If the chief executive gives a cancellation notice to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with responsibility for day-to-day matters for each affected child about the cancellation.
- (4) The cancellation notice must be given to the licensed proprietor at least 7 days before the cancellation date.

2640 Offence—fail to return cancelled childcare service licence

- (1) A person commits an offence if—
 - (a) the person is a licensed proprietor of a childcare service; and
 - (b) the chief executive cancels the childcare service licence by giving the licensed proprietor a cancellation notice; and

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- (c) the person fails to return the childcare service licence to the chief executive not later than 7 days after the day the cancellation notice is given to the person.

Maximum penalty: 5 penalty units.

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

2641 Childcare service licence—identity of childcare workers protected

If the chief executive is required to tell a person with responsibility for day-to-day matters for an affected child about something under this division, the chief executive must not tell the person information that—

- (a) identifies a person as a childcare worker for a childcare service; or
- (b) would allow the identity of a person as a childcare worker for a childcare service to be worked out.

Division 24.4.4 Childcare service licences—offences

2642 Offence—operate unlicensed childcare service

- (1) A person commits an offence if—
 - (a) the person is—
 - (i) a proprietor of a childcare service; or
 - (ii) a controlling person for a childcare service; and
 - (b) the proprietor of the childcare service operates the childcare service; and

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- (c) the proprietor of the childcare service does not hold a childcare service licence to operate the childcare service.

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

- (2) This section does not apply if—
 - (a) an exemption under section 2604 (Exemption—ch 24) is in force for the childcare service; and
 - (b) the exemption exempts the childcare service from the operation of this section; and
 - (c) the proprietor of the childcare service operates the childcare service in accordance with the exemption.

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

2643 Offence—advertise unlicensed childcare service

- (1) A person commits an offence if—
 - (a) the person is—
 - (i) a proprietor of a childcare service; or
 - (ii) a controlling person for a childcare service; and
 - (b) the person publishes an advertisement for the childcare service; and
 - (c) the proprietor of the childcare service does not hold a childcare service licence to operate the childcare service.

Maximum penalty: 30 penalty units.

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- (2) This section does not apply if—
- (a) an exemption under section 2604 (Exemption—ch 24) is in force for the childcare service; and
 - (b) the exemption exempts the childcare service from the operation of this section; and
 - (c) the proprietor of the childcare service operates the childcare service in accordance with the exemption.
- (3) This section also does not apply if—
- (a) a person applies for a childcare service licence to operate a childcare service; and
 - (b) the application has not been decided; and
 - (c) the person publishes an advertisement for the childcare service; and
 - (d) the advertisement clearly states that the person does not hold a licence to operate the service.
- (4) In this section:
- advertisement*—
- (a) includes an enrolment form, circular, label, notice and sign; but
 - (b) does not include a document published for a feasibility study.

2644 Offence—operate childcare service when licence suspended

A person commits an offence if—

- (a) the person is—
 - (i) a licensed proprietor of a childcare service; or
 - (ii) a controlling person for a licensed childcare service; and

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- (b) the childcare service licence is suspended under—
- (i) section 2634 (Childcare service licence—suspension for noncompliance); or
 - (ii) section 2636 (Childcare service licence—suspension if children unsafe); and
- (c) the licensed proprietor operates the childcare service.

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

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

2645 Offence—operate childcare service in contravention of standards

- (1) A person commits an offence if—
- (a) the person is—
 - (i) a licensed proprietor of a childcare service; or
 - (ii) a controlling person for a licensed childcare service; and
 - (b) the childcare service is operated in a way that does not comply with the childcare services standards.

Note The Minister may make childcare services standards under s 3211.

Maximum penalty: 50 penalty units.

- (2) This section does not apply if—
- (a) an exemption under section 2604 (Exemption—ch 24) is in force for the childcare service; and

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- (b) the exemption exempts the childcare service from the operation of this section; and
 - (c) the proprietor of the childcare service operates the childcare service in accordance with the exemption.
- (3) An offence against this section is a strict liability offence.

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

Division 24.4.5 Childcare service licenses—register, assessment and reporting

2646 Childcare service licence—register

The chief executive must establish a register of childcare service licences.

2647 Assessing compliance with childcare services standards

- (1) At least once during the period of a childcare service licence, the chief executive must assess the childcare service's compliance with the childcare services standards.

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises (see s 2907).

- (2) The Minister may make childcare services assessment requirements.
- (3) A childcare services assessment requirement is a disallowable instrument.

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

- (4) An assessment must be carried out in accordance with the childcare services assessment requirements.

2648 Annual childcare standards report

- (1) The chief executive must, for each financial year, prepare a report (a *childcare standards report*) about the compliance of licensed childcare services with the childcare services standards.
- (2) A childcare standards report must include—
 - (a) any assessments made by the chief executive under section 2647 during the financial year to which the report relates; and
 - (b) any submissions that the chief executive is required to include under section 2650 (Annual childcare standards report—consultation).

Note Before including in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard, the chief executive must consult with, and consider submissions by, the licensed proprietor (see s 2650).

- (3) A childcare standards report is a notifiable instrument.

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

- (4) A childcare standards report must comply with the childcare standards report requirements.
- (5) A childcare standards report must not include—
 - (a) sensitive information; or
 - (b) information that—
 - (i) identifies a person as a childcare worker for a childcare service; or

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- (ii) would allow the identity of a person as a childcare worker for a childcare service to be worked out.

Note 1 **Sensitive information** is defined in s 3104.

Note 2 The identity of a person who reports a breach of the Act is sensitive information (see s 3200).

2649 Annual childcare standards report—requirements

- (1) The Minister may make childcare standards report requirements.
- (2) A childcare standards report requirement is a disallowable instrument.

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

2650 Annual childcare standards report—consultation

- (1) This section applies if the chief executive proposes to include in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard.
- (2) The chief executive must give the licensed proprietor of the childcare service a written notice (a **childcare standards report notice**) stating—
 - (a) the chief executive’s proposal; and
 - (b) that the licensed proprietor may, not later than 30 days after the day the notice is given to the licensed proprietor, make a submission about the proposal to the chief executive; and
 - (c) that if the proprietor makes a written submission in accordance with the notice, the submission may be included in a childcare standards report.

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- (3) A childcare standards report notice must not include—
- (a) sensitive information; or
 - (b) information that—
 - (i) identifies a person as a childcare worker for a childcare service; or
 - (ii) would allow the identity of a person as a childcare worker for a childcare service to be worked out.

Note 1 **Sensitive information** is defined in s 3104.

Note 2 The identity of a person who reports a breach of the Act is sensitive information (see s 3200).

- (4) Before including in a childcare standards report information about a childcare service being operated in a way that does not comply with a childcare services standard, the chief executive must consider any submission made by the licensed proprietor in accordance with the childcare standards report notice.
- (5) If the chief executive decides to include in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard, the chief executive must also include in the report a copy of any written submission given to the chief executive by the licensed proprietor in accordance with a childcare standard report notice.

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Part 24.5 Childcare services—enforcement

Note to pt 24.5

Other enforcement provisions apply to this chapter (see ch 27).

2651 Removal of child in immediate danger

- (1) This section applies if the chief executive is satisfied that there is an immediate danger to the health, welfare or safety of a child being cared for by a childcare service.

Note An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive reasonably suspects that a childcare service is operating on the premises (see s 2907).

- (2) The chief executive may—
- (a) remove the child from the premises where the childcare service is operating; and
 - (b) also remove from the premises anything reasonably required for the child's care; and
 - (c) arrange for the child to be—
 - (i) returned to the care of a person with responsibility for day-to-day matters for the child; or

(ii) temporarily cared for by a licensed childcare service.

Examples of things reasonably required for child's care

- 1 nappies provided by child's parent
- 2 food provided by child's parent
- 3 medication for the child provided by child's parent
- 4 information about how to contact the child's parent
- 5 information about the child's medical conditions

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 parent of a child has responsibility for day-to-day matters for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Responsibility for day-to-day matters for a child may also be shared with someone else (see s 18).

- (3) If the chief executive arranges for the child to be temporarily cared for by a licensed childcare service, the chief executive must take all reasonable steps to tell a person with responsibility for day-to-day matters for the child—
 - (a) that the child is being temporarily cared for by a licensed childcare service; and
 - (b) the reason for the temporary care; and
 - (c) the location of the child.
- (4) If the chief executive removes something required for a child's care under subsection (2) (b), the chief executive must take all reasonable steps to ensure that the thing is used for the child's care and returned to its owner when no longer needed.

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Chapter 25 Employment of children and young people

Notes to ch 25

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 10).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 10).

Part 25.1 Important concepts

2700 Ch 25 subject to Education Act 2004, s 13

This chapter has effect subject to the *Education Act 2004*, section 13 (Employment of children under school-leaving age).

Note The *Education Act 2004*, s 13 makes it an offence for a person to employ a child or young person under school-leaving age (15 years old), on a day and at a time, when the child or young person—

- (a) is required under the Act to attend a school, school activity or approved educational course; or
- (b) if the child or young person does not live in the ACT or is enrolled at a school under State law—would be required under this Act to attend a school, school activity or approved educational course if the child or young person were living in the ACT or were not enrolled at a school under State law.

The *Education Act 2004*, s 14 allows the chief executive to issue a certificate exempting the child or young person from school if—

- (a) it is necessary or desirable, considering any educational, vocational training or employment opportunity offered to the child or young person; or

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- (b) it is otherwise in the best interests of the child or young person, considering the care, health, development or education of the child or young person.

2701 Definitions—ch 25

- (1) In this Act:
school-leaving age—see section 2710.
- (2) In this chapter:
contrary to the best interests of a child or young person—see section 2704.
employment—see section 2702.
employment conditions notice—see section 2708.
employment prohibition notice—see section 2706.

2702 When does someone *employ* a child or young person?

- (1) In this chapter:
employment includes—
- (a) performance of work under a contract for services (whether written or unwritten); and
 - (b) an apprenticeship, traineeship or other work-related training for a trade or occupation; and
 - (c) work experience, other than work experience as part of a work experience program exempted under section 2703.
- (2) In deciding whether something is *employment* of a child or young person for this chapter, it does not matter whether the child or young person receives payment (however described) or not.

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- (3) In this section:

educational institution means a school, college or other educational institution, whether or not operated by or on behalf of the Territory.

work experience means the engagement of a child or young person by someone if the engagement—

- (a) is arranged by an educational institution where the child or young person is enrolled; and
- (b) is part of a work experience program (however described) conducted by the educational institution.

2703 Exempt work experience programs

- (1) The Minister may exempt a work experience program if satisfied that the program complies with the work experience standards.

Note The Minister may make work experience standards under s 3211.

- (2) An exemption is a notifiable instrument.

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

- (3) In this section:

work experience—see section 2702 (3).

2704 When is employment *contrary to the best interests of a child or young person*?

In this chapter, employment is taken to be ***contrary to the best interests of a child or young person*** if it—

- (a) contravenes the *Education Act 2004*, section 13 in relation to the child or young person; or
- (b) if the child or young person is engaged in education or training—is likely to prejudice the ability of the child or young person to benefit from the education or training; or

(c) is otherwise likely to prejudice the health, safety or personal or social development of the child or young person.

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Part 25.2 Employment of children and young people

Note to pt 25.2

Occupational health and safety matters are dealt with in the *Occupational Health and Safety Act 1989*.

2705 Offence—employ underage child or young person

- (1) A person commits an offence if—
- (a) the person employs a child or young person; and
 - (b) the employment is regulated employment; and
 - (c) the child or young person is younger than the minimum age prescribed by regulation for the employment.

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

- (2) In this section:

regulated employment means employment declared to be regulated employment by a regulation.

2706 Chief executive may prohibit employment

The chief executive may, by written notice given to an employer (an *employment prohibition notice*), prohibit the employer from employing, or continuing to employ, a child or young person named in the notice if the chief executive reasonably believes that the employment is, or is likely to be, contrary to the best interests of the child or young person.

2707 Offence—contravene employment prohibition notice

An employer commits an offence if—

- (a) the chief executive gives the employer an employment prohibition notice under section 2706; and
- (b) the employer engages in conduct that contravenes the employment prohibition notice.

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

2708 Chief executive may state conditions of employment

The chief executive may, by written notice given to an employer (an *employment conditions notice*), state conditions in relation to the employment of a child or young person named in the notice, that must be complied to ensure the employment is not contrary to the best interests of the child or young person.

2709 Offence—contravene employment conditions notice

An employer commits an offence if—

- (a) the chief executive gives the employer an employment conditions notice under section 2708; and
- (b) the employer engages in conduct that contravenes the employment conditions notice.

Maximum penalty: 50 penalty units.

Part 25.3 Employment of children and young people under school-leaving age

Note to pt 25.3

Occupational health and safety matters are dealt with in the *Occupational Health and Safety Act 1989*.

2710 What is *school-leaving age*?

In this Act:

school-leaving age—see the *Education Act 2004*, dictionary.

Note The *Education Act 2004*, dictionary defines school-leaving age as 15 years old.

2711 What is *light work*?

In this part:

light work means each of the following:

- (a) babysitting;
- (b) going on errands;
- (c) casual work in or around a private home;
- (d) golf-caddying;
- (e) clerical work;
- (f) gardening;
- (g) selling, delivering or distributing newspapers or advertisements;

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- (h) entertaining at a place used for providing entertainment or amusement;
 - (i) entertaining at a place used for sporting activities;
 - (j) singing, dancing, playing a musical instrument or similar work;
 - (k) performing in a radio, television or film program or production, or a similar program or production, other than a news item;
 - (l) modelling;
 - (m) acting as a photographic subject, whether still or moving;
 - (n) any other work prescribed by regulation.

2712 What is a *high risk occupation*?

In this part:

high risk occupation means an occupation declared to be high risk under section 2716.

2713 Offence—employment of children and young people under school-leaving age

- (1) A person commits an offence if—
 - (a) the person employs a child or young person; and
 - (b) the child or young person is younger than school-leaving age.

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

Note Employment as part of an exempted work experience program is not employment for this chapter (see s 2702 (1), def *employment*, par (c)).

- (2) This section is subject to the following sections:
 - (a) section 2714 (which is about light work);

(b) section 2715 (which is about family businesses).

2714 Exception to s 2713—employment in light work

- (1) Section 2713 (1) does not apply to the employment of a child or young person if—
- (a) the employment is in light work; and
 - (b) the child or young person is employed for 10 hours per week or less; and
 - (c) the employment is not contrary to the best interests of the child or young person.
- (2) Section 2713 (1) does not apply to the employment of a child or young person in light work for more than 10 hours per week if—
- (a) the employment is in light work; and
 - (b) the employment is not contrary to the best interests of the child or young person; and
 - (c) the proposed employer has, at least 7 days before the day the employment starts, told the chief executive about the employment.

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

2715 Exception to s 2713—employment in family business

Section 2713 (1) does not apply to the employment of a child or young person if—

- (a) the employer is—
 - (i) a parent of the child or young person; or
 - (ii) a company of which a parent of the child or young person is a director; or

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- (iii) a partnership of which a parent of the child or young person is a partner; and
 - (b) the employment is not contrary to the best interests of the child or young person; and
 - (c) the employment is not in a high risk occupation.

2716 Declaration of high risk occupation

- (1) The chief executive may declare an occupation to be high risk if satisfied that there is a higher than usual risk of a child or young person in the occupation being exposed to the risk of significant physical injury.
- (2) A declaration is a notifiable instrument.

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

2717 Offence—employment of child or young person under school-leaving age in high risk industries

- (1) A person commits an offence if—
 - (a) the person employs a child or young person; and
 - (b) the employment is in a high risk occupation; and
 - (c) the child or young person is younger than school-leaving age.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) This section does not apply to the employment of a child or young person if the chief executive has consented to the employment under section 2718.

2718 Chief executive’s consent to employment in high risk occupation

- (1) If a person who proposes to employ a child or young person who is younger than school-leaving age in a high risk occupation applies to the chief executive for consent to employ the child or young person, the chief executive may consent to the employment of the child or young person.
- (2) The chief executive must refuse to consent to the employment of the child or young person if the chief executive reasonably believes that the proposed employment would be likely to prejudice the child’s or young person’s health or safety.
- (3) The chief executive’s consent may be subject to stated conditions about the preservation of the child’s or young person’s health and safety.

2719 Offence—contravene condition of consent

A person commits an offence if—

- (a) the chief executive has consented to the employment of a child or young person under section 2718; and
- (b) the chief executive’s consent is conditional; and
- (c) the person engages in conduct that contravenes a condition of the chief executive’s consent.

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

Chapter 26 Research involving children and young people

2800 Definitions—ch 26

In this chapter:

approved research project means a research project approved under section 2802 (1).

approved research project procedures, for a research project, means the procedures approved under section 2803 for carrying out the project.

ethics committee means a committee approved under section 2807 as an ethics committee.

researcher, for a research project, means the person carrying out, or proposing to carry out, the research project.

research project—see section 2801.

2801 What is a *research project*?

In this chapter:

research project means a research project about children and young people that involves—

- (a) a child or young person taking part in the project; or
- (b) the chief executive giving the researcher protected information, that is not sensitive information, about a child or young person for the research project.

Note *Protected information* is defined in s 3103.
Sensitive information is defined in s 3104.

2802 Approval of research projects—generally

- (1) The chief executive may approve a research project.
- (2) However, the chief executive may approve a research project only if—
 - (a) the chief executive has approved procedures under section 2803 (Approval of research project procedures) for the research project; and
 - (b) if the project involves a child or young person taking part in the project—the chief executive has approved the project under section 2804 (Approval of research projects—child or young person to take part); and
 - (c) if the project involves the chief executive giving the researcher protected information, that is not sensitive information, about a child or young person—the chief executive has approved the project under section 2806 (Approval of research projects—chief executive to give researcher protected information).
- (3) In deciding whether to approve a research project, the chief executive may have regard to a recommendation made by an ethics committee approved by the chief executive under section 2807 (Approval of ethics committees).

2803 Approval of research project procedures

- (1) The Chief executive may approve procedures for carrying out an approved research project.
- (2) If a child or young person is to take part in the research project, the chief executive must not approve procedures under subsection (1) for the project unless satisfied that the procedures—
 - (a) ensure that the welfare of the child or young person is paramount; and

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- (b) appropriately protect the child's or young person's health and safety; and
 - (c) allow the child or young person to stop taking part in the project at any time; and
 - (d) ensure that the child's or young person's identity as a participant in the project is protected; and
 - (e) only allow the project to take place during normal business hours; and
 - (f) comply with anything else prescribed by regulation.
- (3) If the chief executive is to give the researcher protected information, that is not sensitive information, about a child or young person for the project, the chief executive must not approve procedures under subsection (1) for the project unless satisfied that the procedures—
- (a) ensure that the secrecy of the information is protected; and
 - (b) comply with anything else prescribed by regulation.
- (4) An approval under subsection (1) is a disallowable instrument.

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

2804 Approval of research projects—child or young person to take part

- (1) This section applies if the chief executive is deciding whether to approve a research project that involves a child or young person taking part in the project.

(2) The chief executive may approve the research project only if satisfied that—

(a) the researcher is a suitable entity to have contact with children or young people in the way proposed in the project; and

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

(b) any other person who is to have contact with children or young people for the project is a suitable entity to have contact with children or young people in the way proposed in the project; and

(c) a person who has responsibility for day-to-day matters for the child or young person has agreed to the child or young person taking part in the project.

Note Responsibility for day-to-day matters is dealt with under s 19.

2805 Acknowledgement of agreement—child or young person to take part

(1) When seeking the agreement of a person under section 2804 (2) (c), the chief executive must tell the person—

(a) what the child's or young person's role is to be in the research project; and

(b) that agreement may be refused.

(2) If the person agrees, the chief executive must ask the person to sign a written acknowledgment (an *acknowledgement of agreement*)—

(a) that the person was told—

(i) what the child's or young person's role is to be in the research project; and

(ii) that agreement may be refused.

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- (b) that the person agreed to the child or young person taking part in the research project; and
 - (c) stating the time and date when agreement was given.
- (3) If the person signs an acknowledgment of agreement, the chief executive must immediately give a copy to the person.
- (4) A court must find that the person did not agree to the child or young person taking part in the research project under this part if—
- (a) the question arises in a proceeding in the court whether the person agreed to the child or young person taking part in the research project; and
 - (b) an acknowledgment of agreement is not produced in evidence; and
 - (c) it is not proved that the person agreed to the child or young person taking part in the research project.

2806 Approval of research projects—chief executive to give researcher protected information

- (1) This section applies if the chief executive is deciding whether to 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.
- (2) The chief executive may approve the research project only if satisfied that—
 - (a) the researcher is a suitable entity to have access to the information; and
 - (b) any other person who is to have access to the information for the project is a suitable entity to have access to the information; and

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- (c) the research project cannot reasonably be carried out without the researcher having access to the information.

2807 Approval of ethics committees

- (1) The Minister may approve a stated committee as an ethics committee for this chapter.
- (2) An approval is a notifiable instrument.

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

2808 Researcher may carry out approved research project

A researcher may carry out an approved research project in accordance with the approved research project procedures for the project.

2809 Offence—researcher contravene approved procedures

A person commits an offence if the person—

- (a) is a researcher for an approved research project; and
- (b) carries out the approved research project in a way that does not comply with the approved research project procedures for the project.

Maximum penalty: 50 penalty units.

Note An approved researcher must also comply with the provisions about secrecy of information in ch 29 (Information secrecy and sharing).

Chapter 27 Enforcement

Notes to ch 27

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 for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 10).

Part 27.1 General

2900 Definitions—ch 27

In this chapter:

connected—a thing is connected with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used to commit the offence.

occupier, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

Part 27.2 Authorised people

2901 Appointment of authorised people

The chief executive may appoint a public servant to be an authorised person for this Act.

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

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

2902 Identity cards

- (1) The chief executive must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an authorised person; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable, but not later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

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

Part 27.3 Powers of authorised people

2903 Power to enter premises—general

- (1) For this Act, an authorised person may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier’s consent; or
 - (c) enter premises in accordance with a search warrant.
- (2) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (3) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (4) However, subsection (1) does not authorise entry into a part of premises that is being used only for residential purposes.
- (5) In this section:

at any reasonable time includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

2904 Power to enter premises—ch 17 (Emergency care and protection)

- (1) For this Act, an authorised person or police officer may, at any time, enter premises if—
- (a) the authorised person or police officer reasonably believes that a child or young person at the premises is in need of emergency care and protection; and
- Note* ***In need of emergency care and protection*** is defined in s 1803.
- (b) the purpose of the entry is for the authorised person or police officer to take emergency action for the child or young person under section 1805 (Emergency action—criteria for taking emergency action).
- Note* ***Emergency action*** is defined in s 1804.
- (2) This section is additional to section 2903.

2905 Power to enter premises—ch 19 (Care and Protection—chief executive has aspect of parental responsibility)

- (1) For this Act, an authorised person may, at any reasonable time, enter premises where a child or young person is living if—
- (a) the chief executive has placed the child or young person with an out-of-home carer under section 2013 (Chief executive must place child or young person with out-of-home carer); and
 - (b) the purpose of the entry is to ensure that the child or young person is being properly cared for.

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- (2) For this Act, an authorised person may also, at any reasonable time, enter a place operated by a residential care service if—
- (a) the Minister—
 - (i) is deciding whether to approve the place as a place of care under section 2027 (Approval of places of care); and
 - (ii) has asked the residential care service to allow the Minister to inspect the place; and
 - (b) the residential care service has agreed to allow the Minister to inspect the place.

Note If the residential care service does not allow the Minister to inspect the place, the Minister need not decide whether to approve the place as a place of care (see s 2027).

- (3) This section is additional to section 2903 (Power to enter premises—general).
- (4) In this section:

at any reasonable time includes at any time during normal business hours.

Note An official visitor also inspects places of care and handles complaints made by children and young people who are placed with a residential care service and accommodated at a place of care (see s 2016 and pt 2.3).

2906 Power to enter premises—ch 20 (Therapeutic protection of children and young people)

- (1) For this Act, an authorised person may, at any reasonable time, enter a therapeutic protection place.
- (2) For this Act, an authorised person may also, at any reasonable time, enter a place if the chief executive is deciding whether to declare the place as a therapeutic protection place under section 2195 (Therapeutic protection place—declaration).

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- (3) However, this section authorises entry into a part of premises used for residential purposes only if the part of the premises is used to operate the therapeutic protection place.
- (4) This section is additional to section 2903 (Power to enter premises—general).
- (5) In this section:
at any reasonable time includes at any time during normal business hours.

2907 Power to enter premises—ch 24 (Childcare services)

- (1) For this Act, an authorised person may, at any reasonable time, enter premises if—
- (a) the chief executive has—
- (i) received an application for a childcare service licence under section 2616 (Childcare service licence—proprietor may apply) and has asked the proposed proprietor to allow the chief executive to inspect the premises where the proposed proprietor proposes to operate the childcare service under section 2617 (Childcare service licence—further information); or
 - (ii) received an application for renewal of a childcare service licence under section 2627 (Childcare service licence renewal—licensed proprietor may apply) and has asked the proposed proprietor to allow the chief executive to inspect the premises where the proposed proprietor proposes to operate the childcare service under section 2628 (Childcare service licence renewal—further information); and

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- (b) the proposed proprietor has agreed to allow the chief executive to inspect the premises.

Note If the proposed proprietor does not allow the chief executive to inspect the premises, the chief executive need not decide whether the proposed proprietor is eligible for the childcare service licence or for renewal of the licence (see s 2618 and s 2629).

- (2) For this Act, an authorised person may also—
- (a) at any reasonable time, enter premises if—
- (i) a licensed childcare service is operating on the premises;
or
- (ii) the chief executive reasonably suspects that a childcare service is operating on the premises; or
- (b) at any time, enter premises with the occupier’s consent.
- (3) However, this section authorises entry into a part of premises used for residential purposes only if the part of the premises is used to operate the childcare service.
- (4) This section is additional to section 2903 (Power to enter premises—general).
- (5) In this section:

at any reasonable time includes at any time during normal business hours.

2908 Production of identity card

An authorised person must not remain at premises entered under this chapter if the authorised person does not produce his or her identity card when asked by the occupier.

2909 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 2903 (1) (b), an authorised person must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this chapter may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this chapter may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this chapter if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and

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- (b) an acknowledgment of consent is not produced in evidence;
and
 - (c) it is not proved that the occupier consented to the entry.

2910 General powers on entry to premises

- (1) An authorised person who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) make copies of, or take extracts from, a document kept at the premises;
 - (f) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this chapter.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (b).

Maximum penalty: 50 penalty units.

2911 Power to require name and address

- (1) An authorised person may require a person to state the person's name and home address if the authorised person believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

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

- (2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised person to produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised person—
 - (a) tells the person the reason for the requirement; and
 - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) In this section:

home address, of a person, means the address of the place where the person usually lives.

2912 Power to seize things

- (1) An authorised person who enters premises under this chapter with the occupier's consent may seize anything at the premises if—
 - (a) satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and

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- (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this chapter may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this chapter (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—
- (a) the thing is connected with an offence against this Act; and
- (b) the seizure is necessary to prevent the thing from being—
- (i) concealed, lost or destroyed; or
- (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
- (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
- (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

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

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Part 27.4 Search warrants

2913 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
 - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person’s powers under this chapter; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and

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- (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

2914 Warrants—application made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
 - (a) the magistrate must tell the authorised person—
 - (i) the terms of the warrant; and
 - (ii) the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.

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- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this chapter.
 - (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
 - (8) On receiving the documents, the magistrate must attach them to the warrant.
 - (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

2915 Search warrants—announcement before entry

- (1) An authorised person must, before anyone enters premises under a search warrant—
 - (a) announce that the authorised person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

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- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or a person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

2916 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

2917 Occupier entitled to be present during search etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Part 27.5 Return and forfeiture of things seized

2918 Receipt for things seized

- (1) As soon as practicable after an authorised person seizes a thing under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 2912 (Power to seize things).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the authorised person's name, and how to contact the authorised person;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

2919 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

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- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
 - (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
 - (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
 - (4) The authorised person must give the occupier of the premises notice of the application, and the occupier is entitled to be heard on the application.
 - (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier’s representative to be present during the examination or processing.
 - (6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

2920 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may—

- (a) inspect it; and

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(b) if it is a document—take extracts from it or make copies of it.

2921 Return of things seized

- (1) A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—
- (a) a prosecution for an offence relating to the thing is not started within 90 days after the day of the seizure; or
 - (b) a prosecution for an offence relating to the thing is started within 90 days after the day of the seizure but the court does not find the offence proved.
- (2) If anything seized under this chapter is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
- (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the chief executive directs.

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Part 27.6 Miscellaneous

2922 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this chapter, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this chapter, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this chapter in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

2923 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this chapter by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.

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- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
 - (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

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Chapter 28 Appeals and review

Notes to ch 28

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 for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 10).

Part 28.1 Appeals

Division 28.1.1 Appeals generally

3000 Appeals to Supreme Court—generally

- (1) A person must not appeal to the Supreme Court in relation to a matter arising under this Act except—
 - (a) in accordance with—
 - (i) section 3001 (Appeals to Supreme Court—criminal matters chapters); or
 - (ii) section 3005 (Appeals to Supreme Court—care and protection chapters); or
 - (b) for a protection order made by the Childrens Court for a child or young person in need of care and protection—in accordance with the *Domestic Violence and Protection Orders Act 2001*.
- (2) This chapter does not limit the *Magistrates Court Act 1930*, part 3.10 (Criminal appeals) or another Territory law that makes provision about the appellate jurisdiction of the Supreme Court.

Division 28.1.2 Appeals—criminal matters chapters

3001 Appeals to Supreme Court—criminal matters chapters

- (1) The following appeals may be made to the Supreme Court under this Act:
 - (a) an appeal by the young person against whom the order or other decision was made from an order or other decision under part 6.2 (Children, young people and young adults), other than an order or other decision made under section 602 (Childrens Court may send cases to Supreme Court for sentencing) or section 1093 (Leave authority);
 - (b) an appeal, by the young person charged, from a decision of the Childrens Court under section 606 (Non-conviction orders—general) that the charge against the young person was proved;
 - (c) an appeal, by a party to the proceeding in which the order or other decision was made, from an order or other decision of the Childrens Court under section 1093 (Leave authority);
 - (d) an appeal, by way of an order or other decision to review, by the informant from an order or other decision of the Childrens Court dismissing an information under part 6.2;
 - (e) an appeal, by way of an order or other decision to review, by the child against whom the order or other decision was made, from an order or other decision under part 6.2;
 - (f) an appeal, by way of order or other decision to review, by the informant from a decision of the Childrens Court to dispose of a case summarily under section 518 (Indictable offences may be dealt with summarily);

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- (g) an appeal, by way of an order or other decision to review, by the informant from a decision of the Childrens Court not to commit a child or young person to the Supreme Court for sentence under section 602;
 - (h) an appeal, by way of an order or other decision to review, by the informant from an order or other decision of the Childrens Court under section 610 (Conviction orders—general).

3002 Application of Magistrates Court Act

- (1) The provisions of the *Magistrates Court Act 1930*, division 3.10.2 (Appeals in criminal matters), other than section 219 (Barring right of appeal under div 3.10.2 if order to review granted) apply in relation to an appeal mentioned in section 3001 (1) (a) or (b) of this Act as if—
 - (a) the appeal were an appeal to which that division applied; and
 - (b) the appeal were an appeal to which that Act, section 214 (Appeals in cases other than civil cases) applied; and
 - (c) a reference in that division to the Magistrates Court were a reference to the Childrens Court; and
 - (d) all other necessary changes, and any changes prescribed by regulation, were made.
- (2) The provisions of the *Magistrates Court Act 1930*, part 4.5 (Civil appeals) apply in relation to an appeal mentioned in section 3001 (1) (c) of this Act as if—
 - (a) it were an appeal from a judgment or order mentioned in that Act, section 274 (2) ; and
 - (b) all other necessary changes, and any changes prescribed by regulation, were made.

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- (3) The provisions of the *Magistrates Court Act 1930* division 3.10.3 (Orders to review in criminal matters) apply in relation to an appeal mentioned in section 3001 (1) (d), (e), (f), (g) or (h) of this Act as if—
- (a) it were an appeal from—
 - (i) for an appeal mentioned in section 3001(1) (d)—an order or other decision mentioned in that Act, section 219B (1) (a); or
 - (ii) for an appeal mentioned in section 3001 (1) (e)—an order or other decision mentioned in that Act, section 219B (1) (c); or
 - (iii) for an appeal mentioned in section 3001 (1) (f)—a decision mentioned in that Act, section 219B (1) (e); or
 - (iv) for an appeal mentioned in section 3001 (1) (g)—a decision mentioned in that Act, section 219B (1) (d); or
 - (v) for an appeal mentioned in section 3001 (1) (h)—a decision mentioned in that Act, section 219B (1) (f).
 - (b) all other necessary changes, and any changes prescribed by regulation, were made.

3003 Barring of appeal if order to review made

If an order nisi to review a decision of the kind mentioned in section 3001 (1) (d) or (e) has been made under the *Magistrates Court Act 1930*, division 3.10.3 (Orders to review in criminal matters) in its application under this chapter—

- (a) the person getting the order nisi is not entitled to make any other appeal to the Supreme Court under this chapter against the decision; and

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- (b) if the person has given to the registrar of the Magistrates Court notice of appeal to the Supreme Court against the decision, the notice of appeal is deemed to have been withdrawn.

3004 Orders that Supreme Court may make

- (1) On an appeal of the kind mentioned in section 3001 (1) (a), (b) or (c), the Supreme Court must not make an order or other decision that is not an order or other decision that could have been made by the Childrens Court in the proceeding appealed from.
- (2) On an appeal of the kind mentioned in section 3001 (1) (d), (e) or (h), the Supreme Court may make an order or other decision that could have been made by the Childrens Court in the proceeding appealed from.

Division 28.1.3 Appeals—Care and protection chapters

3005 Appeals to Supreme Court—care and protection chapters

- (1) An appeal from any of the following decisions under the care and protection chapters may be made to the Supreme Court:
- (a) the making of an order or other decision;
 - (b) a refusal to make an order or other decision applied for;
 - (c) to extend an order or other decision;
 - (d) a refusal to extend an order or other decision;
 - (e) to amend an order or other decision;
 - (f) a refusal to amend an order or other decision;
 - (g) to revoke an order or other decision;
 - (h) a refusal to revoke an order or other decision.

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- (2) The following people may appeal under this section:
- (a) a party to the proceeding in which the decision was made;
 - (b) a person named in the order or other decision.

3006 Application of Magistrates Court Act

The *Magistrates Court Act 1930*, part 4.5 (Civil appeals) applies in relation to an appeal mentioned in section 3005 of this Act as if—

- (a) it were an appeal from a judgment or order mentioned in the *Magistrates Court Act 1930*, section 274 (2); and
- (b) all other necessary changes, and any changes prescribed by regulation, were made.

3007 Orders that Supreme Court may make

On an appeal mentioned in section 3005 (Appeals to Supreme Court—care and protection chapters), the Supreme Court must not make an order or other decision that is not an order or other decision that could have been made by the Childrens Court in the proceeding appealed from.

Division 28.1.4 AAT review

3008 Review of decisions—ch 19 (Care and Protection—chief executive has aspect of parental responsibility)

- (1) A decision mentioned in table 3008, column 2 is a reviewable decision.
- (2) If the chief executive makes a reviewable decision in an item, the chief executive must give written notice of the decision to each person mentioned in table 3008, column 3 for the item.

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- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (4) A person mentioned in table 3008, column 4 for an item may apply to the AAT for review of the reviewable decision mentioned in the item.

Table 3008 Review of decisions—ch 19 (Care and Protection—chief executive has aspect of parental responsibility)

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 2018 to amend or revoke the authorisation of a person as a kinship carer	the person	the person
2	section 2019 to amend or revoke the authorisation of a person as a foster carer	the person	the person
3	section 2020 to amend or revoke the authorisation of a person as a foster carer	the person	the person
4	section 2021 to amend or revoke the authorisation of an entity as a residential care service	the entity	the entity
5	section 2022 to amend or revoke the authorisation of an entity as a residential care service	the entity	the entity
6	section 2024 (1) to revoke the authorisation of a person as a kinship carer	the person	the person

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column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
7	section 2025 (1) to revoke the authorisation of a person as a foster carer	the person	the person
8	section 2026 (1) to revoke the authorisation of an entity as a residential care service	the entity	the entity
9	section 2027 to amend or revoke the approval of a place operated by a residential care service as a place of care	the residential care service	the residential care service

3009 Review of decisions—ch 21 (Care and protection—interstate transfer of orders and proceedings)

- (1) A decision mentioned in table 3009, column 2 is a reviewable decision.
- (2) If the chief executive makes a reviewable decision in an item, the chief executive must give written notice of the decision to each person mentioned in table 3009, column 3 for the item.
- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (4) A person mentioned in table 3009, column 4 for an item may apply to the AAT for review of the reviewable decision mentioned in the item.

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Table 3009 Review of decisions—ch 21 (Care and protection—interstate transfer of orders and proceedings)

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 2352 to ask a welfare body to have an aspect of parental responsibility for a child or young person	each person whose interests are affected by the decision	each person whose interests are affected by the decision

3010 Review of decisions—ch 24 (Childcare services)

- (1) A decision mentioned in table 3010, column 2 is a reviewable decision.
- (2) If the chief executive makes a reviewable decision in an item, the chief executive must give written notice of the decision to each person mentioned in table 3010, column 3 for the item.
- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (4) A person mentioned in table 3010, column 4 for an item may apply to the AAT for review of the reviewable decision mentioned in the item.

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Table 3010 Review of decisions—ch 24 (Childcare services)

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 2620 (3) to refuse to give proprietor childcare service licence	proprietor	proprietor
2	section 2624 (4) to refuse to extend childcare service licence	licensed proprietor	licensed proprietor
3	section 2626 (4) to refuse to remove licensed proprietor from childcare service licence	licensed proprietor	licensed proprietor
4	section 2631 (3) to refuse to renew childcare service licence	licensed proprietor	licensed proprietor
5	section 2633 (4) (a) to confirm compliance notice	licensed proprietor	licensed proprietor
6	section 2634 (2) to suspend childcare service licence	licensed proprietor	licensed proprietor
7	section 2635 (3) (a) to confirm suspension of childcare service licence	licensed proprietor	licensed proprietor
8	section 2636 (2) to suspend childcare service licence	licensed proprietor	licensed proprietor
9	section 2638 (3) to cancel childcare service licence	licensed proprietor	licensed proprietor

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3011 Decision to refuse to give childcare service licence must not be stayed or otherwise affected pending outcome of review

- (1) The *Administrative Appeals Tribunal Act 1989*, section 39A (2) does not apply to a decision under section 2620 (1) (b) (Childcare service licence—decision on application) to refuse to give a childcare service licence.
- (2) The Supreme Court must not make an order or other decision under the *Administrative Decisions (Judicial Review) Act 1989*, section 16 in relation to a decision under section 2620 (1) (Childcare service licence—decision on application) to refuse to give a childcare service licence.

3012 Review of decisions—ch 25 (Employment of children and young people)

- (1) A decision mentioned in table 3012, column 2 is a reviewable decision.
- (2) If the chief executive makes a reviewable decision in an item, the chief executive must give written notice of the decision to each person mentioned in table 3012, column 3 for the item.
- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (4) A person mentioned in table 3012, column 4 for an item may apply to the AAT for review of the reviewable decision mentioned in the item.

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Table 3012 Review of decisions—ch 25 (Employment of children and young people)

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 2706 to prohibit an employer from employing, or continuing to employ, a child or young person	the employer the child or young person	the employer the child or young person
2	section 2708 to state conditions in relation to the employment of a child or young person that must be complied with	the employer the child or young person	the employer the child or young person
3	section 2718 (2) to refuse to consent to the employment of a child or young person	the employer the child or young person	the employer the child or young person
4	section 2718 (3) to consent to the employment of a child or young person subject to conditions	the employer the child or young person	the employer the child or young person

EXPOSURE DRAFT

Chapter 29 Information secrecy and sharing

Notes to ch 29

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 for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 10).

Part 29.1 Definitions

3100 Definitions—ch 29

(1) In this Act:

protected information—see section 3103.

sensitive information—see section 3104.

(2) In this chapter:

divulge—see section 3101.

information holder—see section 3102.

3101 When is information *divulged*?

In this chapter:

divulge includes communicate.

3102 Who is an *information holder*?

In this chapter:

information holder means a person who—

(a) is or has been—

- (i) the chief executive; or
- (ii) the public advocate; or
- (iii) an official visitor; or
- (iv) a researcher for an approved research project; or

Note Research involving children or young people is dealt with in ch 26.

- (v) someone else exercising a function under this Act; or
- (vi) someone else engaged in the administration of this Act;
or

(b) has been given information under this Act by a person mentioned in paragraph (a).

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

- s 1991 (Annual review report—must be given to certain people)
- s 2342 (Interstate transfer of orders and proceedings—giving information)
- s 3111 (Minister or chief executive may give information to person about themselves)
- s 3112 (Chief executive may give information in best interests of child or young person)
- s 3114 (Chief executive may give information to researcher)
- s 3117 (Minister or chief executive may give safety and welfare information to information sharing entity)

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- s 3123 (Giving protected information to a court)
 - s 3124 (Giving sensitive information to a court).

3103 What is *protected information*?

(1) In this Act:

protected information means information about a person that is disclosed to, or obtained by, an information holder because the person is, or has been, an information holder.

(2) Without limiting subsection (1), protected information includes sensitive information.

3104 What is *sensitive information*?

(1) For this Act:

sensitive information means information of the following kind:

- (a) child abuse information;
- (b) child abuse appraisal information;
- (c) interstate child abuse information;
- (d) family group conference information;
- (e) childcare services report information;
- (f) information prescribed by regulation for this section.

(2) In this section:

care and protection appraisal information means information—

- (a) contained in an appraisal record; or
- (b) that would allow the information contained in an appraisal record to be worked out.

child abuse appraisal information means information—

- (a) in an appraisal record made under section 1640 (Chief executive must record appraisal); or
- (b) in a report (an ***incident report***) to the public advocate under section 1641 (Public advocate to be told about some appraisals); or
- (c) that would allow information in an appraisal record or incident report to be worked out.

child abuse information means information—

- (a) in a report (a ***child abuse report***) made under—
 - (i) section 1600 (Definitions—Act); or
 - (ii) section 1602 (Offence—mandatory reporting of abuse and neglect); or
 - (iii) section 1607 (Prenatal reporting—anticipated abuse and neglect); or
- (b) in a record (a ***child abuse record***)—
 - (i) made under section 1605 (Chief executive to record abuse and neglect reports); or
 - (ii) made under section 1609 (Chief executive to record prenatal reports); or
 - (iii) that relates to a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or
- (c) that would allow information in a child abuse report or child abuse record to be worked out; or
- (d) that identifies a person as a person who made a child abuse report; or

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- (e) that would allow a person's identity as a person who made a child abuse report to be worked out.

childcare services report information means information—

- (a) contained in a confidential report made under section 3200 (Confidential report of contravention of Act); or
- (b) that would allow the information contained in a confidential report to be worked out; or
- (c) that identifies a person as a person who made a confidential report; or
- (d) that would allow a person's identity as a person who made a confidential report to be worked out.

family group conference information means information—

- (a) about anything said or done to facilitate a family group conference; or
- (b) about anything said or done at a family group conference; or
- (c) in a family group conference agreement; or
- (d) in a family group conference outcome report; or
- (e) that would allow information mentioned in paragraphs (a) to (d) to be worked out.

Note Family group conferences are dealt with in ch 3 and ch 16.

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interstate child abuse information means information—

- (a) in a report (an *interstate child abuse report*) made under a provision of a law of a State corresponding (or substantially corresponding) to section 1600 (Voluntary reporting of abuse and neglect), section 1602 (Offence—mandatory reporting of abuse and neglect) or section 1607 (Prenatal reporting—anticipated abuse and neglect), that is provided to the chief executive under a section corresponding (or substantially corresponding) to—
 - (i) section 2342 (Interstate transfer of orders and proceedings—giving information); or
 - (ii) section 3119 (Chief executive may ask information sharing entity to give safety and welfare information); or
- (b) that would allow the information in an interstate child abuse report to be worked out; or
- (c) that identifies a person as a person who made an interstate child abuse report; or
- (d) that would allow a person’s identity as a person who made an interstate child abuse report to be worked out.

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Part 29.2 Offence to divulge information

3105 Offence—secrecy of protected information

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

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

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

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

- (3) This section is subject to the following sections:
- (a) section 3106 (Exception to s 3105—information given under this Act);

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- (b) section 3107 (Exception to s 3105—information given under another law);
- (c) section 3108 (Exception to s 3105—information given with agreement).

3106 Exception to s 3105—information given under this Act

- (1) Section 3105 (1) does not apply to the making of a record of protected information if the record is made—
- (a) under this Act; or
- (b) in the exercise of a function, as an information holder, under this Act.
- (2) Section 3105 (2) does not apply to the divulging of protected information if the information is divulged—
- (a) under this Act; or
- (b) in the exercise of a function, as an information holder, under this Act.

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

- s 1991 (Annual review report—must be given to certain people)
- s 2342 (Interstate transfer of orders and proceedings—giving information)
- s 3111 (Minister or chief executive may give information to person about themselves)
- s 3112 (Chief executive may give information in best interests of child or young person)
- s 3114 (Chief executive may give information to researcher)
- s 3117 (Minister or chief executive may give safety and welfare information to information sharing entity)
- s 3123 (Giving protected information to a court)
- s 3124 (Giving sensitive information to a court).

3107 Exception to s 3105—information given under another law

- (1) Section 3105 (1) (Offence—secrecy of protected information) does not apply to the making of a record of protected information if—
- (a) the information is not sensitive information; and
 - (b) the record is made—
 - (i) under another territory law; or
 - (ii) in the exercise of a function, as an information holder, under another territory law.
- (2) Section 3105 (2) does not apply to the divulging of protected information if—
- (a) the information is not sensitive information; and
 - (b) the information is divulged—
 - (i) under another territory law; or
 - (ii) in the exercise of a function, as an information holder, under another territory law.

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

- *Freedom of Information Act 1989*, s 10 (Right of access) and s 38 (Documents to which secrecy provisions of enactments apply)
- *Health Records (Privacy and Access) Act 1997*, s 10 (Statement of principle regarding right of access), and s 14A (No access to health record relating to Children and Young People Act complaint etc).

3108 Exception to s 3105—information given with agreement

Section 3105 (Offence—secrecy of protected information) does not apply to protected information if the information—

- (a) is not sensitive information; and

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- (b) is about a person; and
 - (c) is divulged with the person's agreement.

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Part 29.3 Offence to publish identifying information

3109 What is *identifying information*?

In this part:

identifying information, for a child or young person, means information—

- (a) that identifies the child or young person as a child or young person—
 - (i) who is the subject of a proceeding under this Act; or
 - (ii) for whom a care and protection order is in force; or
 - (iii) for whom the chief executive has an aspect of parental responsibility; or
- (b) that would allow the identity of the child or young person as a child or young person mentioned in paragraph (a) (i), (ii) or (iii) to be worked out.

Examples—par (b)

- 1 the child's or young person's address
- 2 the child's or young person's relationship to another person

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

3110 Offence—publish identifying information

A person commits an offence if the person publishes identifying information.

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

Part 29.4 Sharing protected information

Division 29.4.1 Generally

3111 Minister or chief executive may give information to person about themselves

The Minister or chief executive may give a person protected information (that is not sensitive information) held by the Minister or chief executive about the person.

Note A person who is given information under this section must comply with s 3105 (Offence—secrecy of protected information).

3112 Chief executive may give information in best interests of child or young person

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

Note A person who is given information under this section must comply with s 3105.

3113 Family group conference facilitator may give information in best interests of child or young person

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.

Note 1 Family group conferences are dealt with in ch 3 and ch 16.

Note 2 A person who is given information under this section must comply with s 3105.

3114 Chief executive may give information to researcher

The chief executive may give a researcher protected information, that is not sensitive information, for an approved research project.

Note 1 Approval of researchers and research projects is dealt with in ch 26.

Note 2 A researcher who is given information under this section must comply with s 3105.

Division 29.4.2 Safety and welfare information

3115 What is *safety and welfare information*?

In this part:

safety and welfare information, about a child or young person, means information that is relevant to the health, safety, welfare or wellbeing of the child or young person.

Examples of information relevant to safety, welfare or wellbeing of child or young person

- 1 information needed to assess whether a child or young person is at risk of abuse or neglect
- 2 information needed to assess whether a child or young person is in need of care and protection

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- 3 information needed to investigate whether an unborn child is likely to be at risk of abuse or neglect after the child is born
 - 4 information needed to decide what help and support the chief executive may offer a pregnant woman before her child is born to reduce the likelihood of the child being at risk of abuse or neglect after the child is born
 - 5 information needed to implement a care and protection order
 - 6 information needed to respond to a serious risk of harm to a child or young person
 - 7 information about the health of the child or young person
 - 8 information about the educational needs of the child or young person

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

3116 Who is an information *sharing* entity?

In this part:

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

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

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

Note Out-of-home carers are dealt with in pt 19.4.

- (d) a foster care service;

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

- (e) a Minister;
- (f) an administrative unit;

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- (g) a territory authority;
 - (h) a statutory office-holder;
 - (i) a territory instrumentality;
 - (j) a public employee;
 - (k) a health facility;
 - (l) a police officer or a member of a police service or force of a State;
 - (m) an entity established under a law of a State or the Commonwealth;
 - (n) the holder of a position established under a law of a State or the Commonwealth;
 - (o) an entity prescribed by regulation for this section.

3117 Minister or chief executive may give safety and welfare information to information sharing entity

- (1) The Minister or chief executive may give an information sharing entity for a child or young person protected information about a person if—
 - (a) the information is not sensitive information; and
 - (b) the information is safety and welfare information about the child or young person; and
 - (c) either—
 - (i) the person agrees to the information being given to the information sharing entity; or
 - (ii) the chief executive has taken all reasonable steps to seek the agreement of the person but the chief executive was unable to find the person or obtain agreement.

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- (2) However, the chief executive must not give protected information to an information sharing entity under subsection (1) if satisfied that doing so would be likely to—
 - (a) put the child or young person at risk of abuse or neglect; or
 - (b) jeopardise a criminal investigation.
 - (3) If the chief executive gives protected information to an information sharing entity, the chief executive must record—
 - (a) what information was given; and
 - (b) who the information was given to.
 - (4) This section is additional to section 102 (Chief executive may ask for assistance, etc).

Note 1 An information sharing entity who is given information under this section must comply with s 3105.

Note 2 The chief executive may also ask an information sharing entity for information relevant to the safety, welfare and wellbeing of a child or young person (see s 3119).

3118 Acknowledgement of agreement

- (1) When seeking the agreement of a person under section 3117, the chief executive must tell the person that agreement may be refused.
- (2) If the person agrees, the chief executive must ask the person to sign a written acknowledgment (an ***acknowledgement of agreement***)—
 - (a) that the person was told that agreement may be refused; and
 - (b) that the person agreed to the information being given; and
 - (c) stating the time and date when agreement was given.
- (3) If the person signs an acknowledgment of agreement, the chief executive must immediately give a copy to the person.

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- (4) A court must find that the person did not agree to the information being given to an information sharing entity under this part if—
- (a) the question arises in a proceeding in the court whether the person agreed to the information being given; and
 - (b) an acknowledgment of agreement is not produced in evidence; and
 - (c) it is not proved that the person agreed to the information being given.

3119 Chief executive may ask information sharing entity to give safety and welfare information

- (1) The chief executive may ask an information sharing entity for a child or young person to give the chief executive information about a person.
- (2) The information sharing entity may give the chief executive information about a person if—
 - (a) the information is not sensitive information; and
 - (b) the information is safety and welfare information about the child or young person; and
 - (c) either—
 - (i) the person agrees to the information being given to the chief executive; or
 - (ii) the information sharing entity has taken all reasonable steps to seek the agreement of the person but the information sharing entity was unable to find the 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).

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- (3) However, the information sharing entity must not give information to the chief executive under subsection (2) if the information sharing entity is satisfied that doing so would be likely to—
- (a) put the child or young person at risk of abuse or neglect; or
 - (b) jeopardise a criminal investigation.
- (4) This section is additional to section 102 (Chief executive may ask for assistance, etc).

Note 1 An information sharing entity who is given information under this section must comply with s 3105.

Note 2 The chief executive may also ask an information sharing entity for information relevant to the safety, welfare and wellbeing of a child or young person (see s 3119).

- (5) A territory entity must comply with a request under subsection (1)—
- (a) promptly; and
 - (b) if the chief executive tells the territory entity that the situation is an emergency—not later than 24 hours after the entity receives the request.

- (6) In 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.

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3120 Giving safety and welfare information does not contravene Health Records (Privacy and Access) Act 1997

If an entity gives information under this division, the giving of the information does not contravene the *Health Records (Privacy and Access) Act 1997*.

3121 Giving safety and welfare information does not contravene Privacy Act 1988 (Cwlth)

If an entity gives information under this division, the giving of the information does not contravene the *Privacy Act 1988 (Cwlth)*.

Part 29.5 **Giving protected or sensitive information to a court**

3122 **Definitions—pt 29.5**

In this part:

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

produce includes allow access to.

3123 **Giving protected information to a court**

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

3124 **Giving sensitive information to a court**

- (1) An information holder need not divulge sensitive information to a court unless ordered to do so under section 3125.
- (2) An information holder need not produce a document containing sensitive information to a court unless ordered to do so under section 3125.

3125 **Court may order sensitive information to be divulged or produced**

- (1) A court may, in any proceeding, order an information holder to—
 - (a) divulge sensitive information to the court; or

-
- (b) produce a document containing sensitive information to the court.
- (2) However, the court may make an order under subsection (1) in relation to sensitive information only if satisfied that—
 - (a) the information is materially relevant to the proceeding; and
 - (b) it is in the public interest for the information to be divulged or produced to the court; and
 - (c) if the information is about a person—the best interests of the person are protected.
 - (3) To enable the court to make a decision under subsection (2), the information holder must—
 - (a) for a decision about an order under subsection (1) (a)—divulge the information to the court; or
 - (b) for a decision about an order under subsection (1) (b)—produce the document containing the information to the court.
 - (4) In making a decision under subsection (2), the court must deal with the information divulged or produced under subsection (3) in a way that ensures the information is not divulged or produced to anyone else.
 - (5) If the court decides not to order the information holder to produce the document to the court under subsection (1), the court must return the document produced to the court under subsection (3) (b).

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Division 29.5.1 Admissibility of evidence

3126 How abuse or neglect reports may be used in evidence

- (1) This section applies if a person honestly and without recklessness makes an—
 - (a) abuse or neglect report under chapter 15; or
 - (b) a prenatal report under section 1607 (Prenatal reporting—anticipated abuse and neglect).
- (2) The abuse or neglect report, or evidence of the contents of the report, is admissible in evidence in a proceeding in a court or tribunal only if—
 - (a) the report or evidence is given to the court or tribunal by the person who made the report; or
 - (b) the proceeding is before the Childrens Court, under this part, in relation to the child or young person who is the subject of the report; or
 - (c) the proceeding is before a court hearing an appeal from a decision of the Childrens Court in a proceeding mentioned in paragraph (b); or
 - (d) the proceeding is about a charge or allegation made in a proceeding against a person in relation to the person's exercising a function under this Act.

3127 Confidential report—not admissible in evidence

- (1) A confidential report is not admissible in evidence in any proceeding in a court or tribunal.
- (2) Evidence of the contents of a confidential report is also not admissible in evidence in any proceeding in a court or tribunal.

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- (3) No-one may be compelled in any proceeding before a court or tribunal to—
- (a) produce a confidential report or a copy of, or extract from, a confidential report; or
 - (b) to disclose, or give evidence of, the contents of a confidential report.
- (4) This section is subject to the following sections:
- (a) section 3128 (Confidential report—confidential reporter may give evidence);
 - (b) section 3129 (Confidential report—evidence admissible with agreement or leave).

3128 Confidential report—confidential reporter may give evidence

In any proceeding in a court, the confidential reporter may give evidence about the confidential reporter's belief under section 3200 (1), and the reasons for the belief.

3129 Confidential report—evidence admissible with agreement or leave

- (1) This section applies to evidence—
- (a) that a particular matter is contained in a confidential report; or
 - (b) that identifies, or is likely to lead to the identification of, the confidential reporter.
- (2) The evidence is admissible in a proceeding in a court only if—
- (a) the confidential reporter agrees, in writing, to the admission of the evidence; or
 - (b) the court gives leave for the evidence to be given.

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- (3) The court may give leave under subsection (2) (a) only if the court is satisfied that it is necessary for the evidence to be given—
- (a) to ensure the safety and wellbeing of a child or young person;
or
 - (b) in relation to a charge or allegation made in a proceeding against someone about the exercise of the person’s functions under this Act; or
 - (c) to decide whether the report was made honestly and without recklessness.

3130 Things said at conference not admissible in proceedings

- (1) Evidence of anything said at a family group conference is not admissible in any proceeding.
- (2) However, a conference outcome report is admissible in a proceeding under chapter 18 (Care and protection—care and protection orders) to prove whether an agreement was or was not reached.

3131 Interim matters—things said at pre-orders conference

Evidence of anything said or done at a pre-orders conference is admissible in the proceeding to which it relates only if—

- (a) the parties to the proceeding agree to the evidence being admitted; or
- (b) the Childrens Court gives leave for the evidence to be admitted.

Part 29.6 Protection of people who give information

3132 Protection of people giving certain information

- (1) If a person gives information mentioned in subsection (2) honestly and without recklessness—
 - (a) the giving of the information is not a breach of—
 - (i) confidence; or
 - (ii) professional etiquette or ethics; or
 - (iii) a rule of professional conduct; and
 - (b) the person does not incur civil or criminal liability only because of the giving of the information.
- (2) Subsection (1) applies to information given by—
 - (a) a relevant person to the chief executive in response to a request made by the chief executive under section 102 (Chief executive may ask for assistance, etc); and
 - (b) a person to the official visitor under section 120 (Complaints to official visitors); and

Note Information given honestly and without recklessness to the public advocate under s 120 is protected under the *Public Advocate Act 2005*, s 15.

 - (c) a person to a chief executive under section 319 (Court may order report about guilty young people); and
 - (d) a person to the chief executive under section 1601 (Voluntary reporting of abuse and neglect); and

-
- (e) a person to the chief executive under section 1602 (Offence—mandatory reporting of abuse and neglect); and

Note Information given honestly and without recklessness to the public advocate under s 1602 is protected under the *Public Advocate Act 2005*, s 15.

- (f) a person to the chief executive under section 1607 (Prenatal reporting—anticipated abuse and neglect); and
- (g) a person to a police officer under section 2401 (1) (d) (Police powers); and
- (h) an information sharing entity to the chief executive under section 3119 (Chief executive may ask information sharing entity to give safety and welfare information); and
- (i) a person to the chief executive under section 3200 (Confidential report of contravention of Act).

Note The Minister and the chief executive are protected from civil liability for giving information by s 3203.

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Chapter 30 Miscellaneous

Notes to ch 30

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 for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 10).

3200 Confidential report of contravention of Act

- (1) This section applies if a person believes that a provision of this Act is being, or has been, contravened.
- (2) The person may report (in a *confidential report*) the belief, and the reasons for the belief, to the chief executive.
- (3) The chief executive must keep a written record of each confidential report.

Note 1 The following information is sensitive information and is subject to secrecy provisions (see ch 29):

- information contained in a confidential report;
- information that would allow the information contained in a confidential report to be worked out;
- information that identifies a person who made a confidential report or would allow the identity of the person to be worked out.

Note 2 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).

3201 Offence—tattoo child or young person without agreement

- (1) A person commits an offence if—
- (a) the person tattoos a part of another person’s body; and
 - (b) the other person is a child or young person; and
 - (c) the person does not have agreement, in writing, from a person who has responsibility for day-to-day matters, or long-term matters, for the child or young person, to—
 - (i) tattoo that part of the child’s or young person’s body; or
 - (ii) tattoo the child or young person in that way.

Maximum penalty: 50 penalty units.

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

3202 Presumption of age in proceedings

- (1) This section applies if a person is charged with an offence against this Act in relation to someone (the *supposed child or young person*) who is alleged in the charge to be under a stated age.
- (2) There is a rebuttable presumption that the supposed child or young person is under the stated age if the supposed child or young person appears to the court hearing the charge to be under the stated age.

3203 Protection of officials from liability

- (1) In this section:
- official* means—
- (a) the chief executive; or
 - (b) an official visitor; or

-
- (c) a person who is exercising, or has exercised, a function under this Act; or
 - (d) a person who is, or has been, engaged in the administration of this Act.
- (2) An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (3) Any liability that would, apart from this section, attach to an official attaches instead to the Territory.

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

3204 ACT child welfare services must assist public advocate

- (1) For the purpose of exercising a statutory function, the public advocate may ask an ACT child welfare service to provide information, advice, guidance, assistance, documents, facilities or services in relation to the physical or emotional welfare of children and young people.
- (2) If the public advocate makes a request of an ACT child welfare service under subsection (1), the service must comply with the request promptly.
- (3) In this section:

ACT child welfare service means any of the following entities if the entity is involved in providing welfare services for children and young people:

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- (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.

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 the *Public Advocate Act 2005*, s 15 (Giving of information protected)).

3205 Notification of location of child or young person

- (1) This section applies if—
 - (a) a child or young person has voluntarily entered a hospital, police station or refuge (the *place*); and
 - (b) the person in charge, or an occupier, of the place reasonably believes, reasonably suspects or knows that none of the following people knows the location of the child or young person:
 - (i) a parent of the child or young person;
 - (ii) someone else who has responsibility for day-to-day matters, or long-term matters, for the child or young person.
- (2) The person in charge, or occupier, may—
 - (a) tell 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, of the location of the child or young person; and

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- (b) if the place is not at a police station—tell a police officer that the child or young person is at the hospital or refuge.

3206 Evidentiary certificates—chief executive—parental responsibility

In a proceeding under this Act, a certificate purporting to be signed by the chief executive stating that, on a stated date or during a stated period, the chief executive had, or shared, responsibility for day-to-day matters, or long-term matters, for a stated child or young person is evidence of the matters stated in the certificate.

3207 Evidentiary certificates—chief executive—detention

- (1) In a proceeding under this Act, a certificate purporting to be signed by the chief executive stating that a stated person was committed to a stated detention centre on a stated date, and that on a stated date the period of the person's committal had not ended, is evidence of the matters stated in the certificate.
- (2) In a proceeding under this Act, a certificate purporting to be signed by the chief executive stating that the chief executive had, or had not, given a stated person a leave of absence on a stated date or during a stated period is evidence of the matters stated in the certificate.

3208 Appointment of analyst for Act

- (1) The chief executive may appoint analysts for this Act.

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

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

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- (2) An appointment under subsection (2) is a notifiable instrument.

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

3209 Determination of fees

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

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

- (2) A determination is a disallowable instrument.

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

3210 Approved forms

- (1) The chief executive may approve forms for this Act (other than for use in relation to the Childrens Court).

- (2) If the chief executive approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

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

3211 Standard-making power

- (1) The Minister may make standards for this Act.

Note Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

- (2) The standards may make provision for the following:

- (a) the conduct of family group conferences (***family group conference standards***);

Note Family group conferences are dealt with in ch 3 and ch 16.

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- (b) the implementation of family group conference agreements (*family group conference agreement standards*);

Note Family group conferences are dealt with in ch 3 and ch 16.

- (c) the conduct of drug testing under a drug use provision in a care and protection order (*drug testing standards*);

Note Drug use provisions in care and protection orders are dealt with in pt 18.8.

- (d) the care to be provided for children and young people by out-of-home carers (*out-of-home care standards*);

Note Out-of-home care is dealt with in pt 19.4.

- (e) the operation of therapeutic protection places (*therapeutic protection place standards*);

Note A child or young person may be confined at a therapeutic protection place under a therapeutic protection order (see pt 20.2).

- (f) the operation of childcare services (*childcare services standards*);

Note Childcare services are dealt with in ch 24.

- (g) the requirements for the operation of work experience programs (*work experience standards*).

Note Work experience programs are dealt with in ch 25.

- (3) A standard is a disallowable instrument.

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

3212 Regulation-making power

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

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

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- (2) A regulation may make provision for—
- (a) the duties of people in charge of places of detention; and
 - (b) the health and safety (including medical examinations) of children or young people, and other people, at places of detention; and
 - (c) travel and transport arrangements for children or young people performing community service; and
 - (d) the discipline and security (including the use of force, inspection of mail, and the use of video surveillance and other monitoring devices) at or for places of detention; and
 - (e) the safety, management and good order of places of detention; and
 - (f) working out the periods for community service conditions under division 7.7.4 (Good behaviour orders—community service conditions).
- (3) A regulation may also prescribe offences for contraventions of the regulation and prescribe maximum penalties of not more than 10 penalty units for offences against the regulation.
- (4) In this section:
- place of detention*—
- (a) means a detention centre or other place that children and young people may be detained under this Act; but
 - (b) does not include a remand centre.

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Dictionary

(see s 3)

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

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

- ACT
- administrative appeals tribunal
- administrative unit
- adult
- chief executive
- chief police officer
- Childrens Court
- dentist
- director of corrective services
- disallowable instrument
- doctor
- domestic partner (see s 169 (1))
- entity
- Executive
- function
- human rights commissioner
- indictable offence (s 190)
- individual
- in relation to
- intersex person (see s 169B)
- judge
- lawyer
- magistrate
- mental health tribunal

-
- Minister
 - notifiable instrument
 - nurse
 - ombudsman
 - penalty unit
 - police officer
 - privacy commissioner
 - public advocate
 - public employee
 - public servant
 - State
 - statutory office holder
 - territory authority
 - territory instrumentality
 - the Territory
 - transgender person (see s 169A (1) and (2))
 - working day.

Aboriginal means a person who—

- (a) is a descendant of the indigenous inhabitants of Australia; and
- (b) regards himself or herself as an Aboriginal or, if the person is a child or young person, is regarded as an Aboriginal by a parent or relative.

abuse, of a child or young person,—see section 1506.

abuse or neglect report, for part 15.1 (Care and protection—reporting abuse and neglect)—see section 1600.

accommodation order, in relation to a child or young person—see section 693.

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accredited person—

- (a) in relation to a young detainee, for chapter 10 (Criminal matters—detention places)—see section 1001; and
- (b) for a child or young person in therapeutic protection, division 20.3.3—see section 2149.

accused detainee, for chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

additional condition, of a young offender’s good behaviour order, for part 8.6 (Young offenders under good behaviour orders)—see section 831.

additional offence, for division 7.4.3 (Taking additional offences into account)—see section 630.

adjudicator—

- (a) for division 10.6.3 (Segregation)—see section 1061; and
- (b) for division 12.3.3 (External review of inquiry decisions)—see section 1319.

administrative penalty, for chapter 12 (Criminal matters—discipline at detention places)—see section 1329.

administrator, for chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

admission, of a young person to a detention place, for part 10.4 (Admission to detention places)—see section 1020.

advocate, of an accused detainee—

- (a) for division 12.3.3 (External review of inquiry decisions)—see section 1321; and
- (b) for chapter 13 (Conduct of disciplinary inquiries)—see section 1401.

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affected child, for division 24.4.3 (Childcare service licenses—suspension and cancellation)—see section 2632.

allegation report, for chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

analyst means a person who is appointed as an analyst for this Act under section 3208.

annual review report, for a reviewable child or young person, for chapter 18 (Care and protection—care and protection orders)—see section 1988.

application, for chapter 23 (Care and protection—provisions applying to all proceedings under care and protection chapters)—see section 2500.

appraisal order, for the care and protection chapters—see section 1620.

approved research project, for chapter 26 (Research involving children and young people)—see section 2800.

approved research project procedures, for chapter 26 (Research involving children and young people)—see section 2800.

arrangement, for part 9.2 (Interstate transfers)—see section 916.

at risk of abuse or neglect, in the care and protection chapters—see section 1508.

authorised doctor, for chapter 20 (Care and protection—therapeutic protection of children and young people)—see section 2100.

authorised health professional, for chapter 20 (Care and protection—therapeutic protection of children and young people)—see section 2100.

authorised nurse, for chapter 20 (Care and protection—therapeutic protection of children and young people)—see section 2100.

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authorised person, for a provision of this Act, means a person appointed by the chief executive under section 2901 to be an authorised person for the provision.

basic good behaviour order, for chapter 7 (Criminal matters—sentencing and non-conviction options)—see section 601.

because of, for division 7.4.2 (Victim impact statements)—see section 622.

best interests principle—see section 10.

body includes an agency or organisation.

body search—

- (a) section 1200; and
- (b) for part 20.3 (Children and young people in therapeutic protection)—see section 2160.

cancellation notice, for chapter 24 (Childcare services)—see section 2639.

care and protection appraisal—see section 1615.

care and protection appraisal information, for chapter 29 (Information secrecy and sharing)—see section 3104.

care and protection chapters—see section 1500.

care and protection order—see section 1901.

care entities, for division 19.4.5 (Information to be kept by foster carers and residential care services)—see section 2028.

care plan—see section 1935.

case management plan, for chapter 10 (Criminal matters—detention places)—see section 1050.

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CE community service direction, for subdivision 8.6.2.2 (Good behaviour orders—doing community service work)—see section 841.

charge, for chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

charge notice, for chapter 12 (Criminal matters—discipline at detention places)—see section 1312.

child—see section 11.

child abuse appraisal information, for chapter 29 (Information secrecy and sharing)—see section 3104.

child abuse information, for chapter 29 (Information secrecy and sharing)—see section 3104.

childcare centre—see section 2606.

childcare service—see section 2605.

childcare service licence, for chapter 24 (Childcare services)—see section 2600.

childcare services standards—see section 3211.

childcare worker, for chapter 24 (Childcare services)—see section 2600.

child services report information, for chapter 29 (Information secrecy and sharing)—see section 3104.

child welfare law, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2304.

child welfare order, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2302.

child welfare proceeding, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2303.

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child welfare proceeding transfer order, for part 21.3 (Interstate transfer of ACT child welfare proceedings)—see section 2321.

committal order—see section 638.

committed, an offence, for chapter 6 (Criminal matters—proceedings)—see section 500.

community service condition—see section 660.

community service order includes a good behaviour order that contains a community service condition.

community service work—see section 835.

compliance notice, for chapter 24 (Childcare services)—see section 2633.

compliance suspension notice, for chapter 24 (Childcare services)—see section 2634.

conduct—see the Criminal Code, section 13.

confidential report, for Chapter 24 (Childcare services)—see section 3200.

connected, for chapter 27 (Enforcement)—see section 2900.

contact—see section 1512.

contact provision, in a care and protection order—see section 1971.

contrary, for employment being contrary to the best interests of a child or young person—see section 2704.

controlled drug—see the Criminal Code, section 600.

controlling person, for a childcare service or proposed childcare service, for chapter 24 (Childcare services)—see section 2609.

conviction order, for chapter 7 (Criminal matters—sentencing and non-conviction options)—see section 601.

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core condition, for part 8.6 (Young offenders under good behaviour orders)—see section 831.

core conditions, for chapter 7 (Criminal matters—sentencing and non-conviction options)—see section 601.

corresponding chief executive, of a participating State, for division 10.8.2 (Interstate leave)—see section 1095.

corresponding leave law, for division 10.8.2 (Interstate leave)—see section 1095.

criminal matters chapters—see section 400.

court, for part 29.5 (Giving protected and sensitive information to a court)—see section 3122.

dangerous thing, for part 20.3 (Children and young people in therapeutic protection)—see section 2162.

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

deferred sentence obligations—see section 703.

deferred sentence order—see section 698.

detainee, for chapter 10 (Criminal matters—detention places)—see section 1000.

detention place means a place declared to be a detention centre under section 1009.

disciplinary action, for chapter 12 (Criminal matters—discipline at detention places)—see section 1328.

disciplinary breach, for chapter 12 (Criminal matters—discipline at detention places)—see section 1302.

divulge, for chapter 29 (Information secrecy and sharing)—see section 3101.

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drug, for part 10.7 (Alcohol and drug testing)—see section 1086.

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

drug use provision, in a care and protection order, for the care and protection chapters—see section 1977.

DVPO final protection order, for division 18.3.5 (Care and protection—care and protection orders)—see section 1937.

DVPO interim protection order, for division 18.3.5 (Care and protection—care and protection orders)—see section 1937.

DVPO protection order, for division 18.3.5 (Care and protection—care and protection orders)—see section 1937.

education and training condition—see section 673.

emergency action, for part 17.2 (Emergency care and protection)—see section 1804.

emergency action release order—see section 1814.

employment, for chapter 25 (Employment of children and young people)—see section 2702.

enduring parental responsibility provision, in the care and protection chapters—see section 1967.

engage in conduct—see the Criminal Code, section 13.

entitled child or young person, for part 2.3 (Official visitors)—see section 114.

escape, for division 10.8.2 (Interstate leave)—see section 1095.

escort officer means a police officer or authorised person.

ethics committee, for chapter 26 (Research involving children and young people)—see section 2800.

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existing sentence, for division 8.2.3 (Commitment—multiple sentences)—see section 811.

family day care service—see section 2607.

family group conference—see section 200.

family group conference agreement—see section 203.

family group conference agreement standards—see section 3211.

family group conference facilitator—see section 205.

family group conference outcome report, for chapter 3 (Family group conferences)—see section 216.

family group conference standards—see section 3211.

family member—

- (a) of a person—see section 13; and
- (b) of a detainee for chapter 10 (Criminal matters—detention places)—see section 1001.

fine, for division 8.2.3 (Commitment—multiple sentences)—see section 810.

fine order—see section 721.

former caregiver, of a child or young person, for the care and protection chapters—see section 1511.

foster carer, for a child or young person—see section 2011.

foster care service—see section 2017.

frisk search—

- (a) for chapter 11 (Criminal matters—search and seizure at detention places)—see section 1200; and
- (b) for part 20.2 (Therapeutic protection orders)—see section 2158.

general parental authority—see section 2017.

general principles—see section 8.

given, for a victim impact statement, for division 7.4.2 (Victim impact statements)—see section 622.

good behaviour obligations, for part 7.7 (Particular orders—good behaviour orders) and part 8.6 (Young offenders under good behaviour orders)—see section 831.

good behaviour order, for chapter 7 (Criminal matters—sentencing and non-conviction options) and part 8.6 (Young offenders under good behaviour orders)—see section 646.

government agency, of a state, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2301.

guilty young person, for a criminal matters chapter—see section 600.

harm—

- (a) for division 7.4.2 (Victim impact statements)—see section 622; and
- (b) for part 7.7 (Particular orders—good behaviour orders)—see section 645.

health care treatment means treatment of an illness, disability, disorder or condition by a health professional.

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health facility means a hospital or other facility where health services are provided.

health professional means a health professional registered under the *Health Professions Act 2004*.

health segregation direction, for division 10.6.3 (Segregation)—see section 1061.

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

hearing, for an inquiry, for chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

high risk occupation, for part 25.3 (Employment of children and young people under school-leaving age)—see section 2712.

identifying information, for part 29.3 (Offence to publish identifying information)—see section 3109.

indigenous, for a person, includes Aboriginal or Torres Strait Islander.

indigenous organisation means an organisation whose purpose is to represent the interests of indigenous people.

information holder, for chapter 29 (Information secrecy and sharing)—see section 3102.

information sharing entity, for part 29.4 (Sharing protected information)—see section 3116.

in need of care and protection—see section 1509.

in need of emergency care and protection, for the care and protection chapters—see section 1803.

in need of emergency medical treatment, for the care and protection chapters—see section 1800.

EXPOSURE DRAFT

inquiry, for chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

intention to cancel notice, for chapter 24 (Childcare services)—see section 2637.

interested person, for part 8.6 (Young offenders under good behaviour orders)—see section 831.

interim care and protection order, for chapter 18 (Care and protection—care and protection orders)—see section 1912.

interim child welfare order, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2324.

interim therapeutic protection order—see section 2113.

interstate child abuse information, for chapter 29 (Information secrecy and sharing)—see section 3104.

interstate child welfare order, for part 21.7 (Interstate transfer of child welfare orders and proceedings—non-participating States)—see section 2345.

interstate child welfare order declaration, for part 21.7 (Interstate transfer of child welfare orders and proceedings—non-participating States)—see section 2347.

interstate escort officer, for division 10.8.2 (Interstate leave)—see section 1102.

interstate law, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2305.

interstate leave permit—see section 1097.

interstate officer, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2306.

EXPOSURE DRAFT

interstate young detainee, for division 10.8.2 (Interstate leave)—see section 1095.

in therapeutic protection—see section 2145.

investigator, for chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

investigator’s report, for Chapter 12 (Criminal matters—discipline at detention places)—see section 1301.

kinship carer, for a child or young person—see section 2010.

licensed childcare service, for chapter 24 (Childcare services)—see section 2600.

licensed proprietor, of a childcare service, for chapter 24 (Childcare services)—see section 2600.

light work, for part 25.3 (Employment of children and young people under school-leaving age)—see section 2711.

list of additional offences, for division 7.4.3 (Taking additional offences into account)—see section 630.

litigation representative means a litigation guardian or next friend.

mail means postal mail.

mandatory report—see section 1602.

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

mental health tribunal provision, in a care and protection order—see section 1982.

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

Minister of a State, for part 9.2 (Interstate transfers)—see section 916.

EXPOSURE DRAFT

neglect—see section 1507.

non-association condition, for division 7.7.2 (Good behaviour orders—non-association conditions)—see section 651.

non-conviction order, for chapter 7 (Criminal matters—sentencing and non-conviction options)—see section 601.

non-participating State, for part 21.7 (Interstate transfer of child welfare orders and proceedings—non-participating States)—see section 2344.

occupier, for chapter 27 (Enforcement)—see section 2900.

offence—

- (a) includes an offence against a Commonwealth law; and
- (b) for chapter 27 (Enforcement)—see section 2900.

official visitor means a person appointed as an official visitor under section 115.

operating entity, for part 2.3 (Official visitors)—see section 114.

operating procedure, for chapter 10 (Criminal matters—detention places) means an operating procedure made by the chief executive under section 1001.

order, for chapter 28 (Appeals and review), includes a decision.

ordinary search, for part 20.3 (Children and young people in therapeutic protection)—see section 2159.

out-of-home carer—see section 2009.

out-of-home carer authorisation—see section 2017.

out-of-home care standards—see section 3211.

owner, of a thing, for division 20.3.6 (Seizing dangerous things)—see section 2190.

EXPOSURE DRAFT

paediatrician means a doctor who is registered under the *Health Professionals Regulation 2004* in the specialist area of paediatric medicine.

parental responsibility—

- (a) see division 1.3.2; and
- (b) for part 21.7 (Interstate transfer of child welfare orders and proceedings—non-participating States)—see section 2344.

parental responsibility provision, for care and protection chapter—see section 1954.

participant, for chapter 3 (Family group conferences)—see section 200.

participating state—

- (a) for division 10.8.2 (Interstate leave)—see section 1095; and
- (b) for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2301.

parties, for chapter 3 (Family group conferences)—see section 200.

party—

- (a) for an application, for the care and protection chapters—see section 2505; and
- (b) for chapter 16 (Care and protection—voluntary agreements to transfer or share parental responsibility)—see section 1707.

personal information, about a child or young person, for division 19.4.5 (Information to be kept by foster carers and residential care services)—see section 2028.

EXPOSURE DRAFT

personal violence offence means—

- (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
- (b) a domestic violence offence.

person involved, in community service work, for division 8.6.2 (Good behaviour orders—doing community service work)—see section 835.

person responsible—

- (a) in relation to a young detainee, for part 9.1 (Transfers within ACT)—see section 900.
- (b) for a young detainee, for part 9.2 (Interstate transfers)—see section 916.

place includes premises.

placement, for a child or young person, for division 19.4.5—see section 2028.

place of care means a place approved as a place of care under section 2027.

place restriction condition, for division 7.7.3 (Good behaviour orders—place restriction conditions)—see section 656.

possession, of a thing, includes the following:

- (a) receiving or obtaining possession of the thing;
- (b) having control over the disposition of the thing (whether or not having custody of the thing);
- (c) having joint possession of the thing.

EXPOSURE DRAFT

presiding officer—

- (a) for division 12.3.1 (Disciplinary action—with accused detainee’s consent)—see section 1313; and
- (b) for division 12.3.2 (Internal disciplinary inquiry)—see section 1316; and
- (c) for part 13.1 (Conduct of disciplinary inquiries—general)—see section 1401.

primary sentence, for division 8.2.3 (Commitment—multiple sentences)—see section 810.

principal offence, for division 7.4.3 (Taking additional offences into account)—see section 630.

privilege, for chapter 12 (Discipline at detention places)—see section 1304.

produce, for part 29.5 (Giving protected or sensitive information to a court)—see section 3122.

professional assessment, for the care and protection chapters—see section 1616.

professional assessment order, for the care and protection chapters—see section 1916.

prohibited area, for a criminal matters chapter—see section 1014.

prohibited thing—

- (a) for chapter 10 (Criminal matters—detention places)—see section 1001; and
- (b) for chapter 11 (Criminal matters—search and seizure at detention places)—see section 1200.

proposed controlling person, for a childcare service, for chapter 24 (Childcare services)—see section 2600.

EXPOSURE DRAFT

proposed proprietor, for a childcare service, for chapter 24 (Childcare services)—see section 2600.

proprietor, of a childcare service, for chapter 24 (Childcare services)—see section 2600.

protected information—see section 3103.

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

provision, in a care and protection order, for chapter 18 (Care and protection—care and protection orders)—see section 1900.

psychiatrist means a doctor who is registered under the *Health Professionals Regulation 2004* in the specialist area of psychiatry.

reasonably believes means believes on reasonable grounds.

reasonably suspects means suspects on reasonable grounds.

receiving State, for part 9.2 (Interstate transfers)—see section 916.

registered, for a family group conference, for chapter 16 (Care and protection—voluntary agreements to transfer or share parental responsibility)—see section 1700.

registered victim, for part 8.8 (Victim and young offender information)—see section 867.

register of young detainees, for chapter 10 (Criminal matters—detention places)—see section 1001.

rehabilitation condition—see section 667.

rehabilitation order includes a good behaviour order that contains a rehabilitation condition.

relative, of a child or your person—see section 14.

release date—see section 823.

EXPOSURE DRAFT

relevant conference participant—see section 200.

relevant presiding officer, for division 12.3.4 (Disciplinary action generally)—see section 1327.

remissions advisory board, for part 8.9 (Remissions and pardons)—see section 871.

reparation order—see section 683.

reporting officer, for subdivision 8.6.2.2 (Good behaviour orders—doing community service work)—see section 841.

representative, for a child or young person, means a lawyer or other person representing the child or young person, but does not include a child or young person who represents himself or herself.

requirement notice, for part 2.4 (Suitable entities for purposes under the Act)—see section 143.

researcher, for a research project, for chapter 26 (Research involving children and young people)—see section 2800.

research project, for a research project, for chapter 26 (Research involving children and young people)—see section 2800.

residential care service—see section 2012.

responsible person, for a childcare service, for chapter 24 (Childcare services)—see section 2611.

risk assessment, for chapter 20 (Care and protection—therapeutic protection of children and young people)—see section 2104.

safe custody warrant—see section 2405.

safety and welfare information, for part 29.4 (Sharing protected information)—see section 3115.

EXPOSURE DRAFT

scanning search—

- (a) for chapter 11 (Criminal matters—search and seizure at detention places)—see section 1200; and
- (b) for part 20.3 (Children and young people in therapeutic protection)—see section 2157.

school means—

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

school-leaving age—see the *Education Act 2004*, dictionary.

Note The *Education Act 2004*, dictionary defines school-leaving age as 15 years old.

security classification, for chapter 10 (Criminal matters—detention places)—see section 1001.

segregation, for chapter 10 (Criminal matters—detention places)—see section 1001.

segregation direction, for division 10.6.3 (Segregation)—see section 1061.

sending State—

- (a) for part 9.2 (Interstate transfers)—see section 916; and
- (b) for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2301.

sensitive information—see section 3104.

sentence related order, for division 7.4.3 (Taking additional offences into account)—see section 630.

EXPOSURE DRAFT

short-term parental responsibility provision, in a care and protection order, for the care and protection chapters—see section 1958.

significant harm, for the care and protection chapters—see section 1505.

significant person, for chapter 10 (Criminal matters—detention places)—see section 1001.

specific issues provision, for chapter 18 (Care and protection—care and protection orders)—see section 1984.

specific parental authority—see section 2017.

State, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2301.

State Childrens Court, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2301.

strip search—

- (a) for chapter 11 (Criminal matters—search and seizure at detention places)see section 1200; and
- (b) for part 20.3 (Children and young people in therapeutic protection)—see section 2161.

suitability information—see section 140.

suitability information notice, for part 2.4 (Suitable entities for purposes under the Act)—see section 141.

suitable entities register, for part 2.4 (Suitable entities for purposes under the Act)—see section 147.

suitable entity, to provide a service—see section 136.

EXPOSURE DRAFT

supervision conditions—see section 679.

supervision provision, for the care and protection chapters—see section 1979.

temporary custody provision, in the care and protection chapters—see section 1621.

test sample, for part 10.7 (Alcohol and drug testing)—see section 1086.

therapeutic protection history—see section 2107.

therapeutic protection order—see section 2102.

therapeutic protection place—see section 2105.

therapeutic protection plan—see section 2106.

Torres Strait Islander means a person who—

- (a) is a descendant of the indigenous inhabitants of the Torres Strait Islands; and
- (b) regards himself or herself as a Torres Strait Islander or, if the person is a child or young person, is regarded as a Torres Strait Islander by a parent or relative.

transfer agreement, for part 9.2 (Interstate transfers)—see section 916.

transfer arrangement, means a transfer arrangement under section 918 (Transfer arrangements—general) or, if the transfer arrangement has been amended by another transfer arrangement under that section, the transfer arrangement as amended.

transfer direction, for part 9.1 (Transfers within ACT)—see section 900.

transfer escort, for part 9.2 (Interstate transfers)—see section 916.

EXPOSURE DRAFT

transfer order—for part 9.2 (Interstate transfers)—see section 923.

transition plan, for chapter 20 (Care and protection—therapeutic protection of children and young people)—see section 2108.

under restraint, for chapter 6 (Criminal matters—proceedings)—see section 501.

victim—

- (a) for division 7.4.2 (Victim impact statements)—see section 622; and
- (b) for part 8.8 (Victim and young offender information)—see section 868.

victim impact statement, for division 7.4.2 (Victim impact statements)—see section 622.

victims register, part 8.8 (Victim and young offender information)—see section 867.

visiting conditions, for chapter 10 (Criminal matters—detention places)—see section 1001.

visitor, for chapter 10 (Criminal matters—detention places)—see section 1001.

voluntary care agreement—see section 1705.

voluntary report—see section 1601.

welfare body, for chapter 21 (Care and protection—interstate transfer of orders and proceedings)—see section 2301.

EXPOSURE DRAFT

young child—

- (a) for division 10.6.6 (Maintenance of family relationships)—see section 1083; and
- (b) for chapter 25 (Employment of children and young people), means someone who is not school-leaving age or older.

young detainee—

- (a) for a criminal matters chapter—see section 900; and
- (b) for part 8.5 (Detention)—see section 822.

young offender—

- (a) for a criminal matters chapter—see section 404; and
- (b) for part 8.5 (Detention)—see section 822.

young offender principles, for a criminal matters chapter—see section 403.

young person—see section 12.

young remandee, for part 8.5 (Detention)—see section 822.

youth detention policy, for chapter 10 (Criminal matters—detention places)—see section 1001.

work supervisor, for division 8.6.2 (Good behaviour orders—doing community service work)—see section 841.

EXPOSURE DRAFT

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2007.

2 Notification

Notified under the Legislation Act on 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
